Fort Belknap

Code

TITLE I
TABLE OF CONTENTS
GENERAL RULES OF ADMINISTRATION

Part

TITLE I

GENERAL RULES OF ADMINISTRATION

SECTION I. ESTABLISHMENT OF TRIBAL COURT

The Fort Belknap Indian Community Tribal Court is established to exercise the judicial power of the people of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation to decide all cases and controversies in law or equity arising on the Fort Belknap Indian Reservation.

History: Section 1 enacted on the 3/8/99, Resolution 63-99; formerly Section I of the General Rules of Administration, Title I.

SECTION II JURISDICTION

A. The Court shall have jurisdiction over Tribal Council ordinances, the Laws and Order Code and amendments to this Code. Court shall have the power to enforce the code and ordinances enacted pursuant to that authority or any other authority contained in the approved Constitution and By–Laws.

B. The Tribal Court shall have jurisdiction over all civil and criminal actions arising under this Tribal Code or at Indian Common Law in which the defendant is found within the Fort Belknap Indian Reservation and is validly served with process under the long arm service provisions of Section 1.7, Title II of the Tribal Code.

C. The Tribal Court shall have original jurisdiction not prohibited by law over all persons and property, in all matters arising in law or equity, and it shall have all enforcement power not prohibited by law.

D. The jurisdiction of the Court shall be exclusive and concurrent with respect to an offense over which a federal court may have lawful jurisdiction.

History: Section 2, (A-D) enacted on the 3/8/99, Resolution 63-99; formerly Section II of the General Rules of Administration, Title I.

SECTION III. TRIBAL SOVEREIGNTY AND IMMUNITY FROM SUIT

A. The Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community of the Fort Belknap Indian Reservation of Montana constitutes recognized Indian Tribes organized under a Constitution and By–Laws ratified by the Tribes on December 13, 1935 and approved pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 378). Pursuant to the Treaty of 1855 (11 Stat. 657), the full powers of internal sovereignty are vested in said Indian Tribes and in their duly constituted organs of government.

B. The Tribal Court shall have no jurisdiction over any suit brought against the Fort Belknap Indian Community without the consent of the Fort Belknap Indian Community Tribal Council. Nothing contained in this Tribal Code shall be construed as consent by the Fort Belknap Indian Community to be sued.

History: Section 3, (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section XII of the General Rules of Administration, Title I.

SECTION IV. APPOINTMENT OF JUDGES

A. The Fort Belknap Indian Community Tribal Court shall consist of one (1) Chief Judge and two (2) Associate Judges all of whom shall be appointed by the Fort Belknap Indian Community Council. A Judge from another reservation may serve upon request from the Chief Judge upon terms, conditions, and need, as established by the Tribal Court Administrator.

B. A Tribal member shall be eligible for appointment and serve as a Judge of the Fort Belknap Indian Community Tribal Court if he or she:

1) Is an enrolled member of either the Gros Ventre or Assiniboine Tribes and is a resident of the Fort Belknap Indian Reservation
2) Has never been convicted of a felony crime
3) Has not been convicted of a misdemeanor crime within a one (1) year period immediately before his appointment.
4) Is at least thirty (30) years of age.
5) Has completed four (4) years of high school or its equivalent;
6) Has not received a dishonorable discharge from the Armed Forces of the United States.
7) Has successfully completed an examination covering the Constitution and By–Laws, Corporate Charter, Laws of the Fort Belknap Indian Reservation, the judicial system, and law enforcement to be administered by the Tribal Council.
8) Has successfully completed training for the position as a Judge.

C. Each Judge shall hold office for four (4) years until he is granted tenure, resigns, or is removed pursuant to Section V.

D. The salaries of the Chief Judge and Associate Judges shall be determined and paid by the Fort Belknap Indian Community Tribal Council.

E. The Chief Judge and Associate Judges shall hear and determine all matters which are duly and regularly filed in the Fort Belknap Indian Community Tribal Court. In addition to duties and powers specifically enumerated under the Tribal Code, judges of the Fort Belknap Indian Community Tribal Courts shall have the power to issue subpoenas to compel attendance of witnesses on their own motion or on the motion of a party litigant and may punish for failure to comply with such subpoenas under this Tribal Code.

F. The Chief Judge, in addition to his judicial duties, shall have the responsibility of establishing departments among the judges of the court, as necessary, and, as funding allows, make general assignments of judicial functions to Associate Judges.

G. No judge shall be qualified to act as such in any case wherein he has any direct interest or wherein any relatives by marriage or blood, in the first or second degree, is a party.

H. Any judge, after serving one (1) term, may be granted tenure by two–thirds (2/3) vote of the Tribal Council, providing said judge has exercised his duties on the bench in a fair and impartial manner and in the best interest of the Gros Ventre and Assiniboine Tribes. Tenure shall be indefinite or until such time as one is removed pursuant to Section 4.2

History: Section 4, (A-H) enacted on the 3/8/99, Resolution 63-99; formerly Section III of the General Rules of Administration, Title I, and as amemded, 9/7/99, Resolution __-99.

SECTION V. REMOVAL OF JUDGES

A. Any judge, except tenured judges, may be removed from office after due notice and a hearing by two–thirds (2/3) vote of the Fort Belknap Community Tribal Council, if there is reasonable cause to believe the Judge to be guilty of malfeasance or misfeasance in office and/or neglect of duty, corruption, mental or physical incapacity to perform the duties of his office or the judge has been convicted of a felony crime in a state or federal court since entering office.

B. A tenured Judge may be removed pursuant to Section V (A), except a unanimous vote for removal shall be required for removal.

C. A Judge may be disqualified upon his own motion or by application by any party in the proceedings upon filing a verified motion in writing.

History: Section 5, (A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section IV of the General Rules of Administration, Title I.

SECTION VI. REPLACING JUDGES

6.1 Appointment of Judge

A. The Tribal Court Administrator shall appoint another judge to hear any legal proceedings where a judge or judges have been disqualified, provided that, said appointed judge agrees to hear the matter and is compensated at a rate to be set by the Court Administrator. It shall not be a requirement that appointed judges be a member of the Fort Belknap Indian Community or a resident of the Fort Belknap Indian Reservation.

B. Any judge who replaces a disqualified judge shall meet the standards and qualifications for judges as set forth in this code, except for those sections where the qualifications are suspended, and be knowledgeable of the customs and laws of the Tribes of the Fort Belknap Indian Community.

History: Section 6, Subsection 6.1 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section IV of the General Rules of Administration, Title I, see Resolution No. 147-77, and as amemded, 9/7/99, Resolution __-99.

6.2 Absence or Disability of Judge

The work in the Tribal Court may be interchangeable between the judges thereof during the absence or disability of any of them or upon the request of any judge, provided, inasmuch as information unique to cases is gained by a judge when he presides thereon, every effort shall be made to avoid interchanging services on a case, unless appropriate, in the interests of justice. During the absence of any judge, the judges present and presiding, or any of them, may enter orders and make disposition, temporary or final, of any case or matter pending before the absent judge. However, when any order is made for a hearing to be had thereafter, the judge present and presiding shall make the order returnable before the judge to whom it is assigned. Thereafter, it shall be the duty of counsel to consult with the assigned judge to either confirm or reset the hearing date fixed.

History: Section 6 , Subsection 6.2 enacted on the 3/8/99, Resolution 63-99; formerly Rule 22 of the Rules of Court, see Resolution No. 147-77, and as amemded, 9/7/99, Resolution __-99.

SECTION VII. COURT PROCEDURES

A. The Chief Judge shall hear all cases, criminal and civil, arising under the Tribal Code, except those which he has assigned to an associate judge.

B. The time and place of court sessions, and in all other details of judicial procedure not prescribed by these ordinances, shall be laid down in rules of Court approved by Fort Belknap Indian Community Tribal Council.

C. The Chief Judge and Associate Judges shall adopt rules of pleadings, practice and procedures applicable to any or all proceedings in the Court and in the Court of Appeals. In addition, they shall adopt uniform rules for the admission of evidence and shall require the use of standard forms for pleadings, motions, and other instruments filed in the Court by litigants as well as for judgments, writs, warrants and other Court orders.

D. It shall be the duty of the judges of the Fort Belknap Indian Community Tribal Court to make recommendations to the Fort Belknap Indian Community Tribal Council for the enactment or amendment of the rules of the Court in the interest of improved judicial procedure.

History: Section 7,(A-D) enacted on the 3/8/99, Resolution 63-99; formerly Section V of the General Rules of Administration, Title I.

SECTION VIII. COURT OF APPEALS

8.1 Creation of Court of Appeals

A. There is hereby created a Court of Appeals and it shall be the highest Court of the Fort Belknap Indian Community. The Court of Appeals shall consist of three (3) judges who are licensed to practice law in any state of the union and are in good standing with their state bar and successfully successfully pass the Fort Belknap bar examination.

B. The presiding judge of the panel shall be appointed by the Fort Belknap Community Council. There must be three (3) judges sitting together as a body to hear a case appealed to the Court of Appeals, including a writ of habeas corpus.

History: Section 8 , Subsection 8 .1 enacted on the 3/8/99, Resolution 63-99; formerly Section VI of the General Rules of Administration, Title I.

8.2 Jurisdiction of Court of Appeals

The Court of Appeals shall have jurisdiction to hear and determine all appeals of final judgment of the Fort Belknap Indian Community Tribal Court and all such appeals shall be tried as a new trial except issues of fact already determined by a jury. The Court of Appeals shall have the power to issue any order or writ necessary to the complete exercise of their jurisdiction.

History: Section 8 , Subsection 8 .2 enacted on the 3/8/99, Resolution 63-99; formerly Section VI of the General Rules of Administration, Title I.

SECTION IX. JURIES

9.1 Jury Demand

Upon a preliminary hearing by the Court, in any case where substantial question of fact is raised and/or the offense charged is punishable by imprisonment and/or fine, the accused may demand a jury trial.

History: Section 9, Subsection 9.1 enacted on the 3/8/99, Resolution 63-99; formerly Section VII of the General Rules of Administration, Title I.

9.2 Eligible Jurors

A list of eligible jurors shall be prepared by the Tribal Council each year. The jury shall consist of six (6) members of either Tribe who are residents of the Fort Belknap Indian Reservation and they shall be selected from the list of eligible jurors by the Chief Judge.

History: Section 9, Subsection 9.2 enacted on the 3/8/99, Resolution 63-99; formerly Section VII of the General Rules of Administration, Title I.

9.3 To be eligible for jury duty one selected must:

A) Be an adult member of either the Gros Ventre or Assiniboine Tribes.

B. Twenty–one (21) years of age.

C. Not have been convicted of a felony.

D. Not have been dishonorably discharged from the Armed Services of the United States.

E. Not be a judge, officer or employee of the Court, or elected community official.

F. Reside on the Fort Belknap Indian Reservation.

History: Section 9, Subsection 9.3(A-F) enacted on the 3/8/99, Resolution 63-99; formerly Section VII of the General Rules of Administration, Title I.

9.4 Jury Instructions

The judge shall instruct the jury in the law applicable to the case and the jury shall bring the verdict for the complainant or the defendant. The judge shall render judgment in accordance with the verdict and existing law. A jury verdict in civil and criminal cases shall be entered pursuant to this Tribal Code.

History: Section 9, Subsection 9.4 enacted on the 3/8/99, Resolution 63-99; formerly Section VII of the General Rules of Administration, Title I.

SECTION X. PROFESSIONAL ATTORNEYS AND LAY COUNSEL

A) Professional attorneys shall not appear in any proceeding before the Court unless rules of Court prescribing conditions governing their admission and practice before the Court have been met. The defendant may be represented by lay counsel, who is a member of the Fort Belknap Bar.

B) Eligibility to practice: Lay counsel must successfully pass the Fort Belknap bar examination before he or she is allowed to practice before the court. Professional Attorneys or Lay counsel who have been convicted of a felony shall be found not to be in good standing and will not be allowed to practice. Professional Attorneys or Lay counsel who have been convicted of misdemeanor within the last year, shall be found not to be in good standing and not be allowed to practice for a period of two years.

C) Should an issue as to whether counsel is in good standing arise, the Chief Judge will make the decision whether the individual may practice.

History: Section 10, (A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section VIII of the General Rules of Administration, Title I. Cross-Reference: Title II, Part I, Section XI, Subsection 11.6.

SECTION XI. CHIEF CLERK OF COURT

11.1 Duties.

A. The Chief Clerk of Court shall be appointed by the Fort Belknap Community Council with the recommendations of the Chief Judge.

B. No person shall be appointed Chief Clerk of the Tribal Court unless the appointee:
1) Is (18) eighteen years of age or older and of good moral character.
2) Has never been convicted of a felony or a misdemeanor within the past year.
3) Speaks, writes, and understands the English language fluently and has demonstrated competence in the skills essential to the preparation and maintenance of the Court records.

C. The Chief Clerk shall attend and keep a record of the Tribal Court and Court of Appeals, read the complaints, administer oaths, collect all fines paid by order of the Court and account therefore, as well as provide general supervision of the other court clerks in their duties. The Chief Clerk shall perform other duties as provided in the Tribal Code and/or as may be directed by the Court Administrator. All duties described in this code for the Chief Clerk may be delegated to additional clerks, as hired and established with available funds.

D. The Chief Clerk shall be bonded to perform the above services and duties. The filing of a bond shall be a condition precedent to his or her qualifying for such office.

E. The salary of the Chief Clerk shall be set and paid by the Fort Belknap Indian Community Tribal Council.

History: Section 11.1, (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Section IX of the General Rules of Administration, Title I, and as amemded, 9/7/99, Resolution __-99.

11.2 Recording of Court Documents

A. The Chief Clerk shall keep a record of all proceedings of the Tribal Court for inspection by qualified officials.

B. The Chief Clerk shall keep a docket in which shall be entered the names of each plaintiff and defendant in any civil or criminal proceedings, the character of the proceedings, the date of issuance and the return date of any

process issued therein, the appearance or default of parties summoned, the date and amount of any judgment, any appeal thereon, and all other proceedings therein. The Chief Clerk shall keep and maintain such other records as provided in the Tribal Code and as may be directed by the Court Administrator.

C. Any party to a proceeding may obtain a certified copy of the Court proceedings from a Clerk by payment of the cost therein.

D. The Fort Belknap Indian Community Tribal Court shall be provided copies of this Tribal Code and other copies of federal and state laws and regulations deemed by the Court, necessary, proper and applicable to the rights and conduct of persons subject to the jurisdiction of this Court and its judicial power and responsibilities.

History: Section 11, Subsection 11.2(A-D) enacted on the 3/8/99, Resolution 63-99; formerly Section X of the General Rules of Administration, Title I, and as amemded, 9/7/99, Resolution __-99.

11.3 Court Files

A. The Chief Clerk is the custodian of the files of this Court. The Chief Clerk may allow papers to be taken from his/her office in accordance with the Rules of Court and appropriate code rules, provided, however, that no will, bond, deposition, exhibit or undertaking shall be taken from the Chief Clerk's office under any circumstances, and no judgment before it is recorded, shall be taken, except by order of the court in writing. Nothing shall be removed from the files in criminal actions before trial without a written order from the judge.

B. No file shall be taken from the office of the Chief Clerk of Court without the consent of the Chief Clerk and without the receipt therefor acknowledged in writing by the party taking the same provided, however, that no record or paper belonging to a file shall be taken from the custody of the Chief Clerk for a period of twenty-four (24) consecutive hours of a working day after its initial filing except by permission of one of the judges of the court. The Chief Clerk of Court shall be responsible for safekeeping and return of all files, but shall allow a reasonable use of same.

History: Section 11, Subsection 11.3(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Rules of Court, Rule 21, and as amemded, 9/7/99, Resolution __-99.

SECTION XII. RECORDING SECRETARY

12.1 Recording Secretary's Responsibilities

A) Recording Secretary shall be responsible for filing resolutions that amend or modify any Tribal law.

B) The Recording Secretary shall ensure that all appropriate or affected

departments are provided copies of amendments to the Tribal Code.

C) The Recording Secretary shall be responsible for ensuring the amendments or additions to any Tribal law is codified in the existing Tribal Code.

History: Section 12.1, Subsection 12.2(A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section X of the General Rules of Administration, Title I.

SECTION XIII. INTERFERENCE WITH THE COURT

A. No employee of the Bureau of Indian Affairs or other various agencies of the federal, state, local, or Tribal government shall obstruct, interfere with, or control the functions of the Fort Belknap Indian Community Tribal Court or influence such functions in any manner, except as permitted by this Tribal Code or in response to a request for advice or information from the Tribal Court.

B. Employees who are engaged in social services, health, and educational work may assist the Court, upon its request, with actual information in any case before the Court, and act as an advisor in the proper treatment of individual offenders.

History: Section 13, (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section XI of the General Rules of Administration, Title I

LAWS OF THE FORT BELKNAP INDIAN COMMUNITY

TITLE II

CIVIL PROCEDURE

TABLE OF CONTENTS

LAWS OF THE FORT BELKNAP INDIAN COMMUNITY

Part 1

TITLE II

CIVIL PROCEDURE

SECTION I. PROCEDURE IN CIVIL SUITS

1.1 General Provisions

The procedures of the Fort Belknap Indian Community Tribal Court in cases and in all appeals shall be construed to secure the just, speedy, and inexpensive termination of every such action.

History: Subsection 1.1 enacted 3/8/99, Resolution No.63-99; formerly Part 1, subsection 1.1.

1.2 Applicable Laws

In all civil cases the Tribal Court may apply the laws of the United States, laws enumerated in the Tribal Code of the Fort Belknap Indian Reservation or customs of the Fort Belknap Indian Community, regulations of the Interior Department and the State of Montana which may be applicable. Any matters that are not covered by applicable laws or federal laws and the Interior Department regulations, shall be decided by the Tribal Court in accordance with the customs of the Fort Belknap Indian Reservation in which the matter in dispute may lie.

History: Subsection 1.2 enacted 3/8/99, Resolution No.63-99; formerly Part 1 subsection 1.9.

1.3 Cost Schedule

A filing fee, set from time to time by the Tribal Court, must be paid when the complaint is filed. If the plaintiff is without funds to pay the filing fee and has filed an affidavit of poverty, the Tribal Court may waive the filing fee.

History: Subsection 1.3 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 11.

1.4 Commencement of Action

All civil actions in the Fort Belknap Indian Community Tribal Court shall be commenced by the filing of a complaint with the Tribal Court and serving a copy of such on the defendant as provided herein. The complaint shall state the names of the plaintiff and the defendant and the facts constituting a grievance for which relief is requested and the nature of the relief requested. A complaint filed in the Tribal Court will not be valid unless it bears a signature of the plaintiff and/or the complaining witness. The Tribal Court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant and a return of service is filed with the Tribal Court.

History: Subsection 1.4 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section I

1.5 Process

A. Upon the filing of a complaint, the Clerk shall issue a summons which advises the defendant that he is required to answer the complaint within 20 days or a default judgment will be entered against him. The Clerk shall deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint.

B. The summons shall be signed by the Clerk of Court, be under the seal of the Tribal Court, contain the name of the Tribal Court and the names of the parties, be directed to the defendant, state the name and address of the plaintiffs attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of the defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

C. No judgment shall be given on any suit unless the defendant has actually received notice, as prescribed in this Tribal Code of such suit, and has had ample opportunity to come forward and appear in the Tribal Court in his defense. Evidence of the receipt of the Notice shall be kept as part of the records in each case.

History: Subsection 1.5(A-C) enacted 3/8/99, Resolution No.63-99; formerly Part I, Section I

1.6 Service of Process

A. Process, other than a subpoena or a summons and complaint, shall be served by a tribal officer, provided the party causing the process to be served pays the reasonable cost of said service, or may be served by a person specially appointed for that purpose. Additional summons or notices of actions shall be issued against separately named defendants if requested by the plaintiff.

B. A summons and complaint shall be served by any person who is not a party and is not less than 18 years of age. The Clerk shall furnish the plaintiff with a copy of the notice showing the time and place of hearing. The summons and complaint shall be served together. The Clerk shall furnish the person making service with sufficient copies of the complaint as are necessary to serve all parties. The summons and complaint shall be served on the defendant by personal service or by mail.

C. A summons and complaint shall, at the request of the party seeking service or such party's attorney, be served within the territory of the Fort Belknap Tribes by a tribal officer, or by a person specially appointed by the Tribal Court for that purpose only--

1) On behalf of a party authorized by the Tribal Court to proceed in forma

pauperis,
2) On behalf of the Fort Belknap Tribes or a duly authorized officer or agency of the Tribes, or
3) Pursuant to an order issued by the Tribal Court stating that a tribal officer, or a person specially appointed for that purpose, is required to serve the summons and complaint in order that service be properly effected in that particular action.

D. A summons and complaint may be served upon a defendant by mailing a copy of the summons and complaint (by first class mail, postage pre-paid) to a person to be served, together with two copies of a notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made under B or C of this section.

E. Unless good cause is shown for not doing so, the Tribal Court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

F. The notice and acknowledgment of receipt of summons and complaint shall be executed under oath or affirmation.

G. Service shall be made as follows:
1) Upon an individual other than a minor under the age of sixteen (16), or an incompetent person, by delivering a copy of the summons or the notice of action, and of the complaint to him personally, or by leaving copies therefore where he lives with an adult living thereof by delivering a copy of the summons or notice of action and of the complaint to an agent authorized by appointment or by law to receive service of process.
2) Upon a minor under the age of sixteen (16), by delivering a copy of the summons or notice of action and complaint to one of his parents or to his guardian, if he has one, or to such other person or agent having custody over him. If service cannot be made upon any of the above persons, then service is to be made as provided by order of the Tribal Court.
3) On a person who has been adjudged of unsound mind by this Tribal Court or by any other Court of competent jurisdiction or for whom a guardian has been appointed by reason of incompetency, by delivering a copy of the summons or notice of action and complaint to his guardian, if there be a guardian residing on the reservation. If there be no such guardian, the Tribal Court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the Tribal Court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a Court, such party may be brought into the Tribal Court by service of process personally upon him. The Tribal Court may then state the action

pending against the person and proceed to conduct a hearing on the person's incompetency.

4) Upon a corporation, a partnership, or other unincorporated association by delivering a copy of the summons or notice of action and complaint to an officer, director, superintendent, or managing or general agent, or partner, or associate or to any other agent authorized by appointment or by law to receive service. If the agent is authorized by law to receive service, then copies should also be mailed to the defendant. If no one of the above-named persons can be found on the reservation, then service may be made by leaving a copy of the summons or notice of action and complaint at the defendant's office or place of business with the person in charge, or as provided by long-arm service provided in Title II, Section 1.7.

5) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons or notice of action and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

6) Upon the Fort Belknap Indian Community, (Gros Ventre and Assiniboine Tribes) its Community Council, or any committee or subdivision thereof, delivering a copy of the summons or notice of action and complaint to the chairman, secretary, or to any member of such committee or agency and also by delivering an additional copy of the summons and complaint to the tribal attorney.

History: Subsection 1.6 (A-G) enacted 3/8/99, Resolution No.63-99; formerly Part I, Section I, Rule 1.5, 1.6

1.7 Service of Notice and Publication

A. A defendant who has not been served under the other provisions of this Rule can be served by notice and publication in the following situations only:

1) When the subject of the action is real or personal property located on the Reservation, and the defendant owns or has an interest in the property, or if the relief demanded consists wholly or partially in excluding the defendant from holding any interest in the property.

2) When the action is to foreclose, redeem from or satisfy a mortgage, claim, or lien upon real or personal property located within the Reservation.

3) When the action is for divorce or for annulment of marriage of a resident of this Reservation or for modification of a decree of a divorce granted by this Tribal Court.

4) When the defendant has property within the Reservation which has been attached or has a debtor within the Reservation who has been garnished.

When the defendant has been served by notice and publication as provided in this Section, this Tribal Court may render a decree which will adjudicate any interests of such defendant in status, property, or thing acted upon, but it may no bind the defendant personally. (Action In-rem)

B. Before service by notice and publication is authorized, the plaintiff must

file with the Clerk of Court a pleading setting forth a claim in one of the situations described above and an affidavit that the plaintiff attempted without success to actually serve the defendant in the manner provided for in Rule 1.6 above. Upon complying with these provisions, the plaintiff may obtain an order for the service of summons to be made upon the defendant by publication.

C. Service of the summons by publications may be made by publishing three (3) times, once for each three (3) successive weeks, in newspapers of general circulation on the Reservation and by posting a notice in a prominent place in the following locations: Tribal Law and Order Building, Tribal Headquarters, and the United States Post Office

D. A copy of the summons or notice of action and complaint shall be mailed prior to the first publication to the defendant at his last place of residence unless the affidavit states that the residence of the defendant is unknown. If the defendant is a corporation, a copy of the summons or notice of action and complaint shall be mailed to:
1) The manager of the office of the principal place of business of the corporation; or
2) To an agent or attorney-in-fact authorized by appointment or by law to receive or accept service on behalf of said corporation; or
3) If none of the persons mentioned can be found, the to the last known address of the corporation at its principle home office, if known, and also to the Secretary of State of the state of its incorporation. If the defendant is a corporation whose charter or right to do business has expired or has been forfeited, then copies shall be mailed to one of the person who has become a trustee for the corporation or a stock holder or member, or if no one can be found, to the last known address of the corporation at its principal home office, if known, and also the Secretary of State of the state of its incorporation.

E. The first publication must be made within thirty (30) days of the request. If not so made, the action shall be dismissed as to any person not served within said thirty (3) days period. Service by publication is complete on the date of the last publication of the summons. The publication notice shall state in general terms the nature of the action, and a description of any real property involved, and a statement of the object of the action.

History: Subsection 1.7 (A-E) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 19

1.8 Service on the Tribal Chairman or Secretary /Treasurer of the Tribes.

Whenever the Chairman and/or Secretary/Treasurer of the Fort Belknap Indian Community Tribal Council has been appointed or is deemed by law to have been appointed as the agent to receive service of process for any person or corporation, partnership, etc., the plaintiff shall file an affidavit with the

Clerk of Court stating that the Chairman and/or Secretary/Treasurer of the Fort Belknap Indian Community is such an agent and stating the residence and last known address of the person to be served. In such circumstances, service on the Chairman and/or Secretary/Treasurer of the Fort Belknap Indian Community shall be sufficient. Personal notice of such service and a copy of the summons or notice of action and complaint are forthwith sent by certified or registered mail by the Clerk to the party to be served at this last known address, marked "Delivery to Addressee Only,", and "Return Receipt Requested", and provided further, that such return receipt shall be received and signed by the Clerk, that the registered or certified mail was refused by the addressee, the date on which the Clerk receives said return receipt or notification by the postal authority shall be deemed the date of the service. As an alternative to sending the notice and summons and complaint by registered or certified mail, the Clerk may cause notice of the service and a copy of the summons or notice of action and complaint to be served by a qualified law enforcement officer, personally upon the Chairman and/or Secretary/Treasurer of the Fort Belknap Indian Community Tribal Council.

History: Subsection 1.8 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 14

1.9 Proof of Service

The return postal receipt, filed in the case record, shall constitute proof of service by mail. The affidavit of service by the person making service, filed in the case records, shall constitute proof of personal service.

History: Subsection 1.9 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section I, Subsection, 1.6

1.10 Long-Arm Service

Any person subject to the jurisdiction of the Fort Belknap Indian Community Tribal Court may be served outside the territorial jurisdiction of the Tribal Court in the manner provided in Section 1.6 with the same force and effect as if the service had been made within the territorial jurisdiction thereof, if such person:

A. Transacts business or does an act leading to a Tribal Court action within the Reservation.

B. Owns, uses, or possesses leases of any property or interests therein within the reservation.

C. Contracts of services to be rendered for goods to be furnished within the reservation.

History: Subsection 1.10 (A-C) enacted 3/8/99, Resolution No.63-99; formerly Part I, Section I, Subsection, 1.7

1.11 Time

A. Computation

In computing any period of time, the date for which the designated period of time begins to turn shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than ten (10) days, Saturdays, Sunday, and legal holidays shall be excluded in the computation. "Legal Holiday" includes New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President of the United States, by Congress of the United States, or by the Fort Belknap Indian Community Tribal Council. The times prescribed shall not be automatically enlarged merely because service was by mail.

B. Extension of Time

The Court may at any time in its discretion, with or without motion or notice, order the period enlarged if a request therefore is made before the expiration of the original period. If the time period has expired, the Court may, on motion and with notice to the other side, permit the act to be done if the failure to act within the original time period was the result of excusable neglect.

History: Subsection 1.11 (A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 7

SECTION II. PLEADINGS AND MOTIONS

2.1 Pleadings and Motions

A. Pleadings

There shall be a complaint and an answer, a reply to a counterclaim if there is one, an answer to a cross-claim if there is one, a third party complaint if a person who is not an original party is brought into the lawsuit, and a third party answer if a third party complaint is served. No other pleading shall be allowed except with leave of the Tribal Court.

B. Motions and Other Papers

An application to the Tribal Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall state with particularity the grounds therefore, and shall set forth the relief or order sought.

History: Subsection 2.1 (A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 2

2.2 General Rules of Pleadings

A. Claims for Relief

Any pleading which sets forth a claim for relief shall contain:
1)A short and plain statement of claim; and
2) A demand for judgment for relief to which the pleader deems himself entitled. Relief in the alternative or of several different types may be demanded.

B. Defenses and Forms of Denials
A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny those statements of fact upon which the adverse party relies. If he is without knowledge or information as to the truth of any fact stated by the adverse party, he shall so state and this will have the effect of a denial.

C. Affirmative Defenses
The Defendant shall set forth all affirmative defenses, including: assumption of risk, contributory negligence, duress, failure of consideration, fraud, illegality, payment, release, res judicata, statute of limitations, waiver, estoppel, statute of frauds, and any other matter constituting an avoidance or affirmative defense.

D. Effect of Failure to Deny or to Raise Affirmative Defense.
All statements of fact in a pleading, other than those as to the amount of damage, are deemed admitted if not specifically denied in the responsive pleading. Affirmative defenses not pleaded at the first opportunity will be considered waived except that the Tribal Court on a showing of excusable neglect and in the interest of justice may permit affirmative defenses to be raised at a later time.

E. Pleading to be Concise and Direct
Each factual statement of the pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required. A party may state as many separate claims or defenses as he had regardless of whether or not they are inconsistent. All pleadings shall be so construed as to do substantial justice to the parties.
History: Subsection 2.2 (A-E) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 16

2.3 Defenses and Objections

A. A defendant shall serve his answer within twenty (20) days after the service of the summons or notice of action and complaint upon him. A party served with a cross-claim shall serve an answer thereto within twenty (20) days. The plaintiff shall serve his reply to a counter-claim in the answer within twenty (20) days after the service of the answer. If the Tribal Court denies a motion filed in lieu of a responsive pleading, or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Tribal Court's action.

B. Every defense in law or fact, or a claim for relief shall be asserted in a responsive pleading except that the following defenses may be made by motion:
1) Lack of jurisdiction over subject matter;
2) Lack of jurisdiction over the person;
3) Insufficiency of process or service thereof;
4) Failure to state a claim upon which relief can be granted; and
5) Failure to join an indispensable party.

A motion making any of these defenses must be made before pleading, if further pleading is permitted.

C. Motion for More Definite Statement
If a pleading is so vague or ambiguous that a party cannot reasonably respond thereto, a party may move for a more definite statement before filing his responsive pleading. The motion shall point out the defects complained of and the denials thereto. If the Motion is granted and the order is not obeyed within ten (10) days or within such other times and the Tribal Court may fix, the Court may strike the pleading or make such other as it deems just.

D. Motion to Strike
On motion made by a party or upon the Court's own initiative, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. This motion may be made by a party before responding to a pleading.
History: Subsection 2.3 (A-D) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 17

2.4 Service of Other Papers

A. Except as otherwise provided in these Rules, all orders, all pleadings, all written motions, all notices and similar papers shall be served upon each of the parties.

B. Where service is to be made upon a person represented by an attorney, the service shall be made upon the attorney by making a copy to his office unless service upon the party himself is ordered by the Court. If the party is not represented by an attorney, then services shall be in a manner as described in Section 1. All pleadings and other papers shall be filed with the Clerk of Court.
History: Subsection 2.4(A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 18

2.5 Proof of Service

A. Persons serving the process shall make proof of service thereof to the

Tribal Court promptly. Proof of service may be established in the following manner:

1) If process is served by a Tribal Police officer or by an officer of the Tribal Court, by his certificate thereof.
2) If by any other person, by his affidavit thereof.
3) In the case of publication, an affidavit of the publisher.
4) The written admission of the defendant showing the time and the place of service. The certificate or affidavit of service must state the time and the date, place, and manner of service.

B. At any time in its discretion and upon such notice and terms as it deems just, the Tribal Court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of a party.

History: Subsection 2.5 (A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 19

2.6 Amended and Supplemental Pleadings

A. Amendments

A party may amend its pleadings as a matter of right at any time before a response to the pleading is filed, otherwise a party may amend its pleading only by leave of the Tribal Court or by written consent of the adverse party. Leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within twenty (20) days after service of the amended pleading.

B. Amendments to Conform to the Evidence

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they have been raised in the pleading. If evidence is objected to at the trial on the grounds that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so unless the objecting party satisfies the Court that the admission of such evidence would prejudice him. The Court may grant a continuance to enable the objecting party to meet such evidence.

C. Relation Back of the Amendments

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, occurrence set forth or attempted to be set forth in the original pleading.

D. Supplemental Pleadings

In a Motion of a party, the Court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of

the original pleading.
History: Subsection 2.6 (A-D) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 20

SECTION III. CIVIL CONTEMPT

3.1 What Act

The following acts or omissions in respect to the Trial Court, or proceedings therein, are contempt of the authority of the Tribal Court:

A. Disorderly, contemptuous, or insulting behavior to the Judge while holding he Court, tending to interrupt the Court during trial or other judicial proceedings.

B. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceedings.

C. Misbehavior in office, or other willful neglect or violation of duty of any attorney, counsel, clerk, police officer, or other person appointed or elected to perform a judicial or ministerial service.

D. Deceit or abuse of the process of proceedings of the Court by a party to an action or special proceeding.

E. Disobedience of any lawful judgment, order, or process of the Court.

F. Assuming to be an officer, attorney, or counsel of a court, and passing as such without authority.

G. Re-securing any person or property, in the custody of an officer, by virtue of any order or process of such court.

H. Unlawfully detaining a witness, or party to an action, while going to, or remaining at, or returning from the court where the action is on the calendar for trial.

I. Any other unlawful interference with the process or proceeding of the Tribal Court.

J. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

K. Disobedience of a lawful order or process of a judicial officer is also a contempt of the authority of such officer.
History: Subsection 3.1(A-K) enacted 3/8/99, Resolution No.63-99; formerly Part I, Section III, Subsection 3.1

3.2 Direct Contempt

A direct contempt is an open insult committed in the presence of the Court or so near thereto as to interrupt the proceedings and may be adjudged and punished summarily.

History: Subsection 3.2 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section III, Subsection 3.2

3.3 Civil Contempt

A civil contempt consists in failing to do something ordered to be done by the Court in a civil action for the benefit of the opposing party therein. Contempt prosecuted to preserve or restore the rights of private parties are civil and remedial in nature.

History: Subsection 3.3 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section III, Subsection 3.3

3.4 Indirect (Constructive) Contempt

An indirect (constructive) contempt is an act or omission committed outside the personal knowledge of the judge. Any person charged with such acts has all the rights as enumerated in Title III, Section 1.2.

History: Subsection 3.4 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section III, Subsection 3.4

3.5 Trial by Tribal Court Without a Jury

All trials shall be before the Tribal Court without a jury where the defendant or plaintiff has not demanded a jury trial. In trials without a jury, the Tribal Court shall hear and determine all issues of fact and law. In any jury trial, the jury shall determine all issues of fact and the Tribal Court shall determine all issues of law.

History: Subsection 3.5 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section III, Subsection 3.5

3.6 Trial

Each cause shall be tried before the judge it is assigned. Non-jury and jury trials will be held throughout the year as time is available. Trial settings will be made by the Court upon request to the Court by either party. Each judge shall summon a panel of jurors as needed to try the cases assigned. No judge shall excuse any juror from service before another judge.

History: Subsection 3.6 enacted 3/8/99, Resolution No.63-99.

SECTION IV. TRIAL

4.1 Right to Jury Trial

A. All civil cases shall be tried by the Court, unless the case is one to which a party has a right to a jury under Title III, Section 5.1, and that party makes a

demand thereof to the Court in writing at least five (5) working days before the trial date set in the summons, and agrees to advance the cost of a jury trial.

B. If a jury trial is demanded, the Court shall form a jury in the manner provided in this Tribal Code, and the jury shall reach a verdict in accordance with the provisions of this Tribal Code. At a trial, the Court shall hear and determine the grievance set forth in the complaint and any counterclaim presented by the defendant. Any party may at the beginning or end of the trial move the Court for a judgment for dismissal of the complaint or such other or further relief as the motion may state.

History: Subsection 4.1(A-B) enacted 3/8/99, Resolution No.63-99; formerly Part I, Section IV, Subsection 4.1

4.2. Demand for Jury Trial

Any party may demand trial by jury of an issue tribal of right by jury by serving upon the other parties a demand thereof in writing as follows:
1) By the plaintiff when the complaint is filed.
2) By the defendant or a third party defendant when the answer is filed.
3) By an intervenor when the motion to intervene is filed. The failure of a party to serve a demand as required by this Rule constitutes a waiver by him of a trial by jury.

History: Subsection 4.2 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 30

4.3. Advisory Jury

In all actions not triable by right by a jury or where a jury trial has not been requested, the Court may upon its own motion try an issue with an advisory jury.

History: Subsection 4.3 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 30

4.4 Size of Jury

A jury in a civil case shall be composed of six (6) persons unless the parties agree to a jury of three (3) persons. The agreement of a simple majority of the jury (four (4) jurors in a six (6) man jury and two (2) jurors in a three (3) man jury), will support a verdict in any civil action.

History: Subsection 4.4 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 30

4.5 Cost of Jury Trial

The cost of the jury shall be paid in the first instance by the party or parties demanding the jury trial, but in the event the verdict is in favor of such party, the cost is recoverable from the losing party. See Section 4.6 below.

History: Subsection 4.5 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section IV, Subsection 4.2

4.6 The Cost in Civil Actions

Unless the Tribal Court provides otherwise, the court costs incurred by the winning party shall be included in any judgment, including filing fees, service fees, expense of involuntary witnesses, expert witness fees, compensation of jurors and other incidental expenses. Costs shall not be allowable against the Fort Belknap Indian Community or any agency thereof which may be a party in a civil action.

History: Subsection 4.6 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section IV, Subsection 4.3

4.7 Examination of Jurors

The Court may permit the parties or their attorneys to conduct the examination of perspective jurors, but the preferable practice is for the Court to conduct the examination itself. If the Court conducts the examination itself, it shall permit the parties or their attorneys to supplement the examination itself, it shall permit the parties or their attorneys to supplement the examination by submitting questions in writing to the Court which, if it deems them appropriate, will use in further examination of the jury.

History: Subsection 4.7 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section IV, Subsection 4.4

4.8 Challenges

In all civil actions, in addition to disqualifying prospective jurors for cause, the complainant shall be entitled to three (3) preemptory challenges without assigning any cause, and the defendant or defendants jointly, shall be entitled to three (3) preemptory challenges without assigning any cause.

History: Subsection 4.8 enacted__/__/__, Resolution No. __; formerly Part I, Section IV, Subsection 4.5

4.9 Power to Subpoena Jurors

The judges of the Tribal Court shall have the power to issue subpoenas to compel the attendance of members of the jury panel and of trial jurors. Subpoenas shall be signed by the judge issuing said subpoenas.

History: Subsection 4.9 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section IV, Subsection 4.6

4.10 Alternate Jurors

If there is a substantial likelihood that the trial will last more than one (1) day, the Court may direct that one (1) or two (2) jurors, in addition to the regular jury, be called to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable to perform their duties and are hence, disqualified.

History: Subsection 4.10 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 29

4.11 Special Verdicts

The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event, the Court may submit to the jury written questions susceptible of brief answers or may submit written forms of several special findings which might be properly made under the pleadings and evidence or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate.

History: Subsection 4.11 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 29

4.12 Instructions to the Jury

At the close of the evidence or at such earlier time during the trial as the Court directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. The Court shall inform counsel of its proposed action upon the request prior to their arguments to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign error in the giving or failure to give an instruction unless he objects thereto before the jury returns to consider its verdict, stating distinctly the matter to which he objects and the grounds for his objection. An opportunity shall be given to make the objection out of the hearing of the jury.

History: Subsection 4.12 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 29

SECTION V. WITNESSES AND PRODUCTION OF DOCUMENTARY EVIDENCE

5.1 Attendant of Witnesses

The Court shall order, on motion by any party to the case or on the Court's own motion, by subpoena, the appearance of any individual as a witness in a hearing or trial upon the request from either party. Upon the failure of any person to answer such subpoena, the Court may order a law enforcement officer to bring such person before the Court.

History: Subsection 5.1 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section V, Subsection 5.1

5.2 Documentary Evidence

The Court may also order, as provided in Section 5.1, Title II, the production of books, records, or other physical evidence, and compel compliance therewith in the same manner.

History: Subsection 5.2 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section V, Subsection 5.2

5.3 Production of Documentary Evidence

The Tribal Court, upon motion by either party or upon the Court's own motion, may quash or modify the subpoena if it is unreasonable and oppressive, or requires the person requesting the production to advance the

reasonable cost of producing the books, papers, documents, or tangible things.
History: Subsection 5.3 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section V, Subsection 5.3

5.4 Service

The subpoena may be served by a police officer or by an officer of the Court or by any other person who is not a party and is not less than eighteen (18) years of age. Service of the subpoena upon a person named therein shall be made by delivering a copy thereof to such person.
History: Subsection 5.4 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section V, Subsection 5.4

SECTION VI. EVIDENCE

6.1 Oral Testimony - Admissibility

In all trials, the testimony of witnesses shall be taken orally, given under oath, and in open court, unless otherwise provided by these rules or by order of the Court.
History: Subsection 6.1 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VI, Subsection 6.1

6.2 Scope of Examination and Cross-examination

Either party may interrogate any unwilling or hostile witness by leading questions. Either party may call an adverse witness and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus call may be contradicted an impeached by the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination.
History: Subsection 6.2 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VI, Subsection 6.2

6.3 Documentary and Tangible Evidence

Documents and other tangible evidence that are relevant to the case may be received in evidence if properly identified and a foundation is laid as to their relevance.
History: Subsection 6.3 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VI, Subsection 6.3

6.4 Record of Excluded Evidence

In an action tried by a jury, if an objection to a question to a witness is sustained by the Court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. This "offer of proof" should be made out of the hearing of the jury. The Court may then make a statement showing the character of the evidence, the form in which it is offered, the objection made, and the ruling thereon.
History: Subsection 6.4 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VI, Subsection 6.4

6.5 Evidence on Motion

When a motion raises an issue of fact, the Court may hear the matter on affidavits presented by the respective parties or the Court may direct that the matter be heard wholly or partly on oral testimony or depositions.
History: Subsection 6.5 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VI, Subsection 6.5

6.6 Interpreters

The Court may appoint, on its own motion or on the motion of a party, an interpreter and may affix his compensation which shall be paid out of funds provided by the Community or by one (1) or more of the parties as the Court may direct.
History: Subsection 6.6 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VI, Subsection 6.6

6.7 Official Records

An official records kept within the United States, on any Indian Reservation in the United States or Canada, or in any state, district, commonwealth, territory or insular possession or on an entry therein, when admissible for any purpose, may be evidenced by an official publication thereon or by a copy presented by the officer having the legal custody of the records or by his deputy, and accompanied by a certificate that such officer has the original in his custody.
History: Subsection 6.7 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VI, Subsection 6.7

6.8 Record Search

A written statement that after diligent search no records or entry of the specific type has been found in the official records, is admissible evidence that the records contained no such record or entry.
History: Subsection 6.8 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VI, Subsection 6.8

SECTION VII. JUDGMENTS

7.1 Demand for Judgment

A judgment shall be entered in each civil case and the judgment shall be for money damages or equitable relief. A judgment by default shall not be different in kind or exceed the amount prayed for in the demand for judgment. Except as to the parties against whom the judgment is entered by default, every final judgment shall grant the relief to which the party is entitled even if the party has not demanded such relief in his pleadings.
History: Subsection 7.1 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VIII, Subsection 8.1

7.2 Entry of Judgment

Upon general verdict of a jury, or upon a decision of the Court, a judgment shall be entered reciting the verdict or decision of the Court and including any costs taxed in the case. The judgment may be set forth in a separate document.

History: Subsection 7.2 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VIII, Subsection 8.2

7.3 Satisfaction

Upon failure of a judgment determination to satisfy any final judgment for money damages rendered by the Court, the Court may, after proper assurance that the judgment creditor has exhausted all possible efforts to satisfy such good judgment, instruct the Secretary of the Interior or his authorized representative to pay over to the judgment creditor any funds which may be held or received by the Bureau for the credit of the judgment debtor in satisfaction of the judgment. Only monies of the individual and not of other members of his family may be sued to pay such judgment.

History: Subsection 7.3 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VIII, Subsection 8.3

7.4 Default Judgment

Upon failure of a defendant to appear at the time stated in the summons, the other party may proceed to offer evidence including proof that the defendant was served with a summons, and the Court may render a judgment granting such relief as the evidence warrants, provided that the defaulting party may apply in writing for a new trial within ten (10) days of a default judgment showing good cause for his failure to answer the summons. If the defaulting party fails to appear and/or fails to show just cause at the time set by the summons for a hearing, the Court shall dismiss the cause with prejudice, unless the party against whom the judgment by default is sought is an infant or an incompetent person, who is not represented by a general guardian or such other representative. For good cause shown, the Court may always set aside an entry of default and if a judgment by default has been entered, may likewise set it aside. If the default resulted from the negligent failure of a legal representative or the defaulting attorney to perform an act required by the Tribal Code or by order of the Court, the default maybe set aside and the attorney or legal representative shall be fined an appropriate amount.

History: Subsection 7.4 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VIII, Subsection 8.4

7.5 Enforcement of Judgment

The Court may enforce judgments in civil proceedings by issuing a Writ of Execution against any eligible personal property and non-restricted real property of the party against whom judgment is rendered located within the Reservation, returnable not less than ten (10) days after the date of issuance. The Writ of Execution will be served by a law enforcement officer.

A. A judgment shall be considered a lawful debt in all procedures to distribute a descendant's estate.

B. An unsatisfied judgment may be filed in a lien against funds owning the defendant by the Fort Belknap Indian Community by having the Clerk deliver a copy of the judgment to the Chairman or Secretary/Treasurer of the Tribal Council and they shall pay over the amount specified in the judgment as funds become available to the credit of such parties.

C. Satisfaction of a judgment is not a burden of the Court or its Clerk, and the judgment creditor may notify the Tribal Court in writing of full or partial satisfaction.

D. The Writ of Execution may specify personal property to be seized in satisfaction of any judgment an any property seized may be subject to sale by the Court to satisfy the judgment after ten (10) days notice by posting public notice of such sale. The sale will be conducted by the Clerk and sale will be to the highest bidder for cash, but not less than the appraised value of the property. The proceeds of such sale will be paid as follows:

1) First all costs of the sale
2) All unpaid court costs
3) The amount of the unsatisfied judgment
4) Force--any balance will be paid to defendant
5) Any unpaid amount of the judgment shall remain unsatisfied.

History: Subsection 7.5 (A-D) enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VIII, Subsection 8.5

7.6 Statute of Limitations

No judgment of the Court for money damages shall be enforceable after five (5) years from the date of entry, unless the judgment has been renewed before the date of expiration by institution of appropriate proceeding in the Court under Section 8.0 of Title II.

History: Subsection 7.6 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VIII, Subsection 8.6

7.7 Renewal of Judgment

Upon application of the judgment creditor prior to the expiration of five (5) years after the date of the entry of a judgment for money damages, the Court shall order the judgment renewed and extended for an additional five (5) years.

History: Subsection 7.7 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VIII, Subsection 8.7

7.8 Automatic Stay of Judgment

No execution shall issue upon a judgment nor shall proceedings be taken for

its enforcement until the expiration of ten (10) days after its entry. If execution or enforcement is stayed beyond the ten (10) days , the Court may, in its discretion, require the losing party to post the bond guaranteeing payment of the judgment.

History: Subsection 7.8 enacted 3/8/99, Resolution No.63-99; formerly Part I, Section VIII, Subsection 8.8

SECTION VIII. STATUTES OF LIMITATIONS FOR BRINGING AN ACTION FOR DEBT OR MONEY DAMAGES

The Tribal Court shall have no jurisdiction over any action for debt or damages brought more than five (5) years after the cause of action arose.

History: Section VIII enacted 3/8/99, Resolution No.63-99; formerly Part I, Section IX

SECTION IX. AFFIDAVIT OF BIAS AND PREJUDICE OF A JUDGE

Upon the filing of an affidavit of bias and prejudice setting forth the facts establishing that by reasons of bias or prejudice of the judge to whom the case is assigned, either party cannot have a fair trial, that judge shall disqualify himself. In the event no other judges are available, the Chief Judge may appoint such other qualified person to sit in judgment of the case, as may be required, or as otherwise provided by this Tribal Code.

History: Section IX enacted 3/8/99, Resolution No.63-99; formerly Part I, Section X

SECTION X. BONDS IN CIVIL CASES

All bonds in civil cases shall be a proper amount fixed by a judge and furnished in cash by the defendant and secured by two (2) or more reliable persons subject to the jurisdiction of the Court, who shall appear before the Judge of the Court before the complaint or notice of appeal has been filed and execute a bond form in the amount fixed by the Judge. A surety to a bond given pursuant to Section IX thereby submits himself to the jurisdiction of the Court, and irrevocably appoints the Clerk of the Court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion may be served on the Clerk of Court , who shall forthwith mail copies to the surety at his last known address.

History: Section X enacted 3/8/99, Resolution No.63-99; formerly Part I, Section IX

SECTION XI. TRIAL

11.1 Subpoena

A. Attendance of Witness and/or Production of Documentary Evidence. Every subpoena shall be issued by the Clerk under the Seal of the Tribal

Court. It shall state the name of the Court and the title of the action, the name of the person who is being subpoenaed, the name and address of the party requesting the subpoena and his attorney, if any, and shall command each person to whom it is directed to attend and give testimony and/or produce documentary evidence on the time and place therein specified.

B. Service
The subpoena may be served by a police officer or by an officer of the Tribal Court, or by any other person who is not a party and is not less than eighteen (18) years of age. Service of the subpoena upon a person named therein shall be made by delivering a copy thereof to such person.
History: Section 11.1 (A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 4

11.2 Evidence

A. Form and Admissibility
In all trials the testimony of witnesses shall be taken orally in open Court, unless otherwise provided by these Rules or by order of the Court.

B. Scope of Examination in Cross-examination, Record of Excluded Evidence, and Evidence of Motion shall be governed by Section 5 and Section 6 of Title II.
History: Section 11.2 (A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 5

11.3 Relief from Judgments

A. Motion for New Trial
A new trial may be granted by the Court to all or any of the parties and on all or part of the issues as justice so requires.

B. Clerical Mistake
Clerical mistakes in judgments, orders, or other parts of the record in errors resulting from oversight or omissions may be corrected by the Court at any time on its own initiative or on motion of any party.

C. Newly Discovered Evidence
On motion and upon such terms as are just, the Court may relieve the party or his legal representative from a final judgment or order for the following reasons:
1) Mistake, inadvertence, surprise, or excusable neglect;
2) Newly discovered evidence which by due diligence could not have been previously discovered;
3) Fraud, misrepresentation or other misconduct of an adverse party;
4) The judgment is void;
5) The judgment has been satisfied, released, or discharged; or
6) Any other reason justifying relief from the operation of the judgment.

A motion shall be made within a reasonable time and for the reasons 1, 2, 3, not more than one (1) year after the judgment or order was entered. This Rule does not limit the power of the Court to entertain an independent action to relieve a party from a judgment or order or to grant relief to a defendant not actually personally notified, or to set aside a judgment from fraud upon the Court.

D. Harmless Error

No error in either the admission or exclusion of evidence and no error or defect in any ruling or order or anything done or omitted by the Court or by any of the parties is grounds for granting a new trial or for settings aside a verdict or vacating, modifying or otherwise disturbing a judgment unless refusal to take such action appears to the Court inconsistent with the substantial justice and fairness. The Court at every stage of the pleading should disregard any error or defect in the proceedings which does not effect the substantial rights of the parties.

History: Section 11.3 (A-D) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 6

11.4 The Record of Proceedings

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the Court may direct the prevailing party to prepare a statement of the evidence of proceedings from the best available means including his recollection. The statement shall be served on all other parties who may file objections or proposed amendments thereto within ten (10) days. Thereupon, the statement and any objections or proposed amendments shall be submitted to the Court for settlement and approval, and the settled and approved statement shall be considered to be the official record of the proceedings held in Tribal Court.

History: Section 11.4 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 8

11.5 Clerk of Court

A. Books and Records Kept by Clerk

1) The Clerk must keep a book entitled "Register of Civil Actions", in which must be entered the title and number of the action, the object of the action or proceedings, the names of the parties, the sum of money claimed, if any, and a reference to each and every paper filed and the date filed. Two indexes must be maintained, with one index listing plaintiffs in alphabetical order.

2) The Clerk must keep a book entitled "Register of Civil Actions", in which must be entered the title and number of the action, the charge, and a reference to every paper filed and the date filed. It must include an index of the defendants in alphabetical order.

3) The Clerk must keep a book entitled "Register of all Children's Actions, " in which must be entered all juvenile delinquents, dependents, and neglected

children, and adoption matters. The register must contain the title of the action, the name of the child, the nature of the proceedings, and a reference to every paper filed and the date filed. An index must be kept of the children's cases by case number. The register and all file folders on children's matters must be maintained as confidential records and may not be examined by a person without the consent of the Chief Judge.
4) The Clerk must keep a file folder for each action filed. The folder shall bear the same number that is assigned to that action in the register and each folder shall be filed in numerical order in a filing cabinet. All papers filed in the cause, all process issued and returned, all orders, verdicts, judgments, and any other written papers applicable to the action shall be placed in the file folder. All papers in each folder should be fastened together to prevent loss.
5) The Clerk must act as Clerk during Court proceedings, whether in open Court or in chambers, and must keep a minute book, which must contain the daily proceedings of the Tribal Court. The minutes should reflect the title of every action heard that day by the Court, a summary of the matters heard, the names of witnesses, the day of the hearing, the name of the presiding judge, the findings, if any, and any other order or judgment issued by the Judge. The minutes should also contain any other facts or circumstances deemed of importance. The minutes of action shall then be signed by the Clerk and presented to the Tribal Judge for approval. After, approval, the Tribal Judge shall sign the minutes, and they shall be placed in the individual file folder of that particular action.

In lieu of the above, there may be kept an accurate transcript of each action, taken verbatim by the Court Reporter and filed in the individual file folder of that particular action.

B. Fees, Fines, Forfeitures, and Bail
It shall be the duty of the Clerk to:
1) Collect all fees and fines, issue a receipt therefore, and record the amount and the receipt number in a "Fee Register". The money must then be deposited as required by Tribal Ordinance .
2) Receive and hold all bail bonds deposited with the Court pending further order of the Court.
3) Receive and hold all cash bail which must be held separate and apart from all other funds in a special bail trust account located in a local bank. A receipt shall be issued for such bail funds and the amount and receipt number recorded in a "Bail Register". Thereafter, the Clerk must, upon order of the Court, either return the cash bail to the depositor or dispose of it as ordered by the Court on forfeiture of the bail. All bail declared forfeit by the Court shall be deposited and handled in the same manner as fines.

C. Certified Copies of Records
The Clerk must, on demand and upon payment of the required fees, issue certified copies of a child's records and said records cannot be issued without

an order of a Tribal Judge as prescribed in the Children's Code.

D. Power to Issue Process
The Clerk of Court shall have the power and duty to issue process, in the name of the Tribal Court, when ordered to do so by the Court. Without prior order of the Court, the Clerk shall have the power to issue:
1) Summons after a complaint is filed in a civil action
2) Subpoenas in civil actions.
3) Subpoenas in criminal actions.
4) Notice of Hearing in civil and criminal matters.

E. Power to Administer Oaths
The Clerk of Court shall have the power to administer oaths in a proceeding pending in Court to take and certify their proof and acknowledgment of any instrument or affidavit in the same manner as a notary public. The Clerk must administer oaths during Court proceedings to the following:
1) Jury panel
2) Trial juries
3) All witnesses
4) Interpreters
5) Bailiff before jury deliberation

F. Witness and Juror Fees
The Clerk must keep a record of all witnesses and jurors called to report to the Court and shall make payment to those entitled to be paid from Tribal funds or to those to be paid from monies deposited with the Clerk for that purpose by a party to the action.

G. Other Books and Records
The Clerk shall also keep such other books and records as may be acquired from time to time by the Chief Judge or Tribal Court.
History: Section 11.5 (A-G) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 9

11.6 Professional Attorneys and Counselors

A. Any attorney admitted to practice before the highest court of a state or before the Supreme Court of the United States is eligible for admission to practice in the Fort Belknap Indian Community Tribal Court. Each applicant shall complete and file and application prepared or approved by the Chief Judge and shall be prepared to answer a set of questions, and upon approval of the application, the applicant shall pay an admission fee of fifty dollars ($50.00). This admission fee may be waived or reduced at the discretion of the Chief Judge. All funds received from such applications shall be held in trust by the Clerk and disbursed by the Clerk at the direction of the Chief Judge for such uses and purposes as will benefit the Fort Belknap Indian Community Tribal Court. The Clerk shall render quarterly to the Chief Judge an

accounting of all such funds held and distributed by the Clerk.
B. The Court may admit to practice on such terms and conditions as appear appropriate a lay advocate who shall be a member of the Gros Ventre or Assiniboine Tribes of the Fort Belknap Indian Community and who shall agree to represent persons appearing in the Fort Belknap Indian Community Tribal Court.

C. The Court in its discretion may admit any other person to appear before it as an advocate, upon successful completion of an application and questionnaire on Tribal law prepared by the Chief Judge, and upon payment of a required admission fee, except that such fee may be waived or reduced in the discretion of the Chief Judge.
History: Section 11.6 (A-C) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 10

11.7 Capacity to Sue or be Sued

A. Real Party in Interest
Every action shall be prosecuted in the name of the real party in interest. No action shall be dismissed on the grounds that it is not prosecuted in the name of the real party and interest until a reasonable time has been allowed for ratification of commencement of the action by, or joinder or substitution of , the real party or interest. A person eighteen (18) years of age or older, unless incompetent, shall sue and be sued in his own name.

B. Infant or Incompetent Persons
Whenever an infant under the age of eighteen (18) years of age, or an incompetent person has a representative, guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, he may sue by his next friend or by a guardian ad litem appointed by the Court for the protection of the infant or incompetent person.
History: Section 11.7 (A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 21

11.8 Substitution of Parties

A. Death
If a party dies and the claim is not hereby extinguished, the Court may order substitution of the proper parties.

B. Incompetency
If a party becomes incompetent, the Court, upon motion, may allow the action to be continued by or against his representative.

C. Transfer of Interest
In case of any transfer of interest, the action may be continued by or against

the original party, unless the Court, upon motion, directs that the person to whom the interest has been transferred be substituted or joined with the original party.

D. Public Officer
When a public officer who is a party to an action in his official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, by any misnomer not affecting the substantial rights of the party shall be disregarded. An order or substitution may be entered at any time, the omission to enter such an order shall not affect the substitution. When a public officer sues or is sued in his official capacity, he may be described by his official title rather than by name.

History: Section 11.8 (A-D) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 22

11.9 Counterclaims and Cross-claims

A. Counterclaims
A pleading may state as a counterclaim any claim against an opposing party, whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect or when justice requires, he may by leave of the Court, set up a counterclaim by amendment.

B. Cross-claim
A pleading may state as a cross-claim, any claim by one party against a co-party arising out of the transaction or occurrence which is the subject matter of the original action or of a counterclaim or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or maybe liable to the cross-complaint for all or part of the claim asserted in the action.

History: Section 11.9 (A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 23

11.10 Third Party Practice

A. At any time after commencement of the action, a defendant as a third party plaintiff, may cause a summons or notice of action and complaint to be served upon a person not a party to the action, who is or may be liable to him for all or part of plaintiff's claim against him. If a third party complaint is filed more than thirty (30) days after the defendant has filed its original answer, the third party complainant must obtain leave of the Court before filing and serving the third party complainant. When a counterclaim is asserted against the plaintiff, he may cause a third party to be brought in under circumstances which would entitle a defendant to do so.

History: Section 11.10 (A) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 24

11.11 Joinder of Parties

A. Persons to be Joined if Feasible
A person who is subject to service and process and whose joinder will not deprive the Court of jurisdiction shall be joined as a party if:
1) In his absence complete relief cannot be accorded among those already parties; or
2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
a) As a practical matter impair or impede his ability to protect that interest.
b) Leave any of the persons already parties, subject to a substantial risk of incurring multiple or inconsistent obligations.

If he should join as the plaintiff, but refuses to do so, he may be made a defendant, or in a proper case, an involuntary plaintiff.

B. Dismissal for Failure to Join an Indispensable Party
If a person described above cannot be made a party, the Court shall determine whether the action should proceed among the parties before it, or should be dismissed, the absent person being regarded as an indispensable party. The factors to be considered include:
1) To what extent a judgment rendered in the person's absence might be prejudicial to him or to those already parties.
2) The extent to which, by protective provisions in the judgment by the shaping of relief, or by other measures, the prejudice can be lessened or avoided.
3) Whether a judgment rendered in the person's absence will be adequate.
4) Whether the plaintiff will have an adequate remedy if the action is dismissed for lack of joinder of an indispensable party.

C. Permissive Joinder
All persons may join in one action as plaintiffs if they assert any right and if any question of law or fact common to all these person will arise in the action. All persons may be joined in one action as the defendants if there is asserted against them any right to relief arising out of the same transaction or occurrence, and if any question of law or fact common to all defendants will arise in the action. Judgment may be given for one or more defendants according to their respective liabilities. No class actions or other representative suits will be permitted, but the Court should liberally permit the jointing of parties under this Rule.

D. Misjoinder of Parties
Misjoinder of parties is not grounds for dismissal of an action as parties may be dropped or added by order of the Court or motion of any party or on its

own initiative at any stage of the action and on such terms as are just. Any claim by or against a party may be severed and proceeded with separately.
History: Section 11.11 (A-D) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 25

11.12 Intervention

A. Intervention of Right
Upon timely application, anyone shall be permitted to intervene in any action when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair his ability to protect that interest.

B. Permissive Intervention
Upon timely application, anyone may be permitted to intervene in any action when an applicant's claim or defense and the main action have a question of law or fact in common. Since class actions and other representative suits are not permitted, the Court shall liberally grant motions for leave to intervene.

C. Procedure
A person desiring to intervene shall serve a motion to intervene upon all parties in the action, stating the grounds therefore and accompanied by a pleading setting forth the claim or defense for which intervention is sought.
History: Section 11.12 (A-C) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 26

11.13 Discovery

A. Methods
With leave of the Court, parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions, written interrogatories, production of documents or things or permission to enter upon land or other property for inspection and other purposes, physical and mental examinations, and request for admission. The Federal Rules of Civil Procedure (Rules 27-37) shall govern the practice and procedure for conducting discovery and depositions in Tribal Court.

B. Scope of Discovery
Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking its discovery or to the claim or defense of any other party. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

C. Insurance Agreements
A party may obtain discovery of the existence and contents of any insurance

agreement under which any person carrying on an insurance business may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

D. Trial Preparations

A party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's attorney or other representative. Only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the information by other means. In ordering discovery of such materials, the Court shall protect against disclosures of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of the party concerning litigations.

E. Expert Witnesses

Discovery of facts known and opinions held by experts acquired or developed in anticipation of litigation or for trial may be obtained only as follows:

1) A party may through interrogatories request another party to identify each person whom it expects to call as an expert witness, to state the subject matter as to which the expert is expected to testify, and a summary of the grounds for each opinion.

2) The party may discover the facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation of the trial and who is not expected to call as a witness to trial upon the showing of exceptional circumstances under which it is impractical for the party seeking discovery to obtain such facts or opinions by any other means.

Unless manifest injustice will result, the Court, in its discretion may require that the party seeking discovery, pay the expert a reasonable fee for time spent in responding to the discovery under this rule.

F. Protective Orders

Upon Motion and for good cause shown, the Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including:

1) That the discovery may be had only in specific terms and conditions, including a designation of time and place;

2) That the discovery may not be had;

3) That the discovery may be had by a method other than that selected by the party seeking discovery;

4) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;

5) That the discovery by conducted with no one present except persons designated by the Court;

6) That a deposition be sealed and only opened on order of the Court; or
7) That a trade secret or other confidential research, development, or commercial information not be disclosed.

History: Section 11.13(A-F) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 27

11.14 Masters

A. Appointment and Compensation

The Chief Judge of the Tribal Court may appoint a special master to assist in the preparation of or trial of any civil action with or without a jury. Compensation and expenses of the special master shall be fixed by the Court and shall, whenever possible, be taxed as costs to the losing party. The order appointing a special master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform a particular act. Subject to the conditions contained in the order appointing the special master, he has and shall exercise all the power of a Tribal Judge and take all measures necessary or proper required in the efficient performance of his duties.

B. The Master's Report

The master shall prepare a report upon the matter submitted to him by the Court and if require, shall make findings of fact and conclusions of law. He shall file the report with the Clerk of Court, who shall send a copy to all parties. Within ten (10) days after receiving the master's report, any party may serve written objection thereto upon the other party. The Court, after hearing, may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence, or may re-commit it to the master with instructions. Before filing his report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

History: Section 11.14(A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 28

11.15 Motion for Directed Verdict

A. The party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefore.

B. Whenever a motion for a directed verdict made at the close of all the evidence is denied for any reason, or not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than ten (10) days after entry of judgment, the party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and have judgment

entered in accordance with his motion for directed verdict. A motion for a new trial may be joined with this motion.

History: Section 11.15(A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 31

11.16 Summary Judgment

Any party may at any time move with or without supporting affidavits for summary judgment in his favor as to all or any part thereof. A motion be served at least ten (10) days before a hearing on the motion is held. Judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, admissions on file, together with the affidavits, if any, show that there is not genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment may be rendered on an issue of liability, although there is a general issue as to the amount of damages.

History: Section 11.16 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 32

11.17 Default Judgment

A. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules, the Clerk shall enter his default. The defaulting party shall be notified and shall be given five (5) days to rectify the default. If the defaulting party fails to appear and defend, judgment by default may be entered by the Court unless the party against whom the judgment by default is sought is an infant or an incompetent person, who is not represented by a general guardian or such other representative.

B. For good cause shown, the Court may always set aside an entry of default and if a judgment by default has been entered, may likewise set it aside. If the default resulted from the negligent failure of the attorney for the defaulting party to perform an act required by these Rules or by order of the Court, the default should be set aside and the attorney shall be fined an appropriate amount.

History: Section 11.17(A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 33

11.18 Dismissal

A. Voluntary Dismissal

An action may be dismissed by the plaintiff without leave of the Court by filing a notice of dismissal at any time before the defendant has filed either an answer or a motion for summary judgment, or by filing a stipulation of dismissal signed by all parties in the action. Such dismissal shall be without prejudice. All other dismissals must be on notice to all other parties and must be approved by the Court.

B. Involuntary Dismissal
An action may be dismissed by the Court on its own initiative, or on motion by the defendant, for failure of the plaintiff to prosecute or to comply with these Rules or any order of the Court. Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than dismissal for lack of jurisdiction, for improper venue, for failure to join an indispensable party, is "without prejudice" and operates as an adjudication upon the merits.

C. Consolidation
When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial on any or all issues; it may order all of the actions consolidated; or it may make such orders as may tend to avoid unnecessary costs or delay.

D. Separate Trials.
The Court, to avoid prejudice, inconvenience, or unnecessary costs, may order a separate trial of any claims, Cross-claims, counterclaims, or third party claims, or of any separate issue in the case.

History: Section 11.18(A-D) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 34

11.19 Deposits in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to all other parties an by leave of court may deposit with the Court all or any part of such sum or thing.

History: Section 11.19 enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 35

11.20 Injunctions

A. Preliminary Injunctions
No preliminary injunction shall be issued without notice to the adverse party. The Court may order the trial of the action on the merits consolidated with the haring on the application.

B. Temporary Restraining Order
A temporary restraining order maybe granted without notice to the adverse party only if it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition to the request for a temporary restraining order.

Every temporary restraining order granted without notice shall be filed immediately in the Clerk's office and shall expire by its own terms within

such time after entry, not to exceed five (5) days, as the Court fixes, unless the order, for good cause shown, is extended or unless the party against whom the order is directed consents to its extension. In case a temporary restraining order is granted without notice, the motion for preliminary injunction shall be set down for hearing at the earliest possible time. When the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so, the Court shall dissolve the temporary restraining order at once. On notice to the party who obtained the temporary restraining order, the adverse party may appear and move for its dissolution or modification, and in that event the Court shall proceed to hear and determine such motion as expeditiously as possible. The Court may require the giving of security by the applicant, in such sum as the Court deems proper for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

History: Section 11.20 (A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 36

11.21 Judgments and Costs

A. Demand for Judgment

A judgment by default shall not be different in kind or exceed the amount prayed for in the demand for judgment. Except as to parties against whom the judgment is entered by default, every final judgment shall grant the relief to which the party is entitled, even if the party has not demanded such relief in his pleadings.

B. Costs

Cost shall be allowed to the prevailing party unless the Court directs otherwise. Costs shall be assessed by the Clerk and added to the amount of the judgment rendered by the Court.

C. Entry of Judgment

Upon a general verdict of a jury, or upon a decision of the Court, judgment shall be entered reciting the verdict or decision of the Court and including any costs taxed in the case. The judgment may be set forth in a separate document.

D. Automatic Stay of Judgment

No execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten (10) days after its entry. If execution or enforcement is stayed beyond the ten (10) days, the Court may, in its discretion, require the losing party to post the bond guaranteeing payment of the judgment.

History: Section 11.21 (A-D) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 37

11.22 Case Management

The Clerk will, at the time each case comes to issue, notify the judge assigned of the fact that the case is at issue. That judge shall be responsible to cause the case to be calendared. If a case is not at issue within 100 days after the complaint is filed, then the Clerk will notify the judge assigned for immediate action.

History: Section 11.22 enacted 3/8/99, Resolution No.63-99;

11.23 Conflicts of Rules

In the event of conflict between these rules and the specific Rules of Procedure adopted by the Council, the Fort Belknap Indian Community Rules of Procedure shall control. Time computation shall be as set forth herein, unless specific guidance is provided in the code.

History: Section 11.23 enacted 3/8/99, Resolution No.63-99;

11.24 Notice of Probate Action Needed.

The Clerk shall notify counsel/parties ninety (90) days before the expiration of two (2) years from the filing of an estate matter if it has not been completed. That fact will be brought to the attention of the presiding judge within the ninety (90) days prior to the expiration of two (2) years, so that such action as may be appropriate can be required.

History: Section 11.24 enacted 3/8/99, Resolution No.63-99;

11.25 Ex Parte Matters

A. Extensions of time to further plead, file briefs, continue a hearing on a motion and other permissible ex parte matters, may be granted by order of the Court upon written application.

B. Prior to the issuance of an Ex Parte Order the attorney seeking such Order must file a Written Certification with the Court declaring that opposing counsel has been contacted, (or recitation of what attempts were made to contact opposing counsel) and given reasonable notice of:

(a) The time and place of the Ex Parte Conference or Meeting;
(b) The substance of the Order sought;
(c) Whether counsel opposes the Motion.

C. All requests for extension of time or continuance or other ex parte matters shall be accompanied by an appropriate form or order with sufficient copies for the Clerk to mail to adverse parties.

History: Section 11.25(A-C) enacted 3/8/99, Resolution No.63-99;

11.26 Orders, Judgments and Decrees

A. It shall be the duty of counsel obtaining any order, judgment or decree to present the same, accompanied by the Court file, in written form for the signature of the judge at the time of applying for the order, judgment or decree. Except in those instances where prior arrangements have been made with the Court or in matters of a self-evident nature concerning which the Court will have no questions, no request for issuance of an order will be considered by the Court unless the request is made by counsel in person.

B. When any order is made by the Court, it must immediately thereafter by presented to the Clerk by counsel for the purpose of making a minute entry thereof. A copy of any order, the original of which is being taken out for service, shall be presented to the Clerk for minute entry immediately upon the signing thereof. All orders, decrees and judgments shall be immediately filed following signature by the Court.

History: Section 11.26(A-B) enacted 3/8/99, Resolution No.63-99; formerly Part II, Section XII, Rule 37

11.27 Attorney Fees

In all uncontested cases where reasonable attorneys fees are left to the discretion of the Court, the following guidelines shall be used:

- On all sums up to and including $1,000 - 20%
- On all sums in excess of $1,000 - 10%
- On all sums in excess of $10,000 - 2%
- Extra fees may be allowed in cases of unusual labor.
- In foreclosure proceedings and suits on promissory notes, no fee less than $100.
- Attorney fees will not be fixed by the Court in probate cases, except upon motion and hearing.

History: Section 11.27 enacted 3/8/99, Resolution No.63-99;

11.28 Evidence as to Character

Not more than two witnesses will be allowed to testify as to character in any civil cause, without leave of the Court being first had and obtained.

History: Section 11.28 enacted 3/8/99, Resolution No.63-99;

11.29 Guilty Plea

Before the judge will accept any plea of guilty, the attorney for the defendant shall file with the Court a fully executed acknowledgment of waiver of rights by plea of guilty, in the form and with the content consistent with the one on file with the Clerk in the general order file, copies of which shall be available from the Clerk. Copies of the executed document shall be served upon the persons designated by said form and at the time provided.

History: Section 11.29 enacted 3/8/99, Resolution No.63-99;

11.30 Domestic Relations Affidavit

Prior to the time fixed for a pretrial conference, trial, or contested hearing for any temporary relief or a contested hearing for modification, each of the parties to a contested domestic relations action shall submit to the Court an affidavit which shall include the following:

A. General Background Information.
1) Name
2) Address
3) Date of birth
4) Date of marriage and date of separation
5) Place of employment and job title
6) Pay period and amount of pay
7) Itemized deductions each pay period
8) Attach the three most recent state and federal income tax returns unless same are or will be included and submitted in accordance with the child support guidelines
9) Education
10) Health
11) Future employment plans with estimated income

B. Describe the custody/visitation proposed; if other than joint legal custody is proposed, state the basis for the proposal.

C. Amount of child support proposed or offered (requirements of the child support guidelines shall be submitted separately and in accordance with guidelines, if any.)

D. Amount and duration of maintenance sought or offered and the basis for the proposal.

E. Include or attach a net worth or financial statement which lists all marital assets and liabilities and the proposed distributions of same; gifts, inheritances, insurance proceeds, property or debts brought to the marriage, and all other property or debts which one asserts should be treated differently shall be listed on a separate schedule, and the basis for that treatment indicated.

History: Section 11.30(A-E) enacted 3/8/99, Resolution No.63-99;

SECTION XII. SOVEREIGN IMMUNITY

Nothing contained within this title shall constitute a waiver or renunciation of the sovereign immunity of the Fort Belknap Tribal Community from suit,

which immunity is hereby reaffirmed.
History: Section 12 enacted 3/8/99, Resolution No.63-99;

PART 2
APPELLATE PROCEDURES
GENERAL

SECTION 1. COURT OF APPEALS OF THE FORT BELKNAP INDIAN RESERVATION

The highest Court of the Fort Belknap Indian Community's judicial system shall be known as the "Fort Belknap Court of Appeals" and shall be established pursuant to Title I, Section VIII.

History: Section 1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part I, Section I.

SECTION II. CLERK OF THE COURT OF APPEALS

The Court Administrator shall select and appoint a Clerk of the Tribal Court to act as the Clerk of the Court of Appeals or shall request that the Fort Belknap Community Council hire a full time appellate clerk.

History: Section 2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part I, Section II.

SECTION III. PLACE OF SITTING

The Fort Belknap Court of Appeals shall hear all appeals in the Fort Belknap Indian Community Tribal Court building and such appeals shall be open to the public only during oral arguments.

History: Section 3 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part I, Section III.

SECTION IV. FILING AND SERVICE

4.1 Filing

Papers required or permitted to be filed must be placed in the custody of the Clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

History: Section 4, Subsection 4.1 enacted 3/8/99, Resolution No.63-99 ; formerly Title VII, Part I, Section 4.1

4.2 Service of All Papers Required

Copies of all papers, including any transcripts filed by any party and not required by this Title to be served by the Clerk shall, at or before the time of filing, be served by the party or person acting for him or her on all other parties to the appeal. Service on a party represented by counsel shall be made on the counsel.

History: Section 4, Subsection 4.2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part I, Section 4.2

4.3 Manner of Service

Service may be personal or by mail. Personal service includes delivery of the copy to a Clerk or other responsible person at the office of the counsel. Service by mail is complete upon mailing.

History: Section 4, Subsection 4.3 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part I, Section 4.3.

4.4 Proof of Service

Papers presented for filing shall contain acknowledgment of s ervice by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed.

History: Section 4, Subsection 4.4 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part I, Section 4.4

SECTION V. COMPUTATION AND EXTENSION OF TIME

The extension of time and computation thereof in this title shall be governed by Title II, Section 1, Subsection 1.11 of the Laws of the Fort Belknap Indian Community.

History: Section 5 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part I, Section V.

SECTION VI. MOTIONS

6.1 Motion for Relief

A. Unless another form is prescribed by this Title, an application for an order or other relief in civil appeal shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefore and shall set forth the order of relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion.

B. Motions for Procedural Orders may be determined ex parte if a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within seven (7) days after service of the motion or within such time as the Court of Appeals may direct. Motions, supporting papers, and any response thereto may be either typewritten or handwritten.

C. At the time of filing of a motion, the party or counsel shall present a proposed order, together with sufficient copies of both the motion and order for service upon all parties of record.

History: Section 6, Subsection 6.1, 6.2, 6.3 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part I, Section VI.

PART 3
APPELLATE PROCEDURE
CIVIL

SECTION I. SCOPE OF RULES

1.1 Jurisdiction

These rules govern procedure in appeals in civil cases to the Court of Appeals of the Fort Belknap Indian Community from the Tribal Court and original proceedings in the Court of Appeals. The party applying for original relief is known as the petitioner and the adverse party as the defendant. The party appealing is known as the appellant, and the adverse party as the respondent

History: Section I, Subsection 1.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section II.

1.2 Scope of Appeal

A party aggrieved may appeal from a judgment or order, except when expressly made final by law, in the following cases:

A. From a final judgment entered in action or special proceedings commenced in the Tribal Court with the exception of small claims cases.

B. From an order granting a new trial; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve a writ of execution; from an order directing the delivery, transfer, or surrender of property from a special order made after final judgment. In any of the cases mentioned in this Subsection, the Court of Appeals, or a justice thereof, may stay all proceedings under the order appeals from, on such conditions as may be deemed proper.

C. From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor, or administrator, or guardian; or refusing , allowing or directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim legacy, or distributive shares; or confirming, or refusing to confirm the report of an appraiser setting apart a homestead.

All questions raised on an order overruling a motion for a new trial may be raised and reviewed on an appeal from the judgment.

History: Section I, Subsection 1.2 (A-C) enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section I.

SECTION II. WHAT THE COURT MAY REVIEW ON AN APPEAL FROM A JUDGMENT

2.1

Upon appeal from a judgment, the Court of appeals my review the verdict or decision, or any intermediate order or decision which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might not have been taken.

History: Section II, Subsection 2.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Section II

SECTION III. HOW THE APPEAL IS TAKEN

3.1 Filing of the Notice of Appeal

An appeal shall be taken by filing a notice of appeal in the Tribal Court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal but is grounds only for such action as the Court of Appeals deems appropriate, which may include dismissal of the appeal.

History: Section III, Subsection 3.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section III.

3.2 Joint Appeals

If two (2) or more person are entitled to appeal from a judgment or order of the Tribal Court and their interests are such as to make a joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notices of appeal as a single appellant.

History: Section III, Subsection 3.2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section III

3.3 Content of the Notice of Appeal

The notice of appeal shall specify the party or parties taking the appeal, and shall designate the judgment or order appealed from together with the grounds for the appeal.

History: Section III, Subsection 3.3 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section III

3.4 Service of the Notice Appeal

The Appellant (party appealing) shall serve notice of the filing of a notice of appeal by mailing a copy thereof to each party of record other than the

appellant, or to the counsel of each party if the party is so represented, and shall mail a copy of the notice of appeal to the Clerk of the Court of Appeals or serve the Clerk of the Court of Appeals by personal service, whichever is more appropriate an expedient. The Clerk of the Tribal Court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the Clerk with sufficient copies of the notice of appeal to permit the Clerk to comply with the requirements of this Section. Failure of the Clerk to serve notice shall not affect the validity of the appeal. The Clerk shall note in the Register of Civil Actions the names of the parties to whom she mails copies, with the date of mailing, or shall file a certificate of personal service noting in the Register the name of the person served an the date served.

History: Section III, Subsection 3.4 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section III.

SECTION IV. TIME FOR FILING NOTICE OF APPEAL

4.1

The time for filing notice of appeal as described in Section III above must be within thirty (30) days from the entry of the judgment or order appealed from in the Tribal Court. If the tribe or any political subdivision thereof is a party, the notice of appeal shall be filed within forty-five (45) days from the date of entry of the judgment or order in the Tribal Court. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within seven (7) days of the date on which the first notice of appeal was filed, or within the time otherwise provided in this Section, whichever period comes last.

History: Section IV, Subsection 4.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section IV

4.2

Upon a showing of excusable neglect or other unavoidable circumstances, the Tribal Court may extend the time for filing the notice of appeal by any party for a period not to exceed fifteen (15) days form the expiration of the original time prescribed by this Rule.

History: Section IV, Subsection 4.2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section IV.

SECTION V. UNDERTAKING FOR COSTS OF APPEAL

5.1

Within twenty (20) days after service of notice of appeal , an undertaking for costs on appeal shall be filed in the Tribal Court, or a deposit of money in the amount thereof shall be deposited with the Clerk of the Tribal Court, or the

undertaking may be waived by the court . The undertaking must be executed on the part of the appellant and he will pay all damages and costs which may be awarded against him on the appeal, or on the dismissal thereof. If the undertaking on appeal is not filed within the time specified, or if the undertaking filed is found insufficient, and if the action is not yet filed with the Court of Appeals, an undertaking may be filed at such time before the action is so filed as may be fixed by the Tribal Court.

After the action is so filed, application for leave to file an undertaking may be made only in the Court of Appeals. If the appellant is indigent, he or she may file a motion to waive the undertaking for costs on appeal, including in the motion evidence to show that he or she is in fact indigent at the time of filing the notice of appeal, but feels that there is good and meritorious claim for review and that if the appellant is stopped from appealing due to a lack of funds that great injustice will result. The Court may waive the undertaking upon the application of the appellant, but may require the appellant to file an agreement with the Court that in the event the appeal is affirmed or dismissed, he or she will pay the judgment against him or her within twenty (20) days after affirmance or dismissal by the Court of Appeals and in the event such judgment is not paid in that time, the appellant waives the right to claim any exemptions for property upon which an execution may be issued.

History: Section V, Subsection 5.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section V.

SECTION VI. STAY OF JUDGMENT OR ORDER PENDING APPEAL

6.1

Upon entry of judgment or order in the Tribal Court, a party may apply to the Court for a stay of the execution of the judgment or order pending appeal of the case. If a timely notice of appeal has been filed, the Court may stay the judgment or order pending the outcome of the appeal or for a lesser time of the Court so desires. The Court may also order in this stay, such terms and conditions as the Court deems proper, including restraining the party from disposing of , encumbering, or concealing his property.

History: Section VI, Subsection 6.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section VI.

6.2

In addition to the stay of execution on the judgment or order of the Tribal Court, the Court may order the appellant to file a surety bond in the amount of the judgment together with any costs including the cost of the appeal and the attorney's fees or in lieu of such surety bond, the cash amount of the judgment, costs, and any attorney's fees. The surety bond must be executed by at least two (2) sureties who state that they are worth the amount of the

judgment, costs, and any attorney's fees, over and above their liabilities and expenses, and that if the appellant fails to pay the judgment, costs, and the attorney's fees in the event of a dismissal or affirmance by the Court of Appeals, within twenty (20) days from the date of the decision of the Court of Appeals, they will pay said amounts. If the appellant can pay neither the cash deposit as prescribed above or obtain a surety bond, he or she may apply to the Tribal Court for a waiver of the bond, showing in such application the reasons why they appellant cannot comply with either, together with the fact that the appellant has a good and meritorious claim and that to deny him or her an appeal would result in substantial injustice. The Court in its discretion may waive the surety bond or deposit, but may require the appellant to sign an agreement with the respondent listing all his or her property, liens or money owing on such property, and a promise that if the judgment, costs, and attorney's fees are not paid within twenty (20) days after action by the Court of Appeals in dismissing or affirming the judgment of the Tribal Court, that the appellant waives the right to claim exemption on any of his or her property described in a writ or order in question.

History: Section VI, Subsection 6.2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section VI.

6.3

If the judgment or order appealed from directs the sale of perishable property, the Tribal Court may order the property to be sold and the proceeds thereof to be deposited, to await the judgment of the Court of Appeals.

History: Section VI, Subsection 6.3 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section VI

6.4

No stay of proceedings shall be allowed upon a judgment or order which adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding Tribal office within the Fort Belknap Indian Reservation, or which grants a writ of mandamus, or of prohibition, against a tribunal, corporation, Tribal officer, or board, and not involving the payment or allowance of money or its equivalent.

History: Section VI, Subsection 6.4 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section VI.

SECTION VII. SURETIES AND THEIR RESPONSIBILITY

7.1

In cases where a surety bond or undertaking of costs on appeal is required, the sureties shall be liable to the judgment creditor in the event a judgment or order is affirmed or dismissed as to the appellant. If the judgment debtor fails or refuses to pay the judgment, including costs and any attorney fees, the judgment creditor may proceed against the sureties in Tribal Court upon their

undertaking or bond.
History: Section VII, Subsection 7.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section VII.

7.2

A party may take exception to the sufficiency of the sureties to any bond or undertaking mentioned in Section 6 above at any time within fifteen 915) days after the filing of such bond or undertaking and unless they or other sureties, within ten (10) days after service of notice of such exception, justify before a Judge of the Tribal Court, or the Clerk thereof, upon five (5) five days notice to the other parities of the time and place of justification, execution of the judgment, or order appealed from is no longer stayed.
History: Section VII, Subsection 7.2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, SEction VII.

SECTION VIII. THE RECORD ON APPEAL

8.1

The record on appeal in a civil case shall comply with Section 10 of this title.
History: Section VIII, Subsection 8.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section VIII.

SECTION IX. TRANSMISSION OF THE RECORD ON APPEAL

9.1

Transmission of the record on appeal shall comply with Section 10 of this Title.
History: Section IX, Subsection 9.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section IX.

SECTION X. DOCKETING THE APPEAL - FILING OF THE RECORD

10.1 Docketing the Appeal

Within the time allowed or fixed for transmission of the record, the appellant shall pay to the Clerk of the Court of appeals the fee for filing the record on appeal, and the Clerk shall thereupon enter the appeal upon the "Docket of Civil Appeals." If an appellant is authorized to make an appeal without prepayment of fees, the Clerk shall enter the appeal upon the docket or at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the Tribal Court with an appropriate case number and such addition as necessary to indicate the identity of the appellant.
History: Section X, Subsection 10.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section X.

10.2 Filing of the Record

Upon receipt of the record by the Clerk of the Court of Appeals following its timely transmittal, and after the appeal has been docketed, the Clerk shall file the record. The Appellate Clerk of court shall immediately give notice to all parties of the date on which the record was filed, and give notice of the date and time of the date briefs are due. The Clerk shall notify appellant he has 30 days to file appellant's brief. Upon appellant filing his brief, the Clerk shall notify Respondent that his brief is due within 30 days from the date of the certificate of service of Appellant's brief.

History: Section X, Subsection 10.2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section X.

10.3 Dismissal for Failure of Appellant to Cause Timely Transmission or to Docket Appeal

If the appellant fails to cause timely transmission of the record or to pay the filing fee if a filing fee is required, without having such filing fee waived by the Tribal Court, any respondent may file a motion on the Court of Appeals to dismiss the appeal. The motion shall be supported by a certificate of the Clerk of the Tribal Court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record. The Clerk shall docket the appeal for the purpose of permitting the Court to entertain the motion, without requiring payment of the filing fee, but the appellant shall not be permitted to appear without payment of the fees. Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

History: Section X, Subsection 10.3 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section X.

10.4 The Record on Appeal

The Tribal Court Reporter or the Clerk of Court, in the absence of the Reporter, shall keep a transcript of all civil proceedings before the tribal court. This transcript shall consist of either a complete transcription of the entire proceedings or a tape recording of the entire proceeding. In the event a tape recording of the proceeding is made, such tape shall be certified an catalogued by the Clerk of the Tribal Court and kept for a period of not less than *ninety* (90) days . If at the end of the ninety (90) day period there has been no appeal or further proceedings on the case, the Clerk shall make a record of minutes from the tape and file the tape in appellate archives. The minutes shall contain the name of the action, the name of the presiding judge, the names of all the witnesses, a brief summation of the evidence of both the prosecution

and the defense, the verdict or decision, and the judgment, including any sentence in the event of finding of guilty.

History: Section X, Subsection 10.4 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part II, Section IV, Subsection 4.1

10.5

The original papers and exhibits filed in the Tribal Court, including the complaint and warrant of arrest or summons, the transcript of the proceedings, if any, and a certified copy of the register entries prepared by the Clerk of the Tribal Court shall make up the record on appeal in all cases.

History: Section X, Subsection 10.5 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part II, Section IV, Subsection 4.2.

10.6

In the event there is no written transcript or an accurate, unflawed tape recording of the proceedings, the Clerk of the Tribal Court shall so inform the appellant within ten (10) days. The appellant shall then proceed under Subsection 4.4 of this Section below. If there is a transcript of the proceedings, the Tribal Clerk shall so inform the appellant and then file the transcript, together with the other papers constituting the record on appeal in an appropriate "pending appeals" file, and the appellant is required to pay an amount set by the Court Administrator for this transcript.

History: Section X, Subsection 10.6 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part II, Section IV, Subsection 4.3

10.7

If there is no adequate transcript of the proceedings the matter shall be remanded for a new trial.

History: Section X, Subsection 10.7 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part II, Section IV, Subsection 4.4.

10.8 Time

The record on appeal shall be transmitted to the Court of Appeals within thirty (30) days after the filing of the notice of appeal, unless this time is shortened or extended by an order of the Tribal Court. If the appellant has complied with Section IV above, in a lesser time, the record on appeal shall be transmitted to the Court of Appeals immediately after such compliance which may be less than thirty (30) days without leave of the Court.

History: Section X, Subsection 10.8 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part II, Section V, Subsection 5.1

10.9 Duty of Clerk to Transmit

It is the duty of the Clerk of the Tribal Court (not the appellate clerk) to

transmit the record on appeal, as defined in Section 10.2 above to the Clerk of the Court of Appeals, who in turn shall notify the Chief Justice of the Court of Appeals that an appeal has been filed and the record transmitted. The Clerk of the Court of Appeals shall note on the face of the record the date it has been transmitted to the Court of Appeals.

History: Section X, Subsection 10.9, enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part II, Section V, Subsection 5.2.

10.10 Extension of Time for Transmission

The Tribal court may extend the time for transmitting the record on appeal upon timely motion from either party, but in no event shall such extension go beyond fifteen (15) days from the time set for such transmission in Subsection A of this Section. A motion for extension of time from transmitting the record shall show the inability of the party due to causes beyond his or her control or circumstances which may be deemed excusable neglect.

History: Section X, Subsection 10.10 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part II, Section V, Subsection 5.3.

10.11

It is the duty of the appellant to make sure that the record on appeal has been transmitted to the Court of Appeals within the time period noted in Subsection A above.

History: Section X, Subsection 10.11 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part II, Section V, Subsection 5.4.

SECTION XI. REMEDIAL POWERS OF THE COURT OF APPEALS

11.1

When the judgment or order is reversed or modified, the Court of Appeals may make complete restitution of all property and rights lost by the erroneous judgment or order of the Tribal Court, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had process issued upon the judgment on an appeal from which the proceedings were not stayed, and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

History: Section XI, Subsection 11.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XI, Subsectin 11.1.

SECTION XII. ACTION BY CLERK OF COURT OF APPEALS AFTER APPEAL

12.1

When judgment is made upon the appeal, it must be certified by the Clerk of the Court of Appeals to the Clerk of the Tribal Court from which the appeal is taken The Clerk of the Tribal Court must then enter the judgment of the Court of Appeals in the Register of Civil Actions, noting properly the action that was taken.

History: Section XII, Subsection 12.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XII, Subsection 12.1

SECTION XIII. APPEALS IN FORMA PAUPERIS

13.1

A party who desires to proceed on appeal but does not have the funds to make the required filing fees, deposits, or cannot secure sureties, may file an in forma pauperis motion asking leave of the Tribal Court to proceed in forma pauperis together with an affidavit showing in detail his or her inability to pay the fees and costs of the appeal or to give security therefore, his or her belief that he or she is entitled to an appeal, and a statement of the issues to be presented ton appeal. If the motion is granted, the party may be ordered to proceed without costs after signing an agreement or the Court may allow the party to proceed without costs without signing such agreement. If the motion is denied, the Tribal Court shall state the reasons for the denial.

History: Section XIII, Subsection 13.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XIII, Subsection 13.1

13.2

If the motion for leave to proceed on appeal in forma pauperis is denied by the Tribal Court, a motion for leave to so proceed may be filed in the Court of Appeals within (10) days after the denial by Tribal Court. The motion shall be accompanied by a copy of the affidavit filed in the Tribal Court and of the statement of reasons for denial given by the Tribal Court.

History: Section XIII, Subsection 13.2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XIII, Subsection 13.2.

SECTION XIV. BRIEFS

14.1 Appellant

The appellant may file a brief in support of the appeal or may be required by an order of the Court of Appeals to file such brief. In either case, the brief must be filed within thirty (30) days after the docketing of the appeal, unless the Court provides otherwise. The brief of the appellant shall contain:

A. The correct title of the case and the appeal's case number.

B. A brief statement of the case including the judgment or order of the Tribal Court below.

C. The issues presented on appeal.

D. An argument in support of the grounds of the appeal.

E. A short conclusion stating the precise relief sought.

History: Section XIV, Subsection 14.1 (A-E) enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XIV, Subsection 14.1

14.2 Respondent

The respondent may respond to the brief of the appellant either by choice or by order of the Court of Appeals. The respondent's brief shall conform to Subsection 14.1 above with the exception that the respondent need not include a statement of the case unless he or she is dissatisfied with the statement of the appellant.

History: Section XIV, Subsection 14.2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XIV, Subsection 14.2.

14.3 Reply Brief

The appellant may file a brief in reply to the brief of the respondent, but such brief must be confined only to a new matter raised in respondent' brief. No further briefs may be filed without leave of the Court.

History: Section XIV, Subsection 14.3 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XIV, Subsection 14.3

14.4

Unless otherwise ordered by the Court of Appeals, the time for filing the briefs referred to above shall be:

A. Appellant's Brief - thirty (30) days after the docketing of the appeal

B. Respondent's Brief - thirty (30) days after receipt of Appellant's Brief.

C. Reply Brief - fifteen (15) days after receipt of Respondent's Brief.

History: Section XIV, Subsection 14.4 (A-C) enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XIV, Subsection 14.4.

14.5

Each party filing a brief as set out in Subsections 14.1 through 14.3 above shall cause a copy of the brief to be served upon all the other parties of record. This service may be by mail or by personal service, an shall be made at the same time or as soon thereafter as possible as the filing of the brief with the Clerk of

the Court of Appeals.

History: Section XIV, Subsection 14.5 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XIV, Subsection 14.5

14.6

No brief filed in the Court of Appeals may exceed twenty-five (25) pages in length if typewritten and thirty-five (35) if handwritten.

History: Section XIV, Subsection 14. 5 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Sectin XIV, Subsection 14.6.

14.7

All briefs referred to above shall be filed with the Clerk of the Court of Appeals, who shall note the date of filing in the Docket of Civil Appeals and then send such brief to the Chief Justice of the Court of Appeals.

History: Section XIV, Subsection 14. 7 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XIV, Subsection 14.7

SECTION XV. PREHEARING CONFERENCE

15.1

The Chief Judge of the Court of Appeals or other justice sitting on the case may direct the parties or their counselors to appear before the Court or a justice thereof for a prehearing conference to consider the simplification if the issues and such other matters as may aid in the proceedings. The justice shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue to those not disposed of by admission or agreements of the parties or counsel, and such order when entered controls the subsequent course of the proceedings, unless modified to prevent manifest injustice.

History: Section XV, Subsection 15.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XV, Subsection 15.1

SECTION XVI. ORAL ARGUMENT

16.1

Upon notification of the hearing of the appeal as set out in Section 10.2 above, the appellant and the respondent shall be prepared to make oral arguments before the Court of Appeals at the date and time specified. The appellant shall be allowed thirty (30) minutes to present oral argument and the respondent shall be allowed the same time. The appellant is entitled to open and close the argument and should divide the time allotted accordingly. The opening argument shall be limited to rebuttal of respondent's argument. If counsel are representing the parties, they shall not be allowed to read at length from briefs, records, or authorities. At the conclusion of the oral arguments, either party or counsel may be questioned by the presiding justices. If a party or his counsel fails to appear for oral argument, the Court will hear the argument of

the party who is present and the case will be decided upon the briefs, if any, the oral argument made and the notice and record of appeal.

History: Section XVI, Subsection 16.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XVI, Subsection 16.1

SECTION XVII. DECISION ON APPEAL - TIME

17.1

At the conclusion of oral argument, the Court of Appeals shall have not more than thirty (30) days to make a decision in the case, reviewing the notice of appeal, the record on appeal, briefs of any party timely filed, motions, and any other paper properly filed and before the Court for its decision. The decision shall be in writing and shall be served upon all the parties of record, and shall be certified and served upon the Clerk of the Tribal Court for appropriate action.

History: Section XVII, Subsection 17.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XVII, Subsection 17.1

SECTION XVIII. INTEREST ON JUDGMENTS

18.1

If a judgment for money in a civil case is affirmed, interest at the rate set from time to time at the current interest rate per annum shall be payable from the date the judgment was rendered or made in the Tribal Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the Tribal Court, the order shall contain instructions with respect to allowance of interest.

History: Section XVIII, Subsection 18.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XVIII, Subsection 18.1

SECTION XIX. DAMAGES FOR APPEAL WITHOUT MERIT

19.1

If the Court of Appeals is satisfied from the record and the presentation of the appeal that the appeal was taken without substantial or reasonable grounds, but apparently for purposes of delay only, it may assess damages against the appellant as are deemed proper in the judgment of the Court.

History: Section XIX, Subsection 19.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XIX, Subsection 19.1

SECTION XX COSTS ON APPEAL

20.1 Filing Fee

There is a ten dollar ($10.00) filing fee to file a notice of appeal in the Tribal Court. This fee must be paid to the Clerk of the Tribal Court, unless waived as provided under this title.

History: Section XX, Subsection 20.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XX, Subsection 20.1

20.2 Other Costs

Costs incurred in the preparation and transmission of the record, the cost of a transcript if necessary for determination of the appeal, the premiums paid for surety bonds or an undertaking, together with the cost of filing the notice of appeal shall be considered costs on appeal and may be assessed against the losing party.

History: Section XX, Subsection 20.2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XX, Subsection 20.2.

20.3

The cost of transmission of the record on appeal is twenty-five dollars ($25.00). Such fee shall be paid to the Clerk of the Tribal Court.

History: Section XX, Subsection 20.3 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XX, Subsection 20.3.

SECTION XXI. PETITION FOR REHEARING

21.1

When, in appeals or special proceedings, it is ordered that judgment issue immediately, no petition for rehearing will be entertained. In all other cases, a petition for rehearing may be filed within ten (10) days after the decision of the Court of Appeals has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have seven (7) days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit, and in no event in excess of ten (10) days. A petition for rehearing may be presented upon the following grounds and not other: that some fact, material to the decision, or some question decisive of the case was overlooked by the Court, or that the decision is in conflict with an express statute or controlling decision to which the attention of the Court was not directed. Oral argument in support of the petition will not be permitted. Six (6) copies of the petition and six (6) copies of the objections thereto, shall be filed with the Clerk of the Court of Appeals.

History: Section XXI, Subsection 21.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XXI, Subsection 21.1.

SECTION XXII. VOLUNTARY DISMISSAL

22.1

If the parties to an appeal or other proceeding shall sign and file with the Clerk of the Court of Appeals an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the Clerk shall enter the case dismissed, and shall give each party a copy of the agreement filed. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the Court. If an appeal has not been docketed, the appeal may be dismissed by the Tribal Court upon the filing in that Court a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant.

History: Section XXII, Subsection 22.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XXII, Subsection 22.1.

SECTION XXIII. SUBSTITUTION OF PARTIES

23.1 Death of Party

If a party dies after a notice of appeal is filed or which a proceeding is pending in the Court of Appeals, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the Clerk of the Court of Appeals. The motion of a party shall be served upon the representative by the party making the motion within five (5) days after the motion is filed. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Court of Appeal may direct.

History: Section XXIII, Subsection 23.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XXIII, Subsection 23.1

23.2

If a party against whom an appeal may be taken dies after entry of a judgment or order in the Tribal Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be made in accordance with this Section. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his or her personal representative or, if he or she has no personal representative, by his or her counselor of record within the time set up in this Title, Part III.

History: Section XXIII, Subsection 23.2 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XXIII, Subsection 23.2.

23.3 Other Reasons

If substitution of a party in the court of Appeals is necessary for any reason other than death, it shall be accomplished in the same manner as set out in Subsection 1 of this Section.

History: Section XXIII, Subsection 23.3 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XXIII, Subsection 23.3

23.4 Public Officials

When a public officer, including any Tribal officer, is a party to an appeal or other proceeding in the Court of Appeals in his or her official capacity and during the pendency of the appeal, dies, resigns, or otherwise ceases to hold office, the action does not abate and his or her successor is automatically substituted as a party.

History: Section XXIII, Subsection 23.4 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XXIII, Subsection 23.4

SECTION XXIV. APPEALS FROM INJUNCTION ORDERS

24.1

Upon appeal from an order dissolving or refusing an injunction, if the appellant desires to continue in force the injunction order dissolved by the Tribal Court, or to obtain such injunction order pending the appeal, he shall apply to the Tribal Court within ten (10) days. In the event the relief there requested be not granted, he may file in the Court of Appeals his sworn application, within ten(10) days of the order denying the request, setting forth the proceedings appealed from and the relief desired, and present with it to the Court of Appeals, a verified copy of the affidavits or evidence used in the hearing in the Tribal Court. Such application will be heard ex parte and without argument, and the Court, upon such record will make such order as it deems proper.

History: Section XXIV, Subsection 24.1 enacted 3/8/99, Resolution No.63-99; formerly Title VII, Part III, Section XXIV, Subsection 24.1.

TITLE III
CRIMINAL PROCEDURE
TABLE OF CONTENTS

THE LAWS OF THE FORT BELKNAP INDIAN COMMUNITY

TITLE III

CRIMINAL PROCEDURE

PART I
COMMENCING CRIMINAL PROCEEDINGS

SECTION 1 CHARGING DOCUMENTS

Section 1.1 Complaint

A. All prosecutions of crimes shall be brought in the name of the Fort Belknap Tribes. Any crime may be charged by complaint.

B. All prosecutions of crimes shall be instituted by the filing of a complaint.

C. Whenever a complaint is filed, the clerk of the court shall:
(1) mark the date of filing on the instrument;
(2) record it in a record book; and
(3) upon request, make a copy of it available to the defendant or his attorney.

D. The court, upon motion of the tribal prosecutor, may order that the complaint be sealed when failure to do so may result in substantial harm or injury to an individual. If a court has sealed a complaint, no person may disclose the fact that a complaint is in existence or pending until the defendant has been arrested or otherwise brought within the custody of the court. However, any person may make any disclosure necessarily incident to the arrest of the defendant. A violation of this subsection is punishable as a contempt.
History: Section 1, Subsection 1.1(A-D) enacted on the 3/8/99, Resolution 63-99; formerly Section X, Rule 1.

Section 1.2 Method of Commencing Prosecution

A. All criminal prosecutions for violation of a recognized offense shall be initiated by complaint.

B. All complaints charging a class one offense shall be made upon oath before a judge. All complaints charging class two offenses may be made upon oath before a judge or by a police officer. All complaints charging a class one offense must be signed by the prosecutor. All complaints chargina a class two offense may be signed by the prosecutor or the complaint.
History: Section 1, Subsection 1.1(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section X, Rule 1.
Cross-Reference: Section 1.4 Amending a complaint.

Section 1.3 Contents of Complaint

A. The complaint is a written statement of the essential facts constituting the offense charged.

B. The complaint shall:
(1) name the person accused, if known, or a description sufficient to identify the person accused of committing the alleged offense;
(2) the general location where the alleged offense was committed;
(3) the general name and code designation of the alleged offense;
(4) a short, concise statement of the specific acts or omissions to act constituting an offense;
(5) the person against whom the alleged offense was committed if known;
(6) the date and approximate time of the commission of the alleged offense, if known; and
(7) the name of the person filing the complaint.

C. No minor omission or error in the body of the complaint shall be grounds for dismissal unless the defendant is shown to be significantly prejudiced by the omission or error.

D. A specific class of an offense need not be included in the complaint. If a factual allegation is contained in the complaint which will supply the information needed to determine the class of the offense, the judge may use that information to determine bail. If no factual allegation is made, the offense shall be considered the least degree possible under the offense charged, for purposes of setting bail.

E. The judge issuing the complaint shall examine the complainant under oath to:
(1) ascertain the validity of the complaint;
(2) determine whether probable cause exists to make an arrest; and
(3) decide whether an arrest warrant or summons should be issued.

History: Section 1, Subsection 1.3(A-E) enacted on the 3/8/99, Resolution 63-99; formerly Section X, Rule 1.

Section 1.4 Amending the Complaint

A. A complaint which charges the commission of an offense may not be dismissed but may be amended on motion by the tribal prosecutor at any time because of any immaterial defect, including:
(1) any miswriting, misspelling, or grammatical error;
(2) any misjoinder of parties defendant or offenses charged;
(3) the presence of any unnecessary repugnant allegation;
(4) the failure to negate any exception, excuse, or provision contained in the statute defining the offense;
(5) the use of alternative allegations as to the acts, means, intents, or results charged;
(6) any mistake in the name of the court title of the action, or the statutory

provision alleged to have been violated;
(7) the failure to state the time or place at which the offense was committed where the time or place is not the essence of the offense;
(8) the failure to state an amount of value or price of any matter where that value or price is not the essence of the offense; or
(9) any other defect which does not prejudice the substantial rights of the defendant.

B. The complaint may be amended in matters of substance or form, and the names of material witnesses may be added, by the tribal prosecutor, upon giving written notice to the defendant, at any time up to: (1) thirty (30) days if the defendant is charged with a Class One offense; or (2) fifteen (15) days if the defendant is charged only with one (1) or more Class Two offenses; before the pre-trial hearing. When the complaint is amended, it shall be signed by the tribal prosecutor.

C. Before amendment of any complaint, the court shall give all parties adequate notice of the intended amendment and an opportunity to be heard. Upon permitting such amendment, the court shall, upon motion by the defendant, order any continuance of the proceedings which may be necessary to accord the defendant adequate opportunity to prepare his defense.

D. An amendment of a complaint or information to include a habitual offender charge must be made not later than ten (10) days after the pre-trial hearing. However, upon a showing of good cause, the court may permit the filing of a habitual offender charge at any time before the commencement of the trial.

History: Section 1, Subsection 1.4 (A-D) enacted on the 3/8/99, Resolution 63-99

Section 1.5 Affidavits to Accompany Charging Documents

A. In all class one complaints, pleadings, motions, petitions, probable cause affidavits or other documents an affidavit is required to be verified or sworn under oath before it is submitted to the court in a criminal matter in the following form or a substantially similar form is used:

I swear (affirm), under penalty of perjury as specified by , that the foregoing (the following) representations are true.
Signed _____.

B. If a document complies with subsection (A), the swearing or affirming need not be done before a notary or other officer empowered to administer oaths.

C. A person who makes a false affirmation or verification under this section may be prosecuted under the criminal code.

History: Section 1, Subsection 1.5(A-C) enacted on the 3/8/99, Resolution 63-99

Section 1.6 When Complaint Must Be Filed

A. When a person is arrested for a crime before a formal charge has been filed, a complaint shall be prepared and filed before or at the initial hearing.

B. If the tribal prosecutor states more time is necessary to evaluate the case and determine whether a charge should be file, or if it is necessary to transfer the person to another jurisdiction, then the court shall recess or continue the initial hearing for twenty-four (24) hours.

C. Before recessing the initial hearing the court shall inform a defendant charged with his rights specified in Part III, Section 1, Subsections 1.2B, (1) - (5).
History: Section 1, Subsection 1.6(A-C) enacted on the 3/8/99, Resolution 63-99

SECTION 2 LAW & MOTION

Section 2.1 Law and Motion Day

A Law and Motion day shall be held not less than two times during each calendar month, the dates to be determined and established by the Chief Judge through a standing Order. The primary purpose of law and motion day shall be for the court to hear uncontested matters relating to criminal actions.
History: Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99

Section 2.2 Law and Motion--Governing Rules.

A. When a Law and Motion day falls on a holiday, all matters scheduled thereon shall be deemed continued to the next regular Law and Motion day. In the event a judge is unable to hold Law and Motion on his/her assigned day, he/she shall make arrangements with another judge to preside in his/her place, or, if it is to be canceled, wherever possible, at least fifteen (15) days advance notice shall be given to the Clerk of such cancellation.

B. Counsel and/or parties may schedule, by providing notice to the parties and the court, consistent with these Rules and the Rules of Civil Procedure, matters pertaining to questions of law, matters not involving presentation of evidence and uncontested matters on Law and Motion days. Unless good cause exists to justify scheduling before another judge, counsel and/or parties shall determine to whom their case has been assigned, and calendar matters before that judge. Contested matters involving presentation of evidence will not be heard on Law and Motion days except by leave of Court, and must, unless a specific transfer order is signed, be heard by the judge assigned to that case.

C. Only the judge presiding at the Law and Motion day scheduled will hear matters calendared for that day. That judge shall hear all matters presented, whether filed in his/her judge or in the other judge or departments; provided that any motion which is resisted, or any other matter which is contested, shall be heard by the judge wherein such motion or matter is pending. All matters presented on Law and Motion day shall be heard in open court, in the courtroom of the judge presiding, provided that uncontested matters of self-evident nature, not including default divorces, if counsel so desires, may be left with the Clerk for presentation to the presiding judge.

D. Each attorney shall designate in advance the matters to be presented by him/her on Law and Motion day. The matters so designated shall be listed by the Clerk on a Law and Motion calendar, which calendar shall be closed at 8:45 a.m. on each Law and Motion day. Immediately before the opening of court on each Law and Motion day, the Clerk shall bring the court file in each matter on the Law and Motion calendar to the courtroom or chambers of the presiding judge.

History: Section 2, Subsection 2.2 enacted on the 3/8/99, Resolution 63-99

SECTION 3. COMMENCING CRIMINAL CASES

A. In a criminal case charging a class one offense, if a not-guilty plea is entered at the time of the arraignment, the case shall be set for a pre-trial conference at a later date. A pre-trial conference is discretionary when the charge is a class two offense. The tribal prosecutor or the defendant may make any motion permitted at any time after arraignment and said motion shall be noticed for hearing by the moving party.

B. The Court hereby urges that full discovery, exploration and plea discussions be carried on between counsel prior to the pre-trial conference.

C. Continuances will be granted if more time is needed.

D. It is contemplated that most cases will be on set for trial or be ready for a guilty plea at the time of the pre-trial conference. If a defendant is intending to plead guilty, he/she shall do so as soon as possible and in all events prior to trial.

E. At the conclusion of the pre-trial conference, those cases without a trial setting will be set for trial.

F. On a pre-trial conference form, to be provided by the Court, the Tribe and defense may check off the items called to the attention of the Court and note for their file copy the action taken. Such notations will become a motion by the defense and by the prosecution for the relief requested and a shorthand record of the action taken. If a sufficient record has been made in the pre-trial conference, the Court will summarily hear, consider and decide motions checked on the form. However, the Court, upon request or upon its own direction, may permit the defendant or the Tribe to state, in writing, motions and grounds therefore and to support said motions with appropriate supporting documents. If witnesses are to be called, the court will set a date certain for a hearing upon the motion.

G. In all cases in which the court has discretion to consider a motion or allow the exercise of a defense at a later date than that designated in any statute, no party shall be deprived of the right to make such motion to designate such defense by waiting to present the same at the time of the pre-trial conference, as contemplated by this rule.

History: Section 3(A-G), enacted on the 3/8/99, Resolution 63-99

SECTION 4. COURT APPOINTED COUNSEL

The court, in its discretion, may appoint counsel to indigent defendants in adult criminal cases, indigent youth and/or indigent parents in youth matters and to the named subject of involuntary commitment proceedings. The court shall determine the indigence of parties on a case by case basis.

History: Section 4 enacted on the 3/8/99, Resolution 63-99

SECTION 5. DISMISSAL FOR FAILURE TO PROSECUTE

A. When no proceedings have been taken in a criminal case for a period of one year, the action will be dismissed on its merits and/or the file closed by the Court on its own motion after ten (10) days notice of such intended dismissal unless good cause to the contrary is shown.

B. The Clerk shall give notice to the attorneys of record/parties when an action is dismissed pursuant to this rule.

History: Section 5 enacted on the 3/8/99, Resolution 63-99

PART II
ARREST AND SEARCH WARRANTS

SECTION 1 ARREST WITH OR WITHOUT A WARRANT

Section 1.1 Arrest - When Authorized.

A. A law enforcement officer may arrest a person when the officer has:
(1) a warrant commanding that the person be arrested;
(2) without a warrant if he has probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, an offense;
(3) without a warrant if he has probable cause to believe the person has violated the provisions of the criminal code;
(4) without a warrant if he has probable cause to believe the person has committed an assault resulting in bodily injury. The officer may use the alleged victim's statement of the incident alleging the elements of the offense of assault to establish probable cause.

B. A judge may arrest, or order the arrest of a person in his presence, when he has probable cause to believe the person has committed a crime.
History: Section 1, Subsection 1.1(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section 1, Subsection 1.4.

Section 1.2. Summons - When Appropriate

A. When a complaint or information is filed against a person charging him with a class two offense, the court may, in lieu of issuing an arrest warrant, issue a summons. The summons must set forth substantially the nature of the offense, and command the accused person to appear before the court at a stated time and place. However, the date set by the court must be at least seven (7) days after the issuance of the summons. The summons may be served in the same manner as the summons in a civil action.

B. If the person summoned fails, without good cause, to appear as commanded by the summons and the court has determined that there is probable cause to believe that a crime (other than failure to appear) has been committed, the court shall issue a warrant of arrest.

C. If after issuing a summons the court:
1) is satisfied that the person will not appear as commanded by the summons; and
2) has determined that there is probable cause that a crime (other than failure to appear) has been committed; it may at once issue a warrant of arrest.

D. The summons may be in substantially the following form:

IN AND FOR THE FORT BELKNAP INDIAN RESERVATION IN THE FORT BELKNAP TRIBAL COURT

FORT BELKNAP TRIBES,	)	Cause No.
Plaintiff	)	
v.	)	SUMMONS
	)	
_____,	)	
Defendant.	)	

THE FORT BELKNAP TRIBAL COURT TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED, to appear before the above designated Court at the Fort Belknap Agency at _____ ____.m. on (day) _____, _____, 19___, with respect to a complaint for _____. If you do not so appear, an application may be made for the Issuance of a Warrant for your arrest.
ISSUED: _____ ___, 19___.
BY THE CLERK OF SAID COURT:

_____.
CLERK

E. When any law enforcement officer on the reservation serves a summons on a person, he shall file a return of service with the court issuing the summons. The return shall be in substantially the following form:

RETURN OF SERVICE

I hereby certify that I served this summons upon the above named defendant by delivering a copy of it and of the complaint to the defendant personally or by certified mail return receipt requested, on _____ _____, 19___, at ____, _____.
DATED: _____ ___, 19___.
(Signature) _____
_____
LAW ENFORCEMENT AGENCY

F. In lieu of arresting a person who has allegedly committed a class two Offense (other than a traffic misdemeanor) in his presence, a law enforcement officer may issue a summons and promise to appear. The summons must set forth substantially the nature of the offense and direct the person to appear before a court at a stated place and time.

G. The summons and promise to appear may be in substantially the following form:

FORT BELKNAP TRIBES,	)
Plaintiff,	)
vs.	)
	)
_____	)
Defendant	)

SUMMONS AND PROMISE TO APPEAR

YOU ARE HEREBY SUMMONED, to appear before the above designated Court at
_____
(Address)
at _____, ___ .m. on _____ _____,Month Day
19 ___, in respect to the charge of _____
_____.

If you do not so appear, an application may be made for the issuance of a warrant for your arrest.
ISSUED:___, 19 ____, on the Fort Belknap Indian Reservation
BY THE UNDERSIGNED LAW ENFORCEMENT OFFICER:

_____
Officer's Signature
I.D. No. _____
Police Agency _____
COURT APPEARANCE
I promise to appear in court at the time and place designated above, or be subject to arrest.
Signature _____
YOUR SIGNATURE IS NOT AN ADMISSION OF GUILT
History: Section 1, Subsection 1.2(A-G) enacted on the 3/8/99, Resolution 63-99; formerly Section X, Rule 2.

Section 1.3 Officer Must File Summons and Promise to Appear

When any law enforcement officer issues a summons and promise to appear, he shall:
(1) promptly file the summons and promise to appear and the certificate of service with the court designated in the summons and promise to appear; and
(2) provide the tribal prosecutor with a copy thereof.
History: Section 1, Subsection 1.3 (1-2) enacted on the 3/8/99, Resolution 63-99

Section 1.4 Expiration of Warrant for Arrest

A warrant of arrest for a class two offense expires one hundred eighty (180) days after it is issued. A warrant of arrest for a class one offense and a rearrest warrant for any offense do not expire. A law enforcement officer who has an expired warrant shall make a return on the warrant stating that it has expired and shall return it to the clerk of the court. The clerk shall enter the fact that the warrant has expired in the records and shall notify the tribal prosecutor the warrant has expired. Upon request of the tribal prosecutor, the court shall issue another warrant.
History: Section 1, Subsection 1.4 enacted on the 3/8/99, Resolution 63-99; formerly Section 1, Subsection 1.4.

Section 1.5 Scope of Search After Arrest

When a lawful arrest is effected, a law enforcement officer may make a reasonable search of the person arrested and the area within such person's immediate presence, without a search warrant, for the purpose of :
(1) protecting the officer from attack;
(2) discovering and seizing the fruits of the crime;
(3) discovering and seizing instruments, articles, or other property which may have been used in the commission of the offense, or which may constitute evidence of the offense, in order to prevent its destruction; or
(4) preventing the person from escaping.
History: Section 1, Subsection 1.5 enacted on the 3/8/99, Resolution 63-99

Section 1.6 Time of Making an Arrest

An arrest may be made any day of the week and at any time of the day or night, however, a person cannot be arrested in her or his home or private dwelling for a class two offense, at night, without an arrest warrant, specifically permitting arrest at night, unless the person named is being charged with committing a class one offense or the offense of domestic abuse.

History: Section 1, Subsection 1.6 enacted on the 3/8/99, Resolution 63-99; formerly Section I, Subsection 1.7.

Section 1.7 Written Report When No Arrest in Abuse Situation

When a law enforcement officer is called to the scene of a reported incident of elder or family member abuse but does not make an arrest, the officer shall file a written report with the commanding officer stating the reasons for deciding not to make an arrest.

History: Section 1, Subsection 1.7 enacted on the 3/8/99, Resolution 63-99

Section 1.8 Notice of Rights to Victims of Possible Elder or Family Member Abuse Situations

A. Whenever a law enforcement officer is called to the scene of a reported incident of elder or family abuse, the officer shall advise the injured party, if present, of the availability of services in the community and give the injured party immediate notice of any legal rights and remedies available.

B. The notice given by the law enforcement officer must include furnishing the injured party with a copy of the following statement:
"IF YOU ARE THE VICTIM OF ELDER OR FAMILY MEMBER ABUSE, the Tribal prosecutors office shall file criminal charges against your abuser and may request a temporary order for the following relief:
(1) an order restraining your abuser from further abuse;
(2) and order directing your abuser to leave your household;
(3) an order preventing your abuser from transferring any property except in the usual course of business;
(4) an order awarding you or the other parent custody of, or visitation with, any minor children, if appropriate;
(5) and order restraining your abuser from molesting or interfering with any minor children in your custody, if appropriate; or
(6) an order directing the party not granted custody to pay support of any minor children or to pay any other support where there is a legal obligation to do so.

History: Section 1, Subsection 1.8 (A-B) enacted on the 3/8/99, Resolution 63-99; Cross Reference: Family Court Act XI, Section 2, subsection c, Notice of rights to Victims of Family Member Abuse.

SECTION 2. SEARCH WARRANT

Section 2.1 When a Search Warrant May Be Issued.

A. A court may issue warrants only upon probable cause, supported by oath or

affirmation, to search any place for any of the following:
(1) Property which is obtained unlawfully.
(2) Property, the possession of which is unlawful.
(3) Property used or possessed with intent to be used as the means of committing an offense or concealed to prevent an offense from being discovered.
(4) Property constituting evidence of an offense or tending to show that a particular person committed an offense.
(5) Evidence necessary to enforce statutes enacted to prevent cruelty to or neglect of children.

B. As used in this section, "place" includes any location where property might be secreted or hidden, including buildings, persons, or vehicles.
History: Section 2, Subsection 2.1(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section X, Rule 2(B).

Section 2.2 Affidavit to Accompany Arrest or Search Warrant

A. Except as provided in section 1.1, 2, and 2.3 of this part, no warrant for search or arrest shall be issued until there is filed with the judge an affidavit:
(1) particularly describing:
(a) the house or place to be searched and the things to be searched for; or
(b) particularly describing the person to be arrested;
(2) alleging substantially the offense in relation thereto and that the individual requesting the warrant ("affiant") believes and has good cause to believe that:
(a) the things as are to be searched for are there concealed; or
(b) the person to be arrested committed the offense; and
(3) setting forth the facts then in knowledge of the affiant or information based on hearsay, constituting the probable cause.

B. When based on hearsay, the affidavit must either:
(1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or
(2) contain information that establishes that the totality of the circumstances corroborates the hearsay.

C. An affidavit for search substantially in the following form shall be treated as sufficient:

FORT BELKNAP INDIAN RESERVATION)
SS: **AFFIDAVIT**
COUNTY OF _____)

AB swears (or affirms, as the case may be) that he believes and has good cause to believe (here set forth the facts and information constituting the probable cause) that (here describe the things to be searched for and the offense in relation thereto) are concealed in or about the (here describe the house or place) of C D, situated in the _____ area of the Fort Belknap Indian Reservation.

Subscribed and sworn to before me this _____ day of _____, 19__.

D. A search warrant in substantially the following form shall be sufficient:

FORT BELKNAP INDIAN RESERVATION)
SS:
COUNTY OF BLAINE)

To _____ (herein insert the name, department or classification of the law enforcement officer to whom it is addressed)
You are authorized and ordered, in the name of the Fort Belknap Tribes with the necessary and proper assistance to enter into or upon _____ (here describe the place to be searched), and there diligently search for _____ (here describe property which is the subject of the search). You are ordered to seize such property, or any part thereof, found on such search.
Dated this ____ day of _____, 19___, at the hour of ____ ___M.

_____
(Signature of Judge)
Executed this ___ day of _____, 19___, at the hour of _____ ____M.

_____
(Signature of Law Enforcement Officer)
History: Section 2, Subsection 2.2(A-D) enacted on the 3/8/99, Resolution 63-99; formerly Section X, Rule 2.

Section 2.3 Disposition of Seized Property

A. When the warrant is executed by the seizure of property or things described in it or of any other items:
(1) The officer who executed the warrant shall make a return on it directed to the judge who issued the warrant, and this return must indicate the date and time served and list the items seized and be filed with the clerk of court.
(2) The items so seized shall be securely held by the law enforcement agency whose officer executed the search warrant under the order of the court trying the cause, except as provided in this section.

B. All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

C. Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with subsection D of this section.

D. Following the final disposition of the cause at trial level or any other final disposition:
(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:
(a) the rightful owner has been notified to take possession of the property; or
(b) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at such time as it is convenient, dispose of this property at a public auction. The proceeds of this property shall be paid into the court general fund.
(2) Property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

E. If any property described in subsection Section 2.3 C was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

F. For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of it. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

G. The law enforcement agency disposing of property in any manner provided in subsections C and D of this section shall maintain certified records of any such disposition. Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

H. This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

I. A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

J. This section does not affect the durg seizure and forefeiture provisions set out at Title IV., Part VI, Section 3.2.

History: Section 2, Subsection 2.3(A-I) enacted on the 3/8/99, Resolution 63-99; formerly Section X, Rule 14.

PART III
INITIAL APPEARANCE AND ARRAIGNMENTS

SECTION 1 INITIAL APPEARANCE

Section 1.1 Initial Appearance

A. Initial Appearance upon issuance of a Summons. The initial hearing of a person issued a:
(1) summons; or
(2) summons and promise to appear;
must take place according to the terms of the summons. At such an initial hearing, a determination of probable cause is not required unless the tribal prosecutor requests on the record that the person be held in custody before his trial.

History: Section 1, Subsection 1.1 enacted on the 3/8/99, Resolution 63-99

Section 1.2 Initial Appearance after Arrest

A. A person arrested in accordance with the provisions of a warrant shall be taken promptly for an initial hearing before the court issuing the warrant or before a judicial officer having jurisdiction over the defendant. If the arrested person has been released in accordance with the provisions for release stated on the warrant, the initial hearing shall occur at any time within twenty (20) days after his arrest.

B. At the initial hearing of a person, the judicial officer shall inform him orally or in writing:
(1) that he has a right to counsel, at his own expense;
(2) that he has a right to a speedy trial;
(3) of the amount and conditions of bail;
(4) of his privilege against self-incrimination;
(5) of the nature of the charge against him; and
(6) that a preliminary plea of not guilty is being entered for him and the preliminary plea of not guilty will become a formal plea of not guilty:
(a) twenty (20) days after the completion of the initial hearing; or
(b) ten (10) days after the completion of the initial hearing if the person is charged only with one (1) or more Class Two offenses;
unless the defendant enters a different plea.

In addition, the judge shall direct the tribal prosecutor to give the defendant or his attorney a copy of any formal Class One charges filed or ready to be filed. The judge shall, upon request of the defendant, direct the tribal prosecutor to give the defendant or his attorney a copy of any formal Class Two charges filed or ready to be filed.

History: Section 1, Subsection 1.2(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section I, Subsection 1.9.

Section 1.3 Arraignments

A. A defendant shall be arraigned in Tribal court whenever a complaint charging has been filed on behalf of the Tribes. At the arraignment the court will read the defendant his rights and then request him to enter either a guilty or not guilty plea to the charges in the complaint.

B. If the named defendant does not wish to obtain counsel the court may arraign the defendant at the initial appearance.

C. Prior to accepting any plea at the time of arraignment, the presiding judge must:
(1) verify that the person appearing before the Tribal Court is the defendant named in the complaint;
(2) verify that the defendant's true name appears on the complaint and, if different than the name used on the complaint, order the complaint amended to reflect the correct name;
(3) determine whether the defendant is under any mental disability which would prevent the defendant from understanding the charges, the penalties, or the effects of a plea; and
(4) determine if the defendant is voluntarily making the plea.

D. The defendant shall enter a plea of guilty, not guilty, or if the judge agrees, nolo contendere ("no contest") to all charges contained in the complaint. A plea of nolo contendere may be accepted by a judge only after due consideration of the views of the parties and interest of the Tribes in the effective administration of justice.

E. A defendant pleading not guilty to a class one offense is entitled to a jury. All class one offenses shall be tried by a jury unless he chooses to waive a jury trial in writing.

F. If the defendant refuses to plead to the charges, the judge will enter a plea of not guilty on behalf of the name defendant. Once a plea of not guilty is on the records, the judge shall order the matter scheduled for trial and set the conditions of bail.

G. If the defendant voluntarily enters a plea of guilty the judge may impose a sentence at that time or schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.

H. Prior to the imposition of any sentence, the judge shall allow the defendant

an opportunity to inform the judge of any extenuating or mitigating circumstances which might affect the severity of the pending sentence.

I. The Court has the discretion to hold the initial appearance and the arraignment at the same time.

History: Section 1, Subsection 1.3(A-H) enacted on the 3/8/99, Resolution 63-99; formerly Section I, Subsection 1.9.

Section 1.4 Record of Arraignment

The Tribal Court's criminal clerk must prepare and keep a record of all arraignment proceedings.

History: Section 1, Subsection 1.4 enacted on the 3/8/99, Resolution 63-99; formerly Section I, Subsection 1.9.

PART IV
BAIL

Section 1.1 Offenses Subject to Bail

A. As used in this chapter, "bail bond" means a bond executed by a person who has been arrested for the commission of an offense, for the purpose of ensuring his appearance at the appropriate legal proceeding.

B. Murder is not bailable when the proof is evident or the presumption strong. A person charged with murder has the burden of proof that he should be admitted to bail. In all other cases, offenses are bailable.

History: Section 1, Subsection 1.1(A-B) enacted on the 3/8/99, Resolution 63-99

Section 1.2 Conditions of Release

A. The court may admit the defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings.

(1) Require the defendant to execute a bail bond with sufficient solvent sureties or to deposit cash or securities in an amount equal to the bail, or to execute a bond secured by real property on the reservation, less encumbrances is at least equal to the amount of the bail.

(2) Require the defendant to execute a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail. A portion of this deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars ($50), whichever is the lesser amount, may be retained as an administrative fee. A defendant admitted to bail under this subdivision must be notified by the court or clerk that the defendant's deposit may be forfeited, or retained under subsection B.

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual.

(5) Place the defendant under the reasonable supervision of a probation officer or other appropriate public official.

(6) Release the defendant into the care of some qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance where the defendant shows little risk of nonappearance.

(8) Impose any other reasonable restrictions designed to assure the defendant's

presence in court.

B. The clerk of the court shall:
(1) collect a fee of five dollars ($5) for each bond or deposit under subsection 1.2 A, 1; and
(2) retain a fee of five dollars ($5) from each deposit under subsection 5.2 A, 2.

C. With the approval of the clerk of the court, the Chief of Police may collect the bail and fees required by subsection 1.2, B. The Chief of Police shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar ($5) fee to the financial auditor.
History: Section 1, Subsection 1.2(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section I, Subsection 1.10.

Section 1.3 Alteration or Revocation of Bail

A. Upon a showing of good cause, the tribe or the defendant may be granted an alteration or revocation of bail by application to the court before which the proceeding is pending. In reviewing a motion for alteration or revocation of bail, credible hearsay evidence is admissible to establish good cause.

B. When the tribe presents additional evidence relevant to a high risk of nonappearance, based on the factors set forth in section 1.2 of this section, the court may increase bail.

C. When the defendant presents additional evidence of substantial mitigating factors, based on the factors set forth in section 1.2 of this section, which reasonably suggests that the defendant recognizes the court's authority to bring him to trial, the court may reduce bail.

D. The court may revoke bail or an order for release on personal recognizance upon clear and convincing proof by the tribe that while admitted to bail the defendant:
(1) or his agent threatened or intimidated a victim, prospective witnesses, or jurors concerning the pending criminal proceeding or any other matter;
(2) or his agent attempted to conceal or destroy evidence relating to the pending criminal proceeding;
(3) violated any condition of his current release order;
(4) failed to appear before the court as ordered at any critical stage of the proceedings; or
(5) committed a Class One offense that demonstrates instability and a disdain for the court's authority to bring him to trial
History: Section 1, Subsection 1.3(A-D) enacted on the 3/8/99, Resolution 63-99; formerly Section I, Subsection 1.11.

Section 1.4 Acceptance of Bail

A. When any person is committed for want of bail, and the amount of bail is specified in the warrant of commitment, the chief of police may take the bond and approve the bail.

B. Every bond taken by any peace officer must be delivered forthwith to the clerk of the court to which the defendant is recognized. The clerk must thereupon record the bond, and, from the time of filing, it shall have the same effect as if taken in open court.

C. A court or officer required to take or accept any bail or bond or to approve the sureties offered on any bond in any case of a criminal nature, may require any person offered as surety thereon to make affidavit of the person's qualifications or to be examined orally under oath touching the same, and such court or officer may take such affidavit or administer such oath.

History: Section 1, Subsection 1.4(A-C) enacted on the 3/8/99, Resolution 63-99

Section 1.5 Requirements of Surety

A. A surety on every bond must be in good standing and the surety or sureties must be worth at least double the sum to be secured and must have property to execution equal to the sum to be secured, and when two (2) or more sureties are offered, they must have in the aggregate the qualifications prescribed in this section. Whenever by the laws of this reservation a surety company is authorized to become surety on recognizance bonds, such surety company may be accepted as sufficient surety on any such bond.

History: Section 1, Subsection 1.5. enacted on the 3/8/99, Resolution 63-99

Section 1.6 Detainment After Revocation of Bail

The court may detain, for a maximum period of fifteen (15) calendar days, a person charged with any offense who comes before it for a bail determination, if the person is on probation or parole. During the fifteen (15) day period, the tribal prosecutor shall notify the appropriate parole or probation authority. If that authority fails to initiate probation or parole revocation proceedings during the fifteen (15) day period, the person shall be treated in accordance with the other sections of this chapter.

History: Section 1, Subsection 1.6 enacted on the 3/8/99, Resolution 63-99; formerly Section I, Subsection 1.13.

Section 1.7 Forfeiture of Bond

A. If a defendant was admitted to bail under section 1.2 of this chapter and the defendant has knowingly and intentionally failed to appear before the court as ordered, the court:

(1) shall issue a warrant for the defendant's arrest;

(2) may not release the defendant on personal recognizance; and
(3) may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:
(a) the amount of the original bail; or
(b) two thousand five hundred dollars ($2,500); in the form of a bond or the full amount of the bond in cash.

B. In a criminal case, if the court receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 1.2 of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit is subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, forfeited.

C. If a bond is forfeited and the court has entered a judgment the clerk shall transfer to the court general fund:
(1) any amount remaining on deposit with the court (less the fees retained by the clerk); and
(2) any amount collected in satisfaction of the judgment.

D. The clerk shall return a deposit, less the administrative fee, made under section 1.2 of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.
History: Section 1, Subsection 1.7(A-D) enacted on the 3/8/99, Resolution 63-99; formerly Section I, Subsection 1.11.

SECTION 2. BAIL PENDING APPEAL

Section 2.1 Who May be Admitted to Bail

A person convicted of an offense who has appealed or desires to appeal the conviction may file a petition to be admitted to bail pending appeal. The person may be admitted to bail pending appeal at the discretion of the court in which the case was tried, but he may not be admitted to bail if he has been convicted of a class one offense.
History: Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99; formerly Section I, Subsection 1.10.

Section 2.2 Petition for Bail Pending Appeal

When a person has been sentenced to a term of imprisonment and has filed an appeal, that person may file a petition for bail pending appeal unless he is

barred from admission to bail pending appeal by section 2.1 of this section. The petition must be filed in the court and a copy shall be sent to the tribal prosecutor.

History: Section 2, Subsection 2.2 enacted on the 3/8/99, Resolution 63-99

Section 2.3 Bail Pending Appeal

A. Whenever any defendant is admitted to bail under the provisions of this chapter, the judgment of conviction shall be stayed until the appeal is final. If the appeal is dismissed or the judgment affirmed, the term of imprisonment prescribed in the judgment shall commence to run from the time the defendant surrenders himself according to the terms of the judgment.

B. If the defendant is surrendered by his sureties, the judgment shall commence to run from the time of the surrender, and the defendant shall be immediately confined in the institution to which he was committed by the original sentence.

C. If a defendant is admitted to bail under this section after he has commenced to serve his sentence, and his appeal is dismissed or the judgment from which the appeal was taken is affirmed, the defendant shall have credit on his term of sentence for the time he served before being admitted to bail.

History: Section 2, Subsection 2.3(A-B) enacted on the 3/8/99, Resolution 63-99

SECTION 3 BONDS

A. Individuals charged with offenses, shall have the right to be released upon the payment of a bond appropriate to the charges, as set forth in the Tribal Code and a bond schedule to be established by the Chief Judge, provided, where appropriate, the court may, in issuing a warrant or in setting a bond in open court, may establish a bond appropriate to a specific circumstance, not inconsistent with tribal law.

B. Individuals may post the bond established in the bond schedule by specific order by posting the appropriate amount with the clerk of court during working hours, or with the dispatcher, on behalf of the court, after hours and on weekends and holidays. The bond schedule shall be posted in the office of the clerk and at the jail.

C. Bonds shall be returned only in the name of the person who deposited them, unless, at the time of posting written instructions are made authorizing other action.

History: Section 3, (A-C) enacted on the 3/8/99, Resolution 63-99

PART V
PRE-TRIAL MOTIONS

Section 1.1 Grounds for Dismissal of Complaint or Information

A. The court may, upon motion of the defendant, dismiss the complaint upon any of the following grounds:
(1) The complaint, or any count thereof, is defective under this part.
(2) Misidentification of offenses or parties defendant, or duplicity of allegation in counts.
(3) The complaint does not state the offense with sufficient certainty.
(4) The facts stated do not constitute an offense.
(5) The defendant has immunity with respect to the offense charged.
(6) The prosecution is barred by reason of a previous prosecution.
(7) The prosecution is untimely brought.
(8) The defendant has been denied the right to a speedy trial.
(9) There exists some jurisdictional impediment to conviction of the defendant for the offense charged.
(10) Any other ground that is a basis for dismissal as a matter of law.

B. Except as otherwise provided, a motion under this section shall be made no later than (10) days after the pre-trial hearing date if the defendant is charged only with one (1) or more offenses. A motion made thereafter may be summarily denied if based upon a ground specified in subdivision (A)(1)-(A)(4), (A)(5)-(A)(10) of this section. A motion to dismiss based upon a ground specified in subdivision A(5)-A(10)of this section may be made or renewed at any time before or during trial.

C. A motion to dismiss based upon lack of jurisdiction over the subject matter may be made at any time.

D. Upon the motion to dismiss, a defendant who is in a position adequately to raise more than one (1) ground in support thereof shall raise every ground upon which he intends to challenge the complaint. A subsequent motion based upon a ground not properly raised may be summarily denied. However, the court, in the interest of justice and for good cause shown, may entertain and dispose of such a motion on the merits.

E. Upon the motion to dismiss, the court shall:
(1) overrule the motion to dismiss;
(2) grant the motion to dismiss and discharge the defendant; or
(3) grant the motion to dismiss and deny discharge of the defendant if the court determines that the complaint or information may be cured by amendment under Section 1.3 of this chapter and the tribal prosecutor has moved for leave to amend. If the court grants the motion of the tribal prosecutor to amend, any prior order imposing conditions of release pending trial shall stand unless

otherwise modified or removed by order of the court.

F. If the court grants a motion under subsection A(3) and the tribal prosecutor informs the court on the record that the charges will be refiled within seventy-two (72) hours by information:
(1) the court may not discharge the defendant; and
(2) any prior order concerning release pending trial remains in force unless it is modified or removed by the court.

G. An order of dismissal does not, of itself, constitute a bar to a subsequent prosecution of the same crime or crimes except as otherwise provided by law.
History: Section 1, Subsection 1.1(A-G) enacted on the 3/8/99, Resolution 63-99

Section 1.2 Withdrawal of Attorney

A. Counsel for a defendant charged with a class one offense or class two offense may withdraw from the case for any reason, including failure of the defendant to fulfill an obligation with respect to counsel's fee, at any time up to thirty (30) days before the pre-trial hearing.

B. However, the court shall allow counsel for the defendant to withdraw from the case at any time within thirty (30) days of, and at any time after, the pre-trial hearing if there is a showing that:
(1) counsel for the defendant has a conflict of interest in continued representation of the defendant;
(2) other counsel has been retained or assigned to defend the case, substitution of new counsel would not cause any delay in the proceedings, and the defendant consents to or requests substitution of the new counsel;
(3) the attorney-client relationship has deteriorated to a point such that counsel cannot render effective assistance to the defendant;
(4) the defendant insists upon self-representation and the defendant understands that the withdrawal of counsel will not be permitted to delay the proceedings.
History: Section 1, Subsection 1.2, (A-B) enacted on the 3/8/99, Resolution 63-99

Section 1.3 Motion to Postpone Trial

A. A motion by a defendant to postpone a trial because of the absence of evidence may be made only on affidavit showing:
(1) that the evidence is material;
(2) that due diligence has been used to obtain the evidence; and
(3) the location of the evidence.

B. If a defendant's motion to postpone is because of the absence of a witness, the affidavit required under subsection A must:
(1) show the name and address of the witness, if known;
(2) indicate the probability of procuring the witness's testimony within a

reasonable time;
(3) show that the absence of the witness has not been procured by the act of the defendant;
(4) present the facts to which the defendant believes the witness will testify, and include a statement that the defendant believes these facts to be true; and
(5) that the defendant is unable to prove the facts specified in accordance with subdivision (4) through the use of any other witness whose testimony can be as readily procured.

C. The trial may not be postponed if:
(1) after a motion by the defendant to postpone because of the absence of a witness, the tribal prosecutor admits that the absent witness would testify to the facts as alleged by the defendant in his affidavit in accordance with subsection B(4); or
(2) after a motion by the defendant to postpone because of the absence of written or documentary evidence, the tribal prosecutor admits that the written or documentary evidence exists.

D. A defendant must file an affidavit for a continuance not later than five (5) days before the date set for trial. If a defendant fails to file an affidavit by this time, then he must establish, to the satisfaction of the court, that he is not at fault for failing to file the affidavit at an earlier date.

E. If a motion for a continuance is based on the illness of the defendant or of a witness, it must be accompanied by:
(1) oral testimony, given in open court; or
(2) a written statement; of a physician or hospital official having the care or custody of the defendant or witness, presenting the nature of the illness and the probable duration of the person's incapacity to attend trial. Such a written statement must be sworn to by the person making the statement before an officer authorized to administer an oath. The court may appoint a physician to examine the defendant or witness and report to the court on the nature of the person's illness and of his incapacity to attend trial. The court shall by order provide for compensation for such a physician.
History: Section 1, Subsection 1.3, (A-E) enacted on the 3/8/99, Resolution 63-99

Section 1.4 Motion to Change Judge

A. The defendant or the prosecutor may obtain a change of judge if the judge:
(1) is biased or prejudiced against the moving party and that the moving party cannot obtain a fair trial before the judge;
(2) is related by blood or marriage to any party to the cause;
(3) is unable to properly perform the functions of his office because of mental or physical disabilities;
(4) is disqualified by reason of any conflict of interest; or
(5) should be disqualified for any other cause.

B. A motion made under this section must be verified or accompanied by an affidavit specifically stating facts showing that at least one (1) of these causes exists. The motion must be filed within the time limitations specified in the Rules of Civil Procedure.

History: Section 1, Subsection 1.4(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section VI.

SECTION 2 MOTION PRACTICE

2.1 Briefing Schedules

Upon filing a motion or within five (5) days thereafter, the moving party shall file a Brief in support of the motion. The Brief may be accompanied by appropriate supporting documents. Each party must serve a copy of their filings, upon the opposing party and/or counsel immediately upon filing with the Tribal Court Clerk. Within ten (10) days of the receipt of a movant's opening Brief, the adverse party(ies) shall file an Answer Brief which also may be accompanied by appropriate supporting documents. Within ten (10) days of the receipt of the responding parties' Brief, movant may file a Reply Brief or other appropriate responsive documents.

History: Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99

2.2 Failure to File Briefs

Failure to file Briefs may subject the motion to summary ruling. Failure to file a Brief within five days by the moving party shall be deemed an admission that the motion is without merit. Failure to file an Answer Brief by the adverse party within ten (10) days shall be deemed an admission that the motion is well taken. Reply Briefs by movant are optional and failure to file will not subject a motion to summary ruling.

History: Section 2, Subsection 2.2 enacted on the 3/8/99, Resolution 63-99

2.3 Oral Argument

The Court may order oral argument sua sponte or upon application of a party.

History: Section 2, Subsection 2.3 enacted on the 3/8/99, Resolution 63-99

2.4 When Motion Deemed Submitted

Unless oral argument is ordered, or unless the time is enlarged by the Court, the motion is deemed submitted at the expiration of any of the applicable time limits set forth above without supporting Briefs having been filed. If oral argument is ordered the motion will be deemed submitted at the close of argument unless the Court orders additional Briefs, in which case the motion will be deemed submitted as of the date designated as the time for filing the final Brief.

History: Section 2, Subsection 2.4 enacted on the 3/8/99, Resolution 63-99

SECTION 3 MOTIONS-EXTENSIONS-PRESENTATIONS

3.1 Noticing Contested Matters

Prior to noticing a contested motion for argument or hearing, the moving party shall obtain a date and time for same from the Court.

History: Section 3, Subsection 3.1 enacted on the 3/8/99, Resolution 63-99

3.2 Extensions of Time

Extension of time for filing briefs may be granted upon oral application, without notice to the adverse party, provided, a written copy of the request is filed. All requests for extension of time, whether written or oral, shall be accompanied by an appropriate proposed order.

History: Section 3, Subsection 3.2 enacted on the 3/8/99, Resolution 63-99

3.3 Tracking Deadlines

The Clerk shall keep a record of all motions and briefs relating thereto. On the Monday next following the filing of a reply brief or next following the lapse of the time allowed either party for filing of a brief, the clerk shall present such motion to the court for decision.

History: Section 3, Subsection 3.3 enacted on the 3/8/99, Resolution 63-99

SECTION 4 TIME TO AMEND

When a motion to dismiss on the sufficiency of a pleading is made and is granted or denied, the losing party shall have twenty (20) days within which to amend or answer unless a different time shall be prescribed in the order granting or denying the motion

History: Section 4, Subsection 4.1 enacted on the 3/8/99, Resolution 63-99

PART VI
PRE-TRIAL HEARING AND CONFERENCE

Section 1.1 Pre-Trial Hearing/Conference

A. A pretrial hearing and pretrial conference, if one is deemed necessary, may be held on any date that the court designates prior to the commencement of trial. The purpose of the pretrial hearing is to:
(1) consolidate hearings on pretrial motions and other requests to the maximum extent practicable;
(2) rule on the motions and requests and ascertain whether the case will be disposed of by guilty plea, jury trial, or bench trial; and
(3) make any other orders appropriate under the circumstances to expedite the proceedings.

B. At the time of the pretrial hearing as provided under this section, or at any other time after the filing of the complaint or information and before the commencement of trial, the court, upon motion of any party or upon its own motion, may order conferences to consider any matters that will promote a fair and expeditious trial. The purpose of such a conference shall be to consider any matters related to the disposition of the proceedings, including the simplification of the issues to be tried and the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.

C. At the conclusion of the conference the court shall prepare and file a memorandum of the matters agreed upon. Any admission made by the defendant or his attorney at the conference may not be used against the defendant unless the admission is reduced to writing and signed by the defendant and his attorney.

History: Section 1.1, (A-C) enacted on the 3/8/99, Resolution 63-99

Section 1.2 Reserved

SECTION 2 PRE-TRIAL ORDER

2.1 Pre-Trial Order

The pre-trial order shall be substantially in the following form:

(TITLE OF COURT AND CAUSE)

A pre-trial conference was held in the above-entitled cause on the _____ day of _____,19_____, at _____ o'clock _____.m. _____ represented the plaintiff(s). _____ represented the defendant(s). _____(other appearances) were also present.

AGREED FACTS.

The following facts are admitted, agreed to be true, and require no proof:
(Here enumerate all agreed facts, including facts admitted in the pleadings.)

PLAINTIFF'S CONTENTIONS.

Plaintiff's contentions as follows:

1.

2.

DEFENDANT'S CONTENTIONS.

Defendant's contentions as follows:

1.

2.

EXHIBITS.

Attached to the Pre-Trial Order are exhibits lists identifying by number and brief description each exhibit and stating any objections to the exhibits. Any exhibit offered at the trial to which no objection was made in the Pre-Trial Order will be admitted into evidence.

WITNESSES.

The following witnesses and no others will (may) be called to testify except on rebuttal:

Plaintiff

1.
2.

Defendant

1.
2.

ISSUES OF FACT.

The following issues of fact, and no others, remain to be litigated upon the trial: (Here specify each issue.)

1.
2.

ISSUES OF LAW.

The following issues of law, and no others, remain to be litigated upon the trial: (Here set forth a concise statement of each.)

1.
2.

DISCOVERY.

The Final Pre-Trial Order shall refer to all those portions of depositions upon oral examination and interrogatories, requests for admissions, and answers and responses that the parties intend to introduce into evidence. Any objections to the use of the above documents shall be stated and if not stated, shall be deemed waived. (Because this Rule relates to filing and is designed to consolidate in one place all of the fruits of discovery, and because there can be no surprise element involved, the court shall be liberal in permitting the amendment of the Pre-Trial Order to include any material not originally listed.)

ADDITIONAL PRE-TRIAL DISCOVERY.

(Here specify any additional discovery contemplated by either party and the time within which such discovery will be completed.)

STIPULATIONS.

(Here include any stipulations in addition to the agreed facts set forth above.)

DETERMINATION OF LEGAL QUESTIONS IN ADVANCE OF TRIAL.

It was agreed that the following legal issues should be determined by the Court in advance of the Trial. (Here specify issues and make provisions for filing briefs with respect to such issues.)

ADDITIONAL ISSUES.

Additional issues to be determined and/or addressed include:
Order of proof where there is a counterclaim;
Attorney's fees testimony and/or proof;
Time filing and service of trial briefs, and other issues.

JURY SELECTION AND PROCESS.

Order and method of selection, stipulation that jury will be selected or drawn, numbering of panel, number of challenges, time to file instructions, length of time on voir dire.

TRIAL.

It is estimated that the case will require hours/days for trial.

The case will be tried before the court with (without) a jury.

IT IS HEREBY ORDERED that this pre-trial Order shall supersede the pleadings and govern the course of this cause, unless modified to prevent manifest injustice.

IT IS HEREBY ORDERED that all pleadings herein shall be amended to conform to this pre-trial Order.

DATED this _____ day of _____, 19_____.

_____
TRIBAL JUDGE

Approved as to form and content:.

_____
Attorney for Tribes

_____
Attorney for Defendant

History: Section 3,Subsection 3.2(A-B) enacted on the 3/8/99, Resolution 63-99

SECTION 3 TRIAL SCHEDULING

A. The Clerk of Court shall keep a trial calendar upon which all criminal causes shall be entered as soon as the same are properly at issue.

History: Section 4,(A-C) enacted on the 3/8/99, Resolution 63-99

PART VII
DISCOVERY

SECTION 1 FILING OF DISCOVERY

A. Depositions upon oral or written examination, requests for production of documents and responses thereto, shall not be routinely filed with the court, unless the rules specifically require such action. When any motion is filed making reference to discovery, the party filing the motion shall submit with the motion relevant unfiled documents.

B. The pre-trial order shall identify all those portions of depositions the parties intend to introduce into evidence.

C. Discovery shall not be routinely filed and shall only be filed upon certification of counsel that same is necessary and appropriate to a pending motion or upon order of the Court.

History: Section 1,(A-C) enacted on the 3/8/99, Resolution 63-99

SECTION 2 EXHIBITS

A. Every exhibit placed on file or offered in evidence shall be held in the custody of the Clerk. Unless there is good reason why the original of an exhibit should be retained, upon application, the Court may order a copy filed in its place, after examination of the original. Public records offered in evidence may be withdrawn at the conclusion of the hearing on order of the court.

B. Exhibits may be withdrawn by the party offering them thirty (30) days after a judgment has become final, provided, the party receiving such exhibit shall sign a release of such exhibit, and the release form placed in the case file. Forty-five (45) days after a judgment has become final, if no appeal has been forthcoming, the Clerk may apply to the Court for an order to dispose of exhibits, and shall notify counsel of record of said application. Twenty (20) days after mailing of said notice the Court may enter its order authorizing the Clerk to dispose of exhibits.

History: Section 2,(A-B) enacted on the 3/8/99, Resolution 63-99

PART VIII
AFFIRMATIVE DEFENSES

Section 1.1

A. When a defendant files a notice of alibi, the tribal prosecutor shall file with the court and serve upon the defendant, or upon his counsel, a specific statement containing:
(1) the date the defendant was alleged to have committed the crime; and
(2) the exact place where the defendant was alleged to have committed the crime; that he intends to present at trial. However, the tribal prosecutor need not comply with this requirement if he intends to present at trial the date and place listed in the complaint or information as the date and place of the crime.

B. If a reply by the tribal prosecutor is required by subsection A of this section, the tribal prosecutor shall serve such a statement upon the defendant, or his counsel, within seven (7) days after the filing of the defendant's first notice of alibi.

C. If the tribal prosecutor 's statement to the defendant contains a date or place other than the date or place stated in the defendant's original statement, the defendant shall file a second statement of alibi if the defendant intends to produce at trial evidence of an alibi for the date or place contained in the prosecutor's statement. The defendant shall:
(1) file the second statement with the court; and
(2) serve the second statement upon the tribal prosecutor ; within four (4) days after the filing of the tribal prosecutor 's statement. The defendant's second statement must contain the same details required in the defendant's original statement.

D. Whenever a defendant in a criminal case intends to offer in his defense evidence of alibi, the defendant shall, no later than:
(1) twenty (20) days prior to the pre-trial hearing date if the defendant is charged with a Class One; or
(2) ten (10) days prior to the pre-trial hearing date if the defendant is charged only with one (1) or more Class Two offenses; file with the court and serve upon the tribal prosecutor a written statement of his intention to offer such a defense. The notice must include specific information concerning the exact place where the defendant claims to have been on the date stated in the complaint or information.

History: Section 1,Subsection 1.1 (A-D) enacted on the 3/8/99, Resolution 63-99

Section 1.2 Reserved

PART IX
TRIAL PROCEEDINGS

SECTION 1.

Section 1.1 Jury Venire

A. The jury venire called by a court may be used in civil or criminal cases.

B. If a defendant is charged with:
(1) Class one offense, the jury shall consist of twelve (12) qualified jurors unless the defendant and tribal prosecutor agree to a lesser number;
(20 Class two offense, the jury shall consist of six (6) qualified jurors.

C. The defendant and tribal prosecutor, with the assent of the court, may submit the trial to the court. All Class one offenses must be by jury, unless the defendant waives the jury trial in writing.

History: Section 1, Subsection 1.1(A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section II.

Section 1.2 Preemptory Challenges

A. In prosecutions for class one offenses the defendant may challenge, peremptorily, six (6) jurors.

B. In prosecutions for all other crimes, the defendant may challenge, peremptorily, three (3) jurors.

C. When several defendants are tried together, they must join in their challenges.

D. The tribal prosecutor shall have the same number of peremptory challenges as the defendant has in like cases.

History: Section 1, Subsection 1.2(A-D) enacted on the 3/8/99, Resolution 63-99; formerly Section II.

Section 1.3 Jury Instructions, Impanelment of Jury, Presentation of Evidence

A. The court shall give the jury preliminary instructions. As a part of the preliminary instructions, the court shall instruct the jurors that if a juror realizes, during the course of the trial, that he has personal knowledge of any fact material to the cause, he shall inform the bailiff that he believes he has this knowledge at the next recess or upon adjournment, whichever is sooner. The bailiff shall inform the court of the juror's belief, and the court shall examine the juror under oath in the presence of the parties and outside the presence of the other jurors concerning his personal knowledge of any material fact.

B. If the court finds that the juror has personal knowledge of a material fact, the juror shall be excused and the court shall replace that juror with an alternate. If

there is no alternate juror, then the court shall discharge the jury without prejudice, unless the parties agree to submit the cause to the remaining jurors.

C. After the jury is impaneled and sworn, the trial shall proceed in the following order:

(1) The tribal prosecutor shall state the case of the prosecution and briefly state the evidence by which he expects to support it, and the defendant may then state his defense and briefly state the evidence he expects to offer in support of his defense.
(2) The tribal prosecutor shall then offer the evidence in support of the prosecution, and the defendant shall then offer the evidence in support of his defense.
(3) The parties may then respectively offer rebutting evidence only, unless the court, for good reason and in furtherance of justice, permits them to offer evidence upon their original case.
(4) When the evidence is concluded the tribal prosecutor and the defendant or his counsel may, by agreement in open court, submit the case to the court or jury trying the case, without argument. If the case is not submitted without argument, the tribal prosecutor shall have the opening and closing of the argument. However, the tribal prosecutor shall disclose in the opening all the points relied on in the case, and if in the closing he refers to any new point or fact not disclosed in the opening, the defendant or his counsel may reply to that point or fact, and that reply shall close the argument of the case. If the tribal prosecutor refuses to open the argument, the defendant or his counsel may then argue the case. If the defendant or his counsel refuses to argue the case after the tribal prosecutor has made his opening argument, that shall be the only argument allowed in the case.
(5) The court shall then charge the jury. The judge shall:
(a) make the charge to the jury in writing;
(b) number each instruction; and
(c) sign the charge;
if, at any time before the commencement of the argument, he has been requested to do so by the tribal prosecutor , the defendant, or the defendant's counsel. In charging the jury, the court must state to them all matters of law which are necessary for their information in giving their verdict. The judge shall inform the jury that they are the exclusive judges of all questions of fact, and that they have a right, also, to determine the law. The court may send the instructions to the jury room.
(6) If the tribal prosecutor, the defendant, or the defendant's counsel desires special instructions to be given to the jury, these instructions must be:
(a) reduced to writing;
(b) numbered;
(c) accompanied by an affixed cover sheet that refers to the instructions by number and that is signed by the party, or his attorney, who is requesting the special instructions; and

(d) delivered to the court; before the commencement of the argument. A charge of the court or any special instructions, when written and given by the court under this section, may not be orally qualified, modified, or in any manner orally explained to the jury by the court. If final instructions are submitted to the jury in written form after having been read by the court, no indication of the party or parties tendering any of the instructions may appear on any instruction.

D. Whenever:
(1) the court believes that it is proper; or
(2) a party to the case makes a motion for the jury to have a view of the place in which any material fact occurred, the court may order the jury to be taken as a group, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury is absent for this reason, no person, other than the officer and the person appointed to show them the place, may speak to the jurors on any subject connected with the trial.

History: Section 1, Subsection 1.3(A-D) enacted on the 3/8/99, Resolution 63-99

Section 1.4 Jury Deliberation

A. After hearing the charge, the jury shall retire to the jury room for deliberation. They shall retire under the charge of an officer, who shall be sworn by the court to:
(1) keep the jury together in the jury room or other place ordered by the court;
(2) furnish them food as directed by the court; and
(3) not permit any person to speak or communicate with them.

B. An officer may not communicate with a juror except:
(1) as provided in subsections 1.3 of this chapter;
(2) to ask them if they have agreed on a verdict; or
(3) when ordered to do so by the court.

C. When the jury has agreed upon its verdict, the officer having the jurors in his charge shall conduct them into court. If all jurors appear, their verdict must be rendered in open court. If all do not appear, the court shall discharge the jury without prejudice. The tribal prosecutor and the parties are entitled, in all criminal cases, to have the jury polled.

History: Section 1, Subsection 1.4(A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section II, Subsection 2.3.

Section 1.5 Witness Refuses to Testify

A. If a witness, in any hearing or trial occurring after a complaint has been filed, refuses to answer any question or produce any item, the court shall remove the jury, if one is present, and immediately conduct a hearing on the witness's refusal. After such a hearing, the court shall decide whether the witness is

required to answer the question or produce the item.

B. If the tribal prosecutor has reason to believe that a witness will refuse to answer a question or produce an item during any criminal trial, the tribal prosecutor may submit the question or request to the trial court. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item.

C. If the court determines that the witness, based upon his privilege against self-incrimination, may properly refuse to answer a question or produce an item, the tribal prosecutor may make a written request that the court grant use immunity to the witness, in accordance with subsection 1.6 of this chapter.
History: Section 1, Subsection 1.5 (A-C) enacted on the 3/8/99, Resolution 63-99

Section 1.6 Immunity to Witness

A. Upon request of the tribal prosecutor , the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceeding against that witness, unless the evidence is volunteered by the witness or is not responsive to a question by the tribal prosecutor. The court shall instruct the witness that he must answer the questions asked and produce the items requested.

B. A grant of use immunity does not prohibit the use of evidence the witness has given in a prosecution for perjury under the criminal code.

C. If a witness refuses to give the evidence after he has been granted use immunity, the court may find him in contempt.

D. A person who is competent to testify in civil actions is also competent to testify in criminal proceedings.
History: Section 1, Subsection 1.6 (A-D) enacted on the 3/8/99, Resolution 63-99

Section 1.7 Safeguarding Victims

A. During court proceedings a court shall provide safeguards necessary to minimize the contact of the victim of an offense or delinquent act with:
(1) a defendant accused of the offense or a juvenile accused of committing the delinquent act; and
(2) the relatives and friends of:
(a) a defendant accused of the offense; or
(b) a juvenile accused of committing the delinquent act.

B. The safeguards required under subsection (a) may include courthouse waiting areas for victims that are separated from those waiting areas specified for defendants, juveniles alleged to be delinquent children, and the relatives

and friends of accused persons.

C. The Tribal Court is not required under this section, or by mandate of a court, to expend any funds to change the physical configuration of a courthouse to meet the requirements of this section.

History: Section 1, Subsection 1.7 (A-C) enacted on the 3/8/99, Resolution 63-99

SECTION 2 TRIALS

2.1 Trials

Each cause shall be tried before the judge it is assigned. Non-jury and jury trials will be held throughout the year as time is available. Trial settings will be made by the Court upon request to the court by either party. Each judge shall summon a panel of jurors as needed to try the cases assigned. No judge shall excuse any juror from service before another judge.

History: Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99

2.2 Trial Briefs

At least two (2) days before trial of any cause charging a class one offense, counsel shall present to the presiding judge and serve upon opposing counsel, a trial brief, setting forth a statement of the theory of their cause and the issues involved, with a statement of the authorities upon which they rely as to both the law of the case and in support of the introduction of evidence proposed to be offered. The presiding judge may waive a trial brief upon request and for good cause.

History: Section 2, Subsection 2.2 enacted on the 3/8/99, Resolution 63-99

2.3 Jury Instructions and Verdict Forms

A. Submission

All proposed jury instructions and verdict forms must be delivered to the Court in duplicate and a copy served upon all opposing parties at the time fixed in the pre-trial order. Thereafter additional instructions may be allowed to prevent manifest injustice.

B. Citation of Authorities

Each proposed instruction shall contain at the bottom the source thereof and a citation of authorities, if any, supporting the statement of law therein.

C. Form

Each instruction shall be on 8 1/2" x 11" paper and shall, after the citation of authorities, indicate the party on whose behalf it is requested an be numbered consecutively. One copy of the instructions filed with the

court shall not be firmly bound together.

D. Request for special findings by jury
Whenever a party desires special findings by a jury he shall file with the court and serve a copy upon all opposing parties, in writing, the issues or questions of fact upon which such findings are requested, in proper form for submission to the jury.
History: Section 2, Subsection 2.3(A-D) enacted on the 3/8/99, Resolution 63-99

2.4 Juror Questionnaire

All jurors are requested to complete a questionnaire, the form of which is on file with the Clerk in the court's General Order file and which contains basic vital statistics and other pertinent information. The completed questionnaires will be available for examination or copying by counsel in the Clerk's office in advance of trial and should be used so as to expedite the examination of jurors. The attorneys shall not unduly reiterate the information contained in the questionnaire during their voir dire examination.
History: Section 2, Subsection 2.4 enacted on the 3/8/99, Resolution 63-99

2.5 Voir Dire-Opening Statements-Closing Arguments

A. Voir dire shall not be conducted in a manner calculated to create prejudice or bias or to disqualify the entire panel by what may be revealed by one prospective juror. Sensitive matters may, upon request, be examined one juror at a time and out of the presence of the balance of the panel. Voir dire shall not be used to argue the merits of the case.

B. During Voir dire, the use of written instructions anticipated to be given by the court shall not be permitted, but this does not prohibit reasonable inquiry concerning aspects of the law which are applicable to the issues.

C. Voir dire examination shall be limited to one hour for each party, unless for good cause shown, additional time is secured from the Court.

D. Opening statements shall be limited to one-half hour and closing arguments (including rebuttal) shall be limited to one hour. For good cause, additional time may be requested.
History: Section 2, Subsection 2.5(A-D) enacted on the 3/8/99, Resolution 63-99

PART X
EVIDENCE OF CHARACTER

SECTION 1. EVIDENCE OF CHARACTER

Section 1.1 When Evidence of Character May Be Presented

A. In all questions affecting the credibility of a witness, his general moral character may be given in evidence.

B. The prosecutor and the defendant may take and use depositions of witnesses in accordance with the Rules of Civil Procedure.

History: Section 1, Subsection 1.1 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section X, Rule 6.

Section 1.2 Evidence as To Character

Not more than two witnesses will be allowed to testify as to character in any cause, civil or criminal, without leave of the Court being first obtained.

History: Section 1, Subsection 1.2 enacted on the 3/8/99, Resolution 63-99; formerly Rules of Court Rule 31.

Section 1.3 Evidence of Sexual Conduct

A. In a prosecution for a sex crime as defined in the criminal code
(1) evidence of the victim's past sexual conduct;
(2) evidence of the past sexual conduct of a witness other than the accused;
(3) opinion evidence of the victim's past sexual conduct;
(4) opinion evidence of the past sexual conduct of a witness other than the accused;
(5) reputation evidence of the victim's past sexual conduct; and
(6) reputation evidence of the past sexual conduct of a witness other than the accused; may not be admitted, nor may reference be made to this evidence in the presence of the jury, except as provided in this chapter.

B. Notwithstanding subsection A, evidence of the victim's or a witness's past sexual conduct with the defendant; which in a specific instance of sexual activity shows that some person other than the defendant committed the act upon which the prosecution is founded; or that the victim's pregnancy at the time of trial was not caused by the defendant; may be introduced if the judge finds, under the procedure provided in subsection (C) of this section, that it is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

C. If the defendant or the prosecutor proposes to offer evidence described in subsection (B) of this section, the following procedure must be followed:
(1) The defendant or the prosecutor shall file a written motion not less than ten

(10) days before trial stating that it has an offer of proof concerning evidence described in subsection B and its relevancy to the case. This motion shall be accompanied by an affidavit in which the offer of proof is stated.
(2) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, and at the hearing allow the questioning of the victim or witness regarding the offer of proof made by the defendant or the tribe.

D. At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant or the prosecutor regarding the sexual conduct of the victim or witness is admissible under subsection B of this section, the court shall make an order stating what evidence may be introduced by the defendant or the prosecutor and the nature of the questions to be permitted. The defendant or the prosecutor may then offer evidence under the order of the court.

E. If new information is discovered within ten (10) days before trial or during the course of the trial that might make evidence described in subsection B of this chapter admissible, the judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under this chapter.

F. This section does not limit the right of either the prosecutor or the accused to impeach credibility by a showing of prior class one offense convictions after giving notice 20 days before trial of the prosecutor or defendant's intent to use the convictions to impeach the witness or defendant.

G. If:
(1) a defendant files a motion under subsection C.1 concerning evidence described in subsection B.3; and
(2) the prosecutor acknowledges that the victim's pregnancy is not due to the conduct of the defendant;
the court shall instruct the jury that the victim's pregnancy is not due to the conduct of the defendant. However, other evidence concerning the pregnancy may not be admitted, and further reference to the pregnancy may not be made in the presence of the jury.
History: Section 1, Subsection 1.3 (A-G) enacted on the 3/8/99, Resolution 63-99

Section 1.4 Evidence Admitted if Obtained by a Law Enforcement Officer in Good Faith

A. In a prosecution for a crime or a proceeding to enforce an ordinance or a statute defining an infraction, the court may not grant a motion to exclude evidence on the grounds that the search or seizure by which the evidence was obtained was unlawful if the evidence was obtained by a law enforcement

officer in good faith.

B. For purposes of this section, evidence is obtained by a law enforcement officer in good faith if:
(1) it is obtained pursuant to:
(a) a search warrant that was properly issued upon a determination of probable cause by a neutral and detached judge, that is free from obvious defects other than nondeliberate errors made in its preparation, and that was reasonably believed by the law enforcement officer to be valid; or
(b) a statute, judicial precedent, or court rule that is later declared unconstitutional or otherwise invalidated; and
(2) the law enforcement officer, at the time he obtains the evidence, has satisfied applicable minimum basic training requirements established by rules adopted by the Law and Order Commission.

History: Section 1, Subsection 1.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section IV, Subsection 4.2.

PART XI
CONVICTION AND SENTENCE

Section 1.1

A. After a verdict, finding, or plea of guilty, if a new trial is not granted, the court shall enter a judgment of conviction.

B. When the court pronounces the sentence, the court shall advise the person that the person is sentenced for not less than the earliest release date and for not more than the maximum possible release date.

History: Section 1, Subsection 1.1(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section X, Rule 10.

Section 1.2

A. As used in this chapter, "victim representative" means a person designated by a sentencing court who is:
(1) a spouse, parent, child, sibling, or other relative of; or
(2) a person who has had a close personal relationship with;
the victim of a class one offense who is deceased, incapacitated, or less than eighteen (18) years of age.

B. Upon entering a conviction, the court shall set a date for sentencing within thirty (30) days, unless for good cause shown an extension is granted. If a presentence report is not required, the court may sentence the defendant at the time the judgment of conviction is entered. However, the court may not pronounce sentence at that time without:
(1) inquiring as to whether an adjournment is desired by the defendant; and
(2) informing the victim, if present, of a victim's right to make a statement concerning the crime and the sentence. When an adjournment is requested, the defendant shall state its purpose and the court may allow a reasonable time for adjournment.

C. If the offense is nonsuspendible, the judge shall order the defendant, if the defendant has previously been released on bail or recognizance, to the local jail facility pending sentencing.

History: Section 1, Subsection 1.2(A-C) enacted on the 3/8/99, Resolution 63-99; formerly Title IV, Section XII, Subsection 1.1-1.2.

Section 1.3 Pre-Sentence Hearing

A. Before sentencing a person for a class one offense, the court must conduct a hearing to consider the facts and circumstances relevant to sentencing. The person is entitled to subpoena and call witnesses and to present information in his own behalf. The court shall make a record of the hearing, including:
(1) a transcript of the hearing;

(2) a copy of the presentence report; and
(3) if the court finds aggravating circumstances or mitigating circumstances, a statement of the court's reasons for selecting the sentence that it imposes.

B. The defendant must be personally present at the time sentence is pronounced. If the defendant is not personally present when sentence is to be pronounced, the court may issue a warrant for his arrest.

C. Sentence may be pronounced against a defendant corporation in the absence of counsel, if counsel fails to appear on the date of sentencing after reasonable notice.

D. When the defendant appears for sentencing, the court shall inform him of the verdict of the jury or the finding of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement personally in his own behalf and, before pronouncing sentence, the court shall ask him whether he wishes to make such a statement. Sentence shall then be pronounced, unless a sufficient cause is alleged or appears to the court for delay in sentencing.

History: Section 1, Subsection 1.3(A-D) enacted on the 3/8/99, Resolution 63-99; formerly Title IV, Section XVI, Section XVII.

Section 1.4 Factors Considered in Sentencing

A. In determining what sentence to impose for a crime, the court shall consider:
(1) the risk that the person will commit another crime;
(2) the nature and circumstances of the crime committed;
(3) the person's:
(a) prior criminal record;
(b) character; and
(c) condition;
(4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;
(5) whether the person violated a protective order issued against the person under; and
(6) any oral or written statement made by a victim of the crime.

B. The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:
(1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.
(2) The person has a history of criminal or delinquent activity.
(3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a jail facility.
(4) Imposition of a reduced sentence or suspension of the sentence and

imposition of probation would depreciate the seriousness of the crime.
(5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.
(6) The victim of the crime was mentally or physically infirm.
(7) The person committed a forcible Class One offense while wearing a garment designed to resist the penetration of a bullet.
(8) The person committed a sex crime and:
(a) the crime created an epidemiological demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
(b) the person had knowledge that the person was a carrier of HIV.

C. The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:
(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.
(2) The crime was the result of circumstances unlikely to recur.
(3) The victim of the crime induced or facilitated the offense.

Except as provided in subsection (C), a defendant convicted of a class one offense may not be sentenced before a written presentence report is prepared by a probation officer and considered by the sentencing court. Delay of sentence until a presentence report is prepared does not constitute an indefinite postponement or suspension of sentence.

D. A victim present at sentencing in a class one or class two offense case shall be advised by the court of a victim's right to make a statement concerning the crime and the sentence.

E. A court may sentence a person convicted of a class two offense without considering a written presentence report prepared by a probation officer. However, if a defendant is committed to jail for one year, the probation officer shall prepare a presentence investigation report.

History: Section 1, Subsection 1.4(A-E) enacted on the 3/8/99, Resolution 63-99; formerly Title VI, Section II.

Section 1.5 Sentencing Hearing

A. Before imposing sentence, the court shall:
(1) advise the defendant or his counsel and the tribal prosecutor of the factual contents and conclusions of the presentence investigation; or
(2) provide the defendant or his counsel and the tribal prosecutor with a copy of the presentence report.
The court also shall offer the victim, if present, an opportunity to make a statement concerning the crime and the sentence.

B. The sources of confidential information need not be disclosed. The court

shall furnish the factual contents of the presentence investigation or a copy of the presentence report sufficiently in advance of sentencing so that the defendant will be afforded a fair opportunity to controvert the material included.

C. Any:
(1) presentence report or memoranda; and
(2) report of a physical or mental examination; submitted to the court in connection with sentencing shall be kept confidential. The materials specified in subsection A may not be made available to any person or public or private agency other than:
(a) the convicted person and his counsel;
(b) the tribal prosecutor ;
(c) a probation department;
(d) the jail or treatment program in which an offender is placed under; except where specifically required or permitted by statute or upon specific authorization by the court and the convicted person.
History: Section 1, Subsection 1.5(A-C) enacted on the 3/8/99, Resolution 63-99

PART XII
PROBATION

SECTION 1. PROBATION

Section 1.1 Probation Proceedings

A. Whenever it places a person on probation, the court shall:
(1) specify on the record the conditions of the probation; and
(2) advise the person that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed;
(a) Violation occurs before sentence is served;
(b) Forty-five (45) days after the prosecutor receives notice of the violation.

B. In addition, if the person was convicted of a class one offense and is placed on probation, the court shall order the person to pay to the Tribal Court a probation fee. If the person was convicted of a Class Two offense, the court may order the person to pay the probation fee prescribed under subsection C and D.

C. In addition to any other conditions of probation, the court shall order each person convicted of a class one offense to pay:
(1) not less than twenty-five dollars ($25) nor more than one hundred dollars ($100) as an initial probation user's fee;
(2) a monthly probation user's fee of not less than five dollars ($5) nor more than fifteen dollars ($15) for each month that the person remains on probation.

D. In addition to any other conditions of probation, the court may order each person convicted of a class two offense to pay:
(1) not more than a fifty dollar ($15) initial probation fee;
(2) not more than a ten dollar ($10) monthly probation fee for each month that the person remains on probation.

E. All money collected under this section shall be collected by the criminal clerk shall who shall deposit the money into the tribal court general fund. The fiscal body of the Tribe shall appropriate money from the fund to the court for probation services to adults.

F. A person placed on probation for more than one (1) crime may not be required to pay more than:
(1) one (1) initial probation user's fee; and
(2) one (1) monthly probation user's fee per month; to the probation department.

History: Section 1, Subsection 1.1(A-F) enacted on the 3/8/99, Resolution 63-99; formerly Title VI, Section III.

Section 1.2 Alcohol and Drug Use

As a condition of probation for a person who is found to have: committed an offense related to alcohol the court shall require the person to pay the alcohol and drug fee.

History: Section 1, Subsection 1.2 enacted on the 3/8/99, Resolution 63-99; formerly Title VI, Section III.

Section 1.3 Conditions of Probation

A. As a condition of probation, the court may require a person to do a combination of the following:
(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment.
(2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
(3) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
(4) Support the person's dependents and meet other family responsibilities.
(5) Make restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.
(6) Execute a repayment agreement with the appropriate governmental entity to repay the full amount of public relief or assistance wrongfully received, and make repayments according to a repayment schedule set out in the agreement.
(7) Pay a fine.
(8) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.
(9) Report to a probation officer at reasonable times as directed by the court or the probation officer.
(10) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.
(11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer.
(12) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.
(13) Perform uncompensated work that benefits the community.
(14) Satisfy other conditions reasonably related to the person's rehabilitation.
(15) Undergo home detention.
(16) Undergo a laboratory test or series of tests approved by the department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if: the person had been convicted of a sex crime and the crime created an epidemiological demonstrated risk of transmission of the human

immunodeficiency virus (HIV); or
(17) Refrain from any direct or indirect contact with an individual.
(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child.
(19) Periodically undergo a laboratory chemical test or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance. The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

B. When a person is placed on probation, the person shall be given a written statement specifying:
(1) the conditions of probation; and
(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed;
(a) If the violation occurs before sentence is served; or
(b) Forty-five (45) days after the prosecutor receives notice of the violation.

C. As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation the court determines.

D. Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the jail facility. The intermittent term is computed on the basis of the actual days spent in confinement and shall be completed within one (1) year. A person does not earn credit time while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:
(1) the term of imprisonment;
(2) the days or parts of days during which a person is to be confined; and
(3) the conditions.

E. As a condition of probation, the court may require a defendant charged with a child abuse or sex offense to:
(1) participate in a treatment program for sex offenders approved by the court; and
(2) avoid contact with any person who is less than sixteen (16) years of age unless the probationer:
(a) receives the court's approval; or
(b) successfully completes the treatment program referred to in subsection (1).
History: Section 1, Subsection 1.3 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Title VI, Section III.

SECTION 2 PROBATION REVOCATION

Section 2.1 Petition and Hearing on Revocation of Probation

A. The court may revoke a person's probation if:
(1) the person has violated a condition of probation during the probationary period; and
(2) the petition to revoke probation is filed during the probationary period.

B. When a petition is filed charging a violation of a condition of probation, the court may:
(1) order a summons to be issued to the person to appear; or
(2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.

C. The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.

D. The court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing.

E. The prosecutor must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel, at his own expense.

F. Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.

G. If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:
(1) continue the person on probation, with or without modifying or enlarging the conditions;
(2) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
(3) order execution of the sentence that was suspended at the time of initial sentencing.

H. If the court finds that the person has violated a condition during any time before the termination of the period, and the petition is filed under subsection A before the probationary period has expired, the court may:
(1) extend the length of the original probationary period as long as the reinstated probationary period does not exceed the length of the maximum sentence allowable for the offense that is the basis of the probation; or
(2) order execution of the sentence that was suspended at the time of the initial sentencing.

I. A judgment revoking probation is a final appealable order.

J. Failure to pay fines or costs required as a condition of probation may not be the sole basis for commitment to jail.
History: Section 2, Subsection 2.1(A-J) enacted on the 3/8/99, Resolution 63-99

Section 2.2 Incarceration

A. As used in this chapter:
"Earliest possible release date" means the date, computed as of the date of sentencing, on which a person would be entitled to discharge or release on parole considering:
(1) the term of the sentence;
(2) the term of any other concurrent or consecutive sentence that the person must serve;
(3) credit time that the person has earned before sentencing; and

"Receiving authority" means:
(1) the tribal jail;
(2) the chief of police; or
(3) a facility or place designated by the court.

B. When a convicted person is sentenced to incarceration the court shall, without delay, certify, under the seal of the court, copies of the judgment of conviction and sentence to the receiving authority.

C. The judgment must include:
(1) the crime for which the convicted person is adjudged guilty and the classification of the criminal offense;
(2) the period, if any, for which the person is rendered incapable of holding any office of trust or profit;
(3) the amount of the fines or costs assessed, if any;
(4) the amount of credit, including credit time earned, for time spent in confinement before sentencing; and
(5) the amount to be credited toward payment of the fines or costs for time spent in confinement before sentencing.

D. The judgment may specify the degree of security recommended by the court.

E. A term of incarceration begins on the date sentence is imposed, unless execution of the sentence is stayed according to law.
History: Section 2, Subsection 2.2 (A-E) enacted on the 3/8/99, Resolution 63-99

PART XIII
APPEAL

SECTION 1. APPEAL

Section 1.1 Scope of Appeals

A. An appeal to the court of appeals may be taken by the defendant:
(1) as a matter of right from any judgment in a criminal action; and
(2) in accordance with this section.

B. Any decision of the court or intermediate order made during the proceedings may be reviewed.

C. Appeals to the court of appeals, if the court rules so provide, may be taken by the prosecutor in the following cases:
(1) From an order granting a motion to dismiss a complaint.
(2) From an order or judgment for the defendant, upon his motion for discharge because of delay of his trial not caused by his act, or upon his plea of former jeopardy, presented and ruled upon prior to trial.
(3) From an order granting a motion to correct errors.
(4) Upon a question reserved by the Tribe, if the defendant is acquitted.
(5) From an order granting a motion to suppress evidence, if the ultimate effect of the order is to preclude further prosecution.
(6) From any interlocutory order if the trial court certifies and the court on appeal or a judge thereof finds on petition that:
(a) the appellant will suffer substantial expense, damage, or injury if the order is erroneous and the determination thereof is withheld until after judgment;
(b)the order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case; or
(c) the remedy by appeal after judgment is otherwise inadequate.

D. In case of an appeal from a question reserved on the part of the Tribe, it is not necessary for the clerk of the court to certify in the transcript any part of the proceedings and record except the pleadings, the motion to correct errors, and the judgment of acquittal. When the question reserved is defectively stated, the court of appeals may direct any part of the proceedings and record to be certified to such court.

E. An appeal taken by the prosecutor does not stay, or affect the operation of, the judgment in favor of the defendant until the judgment is reversed. However, if an appeal is taken by the prosecutor from an order or judgment by which the defendant is discharged before trial, the order or judgment does not constitute a bar to further prosecution of the defendant.

History: Section 1, Subsection 1.1 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II,

Section 1, Subsection 1.1.

Section 1.2

When defendants are tried jointly, any one (1) or more of them may take an appeal. However, those who do not join in the appeal are not affected by it.
History: Section 1, Subsection 1.2 enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section 1, Subsection 1.2.

Section 1.3 Notice of Appeal

A. Any party wishing to appeal a tribal court decision shall file a written notice of appeal with the clerk of the Tribal Court. Unless additional time is granted by the senior judge of the Appellate court, a notice of appeal shall be filed within ten (30) days after the rendition of a final Tribal Court order or judgment, excluding holidays and weekends.

B. The notice shall specify:
(1) the party or parties filing the appeal;
(2) the Tribal Court order or judgment being appealed; and
(3) a brief statement of the grounds for appeal.

C. The party appealing the decision shall be known as the appellant. The adverse part to the action shall be known as the appellee. The title of the case shall remain the same, except that an appellate docket number will be assigned by the Chief Clerk of the Tribal Court.

D. The notice of appeal shall be served on all parties to the action other than the appellant.
History: Section 1, Subsection 1.3(A-D) enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section II.

Section 1.4 Extension of Time for Transmitting

A. The Tribal Court may extend the time for transmitting the record on appeal upon timely motion riom either party, bu in no event shall such extension go behond fifteen (15) days from the set for such transmission in Subsection A of this Seciton. A motion for extension of time for tans itting the record shall show the inability of the party due to causes beyond his ro her control or circumstances which may be deemed excusable neglect.

B. It is the duty of appellant to make sure that the record on appeal has been transmitted to tlhe Court of Appeals within the time period noted in Subsection above.
History: Section 1, Subsection 1.4(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section V, Subsection 5.3-5.4.

Section 1.5 Filing Fee; Transmittal Fee

A. Filing Fee - The cost of filing a notice of appeal is ten dollars ($10.00)
B. Transmittal Fee - The cost of transmitting a record on appeal is one dollars and fifty cents ($1.50) per page.

History: Section 1, Subsection 1.5(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section XIII.

Section 1.6 Indigent Appeals

Upon imposition of any sentence in a criminal case, a defendant may file in the Tribal Court a petition requesting that he or she be furnished with a transcript of the proceedings at his or her trial and that the filing fee for the notice of appeal, the transmission fee of the record on appeal, and the transcript fee be waived because of the defendant's indigency. The petition shall be verified by the defendant and shall state facts showing that he or she is at the time of the filing of the petition without financial means to pay the filing fees and the cost of the transcript. If the trial judge who imposed sentence, or in his or her absence any judge of the Tribal Court, finds that the defendant is without financial means with which to pay the filing fees or the transcript fee, he shall order the Clerk of the Tribal Court to produce the transcript and waive the filing fee for the notice of appeal and the transmission of the record on appeal.

History: Section 1, Subsection 1.6 enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section XIV.

Section 1.7 Relief Pending Appeal

A. An appeal to court of appeals from a judgment of conviction does not stay the execution of the sentence, unless: the judgment is for a fine and costs only, in which case the execution of the sentence may be stayed by an order of the court.

B. If the punishment is to be imprisonment and a fine and costs, the execution of the sentence as to the fine and costs only may be stayed by the court.

History: Section 1, Subsection 1.7(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Section III.

Section 1.8 Record on Appeal

A. The original papers and exhibits filed in the trial court, the recording or transcript of the trial proceedings, and certified copy of the docket entries prepared by the clerk of court shall constitute the record on appeal.

B. The record shall be transmitted to the Appellate Court within thirty (30) days of receiving notice of appeal, unless otherwise directed by the senior judge of the Appellate Court.

History: Section 1, Subsection 1.8(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section IV.

Section 1.9 Transcript of Trial Proceedings

A. The appellant may request a written transcript of the trial proceedings at his own expense, unless otherwise directed by the Appellate Court.

B. If the entire transcript is not requested, the appellant shall serve notice on the appellee, within ten (10) days from receiving the notice to request that additional parts of the transcript be included.

C. Appellant's failure to comply with this prevision may result in dismissal of the appeal.

History: Section 1, Subsection 1.9(A-C) enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section V.

Section 1.10 Briefs

A. Unless otherwise directed by the senior judge of the Appellate Court, the appellant shall file a brief in support of the appeal setting forth;
(1) the issues presented for review;
(2) the nature of the case and its disposition in the trial court;
(3) the facts relevant to the issues presented for review;
(4) the appellants contentions of error by the trial court and the legal authority supporting the argument; and
(5) the precise relief sought.

B. Appellee may file a brief responding to appellant's arguments and statement of facts.

C. The appellant may file a reply brief to appellee's brief. The reply is limited to the issues raised by appellee's brief. No additional briefs may be filed without leave of the Appellate Court.

D. The appellant shall serve and file the brief in support of the appeal within thirty (30) days of filing the notice of appeal. Appellee's brief must be filed within thirty (30) days of receiving appellant's brief. Appellant's reply brief must be served an filed within fourteen (14) days of receiving Appellee's brief. Three copies of each brief shall be filed with the Appellate Court.

E. Unless otherwise permitted by the senior judge of the Appellate Court, all briefs are limited to 25 pages.

History: Section 1, Subsection 1.10(A-E) enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section VII, Subsection 7.2.

Section 1.11 Oral Argument

On the date and time set forth for the hearing on the appeal, both the appellant

and respondent should be present to to present oral arguments before the Court of Appeals. The appellant and respondent may be represented by counsel and if such is the case, only the counsels need be present ofr oral argument. The appellant is allowed fifteen (15) minutes for oral argument and the respondent is allowed ten (10) minutes. The appellant is the first to present oral argument and may proceed for ten (10) minutes. The respondent may then make a ten (10) minute presentation, after which the appellant has an additional five 95) minutes to sum up and close the argument. At the end of the oral argument either party or cousnel amy be questioned by any of the jsutices sitting on the appeal. If one (1) party fials to appear or to have his counsel appear for him or her, the opposing party may prsent oral argument and the case will then be decided on tlhe briefs, if any, the reocrd on appeal, and the argument heard. If a party fails to file a brief and appear for oral arguemnt, the case will be decided upon the brief and/or oral arguemtn of the opposing party.

History: Section 1, Subsection 1.11 enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section VII, Subsection 7.3.

Section 1.12 Brief of Amicus Curiae

A brief of an amicus curiae may be filed only if accompanied by weritten consent of all parties, or by leave of the Court of Appeals granted on motion. A motion to file such a brief must state the interest of the applicant and the reasons why such a brief is desirable. A motion for leave of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

History: Section 1, Subsection 1.12 enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section VIII.

Section 1.13 Action by the Appellate Court

A. After reviewing the lower court record, briefs and considering the information obtained during any oral arguments, the Appellate Court shall:
(1) disregard any error, defect, irregularity or variance not affecting a substantial right of the appellant;
(2) disregard an alleged error not objected to at the time of trial; and
(3) determine whether the alleged error was prejudicial or affected a substantial right of the appellant.

B. In rendering a decision the Appellate court may:
(1) reverse, affirm or modify any trial court order or judgment relating to the matter on appeal;
(2) reduce the sentence imposed by the trial court;
(3) reduce the degree of the offense;
(4) order a new trial; or
(5) remand the case back to the trial court with instructions for correcting any recognized errors.

History: Section 1, Subsection 1.13(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section IX, Subsection 9.2.

Section 1.14 Petition for Rehearing

A. A petition for rehearing may be filed within ten (10) days, excluding holidays and weekends, after the Appellate Court's decision has been rendered.

B. A petition for rehearing may be presented upon the following grounds:
(1) a material fact was overlooked by the Appellate Court; or
(2) the decision is in direct conflict with existing law or a previous court decision.

History: Section 1, Subsection 1.14(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section X, Subsection 10.1.

Section 1.15 Habeas Corpus

A writ of habeas corpus may be filed by any person who is detainer in the Fort Belknap Tribal Jail before any hearing on the merits of the charges against him or her. The writ may be made by the prisoner alone, or if requested by the prisoner, the Clerk of the Tribal Court must make such a writ on behalf of the prisoner. The writ shall state the reasons why the prisoner feels he or she is being wrongfully detained and shall immediately be served upon the Chief Justice of the Court of Appeals who, upon receipt of such writ, must call a hearing on the writ within five (5) days after receipt thereof, unless on a weekend, in which case the hearing shall be called the next day after a weekend or holiday. Three (3) justices must sit at the hearing and the prisoner and/or his counsel may be present to present oral arguments on the merits of the writ. The Court of Appeals may also summon in the Trial jailor and request a record of the charges to be presented by the Clerk of the Tribal Court. If the justices find that the prisoner has been unlawfully detained and jailed, they may proceed affirmatively upon the writ of habeas corpus and order the release of the prisoner. Release under a writ of habeas corpus in no way affects any charge against the defendant under the legal methods and procedures provided under this Tribal Code. This Section in no way interferes with the prisoner's rights to seek a writ of habeas corpus through the United States District Court.

History: Section 1, Subsection 1.15 enacted on the 3/8/99, Resolution 63-99; formerly Title VII, Part II, Section XV.

PART XIV
EXPUNGEMENT OF RECORDS

Section 1.1 When Expungement is Applicable

Whenever:
(1) an individual is arrested but no criminal charges are filed against the individual; or
(2) all criminal charges filed against an individual are dropped because:
(a) of a mistaken identity;
(b) no offense was in fact committed; or
(c) there was an absence of probable cause;
the individual may petition the court for expungement of the records related to the arrest.

History: Section 1, Subsection 1.1 enacted on the 3/8/99, Resolution 63-99

Section 1.2 Petition for Expungement

A. A petition for expungement of records must be verified and filed in the court in which the charges were filed. The petition must set forth:
(1) the date of the arrest;
(2) the charge;
(3) the arresting officer;
(4) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
(5) the date of the petitioner's birth; and
(6) the petitioner's Social Security number.
(7) the date petition is served upon the law enforcement agency and the prosecutor.

B. A copy of the petition shall be served by the petitioner, on the law enforcement agency and the prosecutor's central repository for records.

History: Section 1, Subsection 1.2(A-B) enacted on the 3/8/99, Resolution 63-99

Section 1.3 Receipt of Expungement by Law Enforcement Officer

Upon receipt of a petition for expungement, the tribal prosecutor if he desires to oppose the expungement shall file a notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Civil Procedure. The court shall:
(1) summarily grant the petition;
(2) set the matter for hearing; or
(3) summarily deny the petition, if the court determines that:
(a) the petition is insufficient; or

(b) based on information contained in sworn statements the petitioner is not entitled to an expungement of records.

History: Section 1, Subsection 1.3 enacted on the 3/8/99, Resolution 63-99

Section 1.4 Hearing Necessary If Objection to the Petition

A. If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

B. After a hearing is held under this section, the petition shall be granted unless the court finds:
(1) the individual has a record of arrests other than minor traffic offenses; or
(2) additional criminal charges are pending against the individual.

C. If the petition for expungement is granted, the law enforcement agency shall within thirty (30) days of receipt of the court order, deliver to the individual or destroy all fingerprints, photographs, or arrest records in their possession.

History: Section 1, Subsection 1.4(A-C) enacted on the 3/8/99, Resolution 63-99

PART XV
PAROLE AND CLEMENCY

Section 1.1 Eligibility for Parole

A. When a person imprisoned for a class one completes his fixed term of imprisonment, less the credit time he has earned with respect to that term, he shall be released:
(1) on parole for a period not exceeding twenty-four (24) months, as determined by the parole board; or
(2) to the committing court if his sentence included a period of probation.

B. A person released on parole remains on parole from the date of his release until his fixed term expires, unless his parole is revoked or he is discharged from that term by the parole board. In any event, if his parole is not revoked, the parole board shall discharge him. A person whose parole is revoked shall be imprisoned for the remainder of his fixed term. However, he shall again be released on parole when he completes that remainder, less the credit time he has earned since the revocation. The parole board may reprosecute him on parole at any time after the revocation.

C. In addition to any credit time a person earns under this chapter and in addition to any reduction of sentence a person receives, a person earns credit time if the person:
(1) has demonstrated a pattern consistent with rehabilitation; and
(2) successfully completes requirements to obtain one of the following:
(a) A general educational development (GED) diploma if the person has not previously obtained a high school diploma.
(b) A high school diploma.
(c) An associate's degree from an approved institution of higher learning.
(d) A bachelor's degree from an approved institution of higher learning.
(i) The amount of credit time a person may earn under this section is the following:
(1) Six (6) months for completion of general educational development (GED) diploma.
(2) One (1) year for graduation from high school.
(3) One (1) year for completion of an associate's degree.
(4) Two (2) years for completion of a bachelor's degree.
(ii) Credit time earned by a person under this section is subtracted from the period of imprisonment imposed on the person by the sentencing court.
(c) A person does not earn credit time under subsection A unless the person completes at least a portion of the degree requirements after June 30, 1997.
(d) The maximum amount of credit time a person may earn under this section is the lesser of:
(1) four (4) years; or
(2) one-third (1/3) of the person's total applicable credit time.

D. A person may, with respect to the same transaction, be deprived of any part of the credit time he has earned for any of the following:
(A) A violation of one (1) or more rules of the Law and Order Department.
(B) If a court determines that a civil claim brought by the person in a Tribe an administrative court is frivolous, unreasonable, or groundless.

E. Before a person may be deprived of earned credit time, the person must be granted a hearing to determine his guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in section C(b)of this chapter. The person may waive his right to the hearing. Any part of the credit time of which a person is deprived under this section may be restored.

History: Section 1, Subsection 1.1 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Title IV, Section XVIII, and Section XIX.

PART XVI
EXTRADITION

1.1 Extradition From Another Tribe or State

When a criminal action is pending against a defendant in Tribal Court and the defendant is in the custody of another Tribe or State law enforcement officer, the court may request the law enforcement officer of that Tribe or State, upon motion by the Tribal Prosecutor, to produce the defendant before the Fort Belknap Tribal court for prosecution. If the defendant is at liberty within the reservation as a result of an order releasing him on his own recognizance or on bail, the court may cause the defendant or his attorney to be notified to appear at a designated time. Upon failure to appear after such notification, the Court may issue a warrant for the defendant.

History: Section 1, Subsection 1.1 enacted on the 3/8/99, Resolution 63-99

1.2 Extradition Request by Fort Belknap When Defendant is Pending Trial in Another Tribe or State

When an indictment or information is pending against a defendant:
(1) confined on another reservation or in a state, pending trial for another offense; and
(2) who has been released by order of the other court pending trial before that court for an offense; the court shall, upon motion of the tribal prosecutor , issue a warrant of detainer to the court before which the other prosecution is pending. The court to which the order of detainer is issued, shall, upon termination of the proceedings before the court, deliver custody of the defendant to the Chief Law Enforcement Officer of the Tribe. A duplicate copy of the return shall be served upon the tribal prosecutor who requested the issuance of the warrant.

History: Section 1, Subsection 1.2 enacted on the 3/8/99, Resolution 63-99

1.3 Extradition request by another Tribe or State

When an indictment or information is pending against a defendant confined on this Reservation under a Fort Belknap Tribal Court judgment or order, the court with jurisdiction over the pending criminal action shall, after application by their tribal prosecutor , order that the defendant be produced before that court for prosecution and present this order to the president. The defendant shall not be entitled to release pending trial on the indictment or information. The president may order that the defendant be surrendered to the Chief Law Enforcement Officer in which the court issuing the order is located. The president may order the Chief Law Enforcement Officer to convey the defendant from the jail and commit the defendant to the jail or to another place of custody specified in the order. If the proceeding is delayed, the president may order the defendant returned temporarily to the jail until the presence of the defendant before the court is required.

History: Section 1, Subsection 1.3 enacted on the 3/8/99, Resolution 63-99

1.4

Where appearing in this section, the term "president" includes any person performing the functions of president by authority of the law of this reservation. The term "executive authority" includes the president and any person performing the functions of president on a reservation. The term "tribe", refers to any tribe, state or territory, organized or unorganized, of the United States of America.

A. Subject to the qualifications of this section and the provisions of the Constitution of the Fort Belknap Community Council controlling, and acts of the Fort Belknap Community Council in pursuance thereof, it is the duty of the president of this reservation to have arrested and delivered up to the executive authority of any other tribe of the United States any person charged in that tribe with treason, a class one offense, or other crime who has fled from justice and is found on this reservation.

B. No demand for the extradition of a person charged with crime in another tribe shall be recognized by the president unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the tribe having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that tribe; and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

C. When a demand shall be made upon the President of this reservation by the executive authority of another tribe for the surrender of a person so charged with crime, the president may call upon the tribal prosecutor to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

D. A warrant of extradition shall not be issued unless the documents presented by the executive authority making the demand show that:
(1) the accused was present in the demanding tribe at the time of the commission of the alleged crime, and thereafter fled from the tribe;
(2) the accused is now on this reservation; and
(3) he is lawfully charged by indictment found or by information filed by a prosecuting officer and supported by affidavit to the facts, or by affidavit made before a magistrate in that tribe, with having committed a crime under the laws of that tribe, or that he has been convicted of a crime in that tribe and has

escaped from confinement or has broken the terms of his bail, probation, or parole, or that the sentence or some portion of it otherwise remains unexecuted and that the person claimed has not been discharged or otherwise released from the sentence.

E. When it is desired to have returned to this reservation a person charged on this reservation with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another tribe, the President of this reservation may agree with the executive authority of such tribe for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other tribe, upon condition that such person be returned to this reservation as soon as the prosecution in that tribe is terminated.

F. If the President shall decide that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the Tribal seal, and be directed to a tribal law enforcement officer, marshal, coroner, or other person whom he may think fit to entrust with the execution thereof; and the warrant must substantially recite the facts necessary to the validity of its issue.

G. Such warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where he may be found within the reservation, to command the aid of all law enforcement officers in the execution of the warrant, and to deliver the accused subject to the provision of this section, to the duly authorized agent of the demanding tribe.

H. Every such officer or other person empowered to make the arrest shall have the same authority in arresting the accused to command assistance therein, as officers have by law in the execution of any criminal process directed to them, with the like penalties against those who refuse their assistance.

I. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he has been informed of the demand made for his surrender, of the crime with which he is charged and that he has the right to obtain legal counsel; and if the prisoner, his friends, or counsel shall state that he or they desire to test the legality of the arrest, the prisoner shall be taken forthwith before a judge of the Tribal court who shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the tribal prosecuting officer and to the said agent of the demanding tribe.

K. The officer or person executing the President's warrant of arrest, or the agent of the demanding tribe to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail and the keeper of such jail must receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route, such person being chargeable with the expense of

keeping.

M. If a criminal prosecution has been instituted against such person under the laws of this reservation and is still pending, the President at his discretion either may surrender him on the demand of the executive authority of another tribe or may hold him until he has been tried and discharged, or convicted and punished on this reservation.

N. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the President or in any proceedings after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the President, except as it may be involved in identifying the person held as the person charged with the crime.

O. The President may recall his warrant of arrest or may issue another warrant whenever he deems proper.

P. When the return to this reservation of a person charged with a crime on this reservation is required, the Tribal prosecutor shall present to the President his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place, and circumstances of its committal, the Tribe or state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the said tribal prosecutor the ends of justice require the arrest and return of the accused to this reservation for trial, and that the proceeding is not instituted to enforce a private claim. The application shall be verified by affidavit, shall be executed in triplicate, and shall be accompanied by three (3) certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the magistrate, stating the offense with which the accused is charged. The tribal prosecutor may also attach such further affidavits and other documents in triplicate as he shall deem proper to be submitted with such application. One (1) copy of the application with the action of the President indicated by the endorsement thereon and one (1) of the certified copies of the indictment or complaint or information and affidavit shall be filed in the office of the President to remain of record in that office. The other copies of all papers shall be forwarded with the President's requisition.

Q. The expenses shall be paid out of the general fund. The expenses shall be the fees paid to the officers of the tribe on whose governor the requisition is made, as now provided by law, for all necessary travel in returning such prisoner.

History: Section 1, Subsection 1.4 (A-Q) enacted on the 3/8/99, Resolution 63-99

TITLE 10

SOUTHERN UTE INDIAN TRIBAL CODE

EXCLUSION AND REMOVAL CODE

10-1-101. Persons Subject to Exclusion and Removal.

All persons who are not members of the Southern Ute Indian Tribe or are not authorized by federal law to reside or be present on the Southern Ute Indian Reservation may be excluded or removed from all or any portion of the reservation as provided herein.

10-1-102. Grounds for Exclusion and Removal.

A person may be subject to exclusion or removal from all or any portion of the Southern Ute Indian Reservation for the following reasons:

(1) Repeated violations of tribal ordinances. A criminal finding of guilt is not necessary to show violation of tribal ordinances;

(2) Interference with tribal ceremonies, shrines or religious affairs;

(3) Abuse of privileges granted by the Tribe and/or misuse of tribal lands; and

(4) Repeated acts which threaten to place the health, safety, welfare, or peace of the Southern Ute Indian Tribe in jeopardy.

10-1-103. Proceedings for Exclusion and Removal.

(1) Upon the complaint of any member of the Southern Ute Indian Tribe, the Southern Ute Indian Tribal Court may determine whether a person has committed any acts constituting grounds for exclusion and removal.

(2) A hearing shall not be held later than twenty (20) days from the filing of the complaint.

(3) Emergency Exclusion and Removal.

(a) In an emergency situation, exclusion and removal may occur prior to the time of hearing if it can be shown that exclusion and removal is necessary to preserve the health, safety, welfare or peace of the Tribe and that without such exclusion or removal irrevocable harm would result.

(b) A person receiving notice under emergency exclusion and removal may petition the court once he is off the reservation for a hearing concerning exclusion and removal and shall be afforded such a hearing at the earliest possible date.

10-1-104. Hearings for Exclusion and Removal.

(1) A hearing for exclusion and removal shall be held at a regular session of the Southern Ute Indian Tribal Court.

(2) The Tribal Court shall hear the evidence presented and may request further evidence to be presented. At such time, it shall determine whether or not exclusion or removal shall be granted.

(3) A person subject to exclusion or removal shall have an irrevocable right to be represented by an attorney or lay counsel of his choice, and at his expense.

10-1-105. Enforcement of Orders of Exclusion and Removal.

(1) All law enforcement officers of the Southern Ute Indian Tribe and the United States government shall have the power to carry into effect an exclusion or removal order of the Tribal Court according to the terms of such order.

(2) It shall be unlawful for any person to ignore an exclusion and removal order. If such person fails to follow said order or returns to the reservation in violation of said order, they shall be subject to a fine not to exceed Five Hundred Dollars ($500.00) or a term of imprisonment not to exceed six (6) months, or both.

10-1-106. Lifting of Exclusion and Removal Order.

(1) Any person who is under an order of exclusion and/or removal pursuant to this Title may petition the tribal court to lift said order after they have been absent for one year, and shall give reasons which establish that the person is no longer a threat to the health, safety, welfare or peace of the Southern Ute Indian Tribe. Such reasons shall include, but not be limited to, participation in rehabilitation programs, performance of community service activities in the place of residence, letters of recommendation from Southern Ute tribal members, and a plan of employment or activity to be followed while within the exterior boundaries of the Southern Ute Indian Reservation.

(2) No person who has been ordered to be excluded from the Southern Ute Indian Reservation may come into the exterior boundaries of the reservation unless and until the exclusion order has been lifted.

TITLE IV
TABLE OF CONTENTS
CRIMINAL OFFENSES

Part

TITLE IV.
CRIMINAL OFFENSES

PART I
GENERAL PROVISIONS

SECTION 1. DEFINITIONS

A. "Act" has its usual and ordinary meaning and includes any bodily movement, any form of communication to take action.

B. "Bodily Injury" means physical pain, illness, or any impairment of physical condition, includes mental illness or impairment.

C. "Consent" means voluntary agreement by a person in the possession and exercise of sufficient mental capacity to make an intelligent choice to do something proposed by another.

D. "Indian" is a person who is an enrolled member of a federally recognized Tribe or is recognized by the community as Indian.

E. "Negligently" The failure to exercise care as a reasonable and careful person would use under similar circumstances.

F. "Occupied Structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of person or for carrying on business, whether or not a person is actually present.

G. "Knowingly" a person acts knowingly with respect to conduct or to a circumstance when the person is aware of the person's own conduct or that the circumstance exists.

H. "Possession" is a knowing control of anything for a sufficient time to be able to terminate control.

I. "Purposely" a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious objective to engage in that conduct or to cause that result.

J. "Recklessly" shall mean acting in willful or wanton disregard for persons or property.

K. "Serious Bodily Injury" means bodily injury that creates a substantial risk of death; causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ; or at the time of the injury, can reasonably be expected to result in serious

permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

L. "Sexual Contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

M. "Sexual Intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

N. "Weapon" means any instrument, article, or substance that, regardless of its primary function is readily capable of being used to produce death or serious bodily injury.

O. "Without Consent" means:
1) the victim is compelled to submit by force against him/herself or another or,
2) the victim is incapable of consent because s/he is:
a. mentally defective or incapacitated.
b. physically helpless; or
c. less than 16 years old.
3) As used in subsection 1, above, the term "force" means:. the infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or
a. the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.
History: Section 1 (A-O) enacted on the 3/8/99, Resolution 63-99.

SECTION 2. RESTITUTION & ALTERNATIVE SENTENCING

2.1 Policy on Restitution.

It shall be the policy of the Tribal Court that in all of the offenses included herein that restitution shall be considered and made a part of the sentence if appropriate.
History: Section 2.1 enacted on the 3/8/99, Resolution 63-99.

2.2 Policy on Alternative Sentencing.

Alternative or creative sentencing is an area often unexplored by judges. Therefore, it shall be the policy of the Tribal Court to pursue or develop reasonable creative alternative sentences; provided that the judge must

consider whether such sentence would affect the health, safety or welfare of the general public.

History: Section 2.2 enacted on the 3/8/99, Resolution 63-99.

SECTION 3. CLASSIFICATION OF OFFENSES

Authorized sentences for crimes committed after enactment of this code.

A. Class One Offense. Every person convicted of a classified Class One offense shall be punished as follows: shall include imprisonment for a term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than $5000.00, or by both such imprisonment and fine.

B. Class Two Offense. Every person convicted of a Class Two offense shall be punished by imprisonment in the tribal jail for a maximum term fixed by the court of not more than six months, or by a fine in an amount fixed by the court of not more than $500.00, or by both such imprisonment and fine.

C. This Title applies to only those crimes committed after enactment of this code.

History: Section 3 enacted on the 3/8/99, Resolution 63-99.

SECTION 4. CRIMES FEDERAL COURT HAS CONCURRENT JURISDICTION.

Pursuant to 18 U.S.C. the Federal government through the United States attorneys office has concurrent jurisdiction to prosecute Indians who commit crimes against the person or property of another for the following crimes: murder, manslaughter, assault with intent to commit murder, maiming , incest, assault with a dangerous weapon, assault resulting in serious bodily injury, an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and kidnapping.

History: Section 4 enacted on the 3/8/99, Resolution 63-99.

PART II.
CRIMES AGAINST PERSONS

SECTION 1. CLASS ONE OFFENSES

1.1 Abuse of a Child

A. A person commits the offense of abuse of a child when s/he knowingly or purposely inflicts or causes physical or mental injury, harm, or imminent danger to the physical or mental health or welfare of a child other than by accident. Including but not limited to, abandonment, excessive or unreasonable punishment.

B. A person convicted of Abuse of Child shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.1 (A-B) enacted on the 3/8/99, Resolution 63-99 formerly Title V, Section I, Subsection 1.14

1.2 Abuse of a Family Member

A. A person commits the offense of Abuse of a Family Member if:
1) s/he purposely or knowingly commits an act of physical or mental abuse which results in injury to a family member; or
2) negligently causes bodily injury to a family member with a weapon; or
3) purposely or knowingly causes fear or reasonable apprehension of bodily injury in a family member.

B. Definitions.

"Abuse" means the infliction of physical harm, bodily injury or sexual assault or the infliction of the fear of imminent physical harm, bodily injury or sexual assault, and includes but is not limited to assault as defined in the Fort Belknap Law and Order Code.

"Family Member" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating relationship with a person of the opposite sex, mothers, fathers, children, brothers, sisters, grandparents, aunts, uncles and other past or present family members of a household. These relationships include adoptive, stepchildren, step-parents, in-laws, and they do not have to reside in the same home, at the time of the offense.

C. Mandatory Arrest. An officer shall arrest and take into custody any person whom the officer has probable cause to believe abused or is about to abuse any person. The victim need not sign a complaint for an arrest to occur, an officer

shall arrest under probable cause even though it may be against the expressed wishes of the victim.

D. Twenty-Four Hour Hold. A person arrested under this section for a first offense shall be held without bail, in the custody of the police department, for a minimum of 24 hours. On the second offense the person arrested shall be held without bail for a minimum of 48 hours. On the third or subsequent offense the person shall be held without bail for a minimum of 72 hours.

E. A person convicted of Abuse of a Family Member shall be fined on the first offense an amount not less than $100.00 or more than $5,000.00 and be imprisoned not less than 20 days or more than 1 year, and attend at least 100 hours of counseling. On the Second or subsequent offense a person shall be fined a minimum of $500.00 or not more than $5000.00 and imprisoned for a minimum of 40 days and attend at least 200 hours of counseling classes .

F. The counseling shall have an emphasis on chemical dependency and mental health issues.

History: Subsection 1.2 (A-F) enacted on the 3/8/99, Resolution 63-99 formerly; Domestic Abuse-Resolution NO. ___;

1.3 Accountability

A. A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable for such conduct as provided below, or both.

B. A person is legally accountable for the conduct of another when:
1) Having a mental state described by the code section defining the offense, he causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;
2) The code section defining the offense makes him so accountable; or
3) Either before or during the commission of an offense, with the purpose to promote of facilitate such commission, he solicits, aids, abets, agrees or attempts to aid such other person in the planning or commission of the offense.

C. However, a person is not so accountable if:
1) He is the victim of the offense committed unless the code section defining the offense provides otherwise; or
2) Before the commission of the offense, he terminates his efforts to promote or facilitate such commission and does one of the following:
a) Wholly deprives his prior efforts of effectiveness in such commission;
b) gives timely warning to the proper law enforcement authorities; or
c) otherwise make proper effort to prevent the commission of the offense.

D. "Conduct" means an act or series of acts and the accompanying mental state.

E. Charging of Offense/Conviction. In the charging of this offense, the elements of the offense for which an individual is believed to be accountable must be plead, along with applicable language from this section. Upon conviction of an offense by accountability, a defendant shall be sentenced as provided in the specific offense charged.

History: Subsection 1.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

1.4 Aggravated Assault

A. A person commits the offense of Aggravated Assault if s/he knowingly or purposely causes or inflicts serious bodily injury, or in the process of an assault he attempts or uses a weapon.

B. A person convicted of Aggravated Assault shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.4 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.5 Assault on a Peace Officer

A. A person commits the offense of assault on a peace officer if the person knowingly causes bodily injury to a peace officer.

B. A person convicted of Assault on a Peace Officer shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.5 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.6 Attempt

A. A person commits the offense of Attempt when s/he with the purpose to commit a specific offense, does an act toward the commission of such offense.

B. A person convicted of the offense of Attempt shall be punished according to the offense attempted.

History: Subsection 1.6 (A-B) formerly enacted pursuant to Resolution No. 5-95; revised on the 3/8/99, Resolution 63-99.

1.7 Criminal Conspiracy

A. A person commits the offense of Criminal Conspiracy when she or he, intending conduct constituting a crime be performed, agrees with one or

more person to engage in or cause the performance of such conduct and any one of them commits an overt act in pursuance of the offense.

B. A person convicted of Criminal Conspiracy shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.7 (A-B) formerly enacted pursuant to Resolution 5-95; revised on the 3/8/99, Resolution 63-99.

1.8 Criminal Endangerment

A. A person commits the offense of Criminal Endangerment if s/he knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another.

B. A person convicted of Criminal Endangerment shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.8 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.9 Custodial Interference

A. A person commits the offense of custodial interference if s/he takes, entices, or withholds, without a legal right to do so, a child from the child's lawful custodian.

B. A person convicted of Custodial Interference shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.9 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.10 Elder Abuse

A. A person commits the offense of Elder Abuse if s/he purposely or knowingly does one or more of the following: inflicts physical injury upon an elder; or intimidates an elder; or financially exploits an elder; or when a caretaker or a family member knowingly deprives (as defined under Abuse of a family member) an elder of the basic necessities of life such as, but not limited to; food, shelter, clothing, and medical and personal care, which are necessary to avoid physical harm, mental anguish, or mental illness; or commits an act or causes an act to be committed against an elder with the intent to terrify, harass, abuse, repeatedly annoys or repeatedly offends the elder.

B. A person convicted of Elder Abuse shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not

to exceed one year in jail, or both.

C. Mandatory Arrest.
1) An officer shall arrest and take into custody any person who the officer has reason to believe abused an elderly person with whom s/he is residing. This mandatory arrest provision means the victim need not sign a complaint for an arrest to occur. Further, the officer shall arrest if he has probable cause to do so even though it may be against the express wishes of the victim. No warrant is required.
2) An officer shall arrest and take into custody any person whom the officer has probable cause to believe has violated an order for protection regardless of whether the person violating the order was invited back into the home.
3) Whether or not an arrest occurred the officer must make a written report and submit the report within 48 hours to the prosecutor. The prosecutor must provide a copy of such report to the Department of Social Services within 48 hours after its receipt.

D. Definitions. For purposes of this section, the following definitions shall control:
1) "Elder" shall mean a person who is 55 years old or older.
2) "financially exploits" shall mean expending the funds of an elder for purposes which do not directly benefit the elder, without his/her permission, or expending resources for purposes which do not directly benefit an elder who is incompetent.
3) "intimidates" shall mean an act or statement by a person which purposely causes another person to perform or not to perform an act because he/she is afraid or believes to do so would mean the person would carry out a threat.
History: Subsection 1.10 (A-D) enacted pursuant to Resolution 3-95; revised on the 3/8/99, Resolution 63-99.

1.11 Exposing another to Communicable Disease.

A. A person commits the offense of Exposing another to Communicable Diseases when s/he infected with a communicable disease, including, but not limited to syphilis, H.I.V., gonorrhea, tuberculosis, or other communicable disease dangerous to the public health, knowingly exposes another person to infection. The court may order and compel the medical examination and treatment of any person afflicted with any such disease, and also may require the disclosure of medical information to aid in the prosecution of a cause.

B. A person convicted of Exposing another to Communicable Diseases shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year in jail, or both.
History: Subsection 1.11 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.12 Handicap Abuse

A. A person commits the offense of Handicap Abuse if s/he purposely or knowingly inflicts physical injury upon a handicapped person; or intimidates, or financially exploits, or when a caretaker or a family member knowingly deprives (as defined under Abuse of a family member) a handicapped person of the basic necessities of life such as, but not limited to; food, shelter, clothing, and medical and personal care, which are necessary to avoid physical harm, mental anguish, or mental illness.

B. A person convicted of Handicapped Abuse shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year in jail, or both.

C. Mandatory Arrest.
1) An officer shall arrest and take into custody any person who the officer has reason to believe abused a handicapped person with whom s/he is residing. This mandatory arrest provision means the victim need not sign a complaint for an arrest to occur. Further, the officer shall arrest if he has probable cause to do so even though it may be against the express wishes of the victim. No warrant is required.
2) An officer shall arrest and take into custody any person whom the officer has probable cause to believe has violated an order for protection regardless of whether the person violating the order was invited back into the home.
3) Whether or not an arrest occurred the officer must make a written report and submit the report within 48 hours to the prosecutor. The prosecutor must provide a copy of such report to the Department of Social Services within 48 hours it's receipt.

D. Definitions. For purposes of this section, the following definitions shall control:
1) "handicapped person" shall mean an adult person who by reason of mental deficiency, disease or defect, or by reason of physical limitation, injury or infirmity, is not able to resist or defend themselves against the actions of others.
2) "financially exploits" shall mean expending the funds of an elder for purposes which do not directly benefit the elder, without his/her permission, or expending resources for purposes which do not directly benefit an elder who is incompetent.
3) "intimidates" shall mean an act or statement by a person which purposely causes another person to perform or not to perform an act because he/she is afraid or believes to do so would mean the person would carry out a threat.
History: Subsection 1.12 (A-D) enacted on the 3/8/99, Resolution 63-99.

1.13 Incest

A. A person commits the offense of incest if s/he purposely or knowingly marries or has sexual intercourse with a brother, sister, stepson, stepdaughter,

an ancestor, or descendant who is a first cousin.

B. A person convicted of Incest shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.13 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.14 Intimidation

A. A person commits the offense of Intimidation if s/he purposely causes another person to perform or not to perform an act because he is afraid or believes to do so would mean the person would carry out the threat, and it reasonably appears the individual has the present ability to carry out the threat.

B. A person convicted of Intimidation shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.14 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.15 Kidnapping

A. A person commits the offense of Kidnapping if the person seizes, confines, abducts, or carries away or holds any person by threat of force or by force.

B. A person convicted of Kidnapping shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.15 (A-B) revised on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.1 Abduction.

1.16 Manslaughter

A. A person commits the offense of Manslaughter by recklessly causing the death of another person.

B. A person convicted of Manslaughter shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.16 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.17 Murder

A. A person commits the offense of Murder if s/he purposely causes the death of another.

B. A person convicted of Murder shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.
History: Subsection 1.17 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.18 Negligent Endangerment

A. A person commits the offense of Negligent Endangerment if s/he negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another.

B. A person convicted of Negligent Endangerment shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.
History: Subsection 1.18 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.19 Negligent Homicide

A. A person commits the offense of Negligent Homicide when s/he negligently causes the death of another person.

B. A person convicted of Negligent Homicide shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.
History: Subsection 1.19 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.20 Non-Support of Children

A. A person commits the offense of nonsupport of a child(ren) if the person fails to provide support that the person is able to provide and that the person knows s/he is legally obligated to provide.

B. A person convicted of Non-Support of Children shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00 or imprisoned for a term not to exceed six months, or both. At all times a fine or imprisonment should be used only as a last resort as the goal is to have the non-paying parent provide support.
History: Subsection 1.20 (A-B) revised on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.39.

1.21 Prostitution

A. A person commits the offense of Prostitution if s/he engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received or paid or to be paid.

B. A person convicted of Prostitution shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.21 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Sectin I, Subsection 1.64.

1.22 Rape

A. A person commits the offense of Rape if s/he engages in sexual intercourse with another without consent by either threat of force, or reasonable apprehension of harm, or the defendant is unconscious.

B. A person convicted of Rape shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

C. No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this Part, except to show the origin of a pregnancy, disease, or semen which is at issue in the prosecution

History: Subsection 1.22 (A-C) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.65; revised pursuant to Resolution 5-95.

1.23 Robbery

A. A person commits the offense of Robbery if in the course of committing or attempting to commit a theft, or while fleeing from the commission or attempted commission of a theft, inflicts or attempts to inflict bodily injury upon another; or threatens or menaces another with immediate bodily injury.

B. A person convicted of Robbery shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year in jail, or both.

History: Subsection 1.23 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.24 Sexual Assault

A. A person commits the offense of Sexual Assault by knowingly subjecting another person to any sexual contact without consent.

B. A person convicted of Sexual Assault shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

C. No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this Part, except to show the origin of a pregnancy,

disease, or semen which is at issue in the prosecution
History: Subsection 1.24 (A-C) enacted on the 3/8/99, Resolution 63-99.

1.25 Stalking

A. A person commits the offense of stalking if the person purposely or knowingly causes another substantial emotional distress or reasonable apprehension of bodily injury by repeatedly following the person; or harassing, threatening, or intimidating the person, in person, by phone, or by mail, or by any other action.

B. A person convicted of Stalking shall be guilty of a Class One offense. For the first offense a person shall be fined an amount not to exceed $1,000.00 or imprisoned for a term not to exceed six months, or both. For a second or subsequent offense a person shall be fined an amount not to exceed $5,000.00 or imprisoned for a term not to exceed one year, or both.

C. For purposes of this section if the person who is stalking another is told not to contact, follow, threaten, harass, or intimidate another and s/he continues to do so, s/he may be arrested and shall not be released until s/he appears in front of a judge. Upon a finding that the individual is still stalking the victim, the judge may detain the individual until trial.
History: Subsection 1.25 (A-C) enacted on the 3/8/99, Resolution 63-99

1.26 Statutory Rape

A. A person commits the offense of Statutory Rape if s/he has sexual intercourse with a female or male who is under the age of sixteen years. The person charged may use as a defense his/her belief that the victim was sixteen years of age or older if the victim is fifteen years of age.

B. A person convicted of Statutory Rape shall be guilty of a Class One offense. If the victim is over fourteen years old a person shall be fined an amount not to exceed $5,000.00 or imprisoned for a term not to exceed one year, or both. If the victim is fourteen or under a person shall be fined an amount not to exceed $5,000.00, a minimum imprisonment term of thirty days but not more than one year, or both.

C. No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this Part, except to show the origin of a pregnancy, disease, or semen which is at issue in the prosecution.
History: Subsection 1.26 (A-C) enacted on the 3/8/99, Resolution 63-99.

SECTION 2. CLASS TWO OFFENSES

2.1 Assault

A. A person commits the offense of Assault by inflicting or threatening to inflict bodily injury upon another.

B. A person convicted of Assault shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00, or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.1 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.7 & 1.8.

2.2 Bigamy

A. A person commits the offense of Bigamy if, while married, s/he knowingly marries another, unless the person reasonably believes that s/he is legally eligible to remarry.

B. A person convicted of Bigamy shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.2 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.9.

SECTION 3. REPEALED SECTIONS

3.1 Renaming of Criminal Offenses Section

The Criminal Offenses section known as Title V is now known as Title IV.

3.2 Repealed Sections or Resolutions

A. Adultery - Section 1.2
B. Assaults - Section 1.7
C. Assault & Battery 1.8
D. Child Molestation 1.15, now comes under child abuse.
E. Criminal Trespass- Buildings 1.18, Land 1.19
F. Desertion & Non-support of Children 1.24

TITLE IV
PART III
CRIMES AGAINST PROPERTY

SECTION 1. CLASS ONE OFFENSES

1.1 Arson

A. A person who commits the offense of Arson by starting or maintaining a fire or causes an explosion with intent to destroy or damage a building, occupied structure, motor vehicle, land, crop, or timber of another is guilty of arson.

B. A person convicted of Arson shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.2 Burglary

A. A person commits the offense of Burglary when s/he enters or remains unlawfully in a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, or while there, commits any offense.

B. A person convicted of Burglary shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: *Subsection 1.2 (A-B) enacted on the 3/8/99, Resolution 63-99.*

1.3 Forgery

A. A person commits the offense of Forgery by knowingly and falsely signing, making, completing or executing, issuing, transferring or altering any writing or instrument.

B. A person convicted of Forgery shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.3 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.44.

1.4 Theft

A. A person commits the offense of Theft when s/he intentionally takes or exercises unauthorized control over the property of another with the intent

to deprive the owner, or purposely or knowingly uses, conceals, or abandons the property knowing that the use, concealment or abandonment of the property deprives the owner of the property.

B. A person convicted of Theft, the value of which exceeds $1,000.00, shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year in jail, or both; if the value does not exceed $1,000.00 the person shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or sentenced to a term of imprisonment not to exceed 6 months, or both.

History: Subsection 1.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.73.

SECTION 2. CLASS TWO OFFENSES

2.1 Criminal Mischief

A. A person commits the offense of Criminal Mischief by intentionally or recklessly injuring, damaging, or destroying the property of another; or without consent tampers with the property of another.

B. A person convicted of Criminal Mischief shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00, or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.2 Criminal Trespass to Property

A. A person commits the offense of Criminal Trespass to Property when s/he purposely or knowingly, without authority, enters or remains in an occupied structure or premises of another, or passes upon or over any cultivated or other enclosed lands of another person.

B. A person convicted of Criminal Trespass to Property shall be guilty of a Class 2 offense and shall be fined for the first offense an amount not to exceed $500.00 or imprisoned for a term not to exceed 30 days or subject his animals to impoundment until s/he can provide proof of adequate pasture and fences, or all three. On the second or subsequent offense an individual shall be fined an amount not to exceed $1,000.00, or imprisoned for a term not to exceed three months or be required to pay a fine of $5.00 a head, or provide proof of adequate pasture and fences, or all four.

1) Any damage to premises, including forage consumed, caused by astray or trespassing animals may be recovered from the owner of the animals by civil action or by restraining and impounding such animals in the manner provided herein.

2) Confinement: Police or Stock Inspectors shall have the right to remove

livestock that are straying or trespassing livestock to the confinement area and hold them as long as necessary.

C. A landholder finding stray or trespassing animals on land under his control:
1) may remove livestock to rightful pasture, providing the moving of said livestock does not constitute trespass of another person or pasture and can be done without undue hardship;
2) may confine livestock to decrease damage to crops or grazing lands or injury or damage to livestock. If livestock is confined, landowner shall report such confinement to livestock owner or his agent and stock inspector within twenty-four (24) hours. In the event that the livestock owner or his agent cannot be contacted, the stock inspector shall have the authority to remove confined livestock to a proper area. Livestock owner may be assessed the expense of removal.
3) may notify the chief of police, Bureau of Indian Affairs Natural Resources Department or Tribal Natural Resources Department.

D. The chief of police, Bureau of Indian Affairs Natural Resources Department or Tribal Natural Resources Department shall request within twenty-four hours the stock inspector to inspect the stray or trespassing livestock obtaining the brands, owner's name, damage appraisal, and return the information to him. The appraisement of damage done by the trespassing animals, including all forage consumed, should be signed and made by an individual of legal age, competent to make such appraisals. This appraisal shall state the owner of the animals, if known, and if unknown, the facts, together with an accurate description of the animals impounded and an appraisement of damages caused by the astray or trespassing animals. If the amount of the damage is disputed by the owner, a hearing may be had before the Tribal Court for determination of that matter, provided, however, that the owner must file his complaint objecting to such appraisement within ten days following notice of the impoundment and the making of the appraisement. Thereafter no complaint shall be accepted with objections to such appraisement.

E. The Tribal Natural Resources Department designee shall notify the livestock owner or his agent allowing him three days to remove his livestock from the confinement area and not more than a confinement fee of twenty-five dollars per head per day, plus expenses, shall be assessed against said livestock while in confinement. When a three day notice is given to any livestock owner or his agent, such notice on said livestock within that trespass area shall be effective for a period of six months from date of notice.

F. Seizure and Impoundment of Stray or Trespass Animals
1) The stock inspector or chief of police shall impound all animals not

claimed and removed after three days if the owners are unknown or cannot be found. During impoundment s/he shall see that the animals are fed and watered.
2) The stock inspector or tribal designee shall notify the Tribal Court and give the Court all the information and the appraisal of damages.
3) The stock inspector or tribal designee shall post notice of impoundment in not less that five public and conspicuous places on the Reservation for ten days.
4) During the ten days notice of impoundment, the livestock owner can redeem his livestock by paying the assessed damages, cost of impoundment at not more than fifty dollars($50.00) per head, cost of posting notices, and showing proof of adequate pasturage.
5) Impounded animals shall be available for public inspection during daylight hours.
6) If more than one(1) person claims ownership of an impounded animal or if satisfactory proof of ownership is not furnished, claimant may seek a determination through the Trial Court.
7) Unbounded and unmarked, one year of age or older livestock that are normally branded shall become the property of the Fort Belknap Indian Community upon impoundment, provided proof of ownership has not been established in accordance with this part.

G. Sale of Unclaimed or Impounded Animals
1) Animals impounded, notices posted for ten (10) days, without any contested ownership of any damages being heard in the Tribal Court shall be sold at a public sale to the highest bidder and the Judge shall execute or deliver a bill of sale to the purchaser.
2) Disposition of sale proceeds shall be applied to the following:
a. cost of sale;
b. cost of impoundment; (includes but is not limited to feed, care, veterinarian services)
c. cost of impoundment notices;
d. reasonable value of forage consumed and damages to the land trespassed;
e. payment to the former owners of the animals of any surplus.

3) If the former owner of any animal should, pursuant to this section fail or refuse to claim any balance due under this part within one (1) year after the date of sale, such balance shall be paid into the treasury of the Fort Belknap Indian Community and the former owner's entitlement thereto shall cease to exist.

History: Subsection 2.2 (A-G) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.18 & 1.19.

2.3 Disposing of Property of an Estate

A. A person commits the offense of Disposing of Property of an Estate when

s/he, without proper authority, sells, trades, or otherwise disposes of any property of any estate before the determination of the heirs.

B. A person convicted of Disposing of Property of an Estate shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00, or imprisoned for a term not to exceed six months, or both.
History: Subsection 2.3 (A-G) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.30.

2.4 Extortion

A. A person commits the offense of Extortion by obtaining property from another by use of actual or threatened force, violence, or fear, or under color of official right.

B. A person convicted of Extortion shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00, or imprisoned for a term not to exceed six months, or both.
History: Subsection 2.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.35.

2.5 Injury to Public Property

A. A person commits the offense of Injury to Public Property when s/he without proper authority, intentionally, recklessly, or negligently uses or injures any Tribal or other public property.

B. A person convicted of Injury to Public Property shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00, or imprisoned for a term not to exceed six months, or both.
History: Subsection 2.5 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.48.

2.6 Issuing a Bad Check

A. A person commits the offense of Issuing a Bad Check by issuing a check, draft, or order upon any bank or other depository knowing that there is not sufficient funds in the account, to pay such check, draft, or order, or no account, and did not pay debt within 10 days, after notice. of the return of such check.

B. A person convicted of Issuing a Bad Check shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $1000.00, or imprisoned for a term not to exceed six months, or both.
History: Subsection 2.6 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.7 Illegal Moving of Livestock

A. A person commits the offense of Illegal Moving of Livestock when disturbing or moving livestock in any private or association pasture or range without permit or permission from owner, lessee, or stock association officers, within or without the boundaries of the Fort Belknap Indian Reservation.

B. A person convicted of Illegal Moving of Livestock shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $1000.00, or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.7 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.8 Littering.

A. A person commits the offense of Littering by disposing of any garbage or other forms of litter or waste anywhere within the exterior boundaries of the Fort Belknap Reservation, including waterways and public roads.

B. A person convicted of Littering shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00, or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.8 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.50.

2.9 Open Container

A. A person commits the offense of Open Container when he or she uses, drinks, or consumes beer, wine or other intoxicating liquor, while on a public street or in a public event, sidewalk, alley, or highway, or in a motor vehicle, unless it is done so in accordance with a special license from the appropriate authorities.

B. A person convicted of Open Container shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.09 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.10 Registration of Dogs

A. A person commits the offense of Failing to Register his or her dog when s/he fails to register and pay a restoration fee for each calendar year for any dog owned by him or in his/her possession.

B. A person convicted of Failing to Register a Dog shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.10 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.68.

2.11 Running of Outside Livestock on Reservation without a Permit

A. A person commits the offense of Running of Outside Livestock on Reservation without a Permit if s/he runs outside livestock within any of grazing units on the Fort Belknap Indian Reservation without appropriate permits issued by the superintendent on behalf of individual Indian landowners or the Fort Belknap Indian Community.

B. A person convicted of Running of Outside Livestock on Reservation without a permit shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.11 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.72.

2.12 Butchering

A. Any person who shall butcher livestock of another person with the intent to deprive such other person thereof, shall be deemed guilty of the offense of butchering, and upon conviction thereof shall be sentenced to a fine of not less than three hundred dollars ($300.00) or more than five hundred dollars ($500.00) or not more than six (6) months in prison or both such fine and imprisonment, and provide restitution to the owner of said butchered livestock.

B. Upon proof of the following:
1) Failure to produce the hide when in possession of slaughtered beef; or
2) Found to be in possession of slaughtered beef and the hide thereof is found to be defaced without any satisfactory explanation thereof; or
3) A person shall be presumed guilty of the offense of butchering unless such presumptions are overcome.

History: Subsection 2.12 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.12.

2.13 Cutting Fence or Opening Gates

Any person who shall, without lawful authority, willfully and knowingly open and leave open any gate or tear down, carry away, or destroy any fence or part thereof within the jurisdiction of the Fort Belknap Indian Reservation, shall be deemed guilty of an offense and upon conviction thereof shall be fined not less than one hundred dollars ($100.00) and not over five hundred dollars ($500.00) or confined in jail not less than ten (10) days and not more than six (6) months or both, such fine and imprisonment at the discretion of the Court, and provide restitution.

History: Subsection 2.13 enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.22.

2.14 Misbranding

Any person who shall knowingly and willfully misbrand, alter, or deface any brand or mark intended to designate ownership of any timber, livestock, or other property, including boats and trailers, of another person without his consent and with the intent to deprive the owner of his property, shall be guilty of an offense and upon conviction thereof shall be sentenced to confinement for a period of not more than six (6) months and to pay a fine of not more than five hundred dollars ($500.00) or both, with costs.

History: Subsection 2.14 enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.55.

2.15 Receiving Stolen Property

Any person who shall receive or conceal or aid in receiving or concealing any property, knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, theft, burglary, or robbery, shall guilty of an offense and upon conviction thereof shall sentenced to confinement for a period of not more than six (6) or to pay a fine of not more than five hundred dollars ($500.00) or both, with costs, and may be ordered by the Court to make proper restitution.

History: Subsection 2.15 enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.66.

SECTION THREE. REPEALED SECTIONS

3.1 Repealed sections.

A. Mortgaged Chattels-Selling 1.56
B. Neglecting Dogs and Other Animals 1.58

TITLE IV
PART IV
OFFENSES AGAINST ADMINISTRATION AND ORDER

SECTION 1. CLASS ONE OFFENSES

1.1 Accountability

A. A person commits the offense of Accountability or is responsible for the conduct of another, when either before or during the commission of an offense s/he with the purpose to promote or facilitate such commission solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense.

B. A person convicted of Accountability shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00, or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.2 Bribery

A. A person commits the offense of Bribery when s/he gives or offers to give any money, property or services or anything else of value to another person with intent to influence another in the discharge of his public duties or conduct, and any person who shall accept, solicit or attempt to solicit any bribe, as above defined.

B. A person convicted of Bribery shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00 or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.1 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.11.

1.3 Embezzlement

A. Any person who shall, having lawful custody of property not his own, appropriates the same to his or her own use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement.

B. A person convicted of Embezzlement shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00 or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.3 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.33

1.4 Escape

A. Any person who being in lawful custody for any offense, escapes or attempts to escape from that custody shall be guilty an offense.

B. A person convicted of Escape shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5,000.00 or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.34.

1.5 Weapons Firing

A. A person commits the offense of Weapons Firing if s/he willfully shoots or fires a gun, pistol, or any other firearm within a community or any private enclosure which contains a house.

B. A person convicted of Weapons Firing shall be guilty of a Class 1 offense and shall be fined an amount not to exceed $5000.00 or imprisoned for a term not to exceed one year, or both.

History: Subsection 1.5 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.79.

SECTION 2. CLASS TWO OFFENSES

2.1 Carrying a Concealed Weapon

A. A person commits the offense of Carrying a Concealed Weapon if s/he goes about in public places bearing, either wholly or partially covered by his/her clothing or wearing apparel, a dirk, dagger, pistol, revolver, slingshot, sword cane, billy club, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon unless s/he shall have a permit approved by appropriate authorities.

B. A person convicted of Carrying a Concealed Weapon shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or be imprisoned for a term not to exceed six months, or both.

History: Subsection 2.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.2 Criminal Contempt

A. A person commits the offense of criminal contempt when he or she knowingly engages in any of the following conduct:
1) disorderly, contemptuous or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to

interrupt proceedings and to impair the respect due its authority;
2) breach of peace, noise or other disturbance directly intending to interrupt a court's proceedings;
3) purposely disobeying or refusing any lawful process or other mandate of a court;
4) refusing to answer any legal and proper interrogation

B. A person convicted of Contempt shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.
History: Subsection 2.2 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.3 Disorderly Conduct

A. Any person who shall engage in fighting in a public place disturb or annoy any public or religious assembly, or appear in a public or private place in an intoxicated and disorderly condition, or who shall engage in any other act of public immorality shall be deemed guilty of an offense.

B. A person convicted of Disorderly Conduct shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.
History: Subsection 2.3 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.31.

2.4 False Reporting

A. A person commits the offense of False Reporting if he knowingly:
1) gives false information to any law enforcement officer, fire department, or social services agency;
2) reports to the above-mentioned departments an offense or other incident within their concern knowing that it did not occur; or
3) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

B. A person convicted of False Reporting shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00, or imprisoned for a term not to exceed six months, or both.
History: Subsection 2.4 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.5 Obstructing Justice

A. A person commits the offense of Obstructing Justice if, knowing a person is an offender, (liable to be arrested, charged, convicted or punished for a public offense) s/he purposely:

1) harbors or conceals an offender;
2) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;
3) provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;
4) prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;
5) suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or
6) aids an offender who is subject to official detention to escape from such detention.

B. A person convicted of Obstructing Justice shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00, or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.5 (A-B) enacted on the 3/8/99, Resolution 63-99 ; formerly Title V, Section I, Subsection 1.59.

2.6 Official Misconduct

A. A public servant commits the offense of Official Misconduct when in his or her official capacity s/he commits any of the following acts:
1) purposely or negligently fails to perform any mandatory duty as required by law;
2) knowingly performs an act in his or her official capacity he knows is forbidden by law; or
3) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority.

B. A person convicted of Official Misconduct shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.6 (A-B) enacted on the 3/8/99, Resolution 63-99 .

2.7 Perjury

A. A person commits the offense of Perjury if s/he if in any official proceeding s/he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made when the statement is material.

B. A person convicted of Perjury shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.7 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.61.

2.8 Possession of a Firearm While Privilege to do so is Suspended

A. A person who possesses a firearm at any time when the person's privilege to do so has been suspended either on the reservation or anywhere else is guilty of a Class 2 offense.

B. A person convicted of Possession of a Firearm While Privilege to do so is suspended shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.

C. The firearm possessed at the time of the offense must be seized upon the person's conviction.

D. The Court may not suspend or defer imposition of penalties provided by this section.

History: Subsection 2.8 (A-D) enacted on the 3/8/99, Resolution 63-99.

2.9 Resisting Arrest

A. A person commits the offense of Resisting Arrest if s/he knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:
1) Using or threatening to use physical force or violence against the peace officer or another;
2) Using any other means which creates a risk of causing physical injury to the peace officer or another;
3) It is no defense to a prosecution under this section that the arrest was unlawful, provided the peace officer was acting under color of his authority.

B. A person convicted of Resisting Arrest shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.9 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.7.

2.10 Tampering with Witnesses

A. A person commits the offense of Tampering with Witnesses if, believing that an official proceeding or investigation is pending or about to be instituted, s/he purposely or knowingly attempts to induce or otherwise cause a witness to: testify falsely; withhold any testimony, information, document, or thing; or elude the legal process or investigation to which he has been summoned.

B. A person convicted of Tampering with Witnesses shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.
History: Subsection 2.10 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.11 Tampering with Public Records or Information

A. A person commits the offense of Tampering with Public Records or Information if s/he:
1) knowingly makes a false entry in or false alteration of any record document, resolution, or thing belonging to or received, issued, or kept by the government for information or record or required by law to be kept for information of the government; or
2) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose that it be taken as a genuine part of information or records referred to in subsection 1 above; or
3) purposely destroys, conceals, removes, or otherwise impairs the original or makes unavailable any such record or document.

B. A person convicted of Tampering with Public Records or Information shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.
History: Subsection 2.11 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.12 Maintaining a Public Nuisance

Any person who shall act in such a manner, or permit his property to fall into such conditions as to injure or endanger the safety, health, comfort, or property of his neighbors, shall be guilty of an offense and upon conviction thereof shall be sentenced to confinement for a period of not more than two (2) months or to pay a fine of not more than two hundred dollars ($200.00) or both, with costs, and may be required to remove or correct such nuisance when so ordered by the Court.
History: Subsection 2.12 enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.51.

2.13 Unlawful Assembly or Riot

If two (2) or more persons assemble for any unlawful purpose affecting the peace of the Fort Belknap Indian Community or for the purpose of committing acts of violence including destruction of property against the peace and tranquillity of the Fort Belknap Indian Community or conspire to do so shall be guilty of a Class 2 offense and upon conviction thereof shall be sentenced to confinement for a period of not more than four (4) months or to pay a fine of not more than four hundred dollars ($400.00) or both, with costs, and any such weapons shall be confiscated and disposed of in such manner as the Court may order.

History: Subsection 2.13 enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.77.

2.14 Refusal to Obey Directive of Peace Officer

Any person or persons who refuse to obey an order of a law enforcement officer, each person shall be guilty of a Class 2 offense and upon conviction thereof shall be sentenced to confinement for a period of not more than four (4) months or to pay a fine of not more than four hundred dollars ($400.00) or both, with costs, and any such weapons shall be confiscated and disposed of in such manner as the Court may order.

History: Subsection 2.14 enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.77.

2.15 Indecent Exposure

Any person who publicly exposes his genitals under circumstances in which his conduct is likely to cause affront or alarm, shall be guilty of an offense, and upon conviction thereof shall be sentenced to confinement for a period of not more than thirty (30) days or to pay a fine of not more than one hundred dollars ($100.00) or both, with costs.

History: Subsection 2.15 enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.47.

2.16 Cruelty to Animals

A. Any person who shall without justification knowingly or negligently subject an animal to mistreatment shall be deemed guilty of the offense of cruelty to animals.

B. A person convicted of Cruelty to Animals shall be guilty of a Class 2 offense and shall be fined an amount not to exceed $500.00 or imprisoned for a term not to exceed six months, or both.

History: Subsection 2.16 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.20.

2.17 Removal of Landmarks, Etc.

Any person who shall willfully remove, alter, or destroy any boundary marked, or other water or landmark erected by the Fort Belknap Indian Community or the United States Government within the jurisdiction of the Fort Belknap Indian Reservation, including the taking and/or destroying of any historical landmarks, shall be guilty of an offense and upon conviction thereof shall be sentenced to confinement for a period of not more than thirty (30) days or to pay a fine of not more than one hundred dollars ($100.00) or both, with costs, and at the Court's discretion, restore or provide restitution.

History: Subsection 2.17 enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.69.

2.18 Violation of Tribal Ordinance

Any person who violates a Tribal ordinance for the peace, safety, health, or orderly development of the Tribes on the Reservation, shall be guilty of an offense, and upon conviction thereof shall be sentenced to confinement for a period of not more than thirty (30) days or to pay a fine of not more than on hundred dollars ($100.00) or both, with costs, or in the alternative, such greater penalties as may be authorized by the ordinance, but not to exceed confinement for more than six (6) months or a fine of five hundred dollars ($500.00) or both, with costs.

History: Subsection 2.18 enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.81.

SECTION 3. Repealed sections

A. Abuse of Office 1.2
B. Adulteration of Food or Drink 1.4
C. Abandoned Iceboxes or Other Containers 1.5
D. Defacing Official Signs 1.25
F. Destruction of Evidence 1.27
G. Distribution of Alcohol, Marijuana, Drugs to Children 1/36
H. False Alarm 1.37
I. False Arrest 1.38
J. Liquor Violation 1.49
K. Operating of a Business without a Permit 1.60
L. Possession of Beer or Liquor by a Minor 1.62
M. Vagrancy 1.79

TITLE IV
PART V
OFFENSES INVOLVING JUVENILES

SECTION 1. CLASS ONE OFFENSES

1.1 Contributing to the Delinquency of a Minor

A. A person commits the crime of contributing to the delinquency of a minor when he purposely or knowingly sells or gives any minor alcohol or illegal drugs.

B. Bail. Any person arrested for Contributing to the Delinquency of a Minor shall have a minimum bond set at $200.00, no reduction with a maximum bond of $300.00 on the first offense and a maximum bond of $400.00 on the second offense. Such bond may either be in cash or a with a surety.

C. Penalty For First Offense. A person convicted of a first offense of Contributing to the Delinquency of a Minor shall be fined an amount of not less than $100.00 or more than $300.00 and a mandatory imprisonment for a term of not less than 10 days or a maximum of 30 days.

D. Penalty For Second and Subsequent Offense. A person convicted of a second offense of Contributing to the Delinquency of a Minor shall be fined an amount of not less than $200.00 or more than $400.00 and imprisoned for a term of not less than 15 days or a maximum of 40 days.

History: Subsection 1.1 (A-D) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.17.

SECTION 2. CLASS TWO OFFENSES

2.1 Curfew Violation

A. A person under the age of 18 commits the offense of curfew violation if the person knowingly, without good cause to the contrary, stays out past 10:00 p.m.. during a weekday and past 12:00 p.m. during the weekend, unless in the presence of their parent(s) or legal guardian.

B. Penalty for First Offense. For the first offense a person shall be fined an amount not less than $20.00 but not to exceed $100.00; and is ordered to perform 20 hours of community service, time payments are permitted.

C. Penalty for Second or Subsequent Offense. For the second or subsequent

offense a person shall be fined an amount not less than $50.00 but not to exceed $100.00; and is ordered to perform 40 hours of community service, time payments are permitted.

History: Subsection 2.2 (A-C) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.21.

2.2 Failure to Send Children to School

A. A person commits the offense of Failure to Send Child to School if a person, without good cause to the contrary, neglects or refuses to send any child under the age of 16, who is in his or her care, to school.

B. Penalty. Any person found to be in violation of 4.1 is subject to a fine of not more than $200.00 on the first offense, or not more than $500.00 on the second offense or sentenced to a jail term of not more than 30 days on the first offense or not more than 60 days on the second offense, or subject to a fine and a jail term.

History: Subsection 2.3 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.36.

2.3 Minor in Possession

A. A person under the age of 18 commits the offense of possession of an alcoholic beverage or tobacco if the person knowingly consumes or has in the person's possession an alcoholic beverage or tobacco.

B. Penalty for First Offense. For the first offense a person shall be fined an amount not less than $20.00 but not to exceed $100.00; and is ordered to perform 20 hours of community service, time payments are permitted.

C. Penalty for Second or Subsequent Offense. For the second or subsequent offense a person shall be fined an amount not less than $50.00 but not to exceed $100.00; and is ordered to perform 40 hours of community service, time payments are permitted.

History: Subsection 2.4 (A-C) enacted on the 3/8/99, Resolution 63-99; formerly Title V, Section I, Subsection 1.62.

TITLE IV
PART VI
DANGEROUS DRUGS

SECTION 1. DEFINITIONS

1.1 Definitions.

The following words have the meanings given below for this part, unless otherwise stated:

A. "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by a practitioner or his authorized agent or by a patient or research subject at the direction and in the presence of the practitioner.

B. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouse person, or employee of the carrier or warehouse person.

C. "Compound" means any process in which two or more chemical substances are mixed together to form a dangerous drug.

D. "Conveyance" means anything that may be used for the purpose of transporting dangerous drugs; such term includes, but is not limited to motor vehicles, air planes, boats, livestock, and any container.

E. "Dangerous Drug" means any substance which is included in the Federal Schedule of Controlled Substances, found at Title 21 U.S.C. Section 812, as amended.

F. "Deliver" or "Delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

G. "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

H. "Dispenser" means a practitioner who dispenses.

I. "Distributor" means a person who distributes.

J. "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

K. "Drug" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them, or substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals or substances (other than food) intended to affect the structure or any function of the body of man or animals or substances intended for use as a component of any of the foregoing in this Subsection.

L. "Drug Paraphernalia" includes but is not limited to the use of all equipment, products, and materials of any kind that are intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting ingesting, inhaling or otherwise introducing into the human body a dangerous drug.

M. "Imitation Dangerous Drugs" means a substance that is not a dangerous drug, but that is expressly or impliedly represented to be a dangerous drug or to stimulate the effect of a dangerous drug and the appearance of which, including the color, shape, size and markings, could lead a reasonable person to believe that the substance is a dangerous drug.

N. "Manufacture" means any act which would tend to make a dangerous drug ready for sale.

O. "Possession" means the knowing control of a dangerous drug for a sufficient period of time to be able to terminate control.

P. "Practitioner" means a physician, dentist, pharmacist, nurse, veterinarian, or other person licensed, registered or otherwise permitted to distribute, dispense or administer dangerous drugs in the course of a professional practice.

Q. "Prepare" means an act which would tend to make a dangerous drug ready for sale.

R. "Prescription" means a written direction for the preparation, distribution, and therapeutic use of a medicine.

S. "School" is given its ordinary meaning and includes, pre-school through a senior in high school.

T. "Ultimate User" means a person who lawfully possesses a dangerous drug for his/her own use, for the use of a member of his/her household, or for administration to an animal owned or controlled by him/her or by a member of his/her household.

U. "Zero Tolerance" shall mean that possession or sale of any amount, no matter how small, of any dangerous drug within the exterior boundaries of the Fort Belknap Indian Reservation is a violation of this ordinance.

History: Subsection 1.1 (A-U) enacted on the 3/8/99, Resolution 63-99; formerly Title VIII, Section I.

SECTION 2. CLASS ONE OFFENSES

2.1 Adulteration of Food and Drink

A. A person commits the offense of Adulteration of Food and Drink if he or she knowingly or purposely manufactures, sells, keeps, or offers for sale any food, drug, or drink in the making of which any harmful substance is used.

B. A person convicted of "Adulteration of Food and Drink" shall be guilty of a Class 1 offense and upon conviction thereof shall be sentenced to confinement for a period of not more than one year or to pay a fine of not more than five thousand dollars ($5,000.00) or both, with costs.

History: Subsection 2.1 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title V, section I. subsection 1.4 (See Resolution 38-95)

2.2 Criminal Possession of Dangerous Drugs

A. A person commits the offense of Criminal Possession of Dangerous Drugs if s/he possesses any amount of a dangerous drug.

B. A person convicted of criminal possession of any dangerous drugs shall be guilty of a Class 1 offense and upon the first conviction shall be imprisoned for a mandatory term of not less than thirty (30) days or more than one year or be fined an amount not to exceed $5,000.00, or both.

History: Subsection 2.2 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title VIII, section XXVI. (See Resolution 38-95)

2.3 Criminal Possession of Drug Paraphernalia

A. A person commits the offense of Possession of Drug Paraphernalia if s/he uses or possesses with intent to use drug paraphernalia to plant propagate, cultivate, grow, harvest, manufacture, compound, convert, produce process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug.

B. A person convicted of Possession of Drug Paraphernalia shall be guilty of a

Class 1 offense, imprisoned for a mandatory term of not less than three days or more than one year and fined an amount not less than $100.00 or more than $5,000.00.

History: Subsection 2.3 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.4 Criminal Possession of Toxic Substances - Penalty

A. A person commits the offense of criminal possession of a toxic substance if he inhales, ingests or possesses, with the purpose to inhale or ingest, for the purposes of altering his mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

B. The provisions of subsection (A) do not apply to a bona fide institution of higher education conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or state agency.

C. A person convicted under this section shall be guilty of a Class 2 offense and shall be imprisoned in the Tribal jail for a term not to exceed 6 months or be fined an amount not to exceed $500.00 or both.

D. The youth court has jurisdiction of any violation of subsection (A) by a person under 18 years of age.

History: Subsection 2.4 (A-D) enacted on the 3/8/99, Resolution 63-99.

2.5 Criminal Sale of Imitation Dangerous Drugs with Intent to Sell

A. A person commits the offense of Criminal Sale of Imitation Dangerous Drugs with Intent to Sell is s/he knowingly or purposely sells, barters, exchanges, gives away, or offers to sell, barter, exchange or give away any imitation dangerous drug.

B. A person convicted of Criminal Sale of Imitation Dangerous Drugs with Intent to Sell shall be guilty of Class 1 offense and shall be imprisoned for a mandatory term of not less than thirty days nor more than one year and fined an amount not less than $500.00 or more than $5,000.00.

History: Subsection 2.5 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.6 Possession of Dangerous Drugs with Intent to Sell on or Near School Property

A. A person commits the offense of Possession of Dangerous Drugs with Intent to Sell on or near school property if s/he violates subsection 2.2 in, on, or within 1000 feet of the real property of a school.

B. A person convicted of Possession of Dangerous Drugs with Intent to Sell on or near school property shall be guilty of a Class 1 offense and shall be imprisoned for a minimum term of six months but not to exceed one year or be fined a minimum amount of $1,000.00 but not to exceed $5,000.00, or both.
History: Subsection 2.6 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.7 Possession of Dangerous Drugs with Intent to Sell or Sale of Dangerous Drugs

A. A person commits the offense of Possession of Dangerous Drugs with Intent of the Sale of Dangerous Drugs if s/he possesses any dangerous drugs with the intent to sell, such dangerous drugs, no matter how small of an amount.

B. A person convicted of Possession of Dangerous Drugs with Intent to Sell or Sale of Dangerous Drugs shall be guilty of Class 1 offense and shall be imprisoned on a first offense for a minimum term of six months and not more than one year or be fined an amount not to exceed $5,000.00, or both. On a second or subsequent offense a mandatory imprisonment term of nine months or not more than one year or fined an amount not to exceed $5,000.00, or both.
History: Subsection 2.7 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title VIII, section XXV. (See Resolution 38-95)

2.8 Sale of Dangerous Drugs

A. A person commits the offense of the Sale of Dangerous Drugs if s/he sells, barter, exchanges, gives away, or offers to sell, barter, exchange or give away, or manufactures, prepares, cultivates, compounds or possesses any dangerous drug no matter how small of an amount.

B. A person convicted of the Sale of Dangerous Drugs shall be guilty of Class 1 offense and shall be imprisoned on a first offense for a minimum term of six months and not more than one year or be fined an amount not to exceed $5,000.00, or both. On a second or subsequent offense a mandatory imprisonment term of nine months or not more than one year or fined an amount not to exceed $5,000.00, or both.
History: Subsection 2.8 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Title VIII, section XXV. (See Resolution 38-95)

SECTION 3. ADMINISTRATION OF THIS PART

3.1 Additional or Alternate Sentencing

If the Court determines the sentence above for a Class 1 offense is not enough or an alternative sentence is necessary the Court may either add or in lieu of imprisonment sentence the defendant to residential drug treatment for not

less than the minimum recommended time determined necessary by the appropriate chemical dependency center. However, this option, as an alternative, is not available on the second or subsequent conviction of an offense. It may be added as an additional requirement.
History: Subsection 3.1 enacted on the 3/8/99, Resolution 63-99.

3.2 Seizure and Forfeiture Related to Dangerous Drugs.

A. The following property is subject to forfeiture by the Fort Belknap Tribal Court:
1) All dangerous drugs seized pursuant to this Part:
2) All money, raw materials, products, and equipment of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any dangerous drug in violation of this Part.
3) All property used or intended for use as a container for anything listed in (a) or (b) above.
4) All conveyances which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything listed in (a) or (b) above.
5) All conveyances in which a dangerous drug is unlawfully kept, deposited, or concealed.
6) All books, records, and research products and materials, including formulas, microfilm, tapes, and date, that are used or intended for use in violation of this Part.
7) All equipment, products and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug.
8) Everything of value furnished or intended to be furnished in exchange for a dangerous drug in violation of this Part; all proceeds traceable to such an exchange; and all money, negotiable instruments; and securities used or intended to be used to facilitate any violation of this Part.

B. Exceptions to Forfeiture:
1) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this subsection unless it appears that the owner or other person in charge of the conveyance is a consenting party to or knowledgeable of a violation of this Part.
2) No conveyance is subject to forfeiture under this subsection because of any act or omission established by the owner of the conveyance to have been committed or omitted without his/her knowledge or consent.
3) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he/she neither had knowledge of nor consent to any violation of this Part.

C. When Property May be Seized:
1) When a law enforcement officer has probable cause to make an arrest for a violation of this Part or probable cause to believe that a conveyance has been used or is intended to be used to unlawfully keep, deposit, or transport a dangerous drug.
2) All property subject to forfeiture under this Part, may be seized by a law enforcement officer under a search warrant issued by the Fort Belknap Tribal court. Seizure without a warrant may be made if:
a. the seizure is made incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;
b. the property subject to seizure has been the subject of a prior judgment in favor of the Fort Belknap Community Council in a criminal proceeding or a forfeiture proceeding based on this Part;
c. the law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety;
d. the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this criminal provisions of this Part;
e. the law enforcement officer has probable cause to believe that the property will be removed from the Fort Belknap Indian Reservation if not seized at that time;
f. that the property was used or is intended to be used.

D. Procedure for Forfeiture of Property
1) Petition to begin forfeiture proceedings shall be filed within forty-five days of the seizure of the property. Further procedures in the forfeiture of property shall be conducted pursuant to the Rules of Civil Procedure.
2) Disposition of proceeds of sales and or fines whenever property is seized, forfeited and sold under the provisions of this Part, the net proceeds of the sale must be remitted to the Treasurer of the Fort Belknap Community Council to be divided as follows:
a. one-half to the Tribal Court
b. one-half to be used for an anti-drug enforcement team.

History: Section 3.2 (A-D) enacted on the 3/8/99, Resolution 63-99.

SECTION 4. REPEALED SECTIONS

Reserved.

TITLE V
FAMILY COURT ACT
TABLE OF CONTENTS

TITLE V

FAMILY COURT ACT

PART 1

SECTION 1. PURPOSE

A. The young people of the Gros Ventre and Assiniboine Tribes are the Tribes' most important resources and their welfare is of paramount importance to the Tribes.

B. The Family Court Act is designed to preserve the unity and welfare of the family, the integrity of the family and safeguard family relationships whenever possible and to secure the rights of children, parents, guardians, and custodians, or other parties who come before the Family Court under the provisions of this Act.

C. To provide a judicial system that ensures fairness and equality for all and a judicial system that recognizes and acknowledges the Tribes unique customs and traditions.

D. The Fort Belknap Tribes need a recognized children's court system to insure and safeguard the rights of children pursuant to applicable Tribal and federal law; to improve any conditions or home environment which may be contributing to a youth's delinquency, and at the same time to protect the peace and security of the community; to preserve and strengthen the youth's cultural and Tribal identity; and to preserve and strengthen the family ties.

History: Section 1 enacted on the 3/8/99, Resolution 63-99; Subsection A was formerly a part of the Children's Code, Title XII, Section 1.

SECTION 2. JURISDICTION

2.1 Subject Matter Jurisdiction.

In all matters arising under this Act, the Family Court has exclusive, original jurisdiction over all proceedings which includes, but is not limited to, the following: a youth who is alleged to be a delinquent, youth/child in need of supervision and care, marriage, dissolution of marriage, child support, custody and visitation, paternity, emancipation, guardianships, conservatorships, name change, Indian Child Welfare Act proceedings, termination of parental rights, peacemaking, family protection, protection of elderly, and adoption. The Family Court shall have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement, and other powers as appropriate.

History: Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99.

2.2 Personal Jurisdiction.

The Courts shall have the authority to exercise civil jurisdiction over all persons concerning all of the above-mentioned subjects except for criminal jurisdiction over non-Indian youth offenders. Child placement of Indian children shall be on the Reservation.

History: Section 2, Subsection 2.2 enacted on the 3/8/99, Resolution 63-99.

2.3. Transfer to Adult Court.

A. After a petition has been filed alleging a criminal act has been committed, the court may, upon motion of the Presenting Officer, before hearing the petition on its merits, transfer the matter of prosecution to the Adult court if:
1) The individual charged is 16 years of age or more at the time of the conduct alleged to be unlawful and the act would be considered a Class 1 offense under the criminal offense section if the act had been committed by an adult.

B. Notice of Hearing. Notice of hearing shall be in writing of the time, place, and purpose of the hearing, given to the youth, and parents, guardian or custodian, and his/her counsel at least ten (10) days before the hearing.

History: Section 2, Subsection 2.3 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section IV, Subsection 4.3 (A-B) of the Childrens Code, Title XII.

2.4 Reasons for Transfer.

A. The court finds upon hearing all relevant evidence probable cause to believe the individual committed the act alleged, the alleged offense was violent or premeditated; and
1) the sophistication and maturity of the youth, home environment, emotional attitude, and behavior patterns; and
2) the criminal record and history with the court, law enforcement or commitments to any institution. Lack of prior history with the courts will not of itself be grounds for denying the transfer.

B. Written Findings of Reason for Transfer. Upon transfer to adult court, the judge shall make written findings of the reasons why the jurisdiction of the Family Court was waived.

History: Section 2, Subsection 2.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section IV, Subsection 4.3 (D) &(F) of the Childrens Code, Title XII.

2.5 Effect of Transfer.

The transfer terminates the jurisdiction of the Family Court over the individual with respect to the acts alleged in the petition. An individual may not be prosecuted in Adult Tribal Court unless the case has been transferred

as provided in this section.
History: Section 2, Subsection 2.5 enacted on the 3/8/99, Resolution 63-99.

2.6 Detention of Youth or Shelter Care.

A youth whose case is transferred to Tribal or Federal Court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the case unless:
1) alternative facilities do not provide adequate security and;

2) the youth is kept in an area that provides physical, as well as sight and sound separation from adults accused or convicted of criminal offenses; or
3) The youth alleged to be a youth offender may be detained, pending a court, hearing in one of the following: a foster case facility; a detention home approved by the tribes, a private family home approved by the tribes.
History: Section 2, Subsection 2.6 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.6(A) &(B) of the Childrens Code, Title XII.

SECTION 3. FULL FAITH AND CREDIT.

3.1 Foreign Court Orders.

Court orders of other Tribal and State courts involving children over whom the Family Court could take jurisdiction may be recognized by the Family court after the court has determined:

A. that the other courts exercised proper subject matter and personal jurisdiction over the parties;

B. due process was accorded to all interested parties participating in the other court proceedings;

C. the provisions of the Indian Child Welfare Act, 25 U.S. C. 1901-1963, were properly followed, if applicable;

D. the other court proceeding does not violate the public policies, tribal customs, or common law of the tribes; and

E. the order or judgment was not fraudulently obtained.
History: Section 3, Subsection 3.1 (A-E) enacted on the 3/8/99, Resolution 63-99.

SECTION 4. OFFICERS OF THE COURT

4.1 Family Court Judge.

The Court shall have at least one judge of the Family court. Such Judge shall

be appointed by the Fort Belknap Community Council.

A. Qualifications: A Family Court judge shall be at least 30 years of age, adequately understand the justice system processes such as the rules of civil procedure, criminal procedure, rules of evidence, the Indian Child Welfare Act of 1978, the human services role and underlying child development and parental bonding, and child protection and permanency planning principles.

B. Duties: Duties shall be to conduct hearings under this Act, and ensure that all hearings and other court appearances required under Parts Two and Three are given priority by the court and must be scheduled and tried as expeditiously as possible.

History: Section 4, Subsection 4.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

4.2 Presenting Officer.

The Fort Belknap Community Council shall appoint as necessary tribal prosecutors to act as presenting officers to carry out the duties and responsibilities set forth in this code.

A. Qualifications. A presenting officer shall thoroughly understand how to prosecute present a charge. Also he/she must be a person of reputable character who has had experience in work of a nature related to the duties of prosecuting presenting officer.

B. Duties. To carry out the duties and powers specifically enumerated under this code. To draft and review all petitions for legal sufficiency and shall appear at all child protective and juvenile proceedings. The presenting officer is a part of the prosecutors office and prosecutes and represents the Tribes in Youth Offender proceedings, child-in-need-of-care proceedings, adoptions, and guardianship and conservatorship proceedings and any other duties assigned by the Tribal prosecutor. Guardianship, conservatorships and adoptions may also be conducted by an attorney or an advocate. The presenting officer may also be used to prosecute adult prosecutions as assigned by the tribal prosecutor.

History: Section 4,Subsection 4.2 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section III, Subsection 3.5(A. --(B) of the Childrens Code, Title XII.

4.3 Guardian Ad Litem/Children's Court Counselor.

In every judicial proceeding, if allowed for in the tribal budget, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem/children's court counselor (hereinafter "guardian") The guardian shall meet the following Qualifications and perform the following general duties:

A. Qualifications. A person of reputable character who has experience in work of a nature related to the duties of a guardian ad litem/children's court counselor.

B. Duties.
1) conduct an investigation necessary to ascertain the facts constituting the alleged abuse or neglect;
2) interview or observe the child who is the subject of the proceeding;
3) have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings, parents or custodians;
4) to make written reports to the court concerning the child's welfare;
5) appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare;
6) perform other duties as directed by the court.

History: Section 4, Subsection 4.3 enacted on the 3/8/99, Resolution 63-99; formerly Section III, Subsections 3.4 & 3.6 of the Childrens Code, Title XII.

4.4 Child Protection Worker.

In every judicial proceeding, if allowed for in the tribal budget or the social service budget, the Tribal Council shall appoint Child Protection Worker(s), or they shall be employed by the Federal Government or a state, who will receive reports of neglected, abused or abandoned family members, received from any reliable source.

A. Qualifications. A degree in social work or a related field or a person of reputable character who has experience working as a social worker.

B. Duties.
1) Upon receipt of any report or information, shall immediately within 24 hours initiate a prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of the other children in the home.
2) In conducting an investigation, the child protection worker shall seek the assistance of law enforcement officials, without delay, after becoming aware that one or more of the following conditions exist:
a) abuse or neglect resulting in severe physical injury to the child which requires medical treatment or hospitalization;
b) law enforcement intervention is necessary for the protection of the child, the child protection worker, or another person involved in the investigation.
3) Under no circumstances shall the Child Protection Worker be required to perform the duties of the tribal prosecutor or law enforcement officer;
4) Supervise and assist a child placed outside the home;

5) If a report alleging a pregnant woman's abuse of alcohol or a controlled substance is received, protective services shall arrange an appropriate assessment and offer services which may include, but are not limited to, a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, and a referral for prenatal care. Child protection workers may also seek court ordered services if the pregnant woman refuses recommended voluntary services or fails recommended treatment. A referral shall also be made to the tribal prosecutor who may prosecute under tribal law any pregnant woman who abuses alcohol or drugs.
6) Law enforcement officials shall cooperate with the child protection workers and the tribal and state welfare and foster placement agencies in conducting child protection service investigations pursuant to this section.
7) Perform other duties as directed by the court.

History: Section 4, Subsection 4.4 (A-B) enacted on the 3/8/99, Resolution 63-99.

4.5 Juvenile Probation Officer.

The Fort Belknap Community Council shall appoint a juvenile probation, if provided for in the budget, an officer to carry out the responsibility of monitoring and advising the court of the status of juveniles placed on probation.

A. Qualifications. Juvenile probation officer must have experience working in the area of criminal law or experience in a related field or the Tribal Council may appoint or hire any person who has had experience in work of a nature related to the duties of a juvenile probation presenting officer.

B. Duties.
1) Before a petition is filed, the probation office may enter into an informal adjustment and give counsel and advice to the youth and other interested parties.
2) Make predisposition studies and submit reports and recommendations to the tribal prosecutor.
3) Supervise, assist, and counsel youth placed on probation or under his supervision.
4) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his/her probation or a lawful order of the court.
5) The probation officer's written report shall describe all reasonable and appropriate alternative dispositions. The report shall contain: a detailed summary of the youth's vital statistics, the youth's family and youth's environment, and other matters relevant to the need for care or rehabilitation. If the youth has been examined by a doctor the result of such examination shall be included in the report.

History:Section 4, Subsection 4.5 (A-B) enacted on the 3/8/99, Resolution 63-99.

4.6 Child Advocate For Parents

In every judicial proceedings an Advocate for the family shall be appointed to represent and guide the parents in criminal, juvenile, and youth-in-need of care proceedings.

A. Qualifications. The Advocate for the family shall have a thorough and extensive understanding of the legal process in both the criminal and civil context where the rights of the parents are at issue.

B. Duties.
1) Child custody proceedings between two fit parents shall not be part of the Advocate duties.
2) Shall be responsible for receiving appointments to represent a parent when a child has been removed because the government alleges the child is a child-in-need of care or where the parents have been charged with a crime, as well as such related proceedings the court deems appropriate.
3) Shall be responsible for serving as the parent's advocate through the trial court system, and through appeal, as necessary or appropriate.
4) Shall be responsible for investigating defenses/responses for all cases appointed to.
5) Shall be responsible for providing monthly and quarterly reports to the court administrator.
6) Appearance shall be made in a fact finding hearing.

History: Section 4, Subsection 4.6 (A-B) enacted on the 3/8/99, Resolution 63-99.

PART II
CHILD IN NEED OF CARE

SECTION 1. GENERAL PROVISIONS

1.1 Definitions.

A. "Abandon": When a parent, guardian, custodian, or other person responsible for the welfare of a child:
1) leaves the child without communication; or
2) fails to support the child and there is no indication of that person's willingness to assume a parental role for a period in excess of six (6) months.

B. "Abused or Neglected": Harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare:
1) the person responsible for the child's welfare inflicts or allows to be inflicted upon the child physical or mental injury;
2) commits or allows to be committed sexual abuse or exploitation of the child;
3) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child.
4) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education or adequate health care, though financially able to so or offered financial or other reasonable means to do so;
5) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or willfully surrenders physical custody for a period of one (1) year and during that period does not manifest to the child and the person having physical custody a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or
6) is unknown and has been unknown for a period of 180 days and reasonable efforts to locate the parents have failed.

C. "Adult": A persontwenty-one (21) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

D. "Child": A person who is less than eighteen (18) years old an has not been emancipated by order of a court of competent jurisdiction.

E. "Failure to Thrive": A medical condition seen in young children where the child fails to gain weight.

F. "Child in Need of Care": A child:
1) who has no parent(s), guardian, or custodian available and willing to care for him/her; or
2) who has suffered or is likely to suffer a physical injury inflicted upon him/her by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily function;
3) who has been neglected or abused by a parent, legal guardian, or person who has custodial care of the child.

G. "Child Protection Worker": A child protective services worker or a social services worker.

H. "Custodian": A person, other than a parent or guardian, to whom legal custody of the child has been given.

I. "Domicile": A person's permanent home, legal home or main residence. The domicile of a child is that of the legal custodial parent, guardian, or custodian.

J. "Guardian Ad Litem": A person appointed by the court to represent the best interests of a child who is before the court.

K. "Indian": Any enrolled member of the Gros Ventre or Assiniboine Tribe or federally recognized Indian tribe, band or community, Alaska Native and descendant or a person considered by the community to be Indian, by traditions, customs and culture of the Gros Ventre or Assiniboine Tribes.

L. "Parent": Means a biological or adoptive or stepparent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

M. "Legal Age": Means legal age of alcohol consumption is 21 years of age and the legal age of Tobacco use is 18 years of age.

N. Mandatory legal age includes being a high school graduate.

History: Section 2.1 (A-L) enacted on the 3/8/99, Resolution 63-99; formerly Section II, Subsections 2.1, 2.2, 2.5, 2.12, 2.18, 2.30, of the Childrens Code, Title XII.

SECTION 2. REPORTING CHILD ABUSE

2.1 Persons Who are Legally Obligated to Report

A. The following professionals or officials who know or have reasonable cause to suspect as a result of information they receive in their professional or official capacity, that a child is abused or neglected shall report the matter

promptly to the tribal prosecutor/presenting officer, social worker, or law enforcement officer:
1) physician, resident, intern, dentist, nurse, optometrist, community health representative, any official or employee who is employed by the Indian Health Service or the Tribal Health Department.
2) school teachers, school officials and employees who work for the school during regular hours;
3) social worker, operator or employee of any registered or licensed day-care facility;
4) foster care or residential worker;
5) law enforcement officer or official;
6) clergy;
7) any member of the local Indian Child welfare committee/child protection team;
8) all tribal court staff.

B. Other Persons May Report. Any person may report suspected abuse. Those reporting, except those specified above, may remain anonymous.
History: Section 2, Subsection 2.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.2 Immunity From Liability

Anyone investigating or reporting any incident of child abuse or neglect, participating in resulting judicial proceedings, or furnishing hospital or medical records as required is immune from any liability, civil or criminal or termination of employment, that might otherwise be incurred or imposed unless the person acted in bad faith or with malicious purpose. Upon receipt of a report that a child is or has been abused or neglected, a social worker, child protection worker, tribal prosecutor, law enforcement officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation an investigator may not inquire into the financial status of the child's family or any other person responsible for the child's care, except as necessary to ascertain eligibility for assistance programs or to determine whether a person requesting the court to award custody is financially able to care for the child.
History: Section 2, Subsection 2.2 enacted on the 3/8/99, Resolution 63-99.

2.3 Reports and Records of Child Abuse

A. Unsubstantiated Report. If from the investigation it appears that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department shall destroy all records concerning the report and the investigation.

B. Confidentiality of Records. The case records of social services, child protection workers, tribal attorney and law enforcement officers, and court actions taken concerning child abuse and neglect must be kept confidential except for the following:
1) disclosure of records for an incamera inspection if relevant to the court action;
2) disclosure to a government agency or entity that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect;
3) disclosure to a licensed youth care facility;
4) disclosure to a health or mental professional who is treating the family or child;
5) disclosure to a parent, guardian or person designated who is the subject of a report in the records, without disclosure of the identity of any person who reported or provided information on the alleged abuse;
6) disclosure to a child's legal representative, guardian ad litem, attorney or special advocate;
7) a person who is authorized to receive records shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described. However, this section is not intended to affect the criminal court records concerning adults.

C. Penalty for Failure to Report. Any person who is required under this act or by federal or state law to report known or suspected child abuse or neglect who fails to do so or purposely or knowingly prevents another person from doing so is guilty of a class 2 Offense (See Title IV)

D. Abuse and Neglect Reports. Those persons mandated to report shall include the following information in a written report:
1) names and addressees of child and person(s) responsible for the child;
2) tribal affiliation;
3) to the extent known nature and extent of the child's injuries, including any previous injuries;
4) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect; and
5) the name and address of the person or agency making the report.

History: Section 2, Subsection 2.3 (A-D) enacted on the 3/8/99, Resolution 63-99.

2.4 Civil Penalty for Obtaining or Releasing Information Confidential Information

A. Any person who knowingly and willfully requests or obtains any information concerning child abuse or neglect pursuant to the authority under this part under false pretenses, or any person who knowingly or willfully discloses any such information in any matter to any individual not entitled under any law to receive it.

B . A Person found guilty of a Obtaining or Releasing Information Confidential Information shall be fined an amount not to exceed $5,000.00.
History: Section 2, Subsection 2.4 (A-B) enacted on the 3/8/99, Resolution 63-99.

SECTION 3 COURT PROCEEDINGS & EMERGENCY PROTECTION ORDER

3.1. Summary of Court Proceedings.

A. The social service department or local law enforcement agency receiving a report under Section 2 required to protect a child, shall inform, within seventy-two hours, the Family Court that the child appears to be within the court's jurisdiction. Upon receipt of such information, the court shall require an immediate investigation to determine, upon petition by the presenting officer, whether protection of the child from further abuse is required and, upon such determination, may authorize the filing of a petition.

B. In any proceeding initiated pursuant to this section, the presenting officer shall name as respondents all persons alleged by the petition to have caused or permitted the abuse or neglect alleged in the petition. In every such case, the responsible person shall be named as respondent. Summonses shall be issued for all named respondents.
History: Section 3, Subsection 3.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

3.2 Emergency Protection Orders

A. The Family Court shall have the authority to issue an emergency protection order to prevent an unlawful offense, when requested by the law enforcement agency the social services department, or responsible persons, in a verified ex parte petition for emergency protection supported by affidavit, that there are reasonable grounds to believe that a child is in danger in the reasonably foreseeable future, based upon an allegation of a recent actual unlawful offense or threat of the same. Any emergency protection order issued pursuant to this section shall be on a standardized form prescribed by the judicial department and a copy shall be provided to the protected person.

B. A copy of any order issued pursuant to subsection A of this subsection shall be delivered to any law enforcement agency having jurisdiction to enforce such order and to the protected party or his parent or an individual acting in the place of a parent who is not the respondent.

C. If any law enforcement personnel having jurisdiction to enforce the order issued pursuant to subsection A of this subsection has cause to believe that a violation of the order has occurred, it shall enforce the order.

D. The Family Court judge shall be responsible for making available a judge to issue by telephone emergency protection orders at all times when the

Family Court is closed for judicial business.

E. When the Family Court is closed for judicial business and a peace officer or a social service department asserts reasonable grounds to believe a child is in danger in the reasonably foreseeable future of being the victim of an unlawful offense, based upon an allegation of a recent unlawful offense or threat of the same, a judge made available pursuant to subsection D, may issue a written ex parte emergency protection order. If the situation warrants, the Family Court may remove a child immediately and then file a Order of Protection the next day. Any written emergency protection order issued pursuant to this subsection shall be on a standardized form prescribed by the judicial department and a copy shall be provided to the protected person.

F. An emergency protection order may include:
1) Restraining an individual from threatening , molesting, or injuring a child; or
2) Excluding an individual from the family home upon a showing that physical or emotional harm would otherwise result; or
3) Enjoining an individual from contacting a child at school, at work or wherever he may be found.

G. Any emergency protection order shall expire not later than on the fifth day of the close of judicial business unless otherwise continued by the court based on good cause. The Court shall determine with respect to any continuing the order, whether temporary custody of the child is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition. The Court upon finding that there is not substantial evidence to continue the order shall return the child to the child's parent or custodian pending the dependency hearing. The removal of the child is only temporary and done only in extraordinary circumstances.
History: Section 3, Subsection 3.2 (A- G) enacted on the 3/8/99, Resolution 63-99.

3.3 Taking Children into Custody

A. A child may be taken into temporary protective custody without a court order only by a law enforcement official or the Tribes' or Federal government Indian child welfare/foster placement agency or the state office of child protection service when:
1) failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm; or
2) the parent, guardian or custodian is absent and it appears from the circumstances that the child is unable to provide for his own basic necessities of life, and no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.

B. If grounds for removal are corrected, the presenting officer shall make a written motion to dismiss the case, and the child may be returned to the parent by the person originally authorizing removal or the child protection worker.

C. The taking of a child into temporary custody under this section shall not be deeded an arrest, nor shall it constitutes a criminal offense.

D. A child who must be taken from his home but who does not require physical restriction may be given temporary care with the grandparent of the child, upon the grandparent's request, if in the best interest of the child, in a shelter facility designated by the court or with the department of social services and shall not be placed in detention.

E . When a child is placed in a shelter facility or a temporary holding facility not operated by the department of social services, the law enforcement officer taking the child into custody shall promptly so notify the court. He shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be found the person with whom the child has been residing and inform him of the right to a prompt hearing to determine whether the child is to be detained further.

History: Section 3, Subsection 3.3 (A-E) enacted on the 3/8/99, Resolution 63-99.

SECTION 4. TEMPORARY CUSTODY HEARING - TIME LIMITS

A. When a child is taken into custody a hearing must be held within seventy-two hours, excluding Saturdays, Sundays, and court holidays. Such a hearing need not be held if a hearing has previously been held pursuant to this section.

B. At the hearing, information may be supplied to the court in the form of written or oral reports, affidavits, testimony, or otherwise relevant information that the court may wish to receive. The court may consider and give preference to giving temporary custody to the child's grandparent who is appropriate, capable, willing , and available for care if in the best interests of the child and if the court finds that there is no suitable natural or adoptive parent. The court may place or continue custody with the department of social services if the court is satisfied from the information presented at the hearing that such custody is appropriate and in the child's best interest. The court shall make a finding that reasonable efforts have been made to prevent unnecessary out-of-home placement if the evidence supports such a finding. In the alternative, if the evidence supports such a finding, the court shall make a finding that the child is seriously endangered and an emergency situation exists which makes it reasonable to remove the child.

C. If the Court determines the child is abused or neglected the court shall set a

date for Formal hearing to be conducted within thirty days, unless the child is placed with a parent, guardian or custodian the court has forty-five days; and order any necessary or required investigations.

D. At the hearing the court shall inform the parents, guardian or other legal custodian that they have the right to be represented by counsel, at their own expense, at every stage of the proceedings.

History: Section 4 (A-D) enacted on the 3/8/99, Resolution 63-99.

SECTION 5. PETITION - FOR CHILD-IN-NEED-OF-CARE

5.1 Who Files Petition.

A. The presenting officer shall be responsible for filing all petitions alleging abuse or neglect, including ex parte petitions. The presenting officer may require all social service and law enforcement agencies to conduct the necessary investigations and furnish reports that may be necessary.

B. A petition alleging abuse or neglect is a civil action brought in the name of the Gros Ventre and Assiniboine Tribes. Proceedings under a petition are not a bar to criminal prosecution.

History: Section 5, Subsection 5.1(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section VI., Subsections 6.1, of the Childrens Code, Title XII.

5.2 Petition Contents.

A. A petition alleging abuse or neglect shall be entitled "In the Matter of....., a Child." The petition must state with specificity:

1) the name, birth date, sex, residence and tribal affiliation of the child;
2) the basis for the court's jurisdiction;
3) the specific allegations which cause the child to be a child-in-need-of-care;
4) a plain and concise statement of the facts upon which the allegations of the child-in-need-of-care are based, including the date, time, and location at which the alleged facts occurred;
5) the names, relationship and residences of all known members of the child's extended family and all former care givers, if known; and
6) if the child is placed outside the home, where the child is placed, the facts necessitating the placement, and the date and time of the placement.

B. All petitions filed alleging abuse or neglect shall include the following statement:

"Termination of the parent-child legal relationship is a possible remedy available if this petition alleging that a child is dependent or neglected is sustained. A separate hearing must be held before such termination is ordered. Termination of the parent-child legal relationship means that the

child who is the subject to this petition would be eligible for adoption."
History: Section 5, Subsection 5.2(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section VI., Subsections 6.1, of the Childrens Code, Title XII.

5.3 Investigation and Orders for Examination.

Whenever it appears to a law enforcement officer or other person that a child may be abused or neglected the law enforcement officer or department of social services must conduct an investigation to determine whether further action be taken.
History: Section 5, Subsection 5.3 enacted on the 3/8/99, Resolution 63-99; formerly Section VI, Subsection 6.7 of the Childrens Code, Title XII.

5.4 Orders for Examination

A. The court may order further investigation and discovery including; but not limited to the following:
1) taking of photographs, gathering physical evidence;
2) examinations or evaluations of the child, parent, guardian or custodian by a physician, dentist, psychologist, or psychiatrist or any other person the court deems qualified to examine or evaluate the above-mentioned individuals.

B. On the basis of the Preliminary investigation the court may decide that no further action is required or authorize a petition to be filed.
History: Section 5, Subsection 5.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section VI, Subsection 6.7 of the Childrens Code, Title XII.

SECTION 6. SUMMONS - SERVICE

A. After a petition has been filed, the court shall promptly issue a summons, prepared by the presenting officer. The summons shall require the person or persons named in it to appear before the court at a time and place stated.

B. The summons shall be served personally. Service and proof of such shall be effected at least five days prior to the time set for a hearing concerning the child.

C. Attached to the Summons shall be a copy of the petition.
History: Section 6 (A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section VI., Subsections 6.7 & 6.12 (D), of the Childrens Code, Title XII.

SECTION 7. FORMAL HEARING

Formal Hearing

A. The court shall conduct a formal hearing to determine if the child is a child in need of care and, if so, measures to be taken by the court.

B. Evidence. The formal rules of evidence apply at these proceedings. All relevant and material evidence which is reliable and trustworthy may be admitted at the trial hearing and may be relied upon by the court to the extent of its probative value.

C. Burden of Proof. The presenting officer has the burden of proof and if the allegations of the petition are sustained by a standard of clear and convincing evidence, the court shall find the child to be a child in need of care.

D. Exclusion of Public. The general public shall be excluded from the proceedings.

E. Disposition. If the Court finds the child is a child in need of care the court may enter its judgment, making any of the following dispositions:
1) order further care and treatment as the court considers in the best interest of the child, that does not require an expenditure of money by the social services agencies unless they are notified, and a court hearing is set in a timely manner on the proposed expenditure;
2) permit the youth to remain in the home of the person(s) responsible for the youth subject to prescribed limitations or conditions; or
3) transfer temporary legal custody to an agency that is willing and able to assume responsibility, a relative or other individual who, after study by the department or a licensed child placing agency is found by the court to be qualified to receive and care for the youth.
4) priority placement of said youth in need of care shall be with an Indian family on the Fort Belknap Reservation.

History: Section 7 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Section VI., Subsections 6.15-6.16, of the Childrens Code, Title XII.

SECTION 8 REVIEW HEARING

A. The formal order is to be reviewed every nine (9) months. The court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child in need of care. The court may modify any part of the formal order.

B. Disposition. At this hearing the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the formal order, modify the formal order, or enter a new formal order.

C. Notice. The court shall ensure that notice of a review hearing is given to the appropriate persons in accordance with this code and by scheduling a hearing on the record at the previous hearing.

History: Section 8 (A-C) enacted on the 3/8/99, Resolution 63-99.

SECTION 9. PERMANENCY PLANNING AND TERMINATION OF PARENTAL RIGHTS

9.1 Permanency Planning Hearing/Concurrent/Reunification

When a child-in-need-of-care remains in foster care for an extended time and, without parental rights to the child having been terminated, the court shall conduct a permanency planning hearing. At the hearing the court may determine that the child is to return home, that the child is to continue in foster care for a limited specified time or on a long-term basis, or that the agency failed to demonstrate that the termination of parental rights to the child is clearly in the best interest of the child. The child protection team shall be involved during this process.

History:Section 9, Subsection 9.1 enacted on the 3/8/99, Resolution 63-99.

9.2 Time.

The court must conduct the permanency planning hearing no later than 365 days after entry of the original formal order. The Court may combine the permanency planning hearing with a review hearing.

History: Section 9, Subsection 9.2 enacted on the 3/8/99, Resolution 63-99.

9.3 Permanency/Concurrent Planning

A. If the court determines at a permanency planning hearing that the child should not be returned to his or her parent, the tribal, state, or federal Indian child welfare/foster placement agency shall propose one of the following alternative permanent placement plans:

1) the child be placed permanently with a relative within the primary service area of the Gros Ventre and Assiniboine Tribes; or

2) the child be placed permanently with a relative who is outside the primary service area of the Gros Ventre or Assiniboine tribes; or

3) the child remain in long-term Indian foster or Indian residential care.

B. Application to Presenting Officer. A petition to terminate parental rights under this code may be submitted by the placement agency to the presenting officer for application.

C. Evidence: At the permanency planning hearing all relevant material evidence, including oral and written reports, may be received by the court and relied upon to the extent of its probative value.

History: Section 9, Subsection 9.3 (A-C) enacted on the 3/8/99, Resolution 63-99.

9.4 Grounds for Involuntary Termination.

A. The court may terminate the parental rights of a parent to a child

adjudicated a child-in-need-of-care if there are foster parents, guardians, or adoptive parents available, and the court finds from clear and convincing evidence one or more of the following:
1) the child has been abandoned under one or more of the following circumstances:
(i) The parent of a child is unidentifiable and has deserted the child for one (1) year and has not sought custody of the child during that period. For purposes of this section, a parent is unidentifiable if the parent's identity cannot be ascertained after reasonable efforts have been made to locate and identify the parent;
(ii) The parent of the child has abandoned the child without provision for his support or without communication for a period of at least one hundred and eighty days. The failure to provide support or to communicate for a period of at least one hundred days shall be presumptive evidence of the parent's intent to abandon the child; or
2) The child or a sibling of the child has suffered physical injury, or physical or sexual abuse under one or more of the following circumstance:
(i) a parent's act caused the physical injury or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home; or
(ii) a parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home; or
3) The parent was named in a proceeding brought under the child in need of care section of this code and twelve (12) or more months have elapsed since the issuance of a initial formal order, and the court finds either of the following.

Other conditions exist that cause the child to be a child in need of care, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.
4) A parent is unable to provide proper care and custody for a period in excess of one year because of a mental deficiency or mental illness, without a reasonable expectation that the parent will be able to assume care and custody of the child within a reasonable length of time considering the age of the child.
5) The parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent or have future custody of the child or if the parent is imprisoned for over two years and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time.

6) Parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect, or physical or sexual abuse, and prior attempts to rehabilitate the parent have been unsuccessful.

B. Termination of Parental Rights Order. An order terminating parental rights under this code may be entered after the presenting officer or interested party files a petition and a hearing has been held. The court must make findings of fact, conclusions of law and the give the statutory basis for the order.

History: Section 9, Subsection 9.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section VII, Subsection 7.1 - 7.7 of the Childrens Code, Title XII.

9.5 Voluntary Relinquishment of Parental Rights.

Parental rights may be voluntarily terminated by a parent in writing, if signed by the parent in the presence and with approval of the court. Relinquishment shall not be accepted or acknowledged by the court prior to ten (10) days after birth of a child. The court shall ensure that the parent understands the consequences of the voluntary termination prior to granting approval.

History: Section 9, Subsection 9.5 enacted on the 3/8/99, Resolution 63-99;

9.6 Effect of Termination on Child's Continued Right to Benefits.

An order terminating the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, state or the United States, nor shall any action under this code be deemed to affect any rights and benefits that the child derives from the child's descent from a member of a federally recognized tribe.

History: Section 9, Subsection 9.6 enacted on the 3/8/99, Resolution 63-99.

PART III.
YOUTH OFFENDER

SECTION 1. GENERAL

1.1 Definitions.

A. "Detention": Holding or temporary placement of a youth in a facility other that the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody.

B. "Detention Facility": Means a physically restricting facility designed to prevent a youth from departing at will.

C. "Parent": Means the natural or adoptive parents but does not include a person whose parental rights have been judicially terminated.

D. "Probable cause": Upon examination of initial complaint or affidavits that would lead a reasonable person to believe that an act had or was being committed.

E. "Youth": A person who is less than 18 years of age.

History: Section 1, Subsection 1.1 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Section II, Subsection 7.1 - 7.7 of the Childrens Code, Title XII.

SECTION 2. ARRESTS AND DETAINMENT OF YOUTH OFFENDER

2.1 Arrest with a Warrant.

A warrant may be entered directing that a juvenile be taken into custody if the court finds there is probable cause to believe the juvenile committed the delinquent act alleged in the complaint and the court finds one or more of the following:

1) he/she has allegedly committed an act that if committed by an adult would be a criminal offense;
2) he/she has violated a valid court order or an aftercare agreement;
3) his/her detention is required to protect persons or property;
4) there are no adequate assurances that he/she will appear for court when required.
5) the law enforcement officer has probable cause to believe that the person had committed an offense.

History: Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.2 of the Childrens Code, Title XII.

2.2 Arrest without a Warrant.

A police officer may arrest a juvenile when no warrant has been issued upon the following:
1) the offense was committed in the presence of a law officer.
History: Section 2, Subsection 2.2 enacted on the 3/8/99, Resolution 63-99.

2.3 Rights of Offender.

A. When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth has committed a crime the youth shall be advised of the following rights that apply to him:
1) right to remain silent and anything he says may be used against him in a court of law.
2) right to counsel at his own expense;
3) right to be informed of the charges against him;.

B. When Questioning of Youth Allowed. If the youth is under 18 years of age the youth may only be questioned when his parents are present.

C. Detaining of Youth Requires a Hearing Immediately. If the youth is not released a hearing must be held within 48 hours, excluding weekends and holidays, to determine if there is probable cause.

D. Notice. The person responsible for or assigned to give notice shall make diligent efforts to immediately notify the parents, guardians, or legal custodian that the youth has been taken into custody.

E. Detainment of Youth Permitted. At the probable cause hearing the court may continue to detain the youth or the youth may be released to the custody of his parents, guardian or legal custodian.
History: Section 2, Subsection 2.3 (A-E) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.7 (E) of the Childrens Code, Title XII.

SECTION 3. INFORMAL AND FORMAL PROCEEDINGS

3.1 Informal Proceeding.

A. When the presenting officer receives a complaint he may decide it is in the youth's best interest to enter into an informal agreement, before a petition is filed. The presenting officer, probation officer, the youth and the youth's parents may enter into an informal agreement to give counsel and advice to the youth.

B. Agreement To Be in Writing. Such agreement must be in writing and signed by the youth and his parents or the person having legal custody of the youth.

C. When Incriminating Statement Admissible. An incriminating statement

relating to any act or omission constituting delinquency made by the participant of the person giving counsel or advice may not be used against him in any proceeding under this title. This does not apply to the use of voluntary and reliable statements that are offered for impeachment purposes.

D. Disposition. The following dispositions may be imposed by this informal proceeding:
1) probation;
2) restitution upon approval of the family court judge; or
3) House Arrest and assessment of drug and alcohol fees
4) community service, when appropriate, and/or
5) counseling, evaluation and/or treatment.

History:Section 3, Subsection 3.1 (A-D) enacted on the 11/5/97, Resolution No. 229-97; formerly Section V, Subsection 5.7 (E) of the Childrens Code, Title XII.

3.2. Formal Proceeding

A. Petition. A petition initiating proceedings alleging the youth to be a delinquent or in need of supervision shall be entitled "In the Matter of ....., a youth. and shall set forth with specificity the charge of an offense including the following:
1) name of offense; and
2) state the facts constituting the offense in ordinary concise language and in such manner as to enable a person of common understanding to know what is intended;
3) state the time and place of the offense as definitely as possible;
4) the names and residence addressees of parents, guardian or spouse or if none of the parents guardian, or spouse resides within the Fort Belknap Reservation the adult relative residing nearest to the court;
5) whether the youth is in detention or shelter care;
6) a list of witnesses who will be used in proving the charges.

B. Court Date and Summons.
1) Upon receipt of the complaint the court shall within five days set a date for the hearing. The hearing must be held within thirty days of the date the matter was set for trial, unless there is good cause to continue the hearing, but in any event the hearing must be held as soon as possible and accorded preferential priority.
2) Summons. The presenting officer upon filing the petition must have the youth and the person responsible for the youth personally served with a copy of the petition. The summons shall contain the date and the time and place of the time set for the youth to deny or admit the allegations in the petition.

History: Section 3, Subsection 3.2 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

3.3 Placement of Youth.

The child shall be released to his parent, guardian or custodian and ordered to appear at the hearing on a date to be set by the court, however, if it appears the youth needs to be placed in a secure facility the court may endorse a warrant as specified under Section 2, 2.1 or order continued detention if the youth is already in a secure facility. The court may release a child under this chapter to a relative or other responsible adult if the parent or guardian of the child consents to the release. The best interest of the child shall be the determining factor.

History: Section 3, Subsection 3.3 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

3.4 Entry of Plea.

At this hearing the Judge shall advise the youth of his rights existing under the law and determine whether the youth admits or denies the offenses alleged in the petition. An adjudicatory hearing must be set immediately to determine whether the offenses are supported beyond a reasonable doubt.

History: Section 3, Subsection 3.4 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

3.5 Recording of Formal Hearing.

A Formal hearing must be recorded verbatim by whatever means the court considers appropriate.

History: Section 3, Subsection 3.5 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

3.6 Proceedings Closed

The hearing shall be closed, however, the proceedings may be open to the victim and the victim's immediate family at the Judge's discretion.

History: Section 3, Subsection 3.6 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

3.7 Youth's Presence Mandatory.

The youth must be present with their parent or guardian at every the Formal hearing.

History: Section 3, Subsection 3.7 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

3.8 Trial by Judge.

If the youth denies all offenses alleged in the petition, the youth or person responsible for the youth or attorney shall receive an adjudicatory hearing..

History: Section 3, Subsection 3.8 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

3.9 Application of Rules of Civil Procedure and Evidence.

At the Formal hearing the rules of evidence and rules of civil procedure are applicable.

History: Section 3, Subsection 3.9 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.13 of the Childrens Code, Title XII.

SECTION 4. SENTENCING, HEARING & DISPOSITION

4.1 Sentencing Dispositional Hearing

A. Sentencing Hearing Scheduled. If the youth is found to be a youth offender at a formal hearing or if such is adjudicated on the basis of a valid admission of the allegations, the court shall schedule a sentencing hearing.

B. When Conducted. As soon as practicable the court shall conduct a sentencing disposition hearing.

C. Presentence Report. Before the hearing the court shall direct that a presentence report be made in writing by a probation officer, if such officer is employed by the Tribes. Such report must be furnished to the youth or youth's counsel prior to the sentencing hearing and contain a detailed summary of the youth, the youth's family and youth's environment, and other matters relevant to the need for care or rehabilitation. If the youth has been examined by a doctor the result of such examination shall be included in the report. The presiding judge shall have the authority, in his/her discretion, to waive a pre-disposition report, if such action is deemed necessary and appropriate in the best interests of the child because of timelines or related issues.

History: Section 4, Subsection 4.1 (A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.14 of the Childrens Code, Title XII.

4.2 Disposition.

The court may enter its judgment making one or more of the following dispositions:

1) place the youth on probation;
2) place the youth in an institution or with an agency designated by the Family Court for not more than one year.
3) require the youth to pay restitution. The Court may review the following factors when determining whether the youth shall pay restitution: age, ability to pay, ability of the parents or person responsible for the youth to pay, amount of damage to the victim, and legal remedies of the victim.
4) Community Services fines and fees.

History: Section 4, Subsection 4.2 enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.15 of the Childrens Code, Title XII.

SECTION 5. PROBATION REVOCATION

A. Violation of Probation. A youth on probation incident to an adjudication as a youth offender who violated the terms of the probation may be proceeded against in a probation revocation proceeding.

B. Petition. A petition shall be filed entitled "Petition for Revocation of Probation" by the presenting officer. Petitions to revoke shall be subject to the same procedure as petitions alleging a youth to be an offender.

History: Section 5 (A-B) enacted on the 3/8/99, Resolution 63-99.

PART IV.
MARRIAGE AND DISSOLUTION

SECTION 1. MARRIAGE.

1.1 Prior Marriages.

All marriages consummated before the effective date of this Tribal Code, whether according to state law or Tribal customs, are declared valid and binding.

History: Section 1, Subsection 1.1 enacted on the 3/8/99, Resolution 63-99; formerly Section I of the Domestic Relations Code, Title IX.

1.2 Tribal Custom Marriage.

Tribal custom marriages consummated after the effective date of this Tribal Code shall be duly recorded within the records of the Fort Belknap Indian Community Tribal Court by signing a Marriage Register maintained by the Clerk of the Court. Each party must sign such Register within five (5) days of the Tribal custom marriage ceremony.

History: Section 1, Subsection 1.2 enacted on the 3/8/99, Resolution 63-99; formerly Section I , Subsection 1.1 of the Domestic Relations Code, Title IX.

1.3 Marriage.

A. A valid marriage hereunder shall be constituted by:
1) the issuance of a marriage license by the Tribal Court or the State of Montana, and by written contract recorded with the Clerk of the Court; or
2) the solemnization of the marriage by Tribal custom, by a judge within the territorial jurisdiction of the Fort Belknap Indian Reservation, by a recognized clergyman, or by a public official authorized to do so by the State of Montana; or
3) If a woman and man hold themselves out publicly to be wife and husband to one another.

B. A marriage license shall be issued by the Clerk of the Court in the absence of any showing that the proposed marriage would be invalid under any provision of this Tribal Code or Tribal custom and usage.
1) Upon written application of an unmarried male and female eighteen (18) years of age or older, provided that the application of a male or female under the age of eighteen (18) shall be accompanied by the written consent of the parent or legal guardian.
2) Upon filing with the Clerk of the Court of a certificate of a physician that the parties are free of any venereal disease.

History: Section 1, Subsection 1.3 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section I , Subsection 1.2 (A-B) & 1.3 (A-B) of the Domestic Relations Code, Title IX.

1.4 Solemnization.

In the event a judge, clergyman, Tribal officer, or anyone authorized to do so solemnizes a marriage, he shall file with the Clerk of the Court a certification thereof within thirty (30) days of the solemnization. The validity of any marriage is not affected by the absence of a ceremony.

History: Section 1, Subsection 1.4 enacted on the 3/8/99, Resolution 63-99; formerly Section I , Subsection 1. 4 of the Domestic Relations Code, Title IX.

SECTION 2. INVALID OR PROHIBITED MARRIAGES.

2.1 Invalid or Prohibited Marriages.

Marriages are prohibited or invalid under this Tribal Code if:
1) either party is lawfully married to another living spouse, unless the former marriage has been legally annulled or dissolved; or
2) between ancestors and descendants of every degree: between a stepfather and a stepdaughter, between stepmother and stepson, between brothers and sisters, aunts and nephews, uncles and nieces, and between first cousins whether the relationship is of the half or whole blood and legitimate or illegitimate; or
3) the marriage is prohibited by custom of the Tribes.

History: Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99; formerly Section I , Subsection 1. 5(A-C) of the Domestic Relations Code, Title IX.

SECTION 3. GROUNDS FOR ANNULMENT OR VOIDABLE MARRIAGE.

3.1 Annulment or Voidable Marriage.

A marriage may be voided or annulled by the Fort Belknap Indian Community Tribal Court for any of the following reasons upon the application of one of the parties:
1) when either spouse is incapable of consenting to the marriage; or
2) when the consent was obtained by force or fraud; or
3) when the party making application was of unsound mind at the time of the marriage; or
4) when either party was at the time of marriage incapable of consummating the marriage, and the incapacity is of a continuing nature; or
5) when the marriage was invalid on one of the grounds set forth in Section 2, 2.1.

History: Section 3, Subsection 3.1 enacted on the 3/8/99, Resolution 63-99; formerly Section I I (A-G) of the Domestic Relations Code, Title IX.

3.2 Marriage not Subject to Annulment.

If, after termination of any of the foregoing defects, the parties continue to live together as husband and wife, the marriage shall not subsequently be subject to annulment because of the defect.
History: Section 3 , Subsection 3.2 enacted on the 3/8/99, Resolution 63-99.

3.3 Who Files Petition.

Procedure to annulment must be instituted by the party laboring under the disability or upon whom the force or fraud is imposed. Civil rules shall apply in all proceedings. Upon filing of the seperation , there shall be a 60 day waiting period, in which time counseling, shall be instituted.
History: Section 3, Subsection 3.3 enacted on the 3/8/99, Resolution 63-99.

3.4 Effects of Annulment of Voidable Marriage.

The legitimacy of children conceived or born prior to a judgment of annulment shall not be affected by the judgment. The judgment shall be conclusive only as against the parties to the action and those claiming under them.
History: Section 3, Subsection 3.4 enacted on the 3/8/99, Resolution 63-99; formerly Section I I , Subsection 2.1 of the Domestic Relations Code, Title IX.

SECTION 4. DISSOLUTION OF MARRIAGE.

4.1 Action of Court Proceedings

A. Without attorneys, the Petition has to be undisputed or non-contested by both parties.

B. Actions of the Court Pending Divorce or Annulment. The Family Court may order:
1) The husband or wife to provide for the separate maintenance of his or her spouse and children as the Court may deem just, upon application by either spouse in the disposition of a divorce proceeding.
2) The care, custody, and maintenance of the minor children of the marriage while the proceeding is pending.
3) The restraint of either spouse from in any manner molesting or interfering with the other, or the minor children.
4) The restraint and enjoinment of either or both spouses from disposing of their property while the action is pending except as ordered by the Court.
5) Enter and docket as a judgment any order issued by the Court to pay any monies falling due, pending action if payment is in default, and order enforcement as provided in the Civil Code of the Fort Belknap Indian Reservation.
History:Section 4, Subsection 4. 1 (A-B) enacted on the 3/8/99, Resolution 63-99.

4.2 Petition.

A. A verified petition in a proceeding for dissolution of marriage shall allege that the marriage is irretrievably broken and shall state the following:
1) the age, occupation, and residence of each party and his length of residence on the reservation;
2) the date of the marriage, tribal affiliation and the place marriage was registered;
3) that the marriage is irretrievable broken in that the parties have lived apart for over one year; or there is serious marital discord which adversely affects the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;
4) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;
5) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse;
6) whether the wife desires to have her maiden name or former name restored.

B. Hearing on Petition. After 20 days from the date of serving the petition on the respondent the Family Court shall set this matter for a judge hearing at which both parties must be present and if the court finds that the marriage is irretrievably broken the court shall enter final judgment.

C. Civil Rules of Procedure shall apply in the process of the dissolution.
History:Section 4, Subsection 4. 1 (A-C) enacted on the 3/8/99, Resolution 63-99.

4.2 Effect of Final Judgment.

A decree of dissolution dissolves the marriage but is not effective until the decree is reduced to writing and stamped with the Clerk of Court's seal. The filing of the decree with the Clerk of Court constitutes a final adjudication of the rights and obligations of the parties with respect to the status of the marriage and property rights.

B. Who May Appeal. Either party may appeal the terms of the dissolution.

History: Section 4, Subsection 4.2(A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section I I , Subsection 2. 3(A-E) of the Domestic Relations Code, Title IX.

PART V.
CHILD SUPPORT, CHILD CUSTODY AND VISITATION

SECTION 1. CHILD SUPPORT.

1.1 Support. - General

In a proceeding for dissolution of marriage or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

History:Section 1 Subsection 1.1 enacted on the 3/8/99, Resolution 63-99.

1.2 Factors Court Shall Consider.

In determining the amount to be paid by a parent or support of the child and the period during the which the duty of support is owed, the Court shall consider Gros Ventre and Assiniboine customs and all relevant factors including:

1) the financial resources of the child;
2) the financial resources of the parent;
3) the standard of living that the child would have enjoyed had the marriage not been dissolved;
4) the physical and emotional condition of the child and the child's educational and medical needs;
5) the cost of day care for the child;
6) any custody arrangement that is decided upon;
7) the needs of any person, other than the child, whom either parent is legally obligated to support; and
8) the income of a spouse or other person residing with the parent.

History:Section 1, Subsection 1.2 enacted on the 3/8/99, Resolution 63-99.

1.3 Court Order for Support.

A. The Court must make a written finding of the basis for ordering a parent to pay support to a child. If the court does not order a parent owing a duty to support a child , the court shall state its reasons for not ordering child support.

B. Default. The Court shall issue a written order based on the best information available. The defaulting parent's income may be used as long as there is a reasonable and adequate evidence presented to verify such income.

C. Income Withholding. The Judge must include a statement in the Order

that should the obligated party fail to make a support payment, his or her income is subject to be withheld.
History: Section 1 , Subsection 1. 3 (A-C) enacted on the 3/8/99, Resolution 63-99.

1.4 Modification of Child Support Order.

A. A child support order may be modified by a court as to maintenance or support only as to installments accruing after notice to the parties of the motion for modification.

B. Modification is appropriate if:
1) there is a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or
2) upon written consent of the parties.
History:Section 1 , Subsection 1. 4(A-B) enacted on the 3/8/99, Resolution 63-99.

1.5 Enforcement of Support.

In addition to other remedies, the Court may issue an order to an employer, trustee, financial agency, or other person, firm or corporation on the reservation, to withhold and pay over to the Clerk of Court or the person designated by the Tribal Council, or the mother, money due or to become due.
History:Section 1 , Subsection 1. 5 enacted on the 3/8/99, Resolution 63-99.

1.6 Policy on State of Montana's Child Support Enforcement Division Notification.

A notification from the state, of any type, other than when the state is following the rules of civil procedure of the Law and Order Code of the Gros Ventre and Assiniboine Tribes, is of no force or effect in any child support proceeding. Any other attempt to notify the tribes in a proceeding in which the Tribes are not named parties, by the State of Montana, is not an appropriate form of notification and shall not be recognized as such, unless an appropriate compact or Memorandum of Agreement between the parties is in place recognizing and authorizing such procedure.
History:Section 1 , Subsection 1. 6 enacted on the 3/8/99, Resolution 63-99.

SECTION 2. CHILD CUSTODY AND VISITATION.

2.1 Definitions

A. "Custody Proceeding": includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, but does not include issues which are determined pursuant to the Indian Child Welfare Act, i.e. adoptions.

B. "Home Reservation": means the reservation in which the child, immediately preceding the time involved, lived with his parents, a parent, or

a person acting as a parent for at least six consecutive months and in the case of a child less than six months old the reservation in which the child lived from birth with any of the persons mentioned.

History: Section 2, Subsection 2.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.2 Determination of Custody and Visitation.

A. All proceedings in this section shall be in accordance with the procedures for civil actions of this Tribal Code and the rules of the Court.

B. The Family Court has jurisdiction to decide child custody matters by initial or modification decree if the reservation is:

1) the home reservation of the child at the time of commencement of the proceedings; or

2) has been the child's home reservation within six months before commencement of the proceeding and the child is absent from the reservation because of his or her removal or retention by a person claiming custody or for other reason and a parent or person acting as a parent continues to live on this reservation; or

3) the child and his parent has a significant connection with the reservation; or

4) if the petitioner for an initial decree has wrongfully taken the child from another reservation or state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if it is just and proper under the circumstances.

History: Section 2 , Subsection 2. 2(A-B) enacted on the 3/8/99, Resolution 63-99.

2.3 Best Interest of Child.

The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including but not limited to:

1) the wishes of the child's parent or parents as to custody;

2) the wishes of the child as to custodian;

3) the interaction and relationship of the child with his parent or parents and siblings and with any other person who may significantly affect the child's best interest;

4) the child's adjustment to home, school, and community;

5) the mental and physical health of all individuals involved;

6) physical abuse or threat of physical abuse by one parent against the other parent or the child; and

7) chemical dependency or chemical abuse on the part of either parent.

History: Section 2 , Subsection 2. 3 enacted on the 3/8/99, Resolution 63-99.

2.4 Temporary Orders.

A party to a custody proceeding may move for a temporary order. The motion must be supported by an affidavit. The court may award temporary custody after a hearing or without a hearing if the party seeking a temporary custody order request that the court grant a temporary assignment of custody ex parte.

1) The party requesting an ex parte order shall so state in his petition and shall submit an affidavit showing that:

(i) no previous determination of custody has been made and it would be in the child's best interest; or

(ii) although a previous determination of custody has been made, the child's present environment endangers his physical or emotional health an immediate change of custody would serve to protect the child's physical or emotional health.

2) If the court finds from the affidavits submitted by the moving party that a temporary award of custody would be in the child's best interest the court shall make an order placing temporary custody with the moving party and shall require all parties to appear and show cause, within 20 days from the execution of the order, why the temporary order should not remain in effect until further order of the court.

History: Section 2 , Subsection 2. 4 enacted on the 3/8/99, Resolution 63-99.

2.5 Visitation.

A. A parent who is not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

B. In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing that the visitation would be in the best interest of the child.

History: Section 2 , Subsection 2. 5 (A-B) enacted on the 3/8/99, Resolution 63-99.

PART VI
PEACEMAKING

SECTION 1. PEACEMAKING.

1.1 Family Peacemaking

A. When Used. The Court may at any time consider the advisability of requiring the parties to a proceeding to participate in peacemaking. Any party may request the court to order peacemaking. If the parties agree to peacemaking, the court may require the attendance of the parties or the representatives of the parties with authority to settle the case at the peacemaking sessions.

B. The purpose of peacemaking is to reduce the animosity that may exist between the parties and to develop an agreement that is supportive of the best interests of the parties or child involved in the proceeding. The peacemaker shall attempt to effect a settlement of the child custody, support, visitation, property settlement dispute, or other matters as the court deems appropriate.

History: Section 1 , Subsection 1. 1(A-B) enacted on the 3/8/99, Resolution 63-99.

1.2 Rules Governing Peacemaking

The Rules governing peacemaking shall be established to carry out the purpose of this part.

History: Section 1, Subsection 1. 2 enacted on the 3/8/99, Resolution 63-99.

1.3 Peacemaking Qualifications.

A peacemaker shall meet the following minimum qualifications.
1) Be a tribal member held in high regard by the community;
2) Be a person of integrity and honesty; and
3) Have knowledge of the peacemaking process or obtain such knowledge within three (3) months of selection.

History: Section 1 , Subsection 1.3(1-3) enacted on the 3/8/99, Resolution 63-99.

1.4 Mediation/Peacemaking Agreement

An agreement reached by the parties as a result of mediation/peacemaking must be discussed by the parties with their attorneys, if any, and the approved agreement may be submitted to the court. An agreement may not be submitted to the court if any party objects. The court may adopt the agreement.

History: Section 1, Subsection 1.4 enacted on the 3/8/99, Resolution 63-99.

1.5 Meetings - Confidential.

Mediation/Peacemaking proceedings must be conducted in private. All records of a mediation/peacemaker proceeding are confidential and may not be used as evidence.

History: Section 1 , Subsection 1.5 enacted on the 3/8/99, Resolution 63-99.

PART VII
ADOPTION

SECTION 1. ADOPTION.

1.1 Petition.

A. Adoption proceedings shall be instituted by filing of a petition with the Court which shall conduct the proceedings in accordance with the procedures for civil actions of this Tribal Code and the Rules of the Court. The petition shall contain the following information:
1) the full names, addresses, ages, and tribal affiliation of the adopting parents, plus the names and ages of all other children living in their household, if any;
2) the full name, residence, sex, birth date, and tribal affiliation of the child whose adoption is sought, plus the length of time the child has resided with the petitioning party;
3) a full description and statement of value of all property owned or possessed by the child.

B. The petitioner shall file with the petition any of the following documents in support:
1) any relinquishments of parental rights and consents to adoption;
2) any denials or orders of paternity; and
3) proof of service.

C. Any minor Indian child may be adopted by an Indian person or persons.
History: Section 1, Subsection 1. 1(A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section III , Subsection A-C of the Domestic Relations Code, Title IX.

1.2 Notice of Hearing.

Notice of hearing to be held on the petition for adoption must be served in any manner appropriate with the Rules of Civil Procedure on the parents or legal guardian of the child. It is not necessary to serve a notice of hearing on a parent whose rights have been terminated or who waives notice or who has consented in writing to the adoption. Proof of service must be filed with the court.
History: Section 1, Subsection 1. 2 enacted on the 3/8/99, Resolution 63-99.

1.3 Consent and Verification.

Any surviving natural parent must consent in writing, and appear before the Family Court Judge to verify he or she understands the consequence of such consent, unless the court has determined that the natural parents rights may be involuntarily terminated pursuant of this Act.

History: Section 1, Subsection 1. 3 enacted on the 3/8/99, Resolution 63-99; formerly Section III , Subsection C of the Domestic Relations Code, Title IX.

1.4 Investigation & Consent of Child.

A. The person or persons seeking to adopt the child shall appear before the Court and be examined. The Court may require a report to be provided by the social worker of the Bureau of Indian Affairs, the State of Montana, or other person designated by the Court to make such a report, on the qualifications of the adoptive person or persons.

B. If the child is over the age of fourteen (14) years, the child must also appear before the Court and consent in writing to such adoption.

History: Section 1, Subsection 1.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section III , Subsection D-E of the Domestic Relations Code, Title IX.

1.5 Best Interest Standard & Order.

A. In determining whether to grant a petition for adoption the court shall consider all relevant factors in determining the best interest of the child. The court shall consider the following factors:
1) prospective adoptive parent's parenting ability;
2) the future security of the child;
3) stability of the future family;
4) nature and length of relationship already established between a child an any person seeking to adopt the child;
5) the nature of the family relationship between the child and nay person seeking to adopt the child.

B. After the Court has heard all the facts on the adoption proceedings, and believes that is to the best interest of the child to be adopted, it shall enter an order which states the following:
1) the original name of the child;
2) the name of the petitioner for adoption;
3) whether the petitioner is a stepparent;
4) name by which the child is to be known; and
5) that the adoption is in t he best interest of the child.

C. Every adoption order shall recite the findings pertaining to the court's jurisdiction and upon which such order is based. The clerk of court shall transmit a certified copy of the order to the Bureau of Indian Affairs, Indian Health Service and Department of Vital Statistics.

History: Section 1, Subsection 1.4(A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section III , Subsection F of the Domestic Relations Code, Title IX.

1.6 Rights and Liabilities of Natural Parents.

The natural parents of an adopted child are, from the time of the final order of adoption, are relieved of all parental duties toward, and all responsibility for children so adopted, and shall have no further rights over them.
History: Section 1, Subsection 1. 6 enacted on the 3/8/99, Resolution 63-99.

1.7 Adoption Records.

All records, reports, proceedings, and order in adoption cases are confidential and permanent records of the court and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the court upon good cause. However, information regarding the trial affiliation and degree of Indian blood of the natural parents, and such other information necessary for tribal enrollment purposes, shall be made available to the child.
History: Section 1, Subsection 1. 7 enacted on the 3/8/99, Resolution 63-99

1.8 Protective Customary Custodian.

If according to tribal custom, a child is placed by his or her natural parents with and extended family member, without court proceedings or involvement, the court will recognize these individuals as having guardianship rights over a child, as the parental rights have not been terminated. Two witnesses to the placement are necessary.
History: Section 1, Subsection 1. 8 enacted on the 3/8/99, Resolution 63-99; formerly Title XII, Section II, subsection 2.20, of the Children's Code.

1.9 Termination of Parental Rights

If after one year (1) either parent fails to provide financial support and fails to exercise his or her rights or obligations to the child, either or both parents rights may be terminated by the Court.
History: Section 1, Subsection 1. 9 enacted on the 3/8/99, Resolution 63-99; formerly Title XII, Section II, subsection 2.20, of the Children's Code.

PART VIII
PATERNITY

SECTION 1. PATERNITY

1.1 Determination of Paternity.

A. All proceedings in this section shall be in accordance with the procedures for civil actions of this Tribal Code and the rules of the Court.

B. A judgment of the Court establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determinations of inheritance and in criteria for enrollment with the Gros Ventre and Assiniboine Tribes.

C. If the paternity of any child is not established, the child shall be presumed to have one–half degree of the Indian blood of the mother for purposes of meeting the criteria for enrollment with the Gros Ventre and Assiniboine Tribes.

History: Section 1, Subsection 1. 1 (A-C) enacted on the 3/8/99, Resolution 63-99; formerly Section IV , Subsection 4.1(B- C) of the Domestic Relations Code, Title IX.

1.2 Petition.

A petition shall include the following;
1) evidence of a presumption of paternity;
2) the child's name and place and date of birth;
3) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother; or
4) The probable time or period of time during which conception took place.

History: Section 1, Subsection 1. 2 enacted on the 3/8/99, Resolution 63-99.

1.3 Presumption of Paternity.

A. A man is presumed to be the natural father of a child if:
1) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other; or
2) he has acknowledged his paternity of the child in writing filed with the Family Court;
3) with his consent, he is named as the child's father on the child's birth certificate, or
4) he is obligated to support the child under a written voluntary promise or by court order; or
5) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or
6) he acknowledges his paternity of the child in a writing filed with the Family Court, and he has provided a copy of the acknowledgment to the

mother. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

B. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which is supported by facts shall be given more weight. The presumption is rebutted by a court decree establishing the paternity of the child by another man.
History: Section 1, Subsection 1. 3 (A-B) enacted on the 3/8/99, Resolution 63-99

1.4 Who May Bring Action.

A. A child, his natural mother, social service agency, parent of the mother if the mother has died, or a man presumed to be the father may bring an action at any time during the minority of the child for the purpose of declaring the existence of the father-child relationship. An action may also be brought for the purpose of declaring the non-existence of the father-child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts.

B. An action under this chapter may be joined with an action for divorce, annulment, custody or support.
History: Section 1, Subsection 1. 4 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.5 Pre-Trial Proceedings.

As soon as practicable after an action to declare the existence or nonexistence of the father-child relationship has been brought, an informal, closed hearing shall be held. On the basis of the information produced at the pre-trial hearing, the judge conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship in a trial and may recommend that the parties settle this matter, if the matter cannot be settled the action shall be set for trial.
History: Section 1, Subsection 1. 5 enacted on the 3/8/99, Resolution 63-99.

1.6 Clinical Test Evidence.

A. In any action or proceeding, upon motion of any interested party, for good cause shown, may request the court to order the mother, child and the alleged father to submit to an examination of blood and tissue specimens for the purpose of testing any genetic systems that are generally accepted within the scientific community for the determination of paternity probability. The results of the tests, together with the opinions and conclusions of the testing laboratory, shall be filed with the Court. The cost of the test shall be paid by the father should it be found he is the father. Otherwise the mother shall pay the cost of the test.

B. Only persons licensed by the appropriate authorities may draw blood or tissue for the purpose of testing to determine parentage. Such person may not be held liable for the damages to the party from whom the blood or tissue is drawn.

C. Evidence relating to paternity may include one or more of the following:
1) evidence of sexual intercourse between the mother and the alleged father and possible time of conception;
2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
3) laboratory test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;
4) all other evidence relevant to the issue of paternity.

History: Section 1, Subsection 1. 6 (A-C) enacted on the 3/8/99, Resolution 63-99.

1.7 Civil Action; Judge Tribal.

An action under this section is a civil action governed by the Rules of Civil Procedure of the Fort Belknap Law and Order Code. The matter shall be held in the Family Court without a jury.

History: Section 1, Subsection 1. 7 enacted on the 3/8/99, Resolution 63-99.

1.8 Statute of Limitations.

A statute of limitations of three years shall be effect in all cases where a child is born and none of the presumptions under this Part have been meant.

History: Section 1, Subsection 1. 8 enacted on the 3/8/99, Resolution 63-99.

PART IX
GUARDIANSHIP AND CONSERVATORSHIP

SECTION 1. GUARDIANSHIP.

1.1 Rules of this Section

Rule of all proceedings in this Section shall be in accordance with the procedures for civil actions of this Tribal Code and the Rules of the Court.
History: Section 1, Subsection 1. 1 enacted on the 3/8/99, Resolution 63-99; formerly Section V , Subsection 5.1(A) of the Domestic Relations Code, Title IX.

1.2 When May a Guardian be Appointed.

The Court may appoint a guardian over the property or over the person, or both, of a minor or for persons determined by the Court as being incapable of managing their own affairs. A guardian may, also, be appointed by will.
History: Section 1, Subsection 1. 2 enacted on the 3/8/99, Resolution 63-99; formerly Section V , Subsection 5.1(B) of the Domestic Relations Code, Title IX.

1.3 Appointment by Will.

Appointment by will becomes effective upon the guardian filing acceptance of such in the court. Upon acceptance, written notice must be given by the guardian to the minor and to the person having his care or to his nearest adult relative. A guardian appointed by will, whose appointment has not been nullified, has priority over any guardian appointed by the court, but the court may proceed with an appointment upon a finding that the person appointed pursuant to the will has failed to accept the appointment within 30 days after notice.
History: Section 1, Subsection 1. 3 enacted on the 3/8/99, Resolution 63-99.

1.4 Contents of Petition for Appointment of Guardian & Notice.

A. The petition for appointment of a guardian shall contain:
1) the name, residence, and mailing address of the petitioner, his relationship to the minor or incapacitated person, and his interest in the matter;
2) name and address of minor or incapacitated person;
3) the reasons why appointment of a guardian is sought and the facts supporting the allegations of incapacity and the need for a guardian.
4) the petition may include a request for temporary guardianship, pending the completion of guardianship proceedings to protect the welfare of the ward.

B. Notice. Upon a petition for the appointment of a guardian notice shall be given to the following:

1) the minor, if he or she is 14 years or more;
2) the person who has had the principal care and custody of the minor; and
3) the living parent of the minor.

History: Section 1, Subsection 1.4 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section V, Subsection 5.1 of the Domestic Relations Code.

1.5 Powers and Duties of Guardian.

A guardian has the following Powers and Duties:
1) any guardian appointed under this section shall advise the court by written report at least once a year or upon request of the court, of the actions of the guardian on behalf of the ward or of his estate;
2) no guardian may dispose of any of the ward's property without the prior approval of the court;
3) must take reasonable care of the ward's personal belongings;
4) may receive money, payable for the support of the ward, to the ward's parent, guardian, or custodian, under the terms of any insurance system or any private contract, devise, trust, conservatorship or custodianship. Any sums received shall be applied to the ward's current needs for support, care, and education. Must exercise due care to conserve any excess for the ward's future needs, unless a conservator has been appointed, in which case excess shall be paid over to the conservator. Sums received are not to be used as compensation unless approved by order of the court.

History: Section 1, Subsection 1. 5 enacted on the 3/8/99, Resolution 63-99; formerly Section V , Subsection 5.1 (D,E) of the Domestic Relations Code, Title IX.

1.6 Termination or Removal of Guardian.

A. Any guardianship of a minor shall automatically terminate when the ward becomes eighteen (18) years of age, or if a female marries while under eighteen (18) years of age. Resignation of a guardian does not terminate the guardianship until it has been approved by the court.

B. The court may terminate or remove the guardian, if a petition is filed requesting termination or removal and if the court determines, after notice and hearing, and that the interests of the ward are not being adequately represented.

History: Section 1, Subsection 1. 6 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section V , Subsection 5.1 (F -G) of the Domestic Relations Code, Title IX.

1.7 Limited Guardianship.

A special guardian may be appointed for the special purpose of signing deeds, contracts, or other documents on behalf of a minor, or a person who is incapable of managing his own affairs. For the document to be valid that involves trust or restricted property or funds it must be approved by the Court, and by the Secretary of the Interior.

History: Section 1, Subsection 1. 7 enacted on the 3/8/99, Resolution 63-99; formerly Section V , Subsection

5.1 (H) of the Domestic Relations Code, Title IX.

SECTION 2. CONSERVATORSHIP.

2.1 Who May Petition to be Conservator.

Any person who is interested in a person to be protected or any person who would be adversely affected by lack of effective management of the person's financial affairs and property may petition for the appointment of a conservator.

History: Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99.

2.2 Contents of Petition & Notice

A. The petition shall set forth to the extent known:
1) the interest of the Petitioner;
2) the name, age, residence, and address of the person to be protected;
3) the name and address of his guardian, if any;
4) the name and address of his nearest relative known to petitioner;
5) a general statement of his property with an estimate of the value thereof, including any compensation, insurance, pension or allowance to which he is entitled;
6) the reason why appointment of a conservator or other protective order is necessary.

B. Notice. The person to be protected and his spouse, if none, his parents must be served personally with notice of the proceeding at least 20 days before the date of the hearing. If the protected person is incapacitated and has neither a spouse or parents, notice must be given to his or her children or if no children, to the person responsible for the person.

History: Section 2, Subsection 2. 2 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.3 Cause for Appointment of a Conservator.

Upon petition and after notice and hearing the court may appoint a conservator if the court finds one of the following:
1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.
2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that:
(i) the person is unable to manage his property and affairs effectively for reasons such as a mental illness, mental deficiency, physical illness or

disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention or disappearance; and
(ii) the person has property which will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.
History: Section 2, Subsection 2. 3 enacted on the 3/8/99, Resolution 63-99.

2.4 Who May be Appointed Conservator--Priority.

A. The court may appoint an individual or corporation to serve with general power to serve as trustee as conservator of the estate of a protected person. The court is to select the person who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority. The following are entitled to consideration for appointment in the order listed:
1) an individual or person nominated by the protected person if he is 12 or more years of age and has sufficient mental capacity to make an intelligent choice;
2) the spouse of the protected person;
3) an adult child of the protected person;
4) a parent of the protected person.

B. The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law with sureties as it shall specify. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the property of the estate in his or her control.
History: Section 2, Subsection 2.4 (A-B) enacted on the 3/8/99, Resolution 63-99.

2.5 Responsibilities of Conservator.

Within 90 days after appointment every conservator shall prepare and file with the appointing court a complete inventory of the protected person's estate. Every year thereafter the conservator must file an accounting with the court for the administration of the trust and at other times as the court directs.
History: Section 2, Subsection 2.5 enacted on the 3/8/99, Resolution 63-99.

2.6 Termination of Conservatorship.

The protected person, his personal representative, the conservator, or any other interested person may petition the court to terminate the conservatorship. The court, upon determining after notice and hearing that the minority or disability of the protected person has ceased, may terminate the conservatorship. Upon termination, title to assets of the estate passes to the former protected person or to his successors.
History: Section 2, Subsection 2. 6 enacted on the 3/8/99, Resolution 63-99.

PART X
EMANCIPATION AND NAME CHANGE

SECTION 1. EMANCIPATION

1.1 Who May Petition

Any child who is at least 15*16* years of age or their parent / guardian *or* any adult may file a petition.

History: Section 1, Subsection 1. 1 enacted on the 3/8/99, Resolution 63-99.

1.2 Contents of Petition & Notice.

A. The petition shall include the following:
1) Name, date of birth, and address of the child;
2) the name and address of each parent;
3) the name and address of the child's guardian or custodian, if applicable;
4) the reason why emancipation would be in the best interest of the child.

B. Notice. The person who is making application for emancipation shall file the original petition with the court and serve a copy of the petition on each parent or guardian or both and provide proof of such service to the court. Upon the court receiving certification that the proper individuals have been notified this Court shall set the matter for hearing and mail copies of the Order setting the matter for hearing.

History: Section 1, Subsection 1. 2 (A-B) enacted on the 3/8/99, Resolution 63-99.

1.3 Factors the Court Shall Consider.

A. Consent. The consent of the parents to emancipation must be requested, but their consent is not necessary, if the court determines by clear and convincing evidence that it is in the best interest of the child to grant him or her emancipation.

B. The age of the child; must be at least 16;

C. Whether the child is living separate and apart from his or her parents or custodian; and

D. Whether he or she is able to be self-supportive and manage his or her own financial and personal affairs.

History: Section 1, Subsection 1.3(A-D) enacted on the 3/8/99, Resolution 63-99.

1.4 Effect of Emancipation

Except for specific constitutional and statutory age requirements for voting

and use of alcohol beverages, a child who the court emancipates for general purposes has the power and capacity of an adult; including, but not limited to, the right to live where he desires, the right to receive and control finances, to sue or be sued, and the capacity to contract. The rights and responsibilities of the parents of the emancipated child shall be terminated except that nothing in this section shall affect the right of the child to inherit property.

History: Section 1, Subsection 1.4 enacted on the 3/8/99, Resolution 63-99.

SECTION 2. CHANGE OF NAME.

2.1 Petition & Notice.

A. The Fort Belknap Indian Community Tribal Court shall have the authority to change the name of any person upon petition of such person, or upon the petition of the parents of any minor. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name. There should be agreement with both parents.

B. The party requesting the name change must publish reasonable notice of such request for three successive weeks and provide proof of such notice to the court. In the case of a minor, if both parents or guardians agree to the name change such notice is not required.

History: Section 2, Subsection 2.1 (A-B) enacted on the 3/8/99, Resolution 63-99; formerly Section VI of the Domestic Relations Code, Title IX.

2.2 Where Recorded.

Any order issued by the Court for change of name shall be kept as a permanent record, and copies shall be filed with the Fort Belknap Indian Community, Bureau of Indian Affairs, and Bureau of Vital Statistics of the State of Montana.

History: Section 2, Subsection 2.2 enacted on the 3/8/99, Resolution 63-99; formerly Section VI of the Domestic Relations Code, Title IX.

PART XI
FAMILY PROTECTION ACT

SECTION 1. SHORT NAME

This section may be cited as the Family Protection Act, and should be cross-referenced for further information with the criminal provisions set forth in Title IV, Part 1, § 1.2.

History: Section 1 enacted on the 3/8/99, Resolution 63-99.

SECTION 2. DEFINITIONS

A. As used in this section, the following terms shall have the meanings given them:

i) "Abuse" means the infliction of physical harm, bodily injury or sexual assault or the infliction of the fear of imminent physical harm, bodily injury or sexual assault, and includes but is not limited to assault as defined in the Fort Belknap Law and Order Code.

ii) "Family Member Abuse" means the following: A person

1) purposely or knowingly commits an act of physical or mental abuse which results in injury to a family member; or

2) negligently causes bodily injury to a family member with a weapon; or

3) purposely or knowingly causes fear or reasonable apprehension of bodily injury in a family member.

iii. "Family or household members" means:

1) spouses and former spouses;

2) parents and children;

3) persons related by blood;

4) persons who are presently residing together or who have resided together in the past;

5) persons who have a child in common regardless of whether they have been married or have lived together at any time;

6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

7) persons involved in a significant romantic or sexual relationship.

B. Issuance of an order for protection on the ground in Section (5) does not affect a determination of paternity. In determining whether persons are or have been involved in a significant romantic or sexual relationship under Section 2, A,(iii)(7), the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.

C. Notice of Rights to victim of Family Member Abuse. When a law enforcement officer is called to the scene of a reported incident of Family Member Abuse, the officer shall advise the injured party, if present, of the availability of services in the community and give the injured party immediate notice of the right to request a restraining order. The notice given by the law enforcement officer shall include a copy of the following statement:

> "IF YOU ARE THE VICTIM OF Family Member Abuse, the Tribal prosecutor shall file criminal charges against the abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:
>
> 1) an order restraining your abuser from further abuse;
> 2) an order directing your abuser to leave your household;
> 3) an order preventing the abuser from entering the residence, school, business, or place of employment;
> 4) an order preventing phone threats and harassment;
> 5) an order preventing the abuser from transferring any property except in the usual course of business;
> 6) an order awarding you or the other parent custody of, or visitation with, any minor children;
> 7) an order restraining the abuser from any minor children in your custody;
> 8) an order directing the party not granted custody to pay support of any minor children or to pay any other support where there is a legal obligation to do so;
> 9) the right to notice of release of the offender."

D. Written Report when no Arrest is Made. When a law enforcement officer is called to the scene of a reported incident of Family Member Abuse but does not make an arrest, the officer shall file a written report with the commanding officer stating the reasons for deciding not to make an arrest.
History: Section 2 (A-D) enacted on the 3/8/99, Resolution 63-99.

SECTION 3. COURT JURISDICTION

An application for relief under this section may be filed in the court having jurisdiction over dissolution actions. Actions under this section shall be given docket priorities by the court.
History: Section 3 enacted on the 3/8/99, Resolution 63-99.

SECTION 4. FILING FEE

The filing fees for an order for protection under this section are waived for the petitioner. The court personnel and the police department shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when the police are or if service is made by publication, without requiring the petitioner to make application under applicable law. The court may direct a respondent to pay to the court administrator the petitioner's filing fees and reasonable costs of service of

process if the court determines that the respondent has the ability to pay the petitioner's fees and costs.
History: Section 4 enacted on the 3/8/99, Resolution 63-99.

SECTION 5.

5.1 Information on Petitioner's Location or Residence.

Upon the petitioner's request, information maintained by the court regarding the petitioner's location or residence is not accessible to the public and may be disclosed only to court personnel or law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.
History: Section 5, Subsection 5.1 enacted on the 3/8/99, Resolution 63-99.

5.2 Petition Order for Protection.

There shall exist an action known as a petition for an order for protection in cases of family member abuse.

A. A petition for relief under this section may be made by any family or household member personally or by a guardian as defined in law, or, if the court finds that it is in the best interests of the minor, by a reputable adult age 25 or older on behalf of minor family or household members. A minor age *18* 16 or older may make a petition on his/her own behalf against a spouse or former spouse, or a person with whom the minor has a child in common.

B. A petition for relief shall allege the existence of family member abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

C. A petition for relief must state whether the petitioner has ever had an order for protection in effect against the respondent.

D. A petition for relief must state whether there is an existing order for protection in effect under this chapter governing both the parties and whether there is a pending lawsuit, complaint, petition or other action between the parties under applicable law. The court administrator shall verify the terms of any existing order governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A subsequent order in a separate action under this chapter may modify only the provision of an existing order that grants relief authorized under Section 6, subsection (a), Section (1). A petition for relief may be granted, regardless of whether there is a pending action between the parties.

E. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

F. The court shall advise a petitioner under subsection (E) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to applicable law and shall assist with the writing and filing of the motion and affidavit.

G. The court shall advise a petitioner under subsection (E) of the right to serve the respondent by published notice if the respondent is avoiding personal service by concealment or otherwise, and shall assist with the writing and filing of the affidavit.

H. The court shall advise the petitioner of the right to seek restitution under the petition for relief.

I. An example of such petition follows:

IN THE TRIBAL COURT OF THE FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP INDIAN RESERVATION, MONTANA

_____	CASE NO. _____
PETITIONER,	
vs.	**PETITION FOR ORDER OF PROTECTION**
_____,	
RESPONDENT.	
_____	

COMES NOW, _____, Petitioner herein, and respectfully petitions the above-entitled Court for an order granting immediate (temporary (custody) of the parties' minor children, to Petitioner) and temporarily restraining Respondent, pending further order of this Court, from doing any of the following:

1. Harassing, abusing, or disturbing the peace of Petitioner or either of the parties' children;

2. Picking up the children without prior agreement of the parties or in any other way interfering with the custodial rights of petitioner;

3. Transferring, encumbering, concealing, or otherwise disposing of the parties' funds or property except for the necessities of life;

4. Directing Respondent to leave the home and prohibiting contact with Petitioner.

Additionally, the Petitioner asks an order be issued allowing Respondent to appear personally and show cause, if any he may have, why the above custody and restraint should not remain in full force and effect, and show cause, if any he may have, why an order should not be entered granting the following additional relief:

4. Granting supervised visitation;

5. Prohibiting Respondent from possessing or using a firearm

DATED this ____ day of _____ 199____.

_____
PETITIONER

History: Section 5, Subsection 5.2(A-I) enacted on the 3/8/99, Resolution 63-99.

SECTION 6. HEARING ON APPLICATION; NOTICE.

A. Upon receipt of the petition, the court shall order a hearing which shall be held not later than 14 days from the date of the order. If an ex parte order has been issued under Section 7 and a hearing requested, the time periods under Section 7 for holding a hearing apply. Personal service shall be made upon the respondent not less than five days prior to the hearing, if the hearing was requested by the petitioner. If the hearing was requested by the respondent after issuance of an ex parte order under Section 7, service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of hearing by mail in the manner provided in the rules of civil procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this subsection, the court may set a new hearing date.

B. Notwithstanding the provisions of subsection (A), service on the respondent may be made by one week published notice, as provided under the Rules of Civil Procedure, provided the petitioner files with the court an affidavit stating that an attempt at personal service made by the police was unsuccessful because the respondent is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under this subsection is complete seven days after publication. The court shall set a new hearing date if necessary to allow the respondent the five-day minimum notice required under subsection A.

History: Section 6, (A-B) enacted on the 3/8/99, Resolution 63-99.

SECTION 7. RELIEF BY COURT.

A. Upon notice and hearing, the court may provide relief as follows:
1) restrain the abusing party from committing acts of family member abuse;
2) exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;

3) exclude the abusing party from a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order;
4) award temporary custody or establish temporary visitation with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children. The court's decision on custody and visitation shall in no way delay the issuance of an order for protection granting other reliefs provided for in this section;
5) establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support as necessary;
6) provide upon request of the petitioner counseling or other social services for the parties, if married, or if there are minor children;
7) order the abusing party to participate in treatment or counseling services;
8) award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court;
9) exclude the abusing party from the place of employment of the petitioner, or otherwise limit access to the petitioner by the abusing party at the petitioner's place of employment;
10) order the abusing party to pay restitution to the petitioner;
11) order the continuance of all currently available insurance coverage without change in coverage or beneficiary designation; and
12) order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the law enforcement or as provided by this section.

B. Any relief granted by the order for protection shall be for a fixed period not to exceed one year, except when the court determines a longer fixed period is appropriate.

C. An order granting the relief authorized in Section 7, Subsection A, may not be vacated or modified in a proceeding for dissolution of marriage or legal separation, except that the court may hear a motion for modification of an order for protection concurrently with a proceeding for dissolution of marriage upon notice of motion and motion. The notice required by court rule shall not be waived. If the proceedings are consolidated and the motion to modify is granted, a separate order for modification of an order for protection shall be issued.

D. An order granting the relief authorized in Section 7, Subsection A, is not voided by the admittance of the abusing party into the dwelling from which the abusing party is excluded.

E. If a proceeding for dissolution of marriage or legal separation is pending between the parties, the court shall provide a copy of the order for protection to the court with jurisdiction over the dissolution or separation proceeding for inclusion in its file.

F. An order for restitution issued under this section is enforceable as a civil judgment.

History: Section 7, (A-F) enacted on the 3/8/99, Resolution 63-99.

SECTION 8. SUBSEQUENT ORDERS AND EXTENSIONS.

A. Upon application, notice to all parties, and hearing, the court may extend the relief granted in an existing order for protection or, if a petitioner's order for protection is no longer in effect when an application for subsequent relief is made, grant a new order. The court may extend the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that:
1) the respondent has violated a prior or existing order for protection;
2) the petitioner is reasonably in fear of physical harm from the respondent; or
3) the respondent has engaged in acts of harassment or stalking as defined by law;

B. A petitioner does not need to show that physical harm is imminent to obtain an extension or a subsequent order under this section.

History: Section 8, (A-B enacted on the 3/8/99, Resolution 63-99.

SECTION 9. EX PARTE ORDER

A. Where an application under this section alleges an immediate and present danger of family member abuse, the court may grant an ex parte order for protection and granting relief as the court deems proper, including an order:
1) restraining the abusing party from committing acts of Family Member abuse;
2) excluding any party from the dwelling they share or from the residence of the other except by further order of the court;
3) excluding the abusing party from the place of employment of the petitioner or otherwise limiting access to the petitioner by the abusing party at the petitioner's place of employment; and
4) continuing all currently available insurance coverage without change in coverage or beneficiary designation.

B. A finding by the court that there is a basis for issuing an ex parte order for protection constitutes a finding that sufficient reasons exist not to require notice under applicable court rules governing applications for ex parte relief.

C. Subject to subsection D, an ex parte order for protection shall be effective for a fixed period set by the court, as provided in section 7, subsection B, or until modified or vacated by the court pursuant to a hearing. Upon request, a full hearing, as provided by this section, shall be set for not later than seven days from the issuance of the ex parte order, if a hearing is requested by the petitioner, or not later than ten days or earlier than eight days from receipt by the court of a request for a hearing by the respondent. Except as provided in subsection (D), the respondent shall be personally served forthwith a copy of the ex parte order along with a copy of the petition and, if requested by the petitioner, notice of the date set for the hearing. If the petitioner does not request a hearing, an order served on a respondent under this section must include a notice advising the respondent of the right to request a hearing, must be accompanied by a form that can be used by the respondent to request a hearing and must include a conspicuous notice that a hearing will not be held unless requested by the respondent within five days of service of the order.

D. Service of the ex parte order may be made by published notice, as provided under section 6, subsection B provided that the petitioner files the affidavit required under that subsection. If personal service is not made or the affidavit is not filed within 14 days of issuance of the ex parte order, the order expires. If the petitioner does not request a hearing, the petition mailed to the respondent's residence, if known, must be accompanied by the form for requesting a hearing and notice described in subsection C. Unless personal service is completed, if service by published notice is not completed within 28 days of issuance of the ex parte order, the order expires.

E. If the petitioner seeks relief under subsection 5 other than the relief described in subsection (A), the petitioner must request a hearing to obtain the additional relief.

F. Nothing in this subsection affects the right of a party to seek modification of an order under subsection 11.

History: Section 9, (A-F) enacted on the 3/8/99, Resolution 63-99.

SECTION 10. ASSISTANCE OF LAW ENFORCEMENT IN SERVICE OR EXECUTION

When an order is issued under this section upon request of the petitioner, the court shall order the police to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist

in execution or service of the order of protection.
History: Section 10 enacted on the 3/8/99, Resolution 63-99.

SECTION 11. RIGHT TO APPLY FOR RELIEF

A. A person's right to apply for relief shall not be affected by the person's leaving the residence or household to avoid abuse.

B. The court shall not require security or bond of any party unless it deems necessary in exceptional cases.
History: Section 11 (A-B) enacted on the 3/8/99, Resolution 63-99.

SECTION 12. MODIFICATION OF ORDER.

Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection
History: Section 12 enacted on the 3/8/99, Resolution 63-99.

SECTION 13. REAL ESTATE

Nothing in this section shall affect the title to real estate.
History: Section 13 enacted on the 3/8/99, Resolution 63-99.

SECTION 14. COPY TO LAW ENFORCEMENT AGENCY

A. An order for protection granted pursuant to this section shall be forwarded by the court administrator within 24 hours to the police. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of an order for protection issued pursuant to this section.

B. When an order for protection is granted, the applicant for an order for protection must be told by the court that:
1) notification of a change in residence should be given immediately to the court administrator and to the local law enforcement agency having jurisdiction over the new residence of the applicant;
2) the reason for notification of a change in residence is to forward an order for protection to the proper law enforcement agency; and
3) the order for protection must be forwarded to the law enforcement agency having jurisdiction over the new residence within 24 hours of notification of a change in residence, whether notification is given to the court administrator or to the local law enforcement agency having jurisdiction over the applicant's new residence.

C. An order for protection is enforceable even if the applicant does not notify the court administrator or the appropriate law enforcement agency of a change in residence.

History: Section 14 (A-C) enacted on the 3/8/99, Resolution 63-99.

SECTION 15. VIOLATION OF AN ORDER FOR PROTECTION

A. Whenever an order for protection is granted pursuant to this section, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor. Upon conviction the first time, the defendant must be sentenced to a minimum of three days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. If the court stays imposition or execution of the jail sentence and the defendant refuses or fails to comply with the court's treatment order, the court must impose and execute the stayed jail sentence. A person is guilty who violates this subsection during the time period is guilty of Contempt under Title IV, part IV, section 2, subsection 2.2. Upon conviction, the defendant must be sentenced to a minimum of ten days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. Notwithstanding other sentencing guidelines, the court must impose and execute the minimum sentence provided in this subsection for convictions.

B. A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to this section restraining the person or excluding the person from the residence or the petitioner's place of employment, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The person shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to this subsection is immune from civil liability that might result from the officer's actions.

C. A violation of an order for protection shall also constitute contempt of court and be subject to the penalties therefor.

D. If the court finds that the respondent has violated an order for protection and that there is reason to believe that the respondent will commit a further violation of the provisions of the order restraining the respondent from committing acts of family member abuse or excluding the respondent from the petitioner's residence, the court may require the respondent to acknowledge an obligation to comply with the order on the record. The court may require a bond sufficient to deter the respondent from committing further violations of the order for protection, considering the financial resources of the respondent, and not to exceed $10,000. If the respondent refuses to comply with an order to acknowledge the obligation or post a bond under this subsection, the court shall commit the respondent to the jail

during the term of the order for protection or until the respondent complies with the order under this subsection. The warrant must state the cause of commitment, with the sum and time for which any bond is required. If an order is issued under this subsection, the court may order the costs of the contempt action, or any part of them, to be paid by the respondent. An order under this subsection is appealable.

E. Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court alleging that the respondent has violated any order for protection granted pursuant to this section, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why the respondent should not be found in contempt of court. The court also shall refer the violation of the order for protection to the appropriate prosecuting authority for possible prosecution under subsection (A).

F. If it is alleged that the respondent has violated an order for protection issued under section 6 and the court finds that the order has expired between the time of the alleged violation and the court's hearing on the violation, the court may grant a new order for protection under section 6 based solely on the respondent's alleged violation of the prior order, to be effective until the hearing on the alleged violation of the prior order. If the court finds that the respondent has violated the prior order, the relief granted in the new order for protection shall be extended for a fixed period, not to exceed one year, except when the court determines a longer fixed period is appropriate.

G. The admittance into petitioner's dwelling of an abusing party excluded from the dwelling under an order for protection is not a violation by the petitioner of the order for protection. A peace officer is not liable under for a failure to perform a duty required by subsection B.

H. When a person is convicted of violating an order for protection under this section and the court determines that the person used a firearm in any way during commission of the violation, the court may order that the person is prohibited from possessing any type of firearm for any period longer than three years or for the remainder of the person's life. A person who violates this subsection is guilty of a offense. At the time of the conviction, the court shall inform the defendant whether and for how long the defendant is prohibited from possessing a firearm and that it is a offense to violate this subsection. The failure of the court to provide this information to a defendant does not affect the applicability of the firearm possession prohibition or the offense penalty to that defendant.

History: Section 16 (A-H) enacted on the 3/8/99, Resolution 63-99.

SECTION 16. ADMISSIBILITY OF TESTIMONY IN CRIMINAL PROCEEDINGS.

Any testimony offered by a respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding.
History: Section 16 enacted on the 3/8/99, Resolution 63-99.

SECTION 17. OTHER REMEDIES AVAILABLE

Any proceeding under this section shall be in addition to other civil or criminal remedies.
History: Section 17 enacted on the 3/8/99, Resolution 63-99.

SECTION 18. EFFECT ON CUSTODY PROCEEDINGS

Effect on custody proceedings. In a subsequent custody proceeding the court may consider, but is not bound by, a finding in a proceeding under this chapter that Family Member abuse has occurred between the parties.
History: Section 18 enacted on the 3/8/99, Resolution 63-99.

SECTION 19. NOTICES

A. Each order for protection granted under this chapter must contain a conspicuous notice to the respondent or person to be restrained that:
1) violation of an order for protection is a Class 2 offense punishable by imprisonment for up to six (6) month or a fine of up to $500 or both;
2) the respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person; in no event is the order for protection voided; and
3) a peace officer must arrest without warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order
History: Section 19 enacted on the 3/8/99, Resolution 63-99.

SECTION 20. RECORDING REQUIRED

Proceedings under this section must be recorded.
History: Section 20 enacted on the 3/8/99, Resolution 63-99.

SECTION 21. RESERVATIONS AND STATEWIDE APPLICATION

An order for protection granted under this section applies throughout the Reservation, and through the State of Montana, if recognized by a State Court.
History: Section 21 enacted on the 3/8/99, Resolution 63-99.

PART XII
INDIAN CHILD WELFARE PROCEEDINGS

SECTION 1. TRANSFER PROCEEDINGS.

1.1 Application of the Indian Child Welfare Act

The Family Court must apply the policies of the Indian Child Welfare Act, 25 U.S.C. 1901-1963, where they do not conflict with the provisions of the Fort Belknap Tribal Code. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Family Court except where specifically provided for in this code.

History: Section 1.1 enacted on the 3/8/99, Resolution 63-99.

1.2 Transfer from another Court.

A. In any proceeding before the Family Court, the Court may transfer the proceeding to an appropriate Tribal or State Court where the state or the other Indian Tribe has a significant interest of the child. In deciding whether to transfer the proceeding the Court may consider whether an agreement of reciprocity exists with the other Court.

B. The Family Court may decline a transfer of jurisdiction under 1911(b) of the Indian Child Welfare Act (ICWA) only after determining that:
1) essential family or tribal relations of the child will not be affected by the state court proceeding; or
2) if the essential extended family or tribal relations of the child will be affected, the best interests of the child, based on other financial considerations, in a secure, stable and loving environment outweigh the need to protect extended family or tribal relations;
3) that active efforts were made by officials of the state conducting the proceedings to provide remedial or rehabilitative services designed to prevent the breakup of the Indian family and these efforts were unsuccessful.

C. Written Findings. When transfer is declined the court shall file written findings.

History: Section 1, Subsection 1.2 (A-C) enacted on the 3/8/99, Resolution 63-99.

1.3 Procedures for Transfer From Other Courts

A. Receipt of Notice: The Tribal agent for service of notice of other Tribal and State Court child custody proceedings, as required by the Indian Child Welfare Act, shall be the Presenting Officer, Tribal Indian Child Welfare/Foster Placement Agency and Family Court.

B. Intervention: The Presenting Officer, based upon a report by the Tribal Indian Child Welfare/Foster Placement Agency, or a parent, shall cause a motion to intervene to be filed with the state or other Tribal Court without delay.

C. Investigation and Pre-Transfer Report: The Tribal Indian Child Welfare/Foster Placement Agency shall conduct an investigation and file a written report with the Presenting Officer.

D. Decision to Transfer: The Tribal Indian Child Welfare/Foster Placement Agency shall make written recommendations to the Presenting Officer on whether or not the Tribe should petition for transfer from the State or other Tribal Courts. The Tribal Indian Child Welfare/Foster Placement agency shall consider these factors:

1) The best interests of the child;
2) The best interest of the Tribe;
3) Availability of services for the child and his/her family; and
4) The prospects for permanent placement for the child.

E. Petition for Transfer: The Tribal petition for transfer, shall be filed by the Presenting Officer without delay upon receipt of recommendations and agreement by the presenting officer. The Family Court should not be involved at this phase of the proceeding, but may consider jurisdictional issues if the petition is challenged in Court. If there is not Presenting Officer, the prosecutor shall file the petition for transfer.

F. Acceptance of Transfer: The Family Court has discretion whether to accept or deny transfer and may accept a transfer from another Tribal or State Court if:

1) A parent or Indian custodian's petition to other Tribal and State Court for transfer is granted, or;
2) The Tribe's petition to other Tribal and State Court for transfer is granted.

Upon receipt of a request for transfer the Family Court shall have twenty days to decide whether to decline transfer in writing. If the Family Court declines to accept the proposed transfer, the proceeding will be continued, likely, by the state court. If the Family Court accepts transfer all information in the state court proceedings shall be forwarded to the presenting officer, who will notify the ICWA worker when the material arrives.

History: Section 1, Subsection 1.3 (A-F) enacted on the 3/8/99, Resolution 63-99.

SECTION 2 PROCEEDINGS AFTER TRANSFER TO TRIBAL COURT

2.1 Upon the case being transferred to tribal court the Child-in-need-of-care procedures pursuant to Part II of this Act shall be followed.

History: Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99.

PART XIII
PROTECTION OF ELDERS

SECTION 1. GENERAL PROVISIONS

1.1 Policy

The Gros Ventre and Assiniboine Elders are one of the Fort Belknap Indian Reservation's most valued resources inasmuch as they are custodians of the Tribes' history, language, culture and traditions; and vested in them is the hope of the Tribes to retain their history, language, culture and traditions. The Elders provide stability by being role models for their children and grandchildren, to whom they demonstrate long-lasting commitment to their individual families and communities. Based on this it is in the best interest of the Tribes to protect the Gros Ventre and Assiniboine elders from abuse, neglect, abandonment, exploitation and other mistreatment.

History: Section 1, Subsection 1.1 enacted on the 3/8/99, Resolution 63-99.

1.2 Purpose

It is the purpose of this Part to protect elders within the jurisdiction of Fort Belknap from abuse and neglect. It is in the interest of the health, safety and welfare of the Fort Belknap Indian Reservation and its people to provide procedures for identifying elders who are victims of abuse, neglect, abandonment, exploitations and other mistreatment and to provide remedies and other services to them.

This Part shall in all cases be implemented in a manner which least restricts interference with individual rights and which most respects Tribal customs.

Nothing in this Part precludes prosecution for any other offenses arising from the same circumstances.

History: Section 1, Subsection 1. 2enacted on the 3/8/99, Resolution 63-99.

1.3 Definitions

A. "Abuse": includes:
1) infliction of bodily injury, unreasonable confinement, intimidation, or cruelty towards an elder with resulting physical harm or pain or mental anguish by any person, particularly anyone such as a spouse, child, other family members, caretaker, or other person recognized by Gros Ventre and Assiniboine traditional law as having a special relationship with an elder.
2) sexual abuse, emotional abuse, exploitation of funds, property or other resources of an elder for personal gain without the informed or true consent of the elder or the acquiring of funds, property, or other resources of an elder

by threat, intimidation, or other coercion or failure to use the elder's funds or benefits for the elder or according to the elder's wishes.

B. "Caretaker": a person who is required by law to provide services or resources to an elder or a person who has voluntarily undertaken to provide care or resources to an elder.

C. "Elder": a person who is65 55 years or older.

D. "Emergency": a situation in which an elder is immediately at risk of death or injury and is unable to consent to services which would remove that risk.

E. "Good Faith": means an honest belief or purpose and the lack of intent to defraud.

F. "Incapacity" is the current inability, (functional inability) of a person to sufficiently understand, make, and communicate responsible decisions about himself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

G. "Neglect" when a caretaker fails to provide basic needs, supervision, services, or resources necessary to maintain minimum physical and mental health of an elder. Neglect also includes:
1) interfering with delivery of necessary services and resources to an elder;
2) failure to report abuse, neglect, or exploitation of an elder when there is reasonable suspicion;
3) failure to provide services or resources essential to the elder's practice of customs, traditions, or religion;
4) leaving of a child or children for indefinite periods of time by parents or legal guardians in the care of elders or grandparent(s) who may resort to using their limited resources in meeting needs of the children.

H. "Least Restrictive alternative": is an approach which allows an elder the most independence and freedom from intrusion, consistent with the elder's needs by requiring that the least drastic method of intervention is required to protect the elder from harm.

I. "Retaliation" threatening harm, or otherwise interfering with an individual reporting elder abuse, including threats or injury to a person's family, property, and employment status of the reporter or the reporter's family in any way

History: Section 1, Subsection 1.3 (A-I) enacted on the 3/8/99, Resolution 63-99.

SECTION 2. ROLE OF SOCIAL SERVICES

2.1

The Department of Social Services shall provide the necessary services to protect and assist an elder who has been subjected to abuse or neglect. Any service provided shall be the least restrictive alternative available. When possible the elder's family and caretakers shall be consulted in determining what services are needed.

History: Section 2, Subsection 2.1 enacted on the 3/8/99, Resolution 63-99.

SECTION 3. REPORTING ELDER ABUSE

3.1 Action on Reporting.

A. Upon receipt of a report that an elder is or has been abused or neglected, a social worker, tribal prosecutor, or law enforcement officer shall promptly conduct a thorough investigation into the home of the elder involved or any other place where the elder is present, into the circumstances surrounding the injury of the elder, and into all other financial matters that in the discretion of the investigator are relevant to the investigation.

B. When Investigation Begins. An initial investigation into the home of the elder may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, no one may be removed from the home.

C. Unsubstantiated Report. If from the investigation it appears that the elder has not suffered abuse or neglect and the initial report is determined to be unfounded, the department shall destroy all records concerning the report and the investigation.

History: Section 3, Subsection 3.1 (A-C) enacted on the 3/8/99, Resolution 63-99.

3.2 Persons Who are Legally Obligated to Report.

A. The following professionals or officials who know or have reasonable cause to suspect as a result of information they received in their professional or official capacity, that an elder is abused or neglected shall report the matter promptly to the tribal prosecutor/presenting officer, social worker, or law enforcement officer:

1) physician, resident, intern, dentist, nurse, optometrist, community health representative, chemical dependency counselor, or other health professional;
2) social worker, operator or employee of any registered or licensed rest home facility;
3) law enforcement officer or official; or

4) clergy;
5) all tribal committee staff
6) all Indian health service or tribal health employees

B. Regulations. The social service department shall adopt regulations establishing criteria and procedures which are consistent with this Part for:
1) receiving report of suspected elder abuse or neglect;
2) investigating all reports of suspected abuse or neglect;
3) initiating petitions for failure to report and bad faith reports;
4) initiating procedure for determining incapacity of the elder; and
5) ensuring confidentiality requirements are met and that each person is granted equal protection under the law.

C. Confidentiality of Records. The case records of social services, tribal attorney and law enforcement officers, and court actions taken concerning elder abuse and neglect must be kept confidential except for the following:
1) disclosure of records for an incamera inspection if relevant to the court action;
2) disclosure to a government agency or entity that is legally authorized to receive, inspect, or investigate reports of elder abuse or neglect;
3) disclosure to a licensed rest home facility;
4) disclosure to a health or mental professional who is treating the family or elder;
5) disclosure to a family member, guardian or person designated who is the subject of a report in the records, without disclosure of the identity of any person who reported or provided information on the alleged abuse;
6) disclosure to a elder's legal representative, guardian ad litem, attorney or special advocate;
7) a person who is authorized to receive records shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described. However, this section is not intended to affect the criminal court records concerning adults.

History: Section 3, Subsection 3.2 (A-C) enacted on the 3/8/99, Resolution 63-99.

3.3 Penalty for Failure to Report.

Any person who knowingly makes a false report of a suspected elder abuse knowing it to be false is subject to a civil penalty of up the $750.00. The Tribal Court shall assess the penalty after petition, notice, an opportunity for hearing, and a determination that the reporter made the report knowing it to be false. The reporter shall be subject to any civil suit brought by or on behalf of the persons(s) named as suspected abusers in the false report for damages suffered as a result of the false report. The person is also subject to any criminal penalties as set forth in Title IV of the Fort Belknap Tribal Code or as allowed by this Act.

History: Section 3, Subsection 3.3 enacted on the 3/8/99, Resolution 63-99.

3.4 Abuse and Neglect Reports.

Those persons mandated to report shall include the following information in a written report:
1) names and addressees of the elder and caretaker (if any);
2) tribal affiliation;
3) to the extent known nature and extent of the elder's injuries, including any previous injuries;
4) the facts that led the person reporting to believe that the elder has suffered abuse or injuries or neglect; and
5) the name and address of the person or agency making the report.
History: Section 3, Subsection 3.4 enacted on the 3/8/99, Resolution 63-99.

3.5 Confidential Information

A. The name of the reporter who makes a report of abuse or neglect as required by Section 18.6 of this Act is confidential and may not be released to any person unless the reporter consents to the release or release is ordered by the Court. The Court may release the reporter's name only after notice to the reporter, a closed evidentiary hearing is held, and the Court finds that the need to protect the elder is greater than the reporters right to confidentiality. The reporter's name shall be released only to the extent that the Court determines necessary to protect the elder.

B. Any record of an investigation of elder abuse or neglect, or of a Court hearing regarding elder abuse or neglect shall be kept confidential. Such records shall be available to the elder and the elder's family or caretaker.

C. A hearing held pursuant to this Act shall be closed and confidential. Only persons essential to the matter before the Court may attend the hearing. No person who attends or testifies at such a hearing shall reveal information about the hearing unless ordered to do so by the Court.
History: Section 3, Subsection 3.5 (A-C) enacted on the 3/8/99, Resolution 63-99.

3.6 Retaliation

A reporter is protected from retaliation which consists of threatening, harming, or otherwise interfering with an individual reporting family abuse, including threats or injury to a person's family, property, and employment status of the reporter or the reporter's family in any way. A person who initiates retaliation against a reporter is subject to a criminal offense as described in Title IV, Criminal Offenses.
History: Section 3, Subsection 3.6 enacted on the 3/8/99, Resolution 63-99.

SECTION 4 COURT PROCEEDINGS

4.1 Petition & Notice.

A. If social services determines a order of protection is necessary because the elder is abused, neglected or incapacitated they shall make application to the tribal prosecutor, in writing, to file a petition seeking such an order.

B. Notice. The elder, elder's family, and caretaker shall be served personally with a petition filed pursuant to this act. The Notice shall provide for a hearing within 10 days or if it is an emergency the hearing shall be held within 72 hours.

History: Section 4, Subsection 4.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

4.2 Elder Protection Order.

A. If the Court finds after a hearing that the elder is abused or neglected or incapacitated he may issue an elder protection order. Such protection may include any of the following:

1) removing the elder from the situation until the matter is corrected or until the elder is no longer at risk;
2) removing the person who has abused or neglected an elder;
3) restraining the person who has abused or neglected an elder;
4) requiring an elder's family or caretaker or any other person with a fiduciary duty to the elder to account for the elder's funds and property;
5) requiring any person who has abused or neglected an elder to pay restitution to the elder;
6) appoint a representative or guardian to assist the elder in managing his finances or property;
7) order the social services agency to prepare a plan to deliver elder protection services which provides the least restrictive alternatives for services, care, treatment, or placement consistent with the elder's needs.
8) Placement services and reasonable parties which include agencies which provide financial support

B. Term of Order. An elder protection order shall be issued for a period of three months, but may be continued after a review hearing. A review hearing shall be conducted every three months.

History: Section 4, Subsection 4.2 (A-B) enacted on the 3/8/99, Resolution 63-99.

TITLE XIV
PARENTAL RESPONSIBILITY ACT

SECTION 1. CRIMINAL LIABILITY

Section 1.1 Failure to Supervise

A. Parental Responsibility. A person who is the parent, lawful guardian or other person, except a foster parent, lawfully charged with the care or custody of a child under eighteen (18) years of age commits the offense of failure to supervise a child if the child:
1) Commits an act bringing the child within the purview of the Family Court; or
2) Fails to attend school or is not comparably instructed, as provided in section; or
3) Violates a curfew law of the reservation.

B. A person shall not be subject to prosecution under the criminal offense sections of this code containing the provisions of subsection A of this section if the person:
1) Is the victim of the act bringing the child within the purview of the provisions of the criminal offenses chapter; or
2) Reported the act of the child to the local law enforcement agency, the juvenile court, the department of health and welfare or other appropriate authority as provided in the ordinance;
3) A person shall not be subject to prosecution under an ordinance containing the provisions of subsections A of this section if the person shows to the satisfaction of the court that the person took reasonable steps to control the conduct of the child at the time the person is alleged to have failed to supervise the child.
4) Except as provided in subsection (5) of this section, the ordinance may provide that in a prosecution for failure to supervise a child the court may order the person to pay restitution to or make whole any victim who suffers an economic loss as a result of the juvenile's conduct in accordance with the standards and requirements of Title IV and Title V, provided that the restitution ordered to be paid shall not exceed twenty-five hundred dollars ($2,500).
5) If a person is found guilty or pleads guilty to the offense of failure to supervise a child and the person has not previously been found guilty or pled guilty to the offense of failure to supervise a child, the court:
(a) Shall warn the person of the penalty for any future conviction of failure to supervise a child and suspend the imposition of sentence;
(b) Shall not order the person to pay restitution.

6) The ordinance enacted pursuant to this section shall further provide that if

the person is found guilty or pleads guilty to a second offense of failure to supervise a child and if the person has previously been found guilty or has pled guilty to the offense of failure to supervise a child, the person shall be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars ($1,000). The ordinance may provide that, in lieu of imposing a fine, the court, may order the person to complete parenting classes or undertake other treatment or counseling, as approved by the court, and upon the person's completion of the classes, treatment or counseling to the satisfaction of the court, the court may discharge the person or if the person fails to complete the program to the satisfaction of the court, the court may impose the penalty provided in this section.

7) The ordinance may provide that any person violating the orders of the court entered under the ordinance shall be subject to contempt proceedings in accordance with Title V, in addition to any other penalties authorized pursuant to this section.

History: Section 1, Subsection 1.1 (A-B) enacted on the 3/8/99, Resolution 63-99.

Section 1.2.

Conviction of a person under an ordinance enacted under the authority of this section shall not preclude any other action or proceedings against the person which may be undertaken pursuant to the provisions of Title V, of the Laws of the Fort Belknap Indian Community, or other provisions of law.

History: Section 1, Subsection 1.2 enacted on the 3/8/99, Resolution 63-99.

PART XV
APPEAL

SECTION 1. APPEAL

1.1

Any party may appeal from a judgment of the court to the Fort Belknap Appellate Court in the manner prescribed by the civil appeals section of this code. The appeal shall be heard by the appellate court upon review of the files, records, and transcript of the Family Court proceedings.

History: Section 1, Subsection 1.1 enacted on the 3/8/99, Resolution 63-99.

1.2 Stay.

The appeal to the appellate court does not stay the judgment appealed from, but the appellate court may order a stay upon application and hearing. If the order appealed from grants one of the parties care and custody of a child the appeal should be heard as soon as practicable.

History: Section 1, Subsection 1.2 enacted on the 3/8/99, Resolution 63-99.

1.3 Costs.

The cost of obtaining the transcript shall be paid by the appealing party, this cost may be waived by the judge if the person is found to be indigent.

History: Section 1, Subsection 1.3 enacted on the 3/8/99, Resolution 63-99.

TITLE VI
RULES OF EVIDENCE
TABLE OF CONTENTS

TITLE VI

RULES OF EVIDENCE

SECTION 1

1.1 Scope

These rules govern all proceedings in the Fort Belknap Tribal Court.
History: Section 1.1 enacted on the 3/8/99, Resolution 63-99.

1.2 Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.
History: Section 1.2 enacted on the 3/8/99, Resolution 63-99.

1.3 Rulings on Evidence

A. Effect of erroneous ruling.
Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected; and
1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

B. Record of offer and ruling.
The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

C. Hearing of jury.
In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

D. Plain error.
Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

History: Section 1.3(A-D) enacted on the 3/8/99, Resolution 63-99.

Rule 1.4 Preliminary Questions

A. Questions of admissibility generally.
Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court.

B. In making its determination it is not bound by the rules of evidence except those with respect to privileges.

C. Relevancy conditioned on fact.
When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

D. Hearing of jury.
Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

E. Testimony by accused.
The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

F. Weight and credibility.
This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

History: Section 1.4 (A-F) enacted on the 3/8/99, Resolution 63-99.

Rule 1.5 Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

History: Section 1.5 enacted on the 3/8/99, Resolution 63-99.

Rule 1.6 Remainder of or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

History: Section 1.6 enacted on the 3/8/99, Resolution 63-99.

SECTION II. JUDICIAL NOTICE

2.1 Judicial Notice of Adjudicative Facts

A. Scope of rule.
This rule governs only judicial notice of adjudicative facts.

B. Kinds of facts.
A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort of sources whose accuracy cannot reasonably be questioned.

C. When discretionary.
A court may take judicial notice, whether requested or not.

D. When mandatory.
A court shall take judicial notice if requested by a party and supplied with the necessary information.

E. Opportunity to be heard.
A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

F. Time of taking notice.
Judicial notice may be taken at any stage of the proceeding.

G. Instructing jury.
In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

History: Section 2.1(A-G) enacted on the 3/8/99, Resolution 63-99.

SECTION III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

3.1 Presumptions in General Civil Actions and Proceedings

In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense

of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

History: Section 3.1 enacted on the 3/8/99, Resolution 63-99.

SECTION IV. RELEVANCY AND ITS LIMITS

4.1 Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

History: Section 4.1 enacted on the 3/8/99, Resolution 63-99.

4.2 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by the Constitution of the Gros Ventre and Assiniboine Tribes, the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.

History: Section 4.2 enacted on the 3/8/99, Resolution 63-99.

4.3 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

History: Section 4.3 enacted on the 3/8/99, Resolution 63-99.

4.4 Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes

A. Character evidence generally.
Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
1) Character of accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;
2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
3) Character of witness. Evidence of the character of a witness, as provided in

rules 6.7 , 6.8 , and 6.9.

B. Other crimes, wrongs, or acts.
Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identify, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.
History: Section 4.4(A-B) enacted on the 3/8/99, Resolution 63-99.

4.5 Methods of Proving Character

A. Reputation or opinion.
In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

B. Specific instances of conduct.
In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.
History: Section 4.5(A-B) enacted on the 3/8/99, Resolution 63-99.

4.6 Habit; Routine Practice

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.
History: Section 4.6 enacted on the 3/8/99, Resolution 63-99.

4.7 Subsequent Remedial Measures

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.
History: Section 4.7 enacted on the 3/8/99, Resolution 63-99.

4.8 Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

History: Section 4.8 enacted on the 3/8/99, Resolution 63-99.

4.9 Payment of Medical and Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

History: Section 4.9 enacted on the 3/8/99, Resolution 63-99.

4.10 Inadmissibility of Pleas, Plea Discussions, and Related Statements

A. Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:
1) a plea of guilty which was later withdrawn;
2) a plea of nolo contendere;
3) any statement made in the course of any proceedings under the Rules of Criminal Procedure regarding either of the foregoing pleas; or
4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

B. However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

History: Section 4.10(A-B) enacted on the 3/8/99, Resolution 63-99.

4.11 Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition

A. Evidence generally inadmissible.
The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):
1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.
2) Evidence offered to prove any alleged victim's sexual predisposition.

B. Exceptions.
1) In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:
a) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;
b) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and
c) evidence the exclusion of which would violate the constitutional rights of the defendant.
2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

C. Procedure to determine admissibility.
1) A party intending to offer evidence under subdivision (b) must --
a) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and
b) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.
2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.
History: Section 4.11(A-C) enacted on the 3/8/99, Resolution 63-99.

4.12 Evidence of Similar Crimes in Sexual Assault Cases

A. In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

B. In a case in which the prosecutor intends to offer evidence under this rule, the prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

C. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

D. For purposes of this rule and Rule 4.15 , "offense of sexual assault" means a crime under the criminal offenses section that involved--
1) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;
2) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;
3) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or
4) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(3).

History: Section 4.12(A-D) enacted on the 3/8/99, Resolution 63-99.

4.13 Evidence of Similar Crimes in Child Molestation Cases

A. In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

B. In a case in which the prosecutor intends to offer evidence under this rule, the attorney for the prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

C. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

History: Section 4.13(A-C) enacted on the 3/8/99, Resolution 63-99.

4.14 Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

A. In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's

commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 4.13 and Rule 4.14 of these rules.

B. A party who intends to offer evidence under this Rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

C. This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

History: Section 4.14(A-C) enacted on the 3/8/99, Resolution 63-99.

SECTION V. PRIVILEGES

5.1 General Rule

Except as otherwise required by the Constitution of the Gros Ventre and Assiniboine Tribes or provided by Act of Congress or in rules prescribed by the Tribal Court pursuant to statutory authority, the privilege of a witness, person, government, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the Tribal Court in the light of reason and experience.

History: Section 5.1 enacted on the 3/8/99, Resolution 63-99.

SECTION VI. WITNESSES

6.1 General Rule of Competency

Every person is competent to be a witness except as otherwise provided in these rules.

History: Section 6.1 enacted on the 3/8/99, Resolution 63-99.

6.2 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 7.3 , relating to opinion testimony by expert witnesses.

History: Section 6.2 enacted on the 3/8/99, Resolution 63-99.

6.3 Oath or Affirmation

Before testifying, every witness shall be required to declare that the witness

will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

History: Section 6.3 enacted on the 3/8/99, Resolution 63-99.

6.4 Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

History: Section 6.4 enacted on the 3/8/99, Resolution 63-99.

6.5 Competency of Judge as Witness

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

History: Section 6.5 enacted on the 3/8/99, Resolution 63-99.

6.6 Competency of Juror as Witness

A. At the trial.

A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

B. Inquiry into validity of verdict or indictment.

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

History: Section 6.6(A-B) enacted on the 3/8/99, Resolution 63-99.

6.7 Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

History: Section 6.7 enacted on the 3/8/99, Resolution 63-99.

6.8 Evidence of Character and Conduct of Witness

A. Opinion and reputation evidence of character.
The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:
(1) the evidence may refer only to character for truthfulness or untruthfulness, and
(2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

B. Specific instances of conduct.
Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 6.9 , may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness
1) concerning the witness' character for truthfulness or untruthfulness, or
2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.
The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

History: Section 6.8(A-B) enacted on the 3/8/99, Resolution 63-99.

6.9 Impeachment by Evidence of Conviction of Crime

A. General rule.
For the purpose of attacking the credibility of a witness,
1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 4.3 , if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

B. Time limit.
Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However,

evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

C. Effect of pardon, annulment, or certificate of rehabilitation.
Evidence of a conviction is not admissible under this rule if
1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or
2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a
finding of innocence.

D. Juvenile adjudications.
Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

E. Pendency of appeal.
The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.
History: Section 6.9(A-E) enacted on the 3/8/99, Resolution 63-99.

6.10 Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.
History: Section 6.10 enacted on the 3/8/99, Resolution 63-99.

6.11 Mode and Order of Interrogation and Presentation

A. Control by court.
The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to
1) make the interrogation and presentation effective for the ascertainment of the truth,
2) avoid needless consumption of time, and
3) protect witnesses from harassment or undue embarrassment.

B. Scope of cross-examination.
Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

C. Leading questions.
Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.
History: Section 6.11(A-C) enacted on the 3/8/99, Resolution 63-99.

6.12 Writing Used to Refresh Memory

A. Except as otherwise provided in criminal proceedings, if a witness uses a writing to refresh memory for the purpose of testifying, either--
1) while testifying, or
2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.
History: Section 6.12 enacted on the 3/8/99, Resolution 63-99.

6.13 Prior Statements of Witnesses

A. Examining witness concerning prior statement.
In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

B. Extrinsic evidence of prior inconsistent statement of witness.
Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny

the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 8.1(d)(2) .
History: Section 6.13(A-B) enacted on the 3/8/99, Resolution 63-99.

6.14 Calling and Interrogation of Witnesses by Court

A. Calling by court.
The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

B. Interrogation by court.
The court may interrogate witnesses, whether called by itself or by a party.

C. Objections.
Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.
History: Section 6.14 (A-C) enacted on the 3/8/99, Resolution 63-99.

6.15 Exclusion of Witnesses

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of the party's cause.
History: Section 6.15 enacted on the 3/8/99, Resolution 63-99.

SECTION VII. OPINIONS AND EXPERT TESTIMONY

7.1 Opinion Testimony by Lay Witnesses

A. If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are
1) rationally based on the perception of the witness and
2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.
History: Section 7.1 enacted on the 3/8/99, Resolution 63-99.

7.2 Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of

fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

History: Section 7.2 enacted on the 3/8/99, Resolution 63-99.

7.3 Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

History: Section 7.3 enacted on the 3/8/99, Resolution 63-99.

7.4 Opinion on Ultimate Issue

A. Except as provided in subdivision B, testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

B. No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

History: Section 7.4 (A-B) enacted on the 3/8/99, Resolution 63-99.

7.5 Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

History: Section 7.5 enacted on the 3/8/99, Resolution 63-99.

7.6 Court Appointed Experts

A. Appointment.

The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to

participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

B. Compensation.
Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the fifth amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

C. Disclosure of appointment.
In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

D. Parties' experts of own selection.
Nothing in this rule limits the parties in calling expert witnesses of their own selection.

History: Section 7.6(A-D) enacted on the 3/8/99, Resolution 63-99.

SECTION VIII. HEARSAY

8.1 Definitions

The following definitions apply under this article:

A. Statement.
A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

B. Declarant.
A "declarant" is a person who makes a statement.

C. Hearsay.
"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

D. Statements which are not hearsay.
A statement is not hearsay if--

1) Prior statement by witness. The declarant testifies at the trial or hearing and

is subject to cross-examination concerning the statement, and the statement is
a) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or
b) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or
c) one of identification of a person made after perceiving the person; or
2) Admission by party-opponent. The statement is offered against a party and is
a) the party's own statement in either an individual or a representative capacity or
b) a statement of which the party has manifested an adoption or belief in its truth, or
c) a statement by a person authorized by the party to make a statement concerning the subject, or
d) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or
e) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

History: Section 8.1 (A-D) enacted on the 3/8/99, Resolution 63-99.

8.2 Hearsay Rule

Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress.

History: Section 8.2 enacted on the 3/8/99, Resolution 63-99.

8.3 Hearsay Exceptions; Availability of Declarant Immaterial

A. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
3) Then existing mental, emotional, or physical condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.
6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.
8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth
a) the activities of the office or agency, or
b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or
c) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.
9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.
10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or

nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 902 , or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

11) Records of religious organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood,

adoption, or marriage, ancestry, or other similar fact of personal or family history.
20) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.
21) Reputation as to character. Reputation of a person's character among associates or in the community.
22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.
23) Judgment as to personal, family or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.
24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that
a) the statement is offered as evidence of a material fact;
b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
c) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

History: Section 8.3 enacted on the 3/8/99, Resolution 63-99.

8.4 Hearsay Exceptions; Declarant Unavailable

A. Definition of unavailability.
"Unavailability as a witness" includes situations in which the declarant--
1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
3) testifies to a lack of memory of the subject matter of the declarant's statement; or

4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.
A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

B. Hearsay exceptions.
The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
4) Statement of personal or family history.
a) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or
b) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
5) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that
a) the statement is offered as evidence of a material fact;
b) the statement is more probative on the point for which it is offered than

any other evidence which the proponent can procure through reasonable efforts; and
c) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention tooffer the statement and the particulars of it, including the name and address of the declarant.

History: Section 8.4(A-B) enacted on the 3/8/99, Resolution 63-99.

8.5 Hearsay Within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

History: Section 8.5 enacted on the 3/8/99, Resolution 63-99.

8.6 Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Rule 801(d)(2),(C),(D), or (E) , has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

History: Section 8.6 enacted on the 3/8/99, Resolution 63-99.

SECTION IX. AUTHENTICATION AND IDENTIFICATION

9.1 Requirement of Authentication or Identification

A. General provision.
The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

B. Illustrations.
By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:
1) Testimony of witness with knowledge - Testimony that a matter is what it

is claimed to be.
2) Nonexpert opinion on handwriting - Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.
3) Comparison by trier or expert witness - Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.
4) Distinctive characteristics and the like - Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.
5) Voice identification - Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.
6) Telephone conversations - Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if
a) In the case of a person, circumstances, including self-identification, show the person answering to be the one called, or
b) In the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.
7) Public records or reports - Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.
8) Ancient documents or data compilation - Evidence that a document or data compilation, in any form,
a) Is in such condition as to create no suspicion concerning its authenticity,
b) Was in a place where it, if authentic, would likely be, and
c) Has been in existence 20 years or more at the time it is offered.
9) Process or system - Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.
10) Methods provided by statute or rule - Any method of authentication or identification provided by Act of Congress or by other rules prescribed by the Gros Ventre and Assiniboine Tribes pursuant to statutory authority.

History: Section 9.1(A-B) enacted on the 3/8/99, Resolution 63-99.

9.2 Self-authentication

A. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:
1) Domestic public documents under seal. A document bearing a seal purporting to be that of the Gros Ventre and Assiniboine Tribe, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

2) Domestic public documents not under seal - A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.
3) Foreign public documents - A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position
a) of the executing or attesting person, or
b) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.
4) Certified copies of public records - A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Act of Congress or rule prescribed by the Supreme Court pursuant to statutory authority.
5) Official publications - Books, pamphlets, or other publications purporting to be issued by public authority.
6) Newspapers and periodicals - Printed materials purporting to be newspapers or periodicals.
7) Trade inscriptions and the like - Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.
8) Acknowledged documents - Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.
9) Commercial paper and related documents - Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.
10) Presumptions under Acts of Congress - Any signature, document, or other matter declared by Act of Congress to be presumptively or prima facie genuine or authentic.

History: Section 9.2 enacted on the 3/8/99, Resolution 63-99.

9.3 Subscribing Witness' Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

History: Section 9.3 enacted on the 3/8/99, Resolution 63-99.

SECTION X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

10.1 Definitions

A. For purposes of this article the following definitions are applicable:
1) Writings and recordings. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.
2) Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.
3) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".
4) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

History: Section 10.1 enacted on the 3/8/99, Resolution 63-99.

10.2 Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Act of Congress.

History: Section 10.2 enacted on the 3/8/99, Resolution 63-99.

10.3 Admissibility of Duplicates

A. A duplicate is admissible to the same extent as an original unless
1) a genuine question is raised as to the authenticity of the original or
2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

History: Section 10.3 enacted on the 3/8/99, Resolution 63-99.

TITLE VII
TRAFFIC CODE
TABLE OF CONTENTS

Part

THE LAWS OF THE FORT BELKNAP INDIAN COMMUNITY

TITLE VII

PART I

MOTOR VEHICLES AND HIGHWAYS

SECTION 1. GENERAL PROVISIONS

1.1 Purpose of Title.

A. The purpose of this title is to provide regulations for the use of vehicles within the boundaries of the Fort Belknap Reservation. The proper use of vehicles within the boundaries of the Fort Belknap Reservation is of importance to the health and safety of the individual Tribal members, as well as the over-all quality of life for residents of the Reservation.

B. This title is further intended to exercise the powers of self-government the Gros Ventre and Assiniboine Tribes retain in governing their people and territory. This self-government becomes all the more important in the face of problem areas such as traffic control, where the jurisdictional maze created by laws in this area have resulted in cumbersome, if not impossible, enforcement requirements. The inherent sovereignty of the Gros Ventre and Assiniboine Tribes are therefore being utilized in this area to deal with a growing problem brought about in part by the ever-growing sophistication, mechanization, and transitory nature of the world around us.

C. These regulations are intended to provide minimum standards for individuals operating vehicles within the boundaries of the Fort Belknap Reservation. These regulations are mandatory in nature, and must be complied with. Sanctions against violators are identified, and will be applied to be sure these minimum standards are met.

D. These regulations are intended to benefit all those who live within the Reservation boundaries, by making the streets and highways safer to use. The Fort Belknap Community Council will enforce these regulations with these purposes in mind, and said regulations shall be applied as necessary to fulfill these purposes. If in the future, any of these regulations are found to be in violation of the law, and therefore void, the remaining provisions shall remain in full force and effect until further action of the Tribal governing body.

History: Subsection 1.1 (A-D) enacted 3/8/99, Resolution No.63-99

1.2 Jurisdiction and procedure.

A. The Fort Belknap Indian Community Tribal Court shall have jurisdiction to hear all cases and controversies arising under the provisions of this title.

Such jurisdiction shall include all matters identified as civil or criminal in nature.

B. All cases and controversies arising under the provisions of Chapter 1 shall be treated as civil in nature, and be controlled by the Fort Belknap Rules of Civil Procedure, unless provisions herein conflict with the Rules of Civil Procedure, in which case the provisions herein control.
History: Subsection 1.2 (A-B) enacted 3/8/99, Resolution No.63-99.

1.3 Definitions.

The following definitions shall control in this Chapter:
A. Authorized Emergency Vehicle: Any vehicle in official use for emergency purposes by the Gros Ventre or Assiniboine Tribes, State of Federal Agency and private ambulances.

B. Bicycle: Every device propelled by human power upon which a person or persons may ride on land, having one, two or more wheels.

C. Flag Person: means any person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person's employer shall ensure that she or he is properly equipped for this work.

D. Funeral Procession: means two or more motor vehicles, one of which is carrying a deceased person, in the daylight hours.

E. Motorcycle: Every motor vehicle having a seat for the use of the rider and designed to travel on not more than three wheels in contact with the ground; but excluding a tractor.

F. Motor Vehicle: Every vehicle which is self-propelled or propelled by electrical power, or upon water.

G. Operator: Any person who operates, drives, controls, or otherwise has charge of a vehicle.

H. Traffic: Pedestrians, ridden or herded animals, vehicles, and other conveyances, either singularly or together while using any road, trail, street or other thoroughfare for purpose of travel.

I. Vehicle: Every device in, upon or by which any person or property is or may be transported or drawn on land, except snowmobiles and devices moved by human power or used exclusively upon stationary rails or tracks.
History: Subsection 1.3 (A-I) enacted 3/8/99, Resolution No.63-99.

TITLE VII
PART II

VEHICLE OPERATION REQUIREMENTS

SECTION 1. CIVIL NATURE OF PART II.

A. As the proceedings intended under this title are civil in nature, a finding of liability for one of the sanctions identified shall impose no legal disability or disadvantage.

B. When presenting a case provided for herein before the Tribal Court, the representative of the Tribes must show by a preponderance of the evidence that the named defendant was in non-compliance with these regulations, and should therefore be liable for the listed fine amount and/or other sanction.

C. All cases going to trial shall be presented in open court before a judge of the Fort Belknap Indian Community Tribal Court. Because of the small amounts involved as fines, and the expensive nature of jury trials, jury trials shall be allowed only at the leave of court, after a showing that such is necessary to receive a fair trial.

D. A cause of action brought under the provisions of Part II does not preempt other causes of action arising from the same incident, whether criminal or civil, as long as there is a separate basis for such cause of action. A finding of liability under this title may be used as evidence in further actions, where appropriate. Actions arising under Part II must be treated separate from criminal actions, and shall not be used as the basis of plea bargain agreements.
History: Subsection (A-D) was enacted 3/8/99, Resolution No.63-99.

SECTION 2. VEHICLE OPERATION REQUIREMENTS

2.1. Bicycles.

A. Bicycle riders must comply with all applicable traffic regulations, including the provisions of this title, and all posted traffic signs. Bicycle riders shall keep bicycles under complete control at all times.

B. All person riding bicycles shall ride as near to the right side of the roadway as practical, exercising due care when passing a standing vehicle. When available, riders must refrain from the highway when designated bike paths are available, other than crossing the highway.

C. Every person operating a bicycle on a hard surface or all weather road within the exterior boundaries of the Fort Belknap Reservation at night shall

have the bicycle equipped with a lamp on the front. In addition, each bicycle must exhibit a white light on the front and a red reflector on the rear, during periods of low visibility or during the period of time between sundown and sunrise.

D. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $10.00 nor less than $5.00. In the case of violation of any of the foregoing provisions by any minor, the adult or adults responsible for the care and custody of the minor shall be responsible for the payment of the fine if they authorized or knowingly permitted the minor to ride the bicycle in violation of this section.

History: Subsection 2.1 (A-D) enacted 3/8/99, Resolution No.63-99.

2.2. Motorcycles.

A. Motorcycle operators and riders must comply with all applicable traffic regulations, including the provisions of this title, and all posted traffic signs. Motorcycle operators and riders must wear protective head gear whenever riding a moving motorcycle within the boundaries of the Fort Belknap Reservation.

B. Each motorcycle operated on any road within the Fort Belknap Reservation must have a light in the front capable of dimming from high beam, have a rear tail light, have turning lights both front and back, and have appropriate rear view mirrors. Turning lights are required at all times, however working front and rear lights are required only during periods of low visibility, or between the time of sundown and sunrise.

C. Each motorcycle operated within the boundaries of the Fort Belknap Reservation must have a muffler in good working order, as required by Section 2.6.

D. All motorcycles are entitled to full use of a land and no motor vehicle shall be driven in such a manner as to deny any motorcycle the full use of a lane.

E. No person shall operate or ride nor shall the operator permit a person to ride upon a motorcycle unless he is wearing protective headgear securely fastened on his head. This subsection shall not apply to person riding within an enclosed cab.

F. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $50.00 nor less than $15.00.

History: Subsection 2.2 (A-F) enacted 3/8/99, Resolution No.63-99.

2.3. Commercial Towing Service

A. An operator of a vehicle used to provide commercial towing service for another vehicle following an accident, or for any other reason, must give immediate notice by the quickest available means of communication to the Fort Belknap Law Enforcement officials, before moving the vehicle, unless traffic is being obstructed, in which case notification shall be made before leaving the Fort Belknap Reservation. In no event shall notice be more than twelve (12) hours after moving the vehicle.

B. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $100.00, nor less than $15.00.
History: Subsection 2.3 (A-B) enacted 3/8/99, Resolution No.63-99.

2.4. Excessive Revving of Engines / Acceleration

A. The excessive revving of the engine of a motor vehicle or motorcycle so as to cause a disturbance of the peace, is prohibited. This prohibition shall not apply to vehicles being repaired or when such revving can be shown to have legitimate purposes.

B. Every operator of a vehicle must keep their vehicle under control at all times. The excessive acceleration of a vehicle when approaching or leaving a stopping place is prohibited. Acceleration is excessive when control is difficult to maintain under normal driving conditions because of the acceleration.

C. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $50.00, nor less than $15.00.
History: Subsection 2.4 (A-C) enacted 3/8/99, Resolution No.63-99.

2.5. False Report.

A. When reporting an accident or the non-compliance of an individual of traffic regulations, information related must be true and accurate to best of the knowledge and memory of the person reporting.

B. Any person found to have deliberately or purposefully given a false or fictitious report shall be liable for a fine of not more than $150.00, nor less than $20.00.
History: Subsection 2.5 (A-B) enacted 3/8/99, Resolution No.63-99.

2.6. Mufflers.

A. Every motor vehicle shall be equipped with a muffler in good working order whenever the vehicle is operated on roads within the boundaries of the Fort Belknap Reservation.

B. Operating a vehicle equipped with muffler cut-outs, bypass, or similar device will not meet the standard of operating a vehicle with a muffler in good working order.

C. Any person found to have been in non-compliance with this section, shall, when first discovered, be issued a written warning directing the operator to install on his/her vehicle, a muffler in good working order. Any person found to have been in non-compliance with this section after being issued the above written notice, shall be liable for a fine of not more than $100.00, nor less than $15.00.

History: Subsection 2.6 (A-C) enacted 3/8/99, Resolution No.63-99.

2.7. Obstructing Traffic

A. When stopping, parking, or leaving any vehicle, whether attended or unattended, upon the paved or maintained surface of a road, every operator must leave at least ten (10) feet of the width of the same traffic lane for the free or unobstructed movement of other vehicles. Stopping, parking, or leaving any vehicle upon a designated fire lane is prohibited. The above shall not apply in the event of an accident or other condition beyond the immediate control of the operator, or if otherwise directed by an authorized person.

B. No operator shall interfere with the normal follow of traffic by permitting a vehicle under his/her control to obstruct traffic by making turns from the wrong lane, by weaving in and out of traffic, by driving too unreasonably slow, or in any other unreasonable manner.

C. No person shall leave their vehicle unattended on the roadway for over 48 hours.

D. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $100.00, nor less than $15.00.

History: Subsection 2.7 (A-D) enacted 3/8/99, Resolution No.63-99.

2.8. Reporting Accidents

A. The operator of any vehicle involved in a collision or accident resulting in damage to property or injury to or death of any person shall immediately stop such vehicle at the scene of the incident, or as close thereto as possible. The operator shall, in every event described above, remain at the scene of said event until he has fulfilled the requirements of paragraphs B and C of this section.

B. The operator of any vehicle involved in a collision with an unattended

vehicle or other property in the absence of the owner, shall at the time and place of the incidents, give in writing his/ her name, address and identification of his vehicle to the operator or owner of the other property involved. If, after waiting for a reasonable time, the owner or operator of other property does not appear, then an operator may leave the above information along with his license number, if any, in a secure and conspicuous place, where said information will be found by the other owner or operator.

C. Where possible, the operator of a vehicle involved in a collision with any vehicle or other property, shall at the time and place of the incident, give in writing his/her name, address, license number, and identification of his/her vehicle to the operator or owner of the other property involved. The operator of the vehicle must also provide the name and address of his or her insurance agent or company. In every situation where the collision causes bodily injury to someone or physical damage to property so as to render one of the vehicles unsafe or unable to drive, the Fort Belknap law enforcement department shall be notified, and both owner/operators shall remain at the scene until law enforcement officials have investigated the incident.

D. The operator of any vehicle involved in a collision or accident shall, no matter how serious the incident, give notice of the Fort Belknap law enforcement department. Said operator shall also provide a written report of the incident within 24 hours, when requested by an authorized person. This report does not relieve the operator from the responsibility of making any other motor vehicle accident report which may be required.

E. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $500.00, nor less than $50.00.
History: Subsection 2.8 (A-E) enacted 3/8/99, Resolution No.63-99.

2.9. Yielding Right of Way.

A. The operator of any vehicle when approached from any direction by any authorized emergency vehicle giving an audible or visual signal, shall yield the right of way to the emergency vehicle, by pulling to the side of the road, and allowing the vehicle to pass.

B. The driver of a vehicle about to enter or cross a highway from a private drive or road shall yield the right of way to all vehicles approaching on the highway or road.

C. When two vehicles from different highways enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the left.

D. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $200.00, nor less than $25.00.
History: Subsection 2.9 (A-D) enacted 3/8/99, Resolution No.63-99.

2.10 Failure to Stop for a School Bus.

A. Every driver traveling on either side of the road shall stop before reaching a school bus receiving or discharging school children when flashing lights are in operation and shall not proceed until the school bus resumes motion.

B. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $600.00, nor less than $50.00.
History: Subsection 2.10 (A-B) enacted 3/8/99, Resolution No.63-99.

2.11. Speed Limits

A. The operator of any vehicle within the boundaries of the Fort Belknap Indian Reservation shall limit the speed of his/her vehicle to the following maximum limits, unless otherwise provided in this section:

1. Fifteen (15) miles per hour, within all school zones, business parking areas, residential areas, and at sites of emergencies such as fires or motor vehicle accidents.

2. Thirty-five (35) miles per hour, upon sections of road repairs.

3. The speed limit on all other roads within the Reservation shall be seventy (70) miles per hour during the day and (65) during the night for all vehicles except trucks and except as posted otherwise. For trucks the speed limit shall be sixty-five (65) during the day and fifty-five (55) during the night.

B. The Fort Belknap Community Council may establish greater or lesser speed limits upon any road or other way when the maximum speed limits set forth above are determined to be greater or less than is reasonable or safe. Such speed limits shall be established by posting of appropriate signs and no person shall drive any vehicle at a speed in excess of the maximum limits posted. The Council, when intending to change the speed limit of any stretch of road, must post said change in at least four (4) public places, three (3) weeks in advance of said change, and provide for a public hearing to take public comment on the proposed change, at least one week before the proposed change. When implementing any change, the Council shall post notice stating the reasons behind any change, and addressing the major issues, if any, raised for or against the change, at the public hearing. All signs existing as of the adoption date of this Code shall be presumed authorized, unless otherwise provided by the Council.

C. The provisions of this section shall not apply to authorized emergency vehicles; provided, however, that such vehicles shall not be operated at speeds in excess of those which are prudent under the circumstances when speeding occurs.

D. Any person found to have been in non-compliance with this section shall be liable for a fine of twenty-five ($25) dollars during the daylight hours between sunrise to sunset. After sundown and before sunrise, the fine assessed shall be the basic twenty-five ($25) dollars fine plus five ($5) dollars for each mile per hour found to be in excess of the posted speed limit.

History: Subsection 2.11 (A-D) enacted 3/8/99, Resolution No.63-99.

2.12 Careless Driving

A. A person operating or driving a vehicle of any manner on a road within the boundaries of the Reservation shall drive it in a careful and prudent manner, so as to avoid unduly or unreasonably endangering the life, limb, property or other rights of other persons.

B. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $150.00, nor less than $15.00.

History: Subsection 2.12 (A-B) enacted 3/8/99, Resolution No.63-99.

2.13. Traffic Control and Signs

A. The Fort Belknap Community Council may erect signs which regulate traffic, prohibit or restrict stopping, standing or parking, the direction of travel, and the hours during which roads and parking areas are open to the public. Any change proposed by the Council must be implemented pursuant to the procedure set forth in section 2.11 (B). All persons shall comply with the direction of any signal or posted traffic sign.

B. All persons shall obey the lawful order or signal of any authorized person or sign directing, controlling, or regarding the movement of traffic.

C. The operator of a motor vehicle shall comply with and observe all visual or audible signals given by any authorized person directing the operator to bring his motor vehicle to a stop. This shall include obeying the instructions of an individual with apparent authority giving traffic instructions at a construction site, as long as given instructions are reasonable and prudent.

D. The Fort Belknap Community Council is authorized to erect signs which regulate traffic, prohibit or restrict stopping, standing or parking, the direction of travel, and the hours during which roads and parking areas are open to the public during Sun dances, celebrations, and other temporary Tribal functions. The Chief of Police is authorized to regulate all motor vehicle traffic during

these temporary Tribal functions, pursuant to these temporary regulations. All persons shall comply with the direction of any signal or posted traffic sign. All signs existing as of the adoption date of this Code shall be presumed authorized, unless otherwise provided by the Council

E. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $50.00, nor less than $15.00.
History: Subsection 2.13 (A-E) enacted 3/8/99, Resolution No.63-99.

2.14. Motor Vehicle Operating Standards

A. Every motor vehicle operated on the roads within boundaries of the Fort Belknap Indian Reservation shall be equipped with headlights in front, capable of dimming from high beam, and have red lights in rear, capable of indicating when the brakes are applied. All vehicles with four wheels shall have at least two working headlights in front, and at least two working red tail-lights in the rear of the vehicle.

B. Every motor vehicle shall also be equipped with at least one rear-view mirror, brakes sufficient to stop the vehicle as necessary, tires with adequate tread to allow safe operation at speeds operated, and windshields, windows, and a vantage point adequate to provide the driver with a safe view of the road and its conditions. The general condition of the car must be maintained so as to make the car safe to operate under existing conditions.

C. When complying with traffic signals and signs, all operators must comply fully. When stopping, vehicles must reach a full stop. When turning, an operator must signal in advance so as to give other operators and pedestrians notice of his/her intentions. Signaling shall be accomplished by turn indicators front and rear on a vehicle, or by hand signals by the driver during daylight hours only. No vehicle shall operated in such manner so as to endanger the safety of another operator, pedestrian, or passenger.

D. All individuals operating a Motor Vehicle or Motorcycle shall have in their possession a valid, current Driver's License from an authorized issuing agency.

E. All vehicles driven on roads within the boundaries of the Fort Belknap Reservation must be properly, currently registered with an authorized registering agency, and must carry within said vehicle, in addition to at least one (1) license plate evidencing such fact, duly executed and authorized proof of registration.

F. All vehicles operated on roads within the boundaries of the Fort Belknap Reservation must be properly, currently insured with basic liability insurance to protect other drivers and passengers in the amount of no less than

$25,000.00 per person and $50,000.00 per accident, with proof of such insurance being carried in the vehicle at all times it is being operated. An officer finding a vehicle in non-compliance with this section may charge either the operator or the owner of the vehicle, in his/her discretion.

G. Any person found to have been in non-compliance with this section shall be liable for a fine of not more than $250.00, nor less than $15.00, or shall receive a written warning to correct the non-compliance. A vehicle found to have no liability insurance shall be impounded by the law enforcement department and held until proof of insurance is produced to the presiding judge. The law enforcement department has no discretion as to the release of such vehicle. The Tribal Court judge is the only person with authority to release a vehicle. Before the vehicle can be released from impound, the owner/operator shall be responsible for any towing or other costs incurred by law enforcement. Should a judge authorize the release he or she must do so in writing and such order shall then be provided to the law enforcement department.

History: Subsection 2.14 (A-G) enacted 3/8/99, Resolution No.63-99.

2.15 Child Safety Restraints and Seat Belts

A. No operator of a motor vehicle within the Fort Belknap Reservation who is the parent or legal guardian of a child between zero (0) and four (4) years old, or weighing less than forty (40) pounds may transport the child in a motor vehicle owned by the resident or his/her spouse unless the child is properly restrained in a safety belt or other properly designed and manufactured child restraint system.

B. All persons found within a motor vehicle shall be required to wear a seat belt.

C. This section does not apply to a vehicle that is a motor bus, school bus, taxicab, moped, motorcycle, or three (3) or four (4) wheel all–terrain.

D. The penalty for violation of Subsection A shall be a fine not to exceed one hundred dollars ($100.00) nor less than $15.00. The penalty for violation of Subsection B shall be a fine not to exceed twenty-five dollars ($25.00) nor less than $15.00.

History: Subsection 2.15 (A-D) enacted 3/8/99, Resolution No.63-99.

SECTION 3 ENFORCEMENT

3.1. Enforcement Responsibilities.

A. The law enforcement department at Fort Belknap shall have the responsibility to see that the above regulations are enforced. This

responsibility shall include, but is not limited to, the authority to stop all vehicles in non-compliance with this Chapter, issue written citations to individuals informing them of the type of non-compliance they will be held accountable for, setting hearing dates for adjudicating the liability of the cited individual unless otherwise prohibited under this Title.

B. When an operator of a vehicle is stopped and issued a citation, the officer shall include, as a part of the citation, a notice that a hearing will be held to determine the validity of the alleged non-compliance. The citation shall state that the officer will institute a civil complaint against the cited individual, list the basis of the complaint against the cited individual. They will have ten (10) working days from the date of the citation to file a written answer to the citation with the Fort Belknap Tribal Court Clerk. If they wish to contest the allegation of non-compliance, and set forth a date, fifteen (15) working days from the date of issuance, when a hearing will be held to adjudicate the matter. Specific times will be designated by Rules of Court.

C. The Chief Judge, Prosecutor's office after consultation with the Council, shall appoint a representative for the Tribe and law enforcement department The Adult Civil Clerk of Court shall carry through on civil complaints initiated by law enforcement officers or others. This Civil Clerk of Court representative shall receive the citations issued, and prepare them for the trial as necessary.

D. All officers, when stopping vehicles, or issuing citations, shall be in regular dress uniforms, and be driving distinctly marked police vehicles.

E. Individuals wishing to report the non-compliance of someone may notify the law enforcement department at Fort Belknap, and officers shall investigate to determine whether there is in fact non-compliance warranting a citation.

History: Subsection 3.1 (A-E) enacted 3/8/99, Resolution No.63-99.

3.2. Default.

A. After the citation described above has been issued, it is the responsibility of the cited individual to answer the complaint as initiated by the citation. If an answer is not received by the Clerk of the Tribal Court within ten (10) working days of the time the citation was issued, the Tribal representative prosecutor's office may move the court for a default judgment for failure to answer. Upon the motion of the representative, prosecutor, a default will be entered in the minutes of the court record. If no answer was filed, the hearing scheduled shall be limited to a show cause proceeding to determine whether there was good cause for the individual's failure to answer. If the individual does not appear, or if good cause is not shown to prevent the default judgment, default judgment against the individual cited shall be

entered.

B. If a fine was paid as a bond amount when the citation was issued, then that amount shall be forfeited to satisfy the default judgment. If no bond was posted, then the representative prosecutor may proceed with the judgment pursuant to the Fort Belknap Law and Order Code Rules of Civil Procedure on executing against property, or may move the Court to revoke the rights of the operator to use the vehicle in non-compliance with this Part for a period of not less than thirty (30) days or more than one (1) year. The Court may order whichever sanction in its discretion best fulfills the purposes of this title.

C. If after failing to answer a complaint, the individual cited appears at the scheduled hearing and presents good cause for his failure, along with a written answer to the complaint, then the judge shall revoke any default entered, and schedule a second hearing within five (5) days, at which time evidence will be received to determine the validity of the complaint. Continuance of the hearing in this manner can be waived by the parties, or, in the interests of justice, by the court. The individual shall be served with a notice of the time and date of the second hearing before leaving the first show cause hearing.

D. If the rights to operate a designated vehicle have been revoked pursuant to a default judgment, and the operator is found to be operating said vehicle within the boundaries of the Fort Belknap Reservation, then said vehicle shall be impounded for the remaining days left on the revocation, unless the individual pays the maximum fine amount listed for the non-compliance identified in the default judgment against him/her.

History: Subsection 3.2 (A-D) enacted 3/8/99, Resolution No.63-99.

3.3. Fines.

A. When an operator of a vehicle is stopped and issued a citation, the individual is to post the maximum fine amount identified in this Chapter for each non-compliance. This fine amount shall be posted as bond to:
(1) encourage conformity with all vehicle operation requirements in the future;
(2) emphasize the importance of non-conformity;
(3) insure action on the part of the individual cited, if he/she chooses to answer;
(4) provide a method for the convenience of the individual cited to choose the fine over a court appearance, when the individual accepts liability for his/her non-conformance.

B. If the individual cited is unable to post the required bond, the officer may detain the individual for up to one (1) hour while the individual attempts to

arrange posting of the bond amounts. If the individual is simply unable to pay the bond amount, the officer shall have the individual sign a note guaranteeing to pay the amount if found liable, and agreeing to submit to the jurisdiction of the Fort Belknap Tribal Court in any action necessary to collect the liability.

C. If an individual is found to be in default, judgment shall be entered, the amount posted as a bond shall be forfeited, and used to satisfy the fine imposed. If an individual is in default on a complaint, the fine assessed shall be the maximum amount set forth in the specific provision cited.

History: Subsection 3.3 (A-C) enacted 3/8/99, Resolution No.63-99.

3.4. Hearing Procedure.

A. The Fort Belknap Rules of Civil Procedure shall control the procedures followed in all hearings, unless specific procedures are identified in this Part.

B. At an adjudicatory hearing, the presiding judge shall receive all relevant evidence, and decide whether there is a preponderance of evidence to find the individual cited liable for a fine amount. It shall be within the discretion of the judge to determine the amount of the fine the individual cited shall be responsible for, provided the amount assessed is within the limits set forth in this Part.

History: Subsection 3.4 (A-B) enacted 3/8/99, Resolution No.63-99.

3.5. Miscellaneous Guidelines

A. All fines collected shall be deposited with a Clerk of Court, so that said fines may be placed in an account established for the benefit of the court. All fines collected shall be used to defray administrative costs in enforcing this title, as well as to establish programs to promote highway safety.

B. When exercising discretion in issuing warnings or citations, where permitted, all officers shall keep in mind the mandate of the Indian Civil Rights Act, and the rights provided for thereunder. All warnings issued shall be in lieu of issuing a citation, and are permitted only under the provisions of this Part which provide for such.

C. This code shall become law immediately upon its passage by the Fort Belknap Community Council. For a thirty (30) day period after passage, no citation shall be issued when an individual is stopped for non-compliance with this title. Warnings shall be issued in lieu of citations, to give the general public time to become familiar with the provisions herein. Copies of this title shall be available to all who request a copy, and copies shall be posted in public places in each community on the Reservation.

History: Subsection 3.5 (A-C) enacted 3/8/99, Resolution No.63-99.

TITLE VII
PART III

CRIMINAL TRAFFIC LAW

SECTION 1. Criminal Nature of Part III

1.1 Criminal Nature of Offenses.

The offenses set forth in this chapter are found to be of a serious nature, warranting distinctive, significant treatment, and shall be considered offenses against the people of the Fort Belknap Indian Community, criminal in nature, and processed under the Rules of Criminal Procedure, provable on evidence demonstrated by the Tribal Prosecutor beyond a reasonable doubt.

History: Subsection 1.1 enacted 3/8/99, Resolution No.63-99.

1.2 Processing of Youth.

All individuals, including youth, shall be subject to the rules of this Part. Wherever possible, police officers shall provide copies of citations issued to the parents or guardians of the youth, and the court shall require at least one (1) parent or guardian accompany the youth in court, at times scheduled. A person under 18 years of age who is convicted of an offense under this title shall not be punished by incarceration, but shall be punished by one or more of the following:

A. A fine not to exceed the fine that could be imposed on him/her if he/she were an adult, provided that such person may not be imprisoned for failure to pay such fine;

B. Revocation of his/her driver's license by the court or suspension of the license for a period set by the court;

C. Impoundment by the court or a party designated by the court of a vehicle operated by the person for a period of time not exceeding sixty (60) days, if the court finds that he/she either owns the vehicle or is the only person who uses the vehicle;

D. Community service designed to impress upon the youth that careful consideration should be given to avoiding similar offenses in the future; and/or

E. Appropriate treatment or counseling designed to meet the needs of the youth and to avoid reoccurrence of similar behavior in the future.

History: Subsection 1.2(A-E) enacted 3/8/99, Resolution No.63-99.

1.3. Work Permits.

A. Upon refusal of a request for a blood, breath or urine test under this Chapter, the court shall be authorized only to grant a work permit for a period of time up to five (5) days. The suspension period otherwise applicable for such refusal, as set forth in this Chapter shall be mandatory, unless found to be improper upon the review provided for herein.

B. Upon conviction of a DUI or PER SE under this Chapter, an individual shall be subject to the suspension of their driving privileges as provided. Individuals not otherwise subject to implied consent revocations or suspensions or other revocations or suspensions, may apply to the court for a work permit. The court shall be authorized to issue work permits to individuals who first pay the reinstatement fees provided for herein and show proof of current liability insurance, for the limited purposes of driving to and from work, driving while at work, driving to and from school, and driving to complete duties immediately necessary to maintain their immediate household.

History: Subsection 1.3 (A-B) enacted 3/8/99, Resolution No.63-99.

1.4 Reinstatement Fees.

The court is authorized to require a reinstatement fee in the amount of ($25.00) or ($50.00) or ($75.00) or ($100.00) be paid to the court, before a suspension or revocation imposed by the court is recognized as lifted, whether on an implied consent revocation or other suspension. Individuals failing to pay the reinstatement fee after a suspension or revocation, shall be maintained on revoked or suspended status until the fee is paid in full to the court.

History: Subsection 1.4 enacted 3/8/99, Resolution No.63-99.

1.5 Reporting Requirements.

The court and police department is hereby required to record all Tribal Court convictions and implied consent revocations on the computer. Such status shall be maintained as current, as an individual serves their suspension/revocation or other sentence, and is reinstated. For purposes of sentencing on Tribal Court convictions, convictions in other jurisdictions will be considered, if duly reported on the Crime Computer. The police department shall assist the Tribal Prosecutor by obtaining records from the Crime Computer for consideration at sentencing, after conviction.

History: Subsection 1.5 enacted 3/8/99, Resolution No.63-99.

1.6 Definitions.

The definitions found in Section 1, subsection 1.3 shall be applicable to the terms found in this Part, unless otherwise provided.
History: Subsection 1.6 enacted 3/8/99, Resolution No.63-99.

1.7 Police Authority

All tribal, Bureau of Indian Affairs, Montana Highway Patrol and other law enforcement officers authorized by the Council shall have the power to:

A. Enforce the provisions of this Part and any other Tribal laws regulating the operation of vehicles or the use of the highways.

B. To make arrests upon any person, without a warrant, for any violation committed in your presence of any of the provisions of this Title or other Tribal laws regulating the operation of vehicles or the use of the highway.

C. At all times to direct all traffic to conform with this Title and in the event of fire or other emergency to expedite or to ensure safety, to direct traffic as conditions may require, notwithstanding the provisions of this Title.

D. When on duty, upon reasonable belief that any vehicle is being operated in violation of any provision of this Title, to require the driver thereof to stop and exhibit his driver's license and registration card issued for the vehicle.

E. To inspect any vehicle in any public garage or repair shop or in any place where such vehicle or vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof.

F. To serve all warrants relating to the enforcement of this Title regulating the operation of vehicles or the use of the highways.

G. To investigate traffic accidents and secure names and addresses of witnesses of persons involved.

H. To investigate reported thefts of motor vehicles.
History: Subsection 1.7 enacted 3/8/99, Resolution No.63-99

SECTION 2 OFFENSES

2.1 Reckless Driving

A. Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

B. Every person convicted of reckless driving shall be punished by

imprisonment for a period of not more than thirty (30) days for a first offense and not more than sixty (60) days for a second or subsequent offense and/or to a fine not to exceed $150.00, for a first offense, or $500.00 for a second or subsequent offense, and/or costs associated with prosecution, and/or may be deprived of the right to operate a motor vehicle for a period of not to exceed one (1) year.

History: Subsection 2.1 (A-B) enacted 3/8/99, Resolution No.63-99.

2.2 Reckless to Elude.

A. Any person who operates any vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time exhibiting emergency lights, attempting to stop such person, is guilty of reckless driving.

B. Every person convicted of reckless driving shall be punished by imprisonment for a period of not less than five (5) days or more than sixty (60) days for a first offense and not less than twenty (20) or not more than sixty (60) days for a second or subsequent offense and/or to a fine not to exceed $150.00, for a first offense, or $500.00 for a second or subsequent offense, and/or costs associated with prosecution, and/or may be deprived of the right to operate a motor vehicle for a period of not to exceed one (1) year.

History: Subsection 2.2 (A-B) enacted 3/8/99, Resolution No.63-99.

2.3 Driving While Suspended or Revoked.

A. Any person who drives a motor vehicle or commercial motor vehicle on any public highway within the boundaries of the Reservation at a time when the person's privilege to do so is suspended or revoked in this jurisdiction or any other jurisdiction is guilty of the offense of Driving While Suspended or Revoked.

B. Any person, regardless of residence, whose license or right or privilege to operate a motor vehicle or commercial motor vehicle in this jurisdiction has been suspended or revoked as provided in this Code may not operate a motor vehicle or commercial vehicle in this jurisdiction under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension or after the revocation until the suspension or revocation is cured and a new license is obtained.

C. Every person convicted of driving while suspended or revoked shall be punished by imprisonment for a period of time not less than two (2) days or not more than six (6) months and to a fine not to exceed $150.00, for a first offense, or $500.00 for a second or subsequent offense, and/or costs associated

with prosecution, and/or may be deprived of the right to operate a motor vehicle for a period of not to exceed one (1) year.

History: Subsection 2.3 (A-C) enacted 3/8/99, Resolution No.63-99.

2.4 Driving a Motor Vehicle by a Person with Alcohol Concentration of 0.10 or more (Per Se).

A. Any person who drives or is in actual physical control of a vehicle on the highways or roads of this Reservation at a time while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.10 or more, is guilty of the offense of driving a motor vehicle by a person with Alcohol Concentration of 0.10 or more (Per Se).

B. Any person who is convicted of a violation of this Section is guilty of an offense punishable as follows: Upon the first conviction and every conviction thereafter, each individual shall be required to attend and complete an alcohol information class, accredited by the court or an authorized jurisdiction recognized by the court. Upon the first conviction and every conviction thereafter, each individual shall also be sentenced to a fine in the amount of not more than $1000.00 and not less than $100.00. Upon the first conviction, the court shall suspend the individual's Driving Privilege for a period of time not more than six (6) months and not less than sixty(60) days. Upon a second or subsequent conviction, the court shall suspend the individual's Driving Privilege for a period of time not more than one (1) year and not less than six (6) months. Upon a third or subsequent conviction, the court shall suspend the individual's Driving Privilege for a period of time not less than one (1) year. Upon the first conviction, the court shall require an individual to serve no more than twenty (20) days. Upon a second conviction, the court shall require an individual to serve no more than ninety (90) days or less than two (2) days in jail. Upon a third or subsequent conviction, the court shall require an individual to serve no more than six (6) months and no less than twenty-eight (28) days in jail. Individuals choosing to attend in-patient treatment, shall be eligible, if the court so chooses, to receive credit for time spent in in-patient treatment on a day for day basis, and against fine amounts, at the rate of $20.00 per day.

History: Subsection 2.4 (A-B) enacted 3/8/99, Resolution No.63-99.

2.5 Driving a Motor Vehicle While Under the Influence of Intoxicating Liquor or Drugs.

A. It is unlawful and punishable for any person who is under the influence of intoxicating liquors, under the influence of any drug, or under the combined influence of alcohol and any drug, to a degree which renders him/her incapable of safely driving motor vehicle to operate or be in actual physical control of any motor vehicle upon the highways or roads of the Fort

Belknap Reservation.

B. In any criminal prosecution for a violation of paragraph (A) of this Section relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance, shall give rise to the following presumptions:

(1) If there was at that time 0.05 percent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor.

(2) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(3) If there was at that time 0.10 percent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred (100) cubic centimeters of blood.

(5) In addition to the results of chemical analysis as set forth in paragraph (B), other competent evidence may be introduced on the question of whether the defendant was under the influence of an intoxicating liquor.

C. Any person who is convicted of a violation of this Section is guilty of an offense punishable as follows: Upon the first conviction and every conviction thereafter, each individual shall be required to attend and complete an alcohol information class, accredited by the court or an authorized jurisdiction recognized by the court. Upon the first conviction and every conviction thereafter, each individual shall also be sentenced to a fine in the amount of not more than $1000.00 and not less than $100.00. Upon the first conviction, the court shall suspend the individual's Driving Privilege for a period of time not more than six (6) months and not less than sixty(60) days. Upon a second or subsequent conviction, the court shall suspend the individual's Driving Privilege for a period of time not more than one (1) year and not less than six (6) months. Upon a third or subsequent conviction, the court shall suspend the individual's Driving Privilege for a period of time not less than one (1) year. Upon the first conviction, the court shall require an individual to serve no more than thirty (30) days and no less than twenty-four (24) hours in jail. Upon a second conviction, the court shall require an individual to serve no more than

ninety (90) days or less than five (5) days in jail. Upon a third or subsequent conviction, the court shall require an individual to serve no more than six (6) months and no less than twenty-eight (28) days in jail. Individuals choosing to attend in-patient treatment, shall be eligible, if the court so chooses, to receive credit for time spent in in-patient treatment on a day for day basis, and against fine amounts, at the rate of $20.00 per day.

History: Subsection 2.5 (A-C) enacted 3/8/99, Resolution No.63-99.

2.6 Chemical Blood, Breath, or Urine Test.

A. Any person who operates a motor vehicle upon the highways and roads of the Reservation shall be deemed to have given consent, subject to the provisions of this Section, to a chemical test of his/her blood, breath, or urine, roadside intoxilizers and/or office intoxilizers for the purpose of determining the alcoholic content of this blood. This test shall be administered at the direction of an arresting police officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the highways and roads of the Reservation while under the influence of intoxicating liquor. The arresting officer may designate which on of the aforesaid tests shall be administered.

B. Any person who is unconscious or who is otherwise in a condition rendering him/her incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (A) of this Section.

C. If the test to be given is a blood test, only a physician or registered nurse acting at the request of the police officer may administer the test, neither shall incur any civil or criminal liability as a result of his/her assistance.

D. If the test to be given is a chemical test of urine, the person tested shall be given privacy in the taking of the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

E. Upon the request of the person tested, full information concerning the test taken at the direction of the police officer shall be made available to such person or his/her attorney/representative.

F. The person tested may, at his/her own expense, have a physician or registered nurse of his/her own choosing administer a test, in addition to any administered at the direction of a police officer, for the purpose of determining the amount of alcohol in his/her blood at the time alleged as shown by chemical analysis of his/her blood, breath or urine.

G. If a person under arrest refuses upon the request of a police officer to submit to a chemical test designated by the arresting officer as provided in

paragraph (A) of this Section, none shall be given, but the officer shall, on behalf of the Fort Belknap Indian Community Tribal Court, immediately seize his/her driver's license. This refusal to take the test shall be in a written verification which shall be signed by the accused and filed with the Court. If the accused refuses to sign the verification , also, the police officer shall file the verification stating that the accused refused the test and the verification signature. The police officer shall forward the license to the Court, along with a sworn report that he/she had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the highways or roads of the Reservation while under the influence of intoxicating liquors and/or drugs, and that the person had refused to submit to the test on the request of the police officer. Upon receipt of the report, the Court shall suspend the license for a period of ninety (90) days.

H. Upon seizure of the license, the police officer shall issue, on behalf of the court, a temporary driving permit, which is valid for seventy-two (72) hours after the time of issuance. This time shall not be counted in the five (5) day period the court can otherwise grant a temporary work permit as provided for above.

I. All suspensions under Section (G) are subject to appeal to the Court. The issue on appeal shall be limited to whether a police officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a motor vehicle upon the highways and roads of the Reservation while under the influence of intoxicating liquor and/or drugs, whether the person was placed under arrest, and whether the person refused to submit to a requested test.

History: Subsection 2.6 (A-I) enacted 3/8/99, Resolution No.63-99.

2.7 Admissibility of Evidence.

A. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor and/or drugs or driving while blood alcohol content is above 0.10 %, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his/her blood, breath, or urine is admissible.

B. If the under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the highways or roads of the Reservation while under the influence of an intoxicating liquor.

History: Subsection 2.7 (A-B) enacted 3/8/99, Resolu

TITLE VIII
TABLE OF CONTENTS
PROBATE CODE

Section 1

TITLE VIII

PROBATE CODE

SECTION 1

1.1 Short Title

This title shall be known and may be cited as the "Gros Ventre and Assiniboine Probate Code."

History: Section 1, Subsection 1.1 enacted on the __/__/_1979, Resolution No. __.

1.2 Purposes --Rule of construction.

A. This code shall be liberally construed and applied to promote its underlying purposes and policies.

B. The underlying purposes and policies of this code are:
(1) To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;
(2) To discover and make effective the intent of a decedent in distribution of his property;
(3) To promote a speedy and efficient system for administering the estate of the decedent and making distribution to his successors;
(4) To facilitate use and enforcement of certain trusts; and
(5) To make uniform the law among the various jurisdictions.

History: Section 1, Subsection 1.2(A-B) enacted on the __/__/_1979, Resolution No. __.

Section 1.3

Supplementary general principles of law applicable. Unless displaced by the particular provisions of this code, the principles of law and equity supplement its provisions.

History: Section 1, Subsection 1.3 enacted on the __/__/_1979, Resolution No. __.

Section 1.4 Severability.

If any provision of this code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

History: Section 1, Subsection 1.4 enacted on the __/__/_1979, Resolution No. __.

Section 1.5 Construction Against Implied Repeal.

This code is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation

if it can reasonably be avoided.
History: Section 1, Subsection 1.5 enacted on the __/__/_1979, Resolution No. __.

Section 1.6 Effect of Fraud and Evasion.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within three years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.
History: Section 1, Subsection 1.6 enacted on the __/__/_1979, Resolution No. __.

Section 1.7 Evidence as to Death or Status.

A. In proceedings under this code the rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are applicable unless specifically displaced by the code. In addition, the following rules relating to determination of death and status are applicable:
(1) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date, and time of death and the identity of the decedent.
(2) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.
(3) A person who is absent for a continuous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.
History: Section 1, Subsection 1.7 enacted on the __/__/_1979, Resolution No. __.

Section 1.8 Acts By Holder of General Power

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a

power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

History: Section 1, Subsection 1.8 enacted on the __/__/_1979, Resolution No. __.

Section 1.9 Duty to Comply with Environmental Laws

A. Definitions

(1) From the inception of the trust or estate, a fiduciary shall have the following powers, without court authorization, which it may use in its sole discretion to comply with environmental law:

(a) to inspect and monitor property held by the fiduciary, including interests in sole proprietorships, partnerships, or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting the property and to respond to any actual or threatened violation of any environmental law affecting the property held by the fiduciary;

(b) to take, on behalf of the estate or trust, any action necessary to prevent, abate, or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

(c) to refuse to accept property if the fiduciary determines that any property to be donated to the trust or estate either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving hazardous substance which could result in liability to the trust or estate or otherwise impair the value of the assets held in the trust or estate;

(d) to settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;

(e) to disclaim any power granted by any document, statute, or rule of law which, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law; or

(f) to decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held in the trust or estate.

(2) For purposes of this section "environmental law" means any federal, state, or local law, rule, regulation or ordinance relating to protection of the environment or human health. For purposes of this section, "hazardous substances" means any substance defined as hazardous or toxic or which is otherwise regulated by any environmental law.

(3) The fiduciary is entitled to charge the cost of any inspection, review, abatement, response, cleanup, or remedial action authorized in this section against the income or principal of the trust or estate. A fiduciary shall not be

personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law. Neither the acceptance by the fiduciary of property or a failure by the fiduciary to inspect property shall be considered to create any inference as to whether or not there is or may be any liability under any environmental law with respect to the property.

(4) This section applies to all estates and trusts in existence upon and created after July 1, 1991.

(5) No exercise by a fiduciary of any of the powers granted in this section shall constitute a transaction which is affected by a substantial conflict of interest on the part of the fiduciary.

History: Section 1, Subsection 1.9 enacted on the __/__/_1979, Resolution No. __.

Section 1.10 General Definitions.

A. Subject to additional definitions contained in the subsequent chapters which are applicable to specific chapters or parts, as used in this code:

(1) "Application" means a written request to the registrar for an order of informal probate or appointment under Chapter 3, Part 3.

(2) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(3) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(4) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses. The term does not include estate or inheritance taxes, Montana income taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(5) "Court" means the Tribal Court of the Gros Ventre and Assiniboine Tribes.

(6) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(7) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(8) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee or trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.

(9) "Disability" means cause for a protective order as described by Section 75-5-

401.
(10) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this subsection, testamentary trustee includes a trustee to whom assets are transferred by will to the extent of the devised assets.
(11) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration.
(12) "Exempt property" means that property of a decedent's estate which is described in Section 75-2-402.
(13) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.
(14) "Foreign personal representative" means a personal representative of another jurisdiction.
(15) "Formal proceedings" means those conducted before a judge with notice to interested persons.
(16) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.
(17) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.
(18) "Incapacitated person" means any person whose decision making process is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, or the person has unusually bad judgment, highly impaired memory, or severe loss of behavior control, to the extent that the person is unable to care for his or her personal safety or is unable to attend to and provide for such necessities as food, shelter, clothing, and medical care, without which physical injury or illness may occur.
(19) "Informal proceedings" mean those conducted by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.
(20) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matters involved in, any proceeding.
(21) "Issue" of a person means all his lineal descendants of all generations,

with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.
(22) "Lease" includes an oil, gas, or other mineral lease.
(23) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.
(24) "Minor" means a person who is under 18 years of age.
(25) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.
(26) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.
(27) "Organization" includes a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.
(28) "Parent" includes any person entitled to take, or who would be entitled to take, if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.
(29) "Person" means an individual, a corporation, an organization, or other legal entity.
(30) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status; but "general personal representative" excludes special administrator.
(31) "Petition" means a written request to the court for an order after notice.
(32) "Proceeding" includes action at law and suit in equity.
(33) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.
(34) "Protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made.
(35) "Protective proceeding" means a proceeding under the provisions of applicable law to determine that a person cannot effectively manage or apply the person's estate to necessary ends, either because the person lacks the ability or is otherwise inconvenienced, or because the person is a minor, and to secure administration of the person's estate by a conservator or other appropriate relief.
(36) "Registrar" refers to the official of the court designated to perform the functions of registrar as provided in applicable law.
(37) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(38) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution, and closing.
(39) "Special administrator" means a personal representative as described in this code.
(40) "Tribe" includes the Gros Ventres and Assiniboine Tribes.
(41) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.
(42) "Successors" mean those persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this code.
(43) "Supervised administration" refers to the proceedings described in Chapter 3, Part 5.
(44) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.
(45) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Chapter 6, custodial arrangements pursuant to any uniform gifts to minors act or provisions, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, pre-need funeral plans under law, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.
(46) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by the court.
(47) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.
(48) "Will" includes any codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.
(49) "Temporary guardian" means a qualified official or person appointed by the court whose powers and duties are limited, as described in this code.
History: Section 1, Subsection 1.10 enacted on the __/__/_1979, Resolution No. __.

Section 1.11 Territorial Application.

A. Except as otherwise provided in this code, this code applies to:
(1) The affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this state;
(2) The property of nonresidents located in this state or property coming into the control of a fiduciary who is subject to the laws of this state;
(3) Incapacitated persons and minors in this state;
(4) Survivorship and related accounts in this state; and

(5) Trusts subject to administration in this state.
History: Section 1, Subsection 1.11 enacted on the __/__/_1979, Resolution No. __.

Section 1.12 Subject Matter Jurisdiction.

A. To the full extent permitted by the Constitution of the Gros Ventre and Assiniboine Tribes, the court has jurisdiction over all subject matter relating to:
1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons;
2) protection of minors and incapacitated persons; and
(3) trusts.
a) The court has full power to make orders, judgments, and decrees and take all other action necessary and proper to administer justice in the matters which come before it.
History: Section 1, Subsection 1.12 enacted on the __/__/_1979, Resolution No. __.

Section 1.13 Venue -- Multiple proceedings -- Transfer -- Orders and Hearings.

A. Where a proceeding under this code could be maintained in more than one place in this Reservation, the court in which the proceeding is first commenced has the exclusive right to proceed.

B. If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this state, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided; and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

C. If a court finds that in the interest of justice a proceeding or a file should be located in another court of this state, the court making the finding may transfer the proceeding or file to the other court.

D. The judge of the court in which any proceeding under this code is pending may make any order relating to the proceeding in chambers at any place in his district, and the order shall have the same force and effect as if made by the court sitting in the proper county. The hearing of any matter requiring notice shall be had at the time and place appointed or at the time to which the same may be postponed, except that where there is no contest or where all the parties consent, the hearing may be had at any place within the judicial district in which the matter is pending.
History: Section 1, Subsection 1.13(A-D) enacted on the __/__/_1979, Resolution No. __.

Section 1.14 Practice in court.

Unless specifically provided to the contrary in this code or unless inconsistent

with its provisions, the rules of civil procedure, including the rules concerning vacation of orders and appellate review, govern formal proceedings under this code.

History: Section 1, Subsection 1.14 enacted on the __/__/_1979, Resolution No. __.

Section 1.15 Records and Certified Copies.

The clerk of the court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this code, including petitions and applications, demands for notices or bonds, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk must issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills must indicate whether the decedent was domiciled in this state and whether the probate was formal or informal. Certificates relating to letters must show the date of appointment.

History: Section 1, Subsection 1.15 enacted on the __/__/_1979, Resolution No. __.

Section 1.16 Jury Trial.

A. If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding and any proceeding in which any controverted question of fact arises as to which any party has a statutory or constitutional right to trial by jury.

B. If there is no right to trial by jury under Section A of this section or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

History: Section 1, Subsection 1.16(A-B) enacted on the __/__/_1979, Resolution No. __.

Section 1.17 Registrar.

The registrar shall be a judge of the court.

History: Section 1, Subsection 1.17 enacted on the __/__/_1979, Resolution No. __.

Section 1.18 Appeals.

Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the rules applicable to the appeals to the Supreme Court in equity cases from the court of general jurisdiction, except that in proceedings where jury trial has been had as a matter of right, the rules applicable to the scope of review in jury cases apply.

History: Section 1, Subsection 1.18 enacted on the __/__/_1979, Resolution No. __.

Section 1.19 Oath or Affirmation on Filed Documents.

Except as otherwise specifically provided in this code or by rule, every document filed with the court under this code, including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed; and penalties for perjury may follow deliberate falsification therein.
History: Section 1, Subsection 1.19 enacted on the __/__/_1979, Resolution No. __.

Section 1.20 Costs

In discretion of court. When not otherwise prescribed in this code, the court, or the Court of Appeals on appeal from the court, may, in its discretion, order costs to be paid by any party to the proceedings or out of the assets of the estate as justice may require.
History: Section 1, Subsection 1.20 enacted on the __/__/_1979, Resolution No. __.

Section 1.21 Consent to Jurisdiction.

By submitting an application for informal probate or appointment or a petition for formal probate, adjudication of intestacy, or appointment the applicant or petitioner subjects himself to the jurisdiction of the court in all matters arising under this code. Notice of any proceeding sought to be maintained against the applicant or petitioner pursuant to his submission to jurisdiction shall be delivered to him or mailed to him by ordinary first-class mail at his address as it is known to the moving party or as listed in the application or petition or as thereafter reported to the court.
History: Section 1, Subsection 1.21 enacted on the __/__/_1979, Resolution No. __.

Section 1.22 Notice Method and Time of Giving

A. If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given by the clerk posting a copy of the notice for the ten consecutive days immediately preceding the time set for the hearing in at least three public places in the county, one of which must be at the courthouse of the county; and
(1) By the clerk mailing a copy thereof at least ten days before the time set for the hearing by certified, registered, or ordinary first class mail addressed to the person being notified at the post-office address given in his demand for notice, if any, or at his office or place of residence, if known; or
(2) By delivering a copy thereof to the person being notified personally at least ten days before the time set for the hearing; and

(3) If the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks a copy thereof in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing.
(4) The court for good cause shown may provide for a different method or time of giving notice for any hearing.
(5) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.
History: Section 1, Subsection 1.22 enacted on the __/__/_1979, Resolution No. __.

Section 1.23 Notice -- Waiver.

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by him or his attorney and filed in the proceeding. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may waive notice for his minor child.
History: Section 1, Subsection 1.23 enacted on the __/__/_1979, Resolution No. __.

Section 1.24 Pleadings -- When Parties Bound By Others -- Notice.

A. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:
(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.
(2) Persons are bound by orders binding others in the following cases:
(a) Orders binding the sole holder or all co-holders of a power of revocation or a presently-exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.
(b) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child.
(c) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.
(3) Notice is required as follows:

(a) Notice as prescribed by applicable rules of civil procedure shall be given to every interested person or to one who can bind an interested person as described in Subsection (2)(a) or (2)(b). Notice may be given both to a person and to another who may bind him.
(b) Notice is given to unborn or unascertained persons, who are not represented under Subsection (2)(a) or (2)(b), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.
(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.
History: Section 1, Subsection 1.24 enacted on the __/__/_1979, Resolution No. __.

Section 1.25 Publication in Newspapers.

Newspapers shall publish all notices of proceedings under the code under the heading "Probate, Guardianship, Conservator and Trust Notices. Consult clerk of the court or the respective signers for further information." These notices shall be published as often during the prescribed period as the paper is regularly issued, unless otherwise provided by law or directed by the court, and as far as possible in one column in the alphabetical order of the surnames of decedents, wards, incapacitated persons, and creators of trusts.
History: Section 1, Subsection 1.25 enacted on the __/__/_1979, Resolution No. __.

TITLE IX
TABLE OF CONTENTS
CIGARETTE AND TOBACCO PRODUCTS CODE

Section 1

TITLE IX

CIGARETTE AND TOBACCO PRODUCTS CODE

SECTION 1

1.1 Title

This ordinance shall be known as the Fort Belknap Indian Community Cigarette and Tobacco Products Code

History: Section 1, Subsection 1.1 enacted on the __/__/_1979, Resolution No. __.

1.2 Definitions

As used in this ordinance, the following words and phrases shall each have a designated meaning is expressly provided or the context is clearly indicated:

1) "Tribes" shall mean the Fort Belknap Indian Community of the Fort Belknap Indian Reservation, Montana.

2) "Council" shall mean the Fort Belknap Indian Community Council.

3) "Cigarettes" means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging, and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1).

4) "Tobacco products" shall mean any of tobacco wrapped in leaf tobacco or in any substance containing tobacco which shall include cigarettes within the meaning of subsection (3).

5) "Taxable event" shall mean the sale, use, consumption, handling, possession or distribution of each tobacco product.

6) "Retail selling price" shall mean the ordinary, customary, or usual prices paid by the consumer for each tobacco product, less the tax levied by this ordinance.

7) "Wholesale distribution price" shall mean the price paid for each tobacco product by the Tribes together will all freight charges and other expenses incurred by the Tribes in their receipt and distribution.

8) "Tobacco outlet" shall mean a licensed Tribal retail sales business selling tobacco products on trust land within the Fort Belknap Indian Reservation.

9) "Vendor" shall mean an enrolled member of the Fort Belknap Indian Community licensed by the Tribes to manage a tobacco outlet.

10) "Wholesale warehouse proprietor" shall mean the Fort Belknap Indian community of the Fort Belknap Indian Reservation; and there shall be no other wholesaler but the Tribes who shall sell cigarettes or

tobacco products to vendors who manage tobacco outlets.
11) "Tax stamp" shall mean a stamped issued by the Tribes which shall be affixed to all cigarettes or tobacco products sold by vendors through tobacco outlets within the Fort Belknap Indian Reservation.
12) "Tobacco outlet license" shall mean a license which shall be issued by the Tribes to those individuals or businesses on an annual basis who desire to sell cigarettes or tobacco products retail; and all vendors shall pay to the Tribes annual a license fee in the amount of $100.00.

History: Section 1, Subsection 1.2 enacted on the __/__/_1979, Resolution No. __.

1.3 Establishment of Tobacco Outlets

The Council shall establish one or more tobacco outlets within the Fort Belknap Indian Reservation as the Council in its sole discretion deems necessary to provide adequate service to consumers of cigarettes and tobacco products.

History: Section 1, Subsection 1.3 enacted on the __/__/_1979, Resolution No. __.

1.4 Nature of Outlet

Each tobacco outlet established hereunder shall be a Tribal tobacco outlet and shall be managed for the Tribes by a vendor pursuant to a license granted by the Council hereunder.

History: Section 1, Subsection 1.4 enacted on the __/__/_1979, Resolution No. __.

1.5 Application for Tobacco Outlet License

Any enrolled member of the Fort Belknap Indian Community may apply upon an application form provided by the Council for a tobacco outlet license. The application shall state the name and address of the applicant and shall be signed by the applicant under oath.

History: Section 1, Subsection 1.5 enacted on the __/__/_1979, Resolution No. __.

1.6 Tobacco Outlet License

Upon approval of an application, the Council shall issue the applicant a tobacco outlet license for a five-year period which shall entitle the vendor to establish and maintain one tobacco outlet on the Fort Belknap Indian Reservation; provided that the vendor pays the annual license fee. The license shall be renewable in such manner as the Council shall prescribe and shall be nontransferable.

History: Section 1, Subsection 1.6 enacted on the __/__/_1979, Resolution No. __.

1.7 Excise Tax Imposed

There is being levied and there shall be collected as hereinafter provided, a tax upon the sale, use, consumption, handling, possession or distribution of all cigarettes in the amount of five cents per package. The Council may levy an additional tax upon the distribution cigarettes and other tobacco products as it deems desirable. The excise tax levied hereunder shall be a tax upon distribution of cigarettes and other tobacco products by the Tribes only and shall not constitute an assessment or license fee upon enrolled members of the Tribes doing business within the reservation or obtaining special rights or privileges.

The excise tax levied hereunder shall be first a tax upon distribution of cigarettes and other tobacco products by the Tribes pursuant to Section 1.9 of this ordinance; provided, however, that failure to pay the tax at the time of such distribution shall not prevent tax liability from arising by reason of another taxable event. The excise tax levied hereunder shall be added to the retail price of tobacco products sold to the ultimate consumer.

History: Section 1, Subsection 1.7 enacted on the __/__/_1979, Resolution No. __.

1.8 Purchase by Tribes

All tobacco products purchased by the Tribes pursuant hereto shall be purchased with federally-restricted Tribal funds.

History: Section 1, Subsection 1.8 enacted on the __/__/_1979, Resolution No. __.

1.9 Wholesale Distribution

Wholesale distribution of tobacco products by the Tribes to a tobacco outlet shall be upon a cash basis for the wholesale distribution price which shall have added to the excise tax levied in Section 1.7 hereof.

History: Section 1, Subsection 1.9 enacted on the __/__/_1979, Resolution No. __.

1.10 Tobacco Products Federally Restricted Tribal Property

The entire stock of tobacco products distributed hereunder shall remain federally-restricted Tribal property owned and possessed by the Tribes until sale to the ultimate consumer. Payment by the vendor of the wholesale distribution price plus the excise tax as provided in Section 1.9 hereof shall entitle the vendor to custody of distributed tobacco products for sale to the ultimate consumer, at the vendor's sole risk in the event of any loss whatsoever.

History: Section 1, Subsection 1.10 enacted on the __/__/_1979, Resolution No. __.

1.11 Renumeration to Operator

As renumeration for managing a tobacco outlet, a vendor shall be entitled to the gross revenue derived form sale of tobacco products distributed hereunder in excess of the wholesale distribution price and the excise tax levied hereunder.

History: Section 1, Subsection 1.11 enacted on the __/__/_1979, Resolution No. __.

1.12 Reserved.

1.13 Restricted Sales to Minors

A vendor may not sell any tobacco products to any person under the age of 18 years.

History: Section 1, Subsection 1.13 enacted on the __/__/_1979, Resolution No. __.

1.14 Other Business by Operator

A vendor may conduct another business simultaneously with managing a tobacco outlet for the Tribes. The other business may be conducted on the same premises and the vendor shall not be required to maintain separate books of accounts for the other businesses.

History: Section 1, Subsection 1.14 enacted on the __/__/_1979, Resolution No. __.

1.15 Tribal Immunity--Liability--Credit

A vendor shall not attempt or be authorized to waive the sovereign immunity of the Tribes from suit, nor shall such vendor attempt to be authorized to create any liability on behalf of the Tribes or to utilize Tribal credit.

History: Section 1, Subsection 1.15 enacted on the __/__/_1979, Resolution No. __.

1.16 Operating Without License

No person shall operate a tobacco outlet on the Fort Belknap Indian Reservation without having in effect a valid tobacco outlet license issued pursuant hereto.

History: Section 1, Subsection 1.16 enacted on the __/__/_1979, Resolution No. __.

1.17 Purchases

A vendor shall purchase all tobacco products sold in his tobacco outlet form the Tribes.

History: Section 1, Subsection 1.17 enacted on the __/__/_1979, Resolution No. __.

1.18 Liability Insurance

A vendor shall maintain liability insurance upon his premises in the sum of $100.00.

History: Section 1, Subsection 1.18 enacted on the __/__/_1979, Resolution No. __.

1.19 Revocation of Tobacco Outlet License

Failure of a vendor to abide by the requirements of this ordinance and any additional requirements imposed by the Council will constitute grounds for revocations of the vendor's tobacco outlet license as well as enforcement of the remedies provided in Section 1.20 below.

History: Section 1, Subsection 1.19 enacted on the __/__/_1979, Resolution No. __.

1.20 Violation--Remedies

Upon application by the President of the Council, the Tribal Judge shall issue an order directing the Tribal Law Enforcement Officer to seize all tobacco products from wherever purchased and by whomever owned from any tobacco outlet being operated in violation of this ordinance. Within three days of such seizure, after adequate notice to the vendor of such outlet shall be given an opportunity to present evidence in defense of his activities. If the Tribal Court shall determine by a preponderance of the evidence that such tobacco outlet was being operated in violation of this ordinance, the Judge shall impose a fine of not less than $50.00 nor more than $250.00 in addition of the forfeiture of tobacco products described above.

History: Section 1, Subsection 1.20 enacted on the __/__/_1979, Resolution No. __.

1.21 Recovery of Taxes Owed

The Tribes shall have a cause of action in Tribal Court to recover any taxes owed and not paid to the Tribes in accordance with this or any previous ordinance.

History: Section 1, Subsection 1.21 enacted on the __/__/_1979, Resolution No. __.

1.22 Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances is not affected.

History: Section 1, Subsection 1.22 enacted on the __/__/_1979, Resolution No. __.

FORT BELKNAP INDIAN COMMUNITY
FISH AND WILDLIFE CONSERVATION CODE
TITLE X
TABLE OF CONTENTS

FISH AND WILDLIFE CONSERVATION CODE OF THE GROS VENTRE AND ASSINIBOINE TRIBES OF THE FORT BELKNAP INDIAN COMMUNITY

SECTION 1: INTRODUCTION

1.01 Title. This ordinance shall be known as the Fish and Wildlife Conservation Code of the GROS VENTRE AND ASSINIBOINE TRIBES OF THE FORT BELKNAP INDIAN COMMUNITY.

1 02 Authority. This ordinance is enacted pursuant to Article V, Section 1, of the Constitution and By-laws of the Fort Belknap Indian Reservation.

1.03 Purpose. It is the purpose of this Code to:

(1) Provide an orderly system for Tribal control and regulations of hunting, fishing, trapping, recreational activities and gathering on the lands established as the Fort Belknap Indian Reservation

(2) Provide a means of conservation enhancement, protection, and management of the Fort Belknap Indian Reservationís fish, wildlife, and plant population, and recreation activities through the regulation of members, non-members, and non-Indian harvesting and recreation activities.

(3) Provide a means of enforcing rules and regulations of this code contained hereafter.

1.04 Jurisdiction. This code shall govern the activities of hunting, fishing, trapping, gathering and recreation within the exterior boundaries of (and trust lands outside the same exterior boundaries of) the Fort Belknap Indian Reservation to include but not limited to the following.

(1) The Tribe(s) shall have exclusive jurisdiction over enrolled members of the Gros Ventre and Assiniboine Tribes on all lands and waters within the exterior boundaries of (and trust lands outside the same exterior boundaries of) the Fort Belknap Indian Reservation.

(2) The Tribe(s) shall have exclusive jurisdiction over non-member Indians on all lands and waters within the exterior boundaries of (and trust lands outside the same exterior boundaries of) the Fort Belknap Indian Reservation.

(3) The Tribe(s) shall have exclusive jurisdiction over non-Indians on Federal Trust, Tribal Trust and Individual Indian Allotted Lands within the exterior boundaries of (and trust lands outside the same exterior boundaries of) the Fort Belknap Indian Reservation.

(4) Jurisdiction herein is intended to be exercised in the broadest possible manner. Should language herein be determined to be in excess of the authority of the Council, it shall be interpreted in a manner consisted with law, as adjudicated.

1.05 Effective Date. This code shall be effective on the date adopted by the Fort Belknap Community Council, the governing body.

1.06 Severability and Non-Liability. If any section, provision, or portion of this code is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this code shall not be affected thereby. The Tribe(s) further asserts immunity on its part that of its agencies, employees, and/or agents from any action or damages that may occur as a result of reliance upon and conformance with this code.

1.07 Repeal of inconsistent Tribal Ordinances. All ordinances and resolutions inconsistent with this code are hereby repealed. To the extent that this document imposes greater restrictions than those contained in any other Tribal ordinance, the provisions of this document shall govern.

SECTION 2: DEFINITIONS

For the purpose of this Code the following definitions shall apply:

1. Aircraft - As used in this code, the term aircraft means any contrivance used for flight, or to be airborne.

2. Allotted Land- Tribally owned or individually owned Indian lands held in trust by the federal government.

3. Antlerless Deer - All deer not displaying at least one visible antler.

4. Arrow - A shaft of a least 24 inches long containing 3 trimmed or 5 untrimmed feathers, tipped with a point or device used to strike, penetrate, or pierce.

5. Bag Limit - Means the maximum limit, in number amount of a particular species of fish or wildlife, which may lawfully be taken in on day during an open season.

6. Bait - Any substance that is placed by any person and which may serve as an attraction to any wildlife, and may include but is not limited to grain or animal remains; however, that artificial decoys used to hunt migratory game birds or turkeys shall not be deemed bait.

7. Big Game - Shall include, but not be limited to Mule Deer, Whitetail Deer, Elk, Antelope, Moose, Big Horn Sheep, Black Bear, Mountain Lion and Bison.

8. Bow - Means any hunting instrument designed for the purpose of propelling arrows which is drawn and held by and through efforts of the person releasing, but does not include crossbow.

9. Carcass - Means the dead body of fish or wildlife or parts thereof.

10. Closed Season - Means the time and/or days during which fish or wildlife may not be taken legally.

11. Crossbow - Means any device using a bow which, once drawn is held solely by means other than the effort of the person firing it.

12. Dog - Shall refer to a dog specifically bred to hunt, scent, point, flush or retrieve game birds or furbearers not to include big game.

13. Department - Means the Fort Belknap Fish and Wildlife Department.

14. Endangered or Threatened Species - Means any species of fish, wildlife or wild plants within the Reservation or State as listed but not limited to (50 CFR Sections 17.11 and 17.12) or species classified pursuant to the Endangered Species Act of 1973, as may be amended from time to time, or which the Tribe's governing body from time to time may declare as endangered or threatened.

15. Falconry - Means taking quarry by means of a trained raptor.

16. Fee Land - Means those lands within the exterior boundary of a Reservation not held in trust or subject to restrictions on alienation and which is in private ownership.

17. Firearm - Means a rifle, shotgun, handgun, or other type of gun.

18. Fish - Means any fish within the water of the Reservation.

19. Fishing - Means taking of fish of any variety by hook and line.

20. Gathering - Means to take or acquire or attempt to take or acquire possession of any wild plants or parts thereof.

21. Harass - Means to shoot at, disturb, worry, molest, rally, concentrate, harry, chase, drive, herd, or torment.

22. Highway - Means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of public as a matter of right for the purposes of vehicular travel. It includes those driveways in the state and Reservation which have been opened to the use of public, but does not include private roads or driveways.

23. Hunt or Hunting - Includes shooting, shooting at, pursuing, taking, catching or killing any wild animal or animals, except that hunt or hunting does not include the recovery of any wild animal which has already been lawfully reduced to possession.

24. Hunting Hours - Means the time of day when wildlife may be lawfully taken.

25. License - Means a written document granting authority to engage in specific activities covered in this code.

26. Member - Shall mean any enrolled member of the Gros Ventre and/or Assiniboine Tribes of the Fort Belknap Indian Reservation.

27. Migratory Birds - Shall include but not be limited to the following:

    (a) All species of Ducks, Geese, and Swans (Order Anseriformes).

    (b) All shorebirds, wading birds, and seabirds (Order Gaviformes, Podicipedformes, Pelicaniformes, Ciconiiformes, Gruiformes).

    (c) Mourning Dove (Order Columbiformes).

28. Motorboat - Means any boat equipped with propulsion machinery, whether or not the machinery is the principle source of propulsion.

29. Non-Indian - Means any person not legally recognized as a Native American who resides on or visits a Reservation for which he/she is not enrolled.

30. Non-Member Indian - Means a legally recognized Native American who resides on or visits a Reservation for which he/she is not enrolled.

31. Open-Season - Means the time and/or days during which taking certain species of fish and/or wildlife is legal.

32. Possession Limit - Means the amount of fish and/or wildlife that may be legally possessed at any one time.

33. Possession - Means having killed, harvested, taken or otherwise obtained or acquired any wild animal, fish or plant subject to the provisions of this ordinance.

34. Permit/Tag - Means any identification device issued for the attachment to the carcass of any fish or wildlife.

35. Plant - Means any undomesticated species, and fruit or part thereof, of the plant kingdom occurring in the natural ecosystem.

36. Raptors - Means a live migratory bird of the order Falconiformes or the Order Strigiformes. For simplification, bald eagle and golden eagle is part of this definition.

37. Reservation - Means all lands within the exterior boundaries of Fort Belknap Indian Reservation (and trust lands outside the same exterior boundaries of the reservation under jurisdiction of the United States, not withstanding the issuance of any patent, and including right-of-ways running through the Reservation.

38. Recreation - Shall include but not limited to any picnicking, camping, boating, hunting, fishing, hiking, skiing, swimming and other related activities.

39. Roadway and Trail - Shall include but not limited to any public highway or road, improve or otherwise, dedicated for public ingress or egress. This does not include temporary trails across cultivated land not include temporary trails across cultivated land used for agricultural purposes.

40. Size Limit - Means the specific size of a species of fish and/or wildlife that may be possessed legally.

41. Take or Taking - Means pursuing, shooting, shooting at, hunting, fishing, netting, (including placing or setting any net or other capturing device) capturing, killing, snaring or trapping any fish, wildlife or plant or attempting any of the foregoing

42. Timber - Shall include but not be limited to any woody vegetation that is 10 feet or greater in heights and consists of 6 inches of diameter or greater in D.B.H.

43. Trapping - Includes the taking of, or attempting to take, any wild animal, animal or fish by means of setting or operating any device, mechanism or contraption that is designed, built or made to close upon, hold fast, or otherwise capture a wild animal, animal or fish.

44. Tribes - Mean the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation.

45. Trust Land - Means land the U. S. Government holds legal title to for the benefits of Indians.

46. Protected Species - Shall include but not be limited to Elk, Antelope, Bison, Big-Horn Sheep, Moose, Mule Deer, Whitetail Deer, Wolf, Lynx, Bobcat, Waterfowl, Upland Game Birds, Wild Turkey, Song Birds, Birds of prey or Raptors, Beaver, Mink, Muskrat, Otter, Prairie Dog and any other species for which a closed season is specified or for which taking is prohibited.

47. Unprotected Species - Shall include but not be limited to Coyote, Fox, Skunk, Badger, Raccoon, Squirrels, Marmot, Crows, Blackbirds, Dogs and other species for which a continuous open season exits.

48. Upland Game Birds - Shall include but not be limited to Grouse, Pheasants, Partridge and Quail.

49. Small Game - Shall include but not be limited to Include Wild Turkeys, Squirrels, Cottontail Rabbits, and Jack Rabbit.

50. Waterfowl - Shall include but not be limited to all varieties of Geese, Brant, Swans, Ducks, rails, Coots, and Wilson Snipes.

51. Wildlife - Shall mean any forms of birds and mammals including their nest or eggs.

SECTION 3: GENERAL PROVISIONS

3.01 For the purpose of this code, all hunting, fishing, trapping, gathering of plants, wood cutting and parts thereof is closed within the exterior boundaries of (and trust lands outside the same boundaries of) the Fort Belknap Indian Reservation unless authorized by the Fort Belknap Community Council.

3.02 Unless and except as permitted by regulation made hereinafter provided by in this code, it shall be unlawful at any time, by any means or manner to pursue, hunt, take, capture, kill, harass, waste, or attempt to take, capture, or kill, possess, offer for sale, harass, waste, sell, offer for barter, barter, offer to purchase, deliver for, shipment, ship, export, import, cause to be shipped, exported, imported, deliver for transportation, transport, or cause to be transported, carried, or cause to be carried, or receive shipment, transportation, carriage, or export any fish, wildlife, plant, any part of any product, whether or not manufactured, which consists, or is composed in whole or part, of any such fish, wildlife, plant or any part included in the terms of this code.

3.03 Title to Fish, Wildlife and Plants

(1) The legal title to, and the custody and protection of all fish, wildlife and plants within the exterior boundaries of (and trust lands outside the same boundaries of) the Fort Belknap Indian Reservation is vested in the Tribes for the purposes of regulating use, disposition, and conservation thereof.

(2) The Legal title to any such fish, wildlife or plant, or carcass and/or part thereof, taken or reduced to possession in violation of this code remains with theTribes; and the Title to any such fish, wildlife or plant, or carcass and/or part thereof, lawfully acquired, is subject to the condition that upon the violation of this code relating to the possession, use, giving, sale, barter, or transportation of such fish, wildlife, or plants, or carcass and/or part thereof, by the holder of such title, the same shall revert, as a result of the violation to the Tribes. In either case, any such fish, wildlife or plant, or carcass and/or part thereof, may be seized forthwith, wherever found, by the Fish & Wildlife Department any law enforcement official authorized to enforce the provision of this code.

SECTION 4: ADMINISTRATION AND SUPERVISON

4.01 There is hereby created a Department to be known as the Fort Belknap Fish and Wildlife Department, which shall have the power and be charged with the duty to protect, conserve, enhance, manage all Fish, Wildlife, and Plant species within the exterior boundaries (and trust lands outside the same boundaries of) the Fort Belknap Indian Reservation. This Department also has the responsibility to enforce the provisions of this code and to carry out the policies and directions of the Tribal Council and/or Natural Resources Committee in all matters relating to Fish, Wildlife, Plant, Timber and Recreation Activities.

4.02 The Fort Belknap Community Council shall establish a Natural Resources Committee to oversee the general activities of the Tribal Fish and Wildlife Department in addition to the committee's other duties. The committee shall review, promulgate, and refer policy decisions to the Tribal Council for action.

4.03 Director of Fish and Wildlife Department

(1) The Tribal Council shall appoint a Director for the Fort Belknap Fish and Wildlife Department who shall have all the rights of employment enjoyed by the Tribal employees. The Director shall be responsible to the Tribal Council and Natural Resources Committee or its authorized representative for the successful operation of the Department.

(2) The Director shall have the knowledge of and experience in the Fish and Wildlife resources, protection, conservation, restoration and management. The Director shall devote his/her entire working time to the service of the Fort Belknap Indian Reservation in the discharge of his/her official duties.

(3) The Director shall have executive authority and control of the Department and its employees to the end that the policies of the Tribal Council shall be carried out in accordance with the ordinances, resolutions and resolutions of said Tribal Council or Natural Resources Committee. The Director shall have full control of and be responsible for all property of the Tribes acquired and held for the purposes contemplated by this code. He/she shall, with the consent of the Tribal Council or its authorized representative, appoint such full-time or temporary officers, wardens other essential assistants and employees from the membership of the Tribes at his/her discretion. In the event that no qualified Tribal members fill such full-time or temporary positions, the Director shall have the authority to appoint qualified non-members or non-Indians to those positions. In cases of emergencies, the Director may exercise the powers of the Council or Committee until such time as the Council or Committee meets or the emergency ends.

(4) The Director is authorized and directed to:

A. Report and be responsible to the Chairman of the Natural Resources Committee.

B. Plan, propose for enactment, and enforce Tribal regulations relating to the setting of annual seasons and limits for harvesting of fish, wildlife, plants and utilization of recreational resources.

C. Design and implement a plan for the issuance of licenses, permits, tags and for the collection of fees.

D. Formulate and publish the respective resolutions annually according to information gathered from census and studies.

E. Maintain records of all licenses and permits issued for the purpose of hunting, fishing, trapping, gathering, wood cutting and recreation.

F. Cooperate with and assist the Tribal Council, Committees, Community Leaders, Federal, State, County Agencies, and individuals.

G. Enforce all Tribal regulations and resolutions necessary for implementing and administrating the provisions of this code.

H. Supervise all Department Personnel and delegate authority as necessary.

I. Establish checking stations to gather biological data, inspect licenses, permits, equipment, and vehicles for compliance of this code.

J. Establish regulations and applications for special permits for the taking of fish, wildlife and plants for disabled persons, subsistence and ceremonial purposes on a need only basis in accordance with federal law.

4.04 Collection of Permit Fees, Forfeitures and Fines

The Fort Belknap Community Council will establish a Tribal fund account or account to deposit monies collected from the sale of license, permits, tags, and recreation leases. Monies collected from fines, penalties, forfeitures and/or civil recoveries through the Tribal court system shall be deposited into this account. Upon federal prosecution, the Director shall make formal request to the U.S. Attorney for Civil Restitution from persons violating any provision of this code. Monies collected from the federal courts or respective Clerk of Courts shall be deposited into this account.

4.05 Expenditure of Funds

The Director shall have the authority to expand appropriated funds and monies deposited in the special account for the following:

A. Conservation, protection, and enhancement of the Reservationís fish, wildlife, plant and recreation resources.
B. Enforcement of provisions of this code, or any rule or regulation adopted in pursuant to this code.
C. Information and Education programs.

4.06 Cooperative and Reciprocal Agreements:

The Director is authorized, subject to the approval of the Tribal Council, to enter into reciprocal and cooperative agreements with the State of Montana or any Federal, County, Local Government Agency for the purpose of promoting and implementing fish, wildlife, vegetation and recreational management programs and activitie

SECTION 5: DUTIES OF TRIBAL CONSERVATION OFFICERS

(1) Conservation Officers shall enforce tribal laws and resolutions and the rules and regulations of this Department.

(2) Conservation Officers shall ensure that any person who hunts, fishes, traps, gathers plants or parts thereof, or cuts wood have in possession the appropriate licenses, permits and/or tags and are complying with all the rules, regulations and laws.

(3) Conservation Officers shall assist the Director in his supervision and management of all natural resources on the Fort Belknap Indian Reservation, and shall perform all other duties described or delegated by the Director.

(4) Conservation Officers shall keep a detailed daily log of activities and make biweekly reports of these activities describing by total number, miles, contacts, violations, dispositions, surveys and what activities were performed or completed during the preceding weeks.

(5) Conservation Officers may not settle or compromise an alleged Natural Resources violation for which a citation was issued.

SECTION 6: ENFORCEMENT

6.01 Enforcement by Tribal Conservation Officers

Any provision of this code may be enforced by Tribal Conservation Officers of the Fort Belknap Fish and Wildlife Department, or Bureau of Indian Affairs Enforcement Personnel, or U.S. Fish and Wildlife Enforcement Personnel.

6.02 Enforcement by State Conservation Officers

State Conservation Officers may be authorized to enforce the provisions of this code and to institute proceedings in the Tribal Court by use of citation forms of that Department, if a Tribal-State Agreement is in efect providing for such, or otherwise shall refer matters to the appropriate Tribal Conservation Officers or Tribal Prosecutor for further investigation or action.

6.03 Search and Seizure When Authorized

Any person authorized to enforce the provisions of this code may conduct a search of a person, object or place, and seize objects when the search is made:

(1) With consent;
(2) Pursuant to valid search warrant;
(3) Within the authority and scope of a lawful inspection.
(4) As otherwise authorized by law or provisions of this code.
(5) Incident to arrest.

6.04 Investigation and Citations

(1) Any persons authorized to enforce the provisions of this code may:

A. Subject to subsection 6.04 (2), Conduct routine inspections of vessels, boats, wagons, trailers, automobiles, vehicles, snowmobiles, containers, packages, tents, and other receptacles contained therein, utilized by any person in a harvest activity authorized by this code and records of commercial transactions.

B. Execute and serve warrants and other process issued by the Tribal Court in accordance with applicable law.

C. Stop and board any boat, or stop any vehicle if the officer has a probable cause that there is a violation of any provision of this code.

D. With or without a warrant, open, enter and examine vessels, boats, wagons, trailers, automobiles, vehicles, snowmobiles, packages and other receptacles contained therein, in which the Officer has probable cause to believe that contraband fish, wildlife, plants, carcasses, or parts thereof, may be contained.

E. Issue a citation on a form approved by the Tribes, Tribal Court, and Department Director to any person upon finding probable cause that such person(s) has violated

F. May seize and hold subject to the order of the Tribal Court or federal court any alleged contraband or property which such Officer reasonably believes may be needed as evidence in connection with the institution of proceedings in Tribal Court or federal court or any property other wise authorized to be seized by any provision of this code.

G. Any enforcement Officers, in the course of their duties, may enter upon private land within the exterior boundaries of (and trust lands outside the exterior boundaries of) the Reservation and remain thereon while performing such duties hereunder, and such actions by the Officer(s) shall not constitute trespass.

(2) The inspections authorized by subsection 6.04(1) (A) shall be conducted in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities. An arrest may be executed by an Officer through a Tribally or federal approved arrest warrant or reasonable belief of eminent danger to life or property.

6.05 Registration Information

Any Officer(s) are hereby empowered to request and receive from tribal tag and permit issuance stations, and harvest registration stations, information regarded tag and permit issuance and harvest registration.

6.06 A. Civil Penalties

(1) Any person who engages in conduct prohibited by any provision of this code and in the exercise of due care should know that the fish, wildlife or plants were taken, possessed, transported, sold in violation of, or in a manner unlawful under any provision of this code or Federal Acts and/or laws, may be assessed a civil penalty by the appropriate court authority, of not more than $1000.00 for each violation.

(2) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation. Each violation shall be deemed a separate offense.

(3) Civil jurisdiction over all matters under this ordinance shall be with the Tribal or Federal Court, which shall adjudicate in accordance with Tribal or Federal Court code all questions, complaints, and alleged violations involving the provisions of this code.

B.Criminal Penalties

Any person who knowingly violates any provisions of this code and knowingly or in the exercise of due care knows that the fish, wildlife or plants were taken, possessed, transported or sold in violation of or in a manner unlawful under any provisions of this code, Federal Acts and/or laws may be assessed a criminal penalty by the appropriate court authority of not more than $1000.00 or imprisoned not more than one year and/or both.

C. For any violation, a revocation or suspension of Reservation hunting, fishing, trapping, gathering, wood cutting, or recreational privileges for a period not to exceed one year or for a period of time within the discretion of the court, may be imposed.

D. For any violation, a civil remedial forfeiture of any property, including boats, motors, vehicles, hunting, fishing, trapping or other property, used in the commission of the violation of this code shall occur.

E. Upon conviction of any person for a violation of this code when such person has been convicted of a previous violation of this ordinance within a civil remedial forfeiture or other penalty as the court deems appropriate.

F. Civil Damages

In addition to any other penalty allowed by this code, the Tribal or Federal Court may award to the Tribes or, in addition to an action to impose penalties, the Tribe may bring a civil action for recovery of, damages against any person(s) unlawfully killing, wounding, catching, taking,trapping or having unlawfully in possession any of the following named fish, wildlife or plant species, or any part thereof, and the sum assessed for damages for each fish, wildlife or plant species shall not be less than the amount stated in this section:

6.07 Forfeited Bond Schedule

The Tribal Court, in consultation with the Tribe's governing body, Department Director, andTribal Prosecutor may adopt a bond schedule or a schedule of forfeiture to be imposed by the Court(s) upon the receipt of an admission that a violation of this code has occurred, or a plea of no contest, which may be done either in person or in writing. This schedule shall not bind the court as to forfeitures assessed by the court after adjudicating a violation where the defendant has entered a plea of not guilty.

6.08 Parties to a Violation

(1) Whoever participates in the commission of a violation of this code shall be deemed a principal and may be charged with the violation although he/she did not directly commit it and although the person who directly committed the violation has not been convicted of the violation.

(2) A person participates in the commission of the violation if the person:

(a) Directly commits the violation
(b) Aids or abets in the commission of; or
(c) Is a party to a conspiracy with another to commit the violation, or advises, hires, or counsels, or otherwise procures another to commit the violation.

6.09 Harvesting After Revocation or Suspension

No person whose Reservation hunting, fishing, trapping, gathering, wood cutting or recreational privileges have been revoked or suspended, shall hunt, fish, trap, gather, cut wood, or recreate on the Fort Belknap Indian reservation any fish, wildlife, or plants, the harvest of which is regulated by this code, during such revocation or suspension.

SECTION 7: GENERAL RULES AND REGULATIONS

7.01 Permits and Identification

(1) No person shall engage in the activity of hunting, fishing, trapping, gathering, recreation, gathering or cutting wood or other activities regulated by this code without acquiring or in possession of a valid Tribal license, permit, or tag as this code may require, validated for the particular season or activity in question.

(2) The Tribal Fish and Wildlife Department is authorized to issue to persons licenses required by this code. Except as otherwise required by this code, the form of such permits or licenses shall be left to the discretion of the Tribal Fish &Wildlife Department, provided such form shall; describe the licensee, including applicantís weight, height, color of eyes, color of hair, address (including street and/or box number), phone number, date of birth, and social security number. This form shall also have printed on it: "Non-Transferable" date of issuance, date of expiration, type of issuance.

(3) No person shall refuse to display his/her identification documents or any other document or permit required by this code to any Tribal or Federal Law Enforcement Officer upon request by such officer.

(4) No person to whom any license has been issued under this code shall, when requested by the Tribal Fish, Wildlife Department, fail or refuse to provide harvest reports and data, and such other relevant information, as may be requested.

7.02 Wanton Waste of Fish, Wildlife and Plants

(1) No person who takes any fish, wildlife or plants shall abandon intentionally, or

needlessly allow to go to waste, any portion thereof. The failure of any person to properly dress and care for any fish or wildlife species taken or killed by that person, and, if the carcass is reasonably accessible, the failure to take or transport the carcass to the residence of that person, or place for proper storage, and there properly care for the carcass within 48 hours after taking or killing, is prima facie evidence of a violation.

(2) No person shall abandon edible portions of fish or wildlife at a meat process plant. The leaving edible portions of fish or wildlife at a processing plant for more than 90 days shall be considered prima facie evidence of a violation. The owner(s) or operator(s) in charge of any meat processing plant shall report the violation to the Tribal Fish and Wildlife Department Director, or to any local Law Enforcement Agency for referral to the Department Director.

7.03 Larceny of Fish, Wildlife or Plants

No person shall, without permission of the owner, molest, disturb or appropriate any fish, wildlife, plant or the carcass and/or parts thereof, which has been lawfully reduced to possession of another.

7.04 Use of Poison and Explosives

(1) No person shall take, or kill any fish, wildlife, or plant with the aid of dynamite or any explosive, poisonous, or stupefying substance or device.

(2) No person shall place in any waters explosives which might cause the destruction of any fish, wildlife, or plant, except when authorized by the Department Director, or have in his/her possession or under his/her control upon any waters any explosive, poisonous, or stupefying substance or device for the purpose of taking, catching, or killing any fish, wildlife or plant.

(3) No person shall use, set, lay, or prepare in any waters of the Reservation any lime, poison, fish berries, or any other substance deleterious to fish life; or use baits containing poison of any description in any area of the Reservation or other places where such baits might destroy or cause the destruction of fish, wildlife or plants; and the possession of any such poison, baits, of substances deleterious to fish, wildlife or plants regulated by this code is prima facie evidence of a violation of this section.

(4) No member shall take, capture, or kill, or attempt to take, capture, or kill any game-bird by setting or operating any trap or device designed, built, or used to capture birds.

(5) Nothing in this code shall prohibit the Tribal Fish and Wildlife Department or its designated agents from using explosives or possessing explosives for the purpose of removing beaver dams, clearing a channel, or breaking a log or ice jam or for the creation of wetlands.

7.05 Throwing refuse in Waters; Abandoning Automobiles, Boats, or other Vehicles.

No person shall deposit, place or throw into any Reservation waters, or leave upon the ice or in such waters any cans, bottles,debris, refuse or other solid waste material; and no person shall abandon any automobile, boat, or other vehicles in such waters. Any automobile, boat, or other vehicles not removed from such

waters within thirty (3) days shall constitute abandonment.

7.06 Scientific Investigations

(1) The Tribal Fish and Wildlife Department biological services (U.S.F.W.S. Technical Services Personnel) may conduct investigations of fish, wildlife and plants in order to develop scientific information relating to populations, distribution, habitat need, and other biological data in order to advise the Tribe on conservation measures designed to ensure the continue ability of fish, wildlife and plants to perpetuate themselves.

(2) The Tribal Fish and Wildlife Department may for scientific purposes engage in or authorize the harvest of protected species by the use of methods, at time or at locations not authorized by this code on such terms and conditions as it deems appropriate, as long as those methods are reasonable and acceptable to the scientific community.

(3) Nothing in this section shall authorized any person to exceed the biological safe harvest level of any species.

7.07 Seasons

No person shall engage in the Reservation harvest privileges regulated by this code, except during the respective seasons established pursuant to this code.

7.08 Unlawful Possession of Fish, Wildlife or Plants

No person shall have in his/her possession or under his/her control at any time any fish, wildlife, plant or carcass and/or part thereof, knowing that the same has been taken unlawfully or during a closed season for such species.

7.09 Bag Limits; Possession Limits

No person shall have in his/her possession his/her control any fish, wildlife or plant in excess of the bag or possession limits, or above or below the size limits for any fish, wildlife or plants as established by this code.

7.10 Sharing of Permits or Tags

Except as otherwise provided in this code, no person shall lend, share, give, transfer, sell, barter or trade to any person any identification document, permit or tag issued by the Tribe pursuant to this code.

7.11 Harvesting with Another's Permit

No person shall hunt, fish, trap, recreate, gather or cut wood while in possession of any permit or tag issued to another except when authorized under permit issued by the Department Director.

7.12 Shining Animals

(1) It shall be unlawful for any person to shine a spotlight, headlight or any other artificial light for the purpose of locating hunting, pursuing, taking or attempting to take or kill any fish or wildlife.

(2) This subsection shall not apply to:

(A) Any person who possesses a flashlight or uses a flashlight while on foot to track or hunt raccoon, foxes, skunks, coyotes or any other unprotected species.

(B) Any person authorized to enforce the provisions of this code while on official business conducting an active investigation.

(C) Any person authorized to conduct fish or wildlife censuses or surveys.

7.13 Duties on Accidental Shooting

Any person who, while hunting any fish or wildlife discharges a firearm or arrow, and thereby injures or kills another person, shall forthwith give his/her name and address to such person if injured and render assistance to him/her as may be necessary and obtain immediate medical or hospital care, and shall immediately report such injury or death to the proper law enforcement authorities.

7.14 Failure to Report Hunting Accidents

Any person who has caused or been injured in an accident in which another person has been injured by gunfire or by an arrow while hunting, fishing, or trapping, or has inflicted an injury upon himself/herself with a firearm or arrow while hunting, fishing or trapping, shall render or cause to be rendered a report to the Department Director. Failure to report such an accident shall constitute a violation of this section.

7.15 Hunter Education Requirement
Any person between the ages of 12 and 18, must have completed a certified Reservation, State, or Canadian Hunter Safety Course and show proof of successful completion to the authorized license vendor to purchase a hunting or furbearers license.

7.16 Age Restriction

A. No person under 12 years of age may hunt or trap while possessing a firearm or bow and arrow.

B. No person between 12 and 15 years may hunt or trap while possessing a firearms or bow and arrow unless he/she is accompanied by a licensed or permitted parent, guardian or other adult designated by a parent or guardian.

C. There are no age restrictions for the purpose of fishing. However, any person under the age 10 years must be accompanied by an adult, guardian, or other adult designated by a parent or guardian.

7.17 Parent Obligation

No parent, guardian or other person shall authorized or knowingly permit or encourage a child to violate any provisions of this code.

7.18 Hunting, Fishing, Trapping or Boating While Intoxicated

No person shall hunt, fish, trap or operate a boat while under the influence of alcohol, intoxicant or controlled substance to a degree that the person is incapable of safely using such weapon or equipment, or while a person has a blood alcohol concentration of 0.10% or more by weight of alcohol in the person's blood or 0.10 grams or more of alcohol in 200 liters of the persons breath.

7.19 Resisting a Conservation Officer

No person shall assault or otherwise resist or obstruct any law enforcement officer authorized to enforce the provisions of this code in the performance of duty.

7.20 False Impersonation of an Enforcement Officer

No person shall falsely represent himself/herself to be a law enforcement officer authorized to enforce the provisions of this code, or shall assume to act as such an officer, without having been first duly appointed.

7.21 General Restrictions on Hunting and Trapping

(1) Hunting in Restricted Areas; No person shall:

A. Hunt within 1700 feet of any hospital, school and/or grounds, or any public establishment and/or grounds.

B. While on lands of another, discharge a firearm within 440 feet of any building devoted to human occupancy situated on lands and attached to the lands of another without the expressed permission of the owner or occupant of the building.

C. No person shall load or discharge a firearm or bow of any type in or from a motor vehicle.

D. No person shall lean or place any loaded firearm or bow of any type against any vehicle.

(5) Restrictions on Use of Bait

A. No person shall place or hunt over bait unless such material is present from normal agricultural practices.

B. No trapper or person shall set any trap within 30 feet of any exposed bait visible to airborne raptors. Exposed bait means meat or viscera of any animal, bird or fish with or without skin, hide or feathers.

C. No person shall place, use or hunt over bait containing, or contained with, metal, plastic, glass, wood or no-biodegradable materials.

(6) Exceptions

A. These subsections shall not apply to any person authorized to enforce this ordinance, who in the line of duty places, possessions, transports, loads or discharges a firearm in, on, or from a motor vehicle or motorboat or discharges a firearm from or across a maintained roadway or within 50 feet of the center of

a maintained roadway, or leaves an established roadway in a motorized vehicle while conducting an active investigation, surveys, or wildlife and fisheries counts.

7.22 Hunting or Harassing Wildlife With Aircraft

No person shall hunt or harass any wild animal with the aid of any type of aircraft. Exception is the authorized use of aircraft to perform population censuses or to remove depredating wildlife with consent of Department Director.

7.23 Pivot Guns and Similar Devices

No person shall place, operate or attend, spread, or set any net, pitfall, spring gun, pivot gun, swivel gun, or other similar contrivance for the purpose of catching or which might catch, take or ensnare wild animals.

7.24 Tampering With Equipment of Another

No person shall molest, disturb, tamper with or in anyway interfere with any hunting, fishing, trapping, gathering, wood cutting, recreational or other equipment used, set or placed by another except with the ownerís permission.

7.25 Wildlife Refuge Established

Except as other wise permitted by law, no person shall take, transport, possess, or sell any endangered and threatened species as defined in Section (2).

7.26 Wildlife Refuge Established

No person shall enter any designated Tribal, Federal, or State Refuge for the purpose of taking, pursuing, harassing, killing and disturbing any wildlife, fish, or plant. This subsection shall not apply to any person authorized to perform directed management and enforcement duties as permissible by the agency of operation.

7.27 Unprotected Species

Except as otherwise expressly provided, nothing in this code shall be construed to prohibit or regulate the harvest of any unprotected species as define in Section (2) of this code.

7.28 Protected Species

No person shall hunt, fish, trap, gather, take, pursue, harass, disturb, sell, purchase, or barter any protected species as defined in Section (2) of this code, except those species whose harvest is specifically regulated pursuant to the provisions of this code.

7.29 Permissible Conduct

Conduct which is not expressly prohibited, restricted, or otherwise regulated by this code shall be deemed permissible.

7.30 Emergency Closures

A. Notwithstanding any other provisions of this code, the Department Director is hereby authorized and empowered to order closure of the harvest activity of any species, generally or with respect to a particular location or body of water, whenever in his/her professional opinion and judgement, the harvest or activity is likely to result in a harvest exceeding the harvest goals and quotas or danger to the public.

B. Every reasonable effort shall be made to consult with and obtain the approval of the Tribal Council prior to ordering an emergency closure, but such closure may be ordered without consultation or approval if circumstances require.

C. An emergency closure shall become effective immediately upon issuance or at such time or date as the closure order may direct. Such closure shall be communicated to the Tribe by the best and swiftest practical method.

D. No persons shall violate the terms, conditions, or restrictions of an emergency closure order issued pursuant to this section.

7.31 Hunting Hours

No person shall pursue, shoot, kill or attempt to take any wildlife, except waterfowl and migratory game birds, between Ω hour after sunset of one day and Ω hour before sunrise of the next day. No person shall pursue, shoot, kill or attempt to take any waterfowl or migratory game birds between sunset of one day and sunrise of the next day.

7.32 Introduction of Fish, Wildlife and Plants

No person shall transplant onto or transport into any lands of the Fort Belknap Indian Reservation any fish or eggs into any body of water, or any wildlife, animal or plant species without authorization from the Tribe or Tribal Fish and Wildlife Director

SECTION 8: BIG GAME HARVEST REGULATIONS

8.01 General Big Game Provision

It shall be unlawful for any person to hunt, take, harvest, or pursue any big game animal by any method other than prescribed in this code and/or section.

8.02 Open and Closed Season

A. A closed season is hereby established for the hunting of big game except for the open seasons specified in Section 8.10 or resolutions established pursuant to this code.

B. Except as otherwise expressly provided by this code, no person shall hunt big game on the Reservation during a closed season.

8.03 Number of Big Game Permits Available

The number of big game harvest permits available for harvest in each big game unit pursuant to this code for each twelve (12) month period commencing January 1,

and ending December 31 shall be limited to the number recommended by the Fish & Wildlife Director and approved by the Natural Resources Committee. No person shall hunt on Reservation Lands or big game units of the Reservation in which no harvest permits are made available.

8.04 Big Game Permits/Tags

A. No person shall hunt big game on any lands of the Fort Belknap Indian Reservation pursuant to this chapter without possessing a valid big game license or permit approved by the Tribes.

B. No person shall hunt big game without possessing a valid carcass tag, except as provided in section 8.14 (Group Hunting).

C. The Tribal Fish and Wildlife Department shall not issue more than one tag at one time to a person except as authorized in sections 8.07 and 8.09, where exceptions for special permits are allowed.

D. No Big Game permits shall be considered valid for any Big Game Unit or Reservation Lands:
(1) Which is shown to be closed.
(2) For which the permit is marked as invalid.
(3) On which any big game permit unit or reservation harvest number has been slit, punched through or otherwise crossed out in any fashion.

E. No person shall move or field dress any big game animal before affixing to it a valid carcass tag.

F. No person shall move or field dress any big game animal without making a cut or punch through the date of the kill.

G. No permit may be issued after 4:30 pm on the closing date of the application period.

H. No person shall hunt and harvest big game in a unit or on Reservation lands that is different than the unit or lands stated on the valid permit.

I. No person shall harvest and/or tag big game of any species or sex without the appropriate license and carcass tag.

J. No person shall hunt or harvest big game without their valid license(s) and tag(s) in possession.

K. No person designated to harvest big game for a Senior Citizen or Disabled Person shall fail to deliver the validly tagged carcass to such Senior Citizen or Disabled Person.

8.05 Accompanying Big Game

It shall be unlawful for any big game permittee to transport any big game without being present with the carcass until such time as the carcass is processed. Nor shall anyone knowingly accept for and transport another's big game without the valid license holder present or written permission from the person providing the game or parts thereof. This subsection shall not apply to any authorized enforcement

persons who in the course of their duties, transport any such seized big game, or Senior/Disable Citizens under Section 8.07.

8.06 Accompaniment by Non-Licensee

It shall be unlawful for any big game permittee to be accompanied in the field by a non-licensee carrying a firearm or bow and arrow. A non-licensee is a person not having a valid Tribal Big Game License.

8.07 Senior Citizens and Disabled Permits

No person other than the designated hunter of Senior or Disabled Citizen may hunt, harvest, transport or possess any big game with a Tribally issued Senior or Disabled Citizen Big Game Permit. No designated hunter may possess more than one Senior or Disabled Citizen Big Game Permit per season.

Senior or Disabled Citizen Big Game Permits will be considered provided:

A. The applicant meets the age/or disability requirements established by the Department Director.
B. Complete and submit the appropriate Big Game Application.
C. If disabled, provide appropriate documents proving such person is disabled.
D. Designate one person who will possess the license, hunt and harvest, transport and deliver the carcass to the Senior Citizen or Disabled Person.

8.08 Special Provisions for Disabled Persons

It shall be unlawful for anyone to hunt with a disabled person who is in the act of hunting under a waiver of certain restrictions of this code.

Waiver of restrictions listed below will be permitted after proof of disability is confirmed:

A. Shoot from a roadway.
B. Shoot from a vehicle that is not moving.

8.09 Special Big Game Permits

No person shall possess, hunt or harvest any big game for special purposes without possessing a valid permit approved by the Tribes and the Department Director.

To obtain a Special Big Game Permit, one must make application to the Department Director containing the following information:

A. Purpose of permit request.

B. Period of requested harvest.

C. Designated hunter's name, address, social security or Tribally enrolled number, hunter safety number (if applicable) phone number, height, weight, color of eyes, color of hair, date of birth.

D. Name of person requesting permit, address, phone number, social security or tribal enrollment number.

E. Description of vehicle to be used for transporting big game.

8.10 Big Game Season

A. No person shall hunt big game from the close of the specific season to the opening of the next specific season of the following year.

B. Each year a regular firearm and bow season shall be established by the Fort Belknap Community Council, or itís designee, with the following limitations:

(1) The regular seasons for hunting big game animals with the use of firearms or bow shall not open prior to the first day of September or close later than the last day in December of each year.

8.11 Permissible Methods

No person shall hunt big game animals except by use of any firearm or bow and arrow, the use of which is not prohibited by this code.

8.12 Firearms Restrictions

No person shall hunt big game animals:

A. With .22 caliber rimfire rifle, 5mm rimfire rifle, or a .17 caliber rifle to include any equivalent caliber or smaller.

B. With a .410 gauge shotgun.

C. With any handgun except a handgun which is leaded with .357, .41, .44 magnum caliber handgun chambered or commercially manufactured cartridges which produce a minimum muzzle energy of 1000 foot pounds and which has a minimum barrel length of six (6) inches measured from the muzzle to the firing pin with the action closed.

D. With any shell, cartridge or ammunition known as a tracer shell, or with incendiary shells or cartridges.

E. With a shot shell containing shot of any size less than a slug.

F. With a gun having the capacity to hold more than eight (8) shells in the clip or magazine.

G. With a gun capable of being fired as an automatic.

H. With a gun having a silencer or sound suppressor device.

I. A rifle with a barrel less than a 16 inch barrel.

J. A shotgun with a barrel less than 18 inches.

K. Any altered projectiles.

8.13 Bow/Crossbow Restrictions

No person shall hunt big game:

A. With a bow having a pull strength less than 30 pounds or using an arrow that does not have a broadhead.

B. With a crossbow unless the crossbow:

(1) Is allowed by special permit by the Department Director.

(2) Is fired from the shoulder.

(3) Has a minimum draw weight of 100 pounds.

(4) Has a stock of not less than 30 continuing inches in length.

(5) Is used with arrows or bolts of not less than 14 inches with a broadhead.

(6) Has a working safety.

8.14 Group Deer Hunting

As used in this section:

A. "Contact " means visual or voice contact without the aide of any mechanical or electronic amplifying device other than a hearing aide.

B. "Group Big Game Hunting Party" means two (2) or more persons lawfully hunting big game in a group under this ordinance.

C. Any Person of a group big game hunting party may kill big game for another person of the group if the following conditions exist:

(1) At the time and place of the kill, the person who kills the big game must be in verbal contact with the person for whom the big game was killed.

(2) The person for whom the big game is killed possesses a current unused big game license and carcass tag valid for the unit or Reservation lands in which the big game is killed.

(3) A person who kills the big game must ensure that a person of his/her group big game hunting parting without delay must attach and validate a carcass tag prior to field dressing and moving the animal. No animal killed under this provision shall leave the animal unattended until after it is properly tagged.

8.15 Hunting Hours

Except where otherwise expressly authorized, no person shall pursue, shoot kill or attempt to take any big game animal between 1/2 hour after sunset of one day and 1/2 hour before sunrise of the next day.

8.16 Transportation

No person shall transport any untagged big game animal in or on any motor vehicle. All big game animals must be properly tagged before transporting.

8.17 Hunting on Certain Lands Prohibited

No person hunting under a Tribal Big Game Permit shall hunt on any designated Tribal, Federal or State Wildlife Refuge unless permitted by law with appropriate license or required permit.

8.18 Sale of Big Game and Big Game Parts

A. No person shall sell, purchase, barter, or trade any big game animal or meat from any big game animal.

B. No person shall sell, barter, or trade any blood antler or antler in velvet from any big game animal.

C. Nothing in this ordinance shall prohibit the sale of hides, bones, heads, or dried antlers from a legally harvested big game animal or the trading of such parts for use in traditional or religious ceremonies. Dried antlers that have been naturally shed or dropped by big game animals may be sold, purchased or traded.

D. Nothing shall prohibit the sale of big game managed by the Tribe or Tribal Fish and Wildlife Department for management and financial purposes to further develop their respective programs.

8.19 Removal and Retention of Tags

A. No person who kills big game pursuant to this ordinance shall remove a carcass or registration tag from that big game animal until such time as the carcass is butchered or processed for consumption.

B. No person who kills big game animals pursuant to this ordinance shall dispose of the carcass tag until all the meat is consumed. All packaged meat must have hunters name, year of kill, and license number clearly printed on each package.

C. Any person who receives meat from another as a gift is exempt from the carcass tag provision but must clearly print the date received on each package and initial each package.

SECTION 9: UPLAND GAME AND SMALL GAME BIRDS

9.01 General Provisions

"Upland Game Bird" means Grouse, Prairie Chicken, Pheasant, Partridge, and Quail.

"Small Game" means Wild Turkey, Tree Squirrel, Prairie Dog, Cottontail Rabbit, and Jack Rabbit.

No persons shall take, pursue, injure, or harass any upland game or upland game

bird while on or in its nest or den, or remove any eggs or young except as may occur in normal agricultural, horticultural, or wildlife research practices and as may be authorized by the Tribes or Tribal Fish and Wildlife Director.

Nothing in this code shall be construed to prohibit the taking of such upland game or upland game bird for the scientific purposes with the authorization of the Fish and Wildlife Director.

9.02 Open and Closed Seasons

A. A closed season is hereby established for the hunting of upland game and upland game birds except for open seasons specified in Section 15.03 or by Tribal Resolution.

B. Except as otherwise expressly provided for by this ordinance, no person shall hunt upland game or upland game birds on the Reservation during a closed season.

9.03 Upland Game and Upland Game Bird Hunting Permits and Tags

A. No person shall hunt Upland Game or Upland Game Birds on any lands of the Fort Belknap Indian Reservation pursuant to this section without possessing a valid Upland Game and/or Bird license or permit approved by the Tribes.

B. The Tribal Fish and Wildlife Department shall not issue more than one license to one person at one time except as authorized by the Department Director.

C. No upland game or upland game bird license shall be considered valid unless:

(1) The license or permit is properly signed in ink by the hunter.

(2) A valid hunter safety certificate is shown at time of purchase and hunter safety number is recorded on the face of the license if hunter is under the age of 18.

(3) For which permit is marked invalid

9.04 Accompaniment of Upland Game or small Game Bird

It shall be unlawful for any upland game and/or bird permittee to tansport an upland game or upland game bird without being present with the carcass until such time as the carcass is processed. Nor shall any person knowingly accept for transport anotherís upland game or upland game bird without the valid license holder present or written permission from the person providing the game.

This section shall not apply to any authorized enforcement persons who in the course of their duties transport any seized upland game or upland game bird.

9.05 Special Permits

No person shall possess, hunt or take any upland game or upland game bird without possessing a valid special permit approved by the Tribes or Tribal Fish and Wildlife Director. Refer to Section 8.09 of this code for application procedures.

9.06 Upland Game and Upland Game Bird Season

A. No person shall hunt upland game or upland game birds from the close of a specific season to the opening of a specific season of the following year.

B. Each year a regular firearm and bow season for upland game and small game birds shall be established by the Tribeís governing body or itís designee with the following limitations:

(1) The regular season for hunting upland game or upland game birds shall not open before the first day in September or extended later than the last day in December of each year.

9.07 Permissible Methods

No person shall hunt upland game except by use of firearms or bow and arrow.

The hunting or taking of upland game except by use of firearms or bow and arrow.

The hunting or taking of upland game birds is restricted to the use of a shotgun, bow and arrow or falconry, the use of which is not prohibited by this code. The hunting or taking of upland game is restricted to the use of a shotgun, rifle, or bow and arrow. Additional firearm and bow and arrow restrictions are listed in subsections 9.08 & 9.00.

9.08 Firearm Restrictions

No person shall hunt small game or upland game birds with:

A. A shotgun larger than 10 gauge.

B. A shotgun capable of holding more than two (2) shells in the magazine.

C. A shotgun using a plug of two (2) or more pieces.

D. A rifle larger than .22 caliber; to allow the use of both rim and center fire cartridges.

E. A handgun larger than .22 caliber; to allow the use of both rim and center fire cartridges.

F. A shotgun with a barrel length less than 18 inches.

G. A handgun with a barrel length less than 6 inches.

H. A rifle with a barrel length less than 16 inches.

I. While possessing shot shells of Double BB or larger, except the use of shot shells of Double BB or larger, except slugs, is permissible for the hunting or taking of wild turkeys.

J. With any type of shell, cartridge, or altered projectile or device which is not considered a factory load, copy or style.

K. Use of lead shot when hunting with a shotgun.

9.09 Bow and Arrow Restriction

No person shall hunt upland game or upland game birds:

A. With a bow having a pull or draw strength less than 30 pounds.

B. Arrows must be at least 24 inches in length, have at least two (2) untrimmed feathers, and tip must be of broadhead type.

C. With poison or exploding points of any type.

D. Crossbows are prohibited, Exception: See Section 8.13

9.10 Falconry

Hunting upland game birds using Birds of Prey or Raptors is permitted by persons possessing a Federal Falconry Permit and Tribal Upland Game Bird Permit. All bag limits, seasons, and legal hunting hours shall apply.

9.11 Hunting Hours

Except where otherwise expressly authorized, no person shall pursue, shoot, kill, or attempt to take any upland game or upland game bird between 1/2 hour after sunset of one day and 1/2 hour before sunrise of the next day.

9.12 Transportation

A. No person shall transport any upland game or upland game bird in or on any motor vehicle without possessing the appropriate permit, required license, and/or tagging the upland game and/or bird with a proper transportation tag.

B. No person shall transport any upland game bird in or on any motor vehicle without leaving at least a fully feathered head, one fully feathered wing, or a leg and foot attached to each harvested upland game bird.

C. Members of the tribes are not required to place a transportation tags on their upland game or upland game bird. This is only required for any person transporting upland game or upland game birds off the reservation.

9.13 Hunting Certain Lands Prohibited

No person shall hunt any designated Tribal, Federal or State Wildlife Refuge unless permitted by law and possessing the appropriate license or required permit.

9.14 Sale of Upland Game or Upland Game Birds

No person shall sell, attempt to sell, or purchase any upland game or upland game birds.

9.15 Use of Dogs

It shall be lawful to use dogs for the purpose of pursuing small game or upland

game birds provided the dog has been properly vaccinated in accordance with acceptable veterinary procedures and the owner maintains proof of such vaccination while afield.

9.16 Limits

No person shall take more than one daily limit on any one day, nor possess more than one daily limit while in the field or while returning from the field to oneís vehicle or hunting camp.

SECTION 10: FURBEARERS

10.01 General Provisions

No person shall take, attempt to take, pursue, harass or injure any furbearers in its den, or remove any young except as may occur during normal agricultural, horticultural, or wildlife research practices and as may be authorized by the Department Director.

Nothing in this code shall be construed to prohibit the taking of such furbearers for scientific purposes and depredation control as may be authorized by the Department Director.

10.02 Open and Closed Seasons

A. A closed season is hereby established for the hunting and trapping of furbearers except for open seasons specified in Section 15.03 or by resolution.

B. Except as otherwise expressly provided by this ordinance, no person shall hunt, take or trap furbearers on the Reservation during a closed season.

10.03 Permits and Tags

A. No person shall take, hunt, or trap furbearers on any lands of the Fort Belknap Indian Reservation pursuant to this section without possessing a valid furbearers license or required permit approved by the Tribes.

B. The Tribal Fish and Wildlife Department shall not issue more than one license to one person at one time except as authorized by the Department Director.

C. No furbearers license shall be considered valid unless:

(1) The license or permit is properly signed in ink by the hunter or trapper.

(2) Show a valid hunter safety certificate at time of purchase and certificate number is recorded on the license or permit if the hunter or trapper is under the age of .

(3) For which any permit or license is marked invalid.

10.04 Furbearer Season

A. No person shall take, hunt or trap any furbearer from the close of a specific season to the opening of a specific season.

B. Each year a regular firearm and trapping season for furbearers shall be established by the Tribes governing body or its designee with the following limitations:

(1) The regular season for trapping furbearers shall not open before the first Saturday in October of one year and may continue through the last Sunday in April of the next year to constitute a trapping year.

(2) A regular season, to include a year-round season, for hunting furbearers shall only be established for the following species: Coyote, Fox, Skunk, Badger, Raccoon and Feral Dogs.

10.05 Furbearers Hunting and Trapping Hours

Except where otherwise expressly authorized, no person shall pursue, shoot, kill, trap, or attempt to take any furbearers between 1/2 hour after sunset of one day and 1/2 hour before sunrise of the next day.

10.06 Method of Taking

No person shall:

A. Trap with any leghold trap larger than a Number four (4) and/or any trap containing a tooth style jaw.

B. Trap within 30 feet of any exposed bait visible to airborne raptors.

C. Trap with aid of poison or poison bait.

D. Trap with traps or snares attached to the traps or snares with a metal tag displaying the trappers full name, address and phone number.

E. Use of Cross-Bows

F. Use of bow with a pull strength less than 30 pounds.

G. Use of arrows less than 24 inches in length.

H. Use of explosive points

I. Use of arrows with a point other than a broadhead having no less than two (2) sharpened edges.

J. Use of artificial lights.

K. Use of a rifle with a barrel length less than 16 inches and use of shotgun with a barrel length less than eight inches.

L. Use of any traps to take any wildlife not specified as furbearer or by resolution.

M. Destroying any den, lodge or hut.

N. Use of poisons or explosives of any type or in any manner not authorized by

the Fish and Wildlife Director.

10.07 Use of Traps

Any person trapping must attend their traps at least every 48 hours and remove any trapped furbearer.

10.08 Trapping Areas Prohibited

A. No person shall trap on private land without receiving verbal or written permission from the owner or tenant.

B. No person shall trap on any Tribal, Federal, or State Refuge without possessing a required permit, license and/or tags.

10.09 Possession of Live Furbearers

A. No person shall remove any live furbearers from their den, lodge, hut or nest or trap and maintain them in captivity for the purpose of raising them for profit or offering them for sale.

B. Any person who maintains live furbearers on any lands of the Fort Belknap Indian Reservation must serve notice within 30 days after receipt of the live furbearer(s) to the Tribal Fish and Wildlife Department and obtain a permit for those furbearers.

10.10 Bobcat Provisions

The taking, hunting, trapping, pursuing, selling purchasing, trading or bartering or any attempt to the above prohibited.

10.11 Use of Dogs

Dogs may be used in the pursuit of raccoon, coyote, and fox while hunting a valid furbearers license. Dogs must be vaccinated under accepted veterinary practices and owner must maintain proof of vaccination while afield.

10.12 Harvest of Depredating Animals

Any land owner or tenant may destroy any furbearer which has been identified as depredating any livestock, poultry, or crops. He/she shall not commercialize in, sell, trade, or ship any pelt or part thereof without possessing a valid Tribal furbearers license or permit.

10.13 Buying or Shipping of Furs or Pelts

No person shall engage in the business of buying or shipping of furs or pelts on any Reservation Lands unless he/she possesses a valid Tribal furbearers license or permit.

10.14 Records to be Kept by Licensed Dealer

Any person licensed to engage in the business of buying or shipping furs and pelts shall keep a true and accurate record if each purchase and/or shipment of furs or pelts.

The record shall include:

(1) The date of purchase
(2) The date of shipment
(3) The name and address of seller
(4) The kind and number of furs involved
(5) The amount of money paid for the furs
(6) Any additional information requested

10.15 Transportation of Furbearers

No person shall transport any furbearer in or on any motor vehicle without possessing a valid furbearer license or required permit and/or required tags.

10.16 Aerial Hunting

No person except an authorized agent shall attempt to take, hunt, or pursue any furbearer using aircraft without authorization from the Tribal Fish and Wildlife Director and in accordance with Federal law.

The following information shall be provided:

A. The name and address of each person whom will be hunting

B. A description of the furbearers authorized to be taken, the number of furbearers to be taken and the harvest area

C. The reason for requesting the permit

D. Description of aircraft and pilots name

10.17 Motor Vehicle Usage

No person shall take, hunt, kill, chase, harass, pursue or attempt the above from any type of motor vehicle unless specifically authorized by permit or license issued by the Tribal Fish and Wildlife Direct.

SECTION 11: MIGRATORY BIRDS

11.01 General Provisions

No one shall take or injure any migratory bird or harass any migratory bird upon its nest or remove any eggs or young except as may occur in normal agricultural, horticultural or wildlife research practices and as may be authorized by the Fish and Wildlife Director and Federal Regulations.

Nothing in this code shall be construed to prohibit the taking of such migratory birds for scientific purposes with out the authorization of the Fish and Wildlife Director and Federal Regulations.

11.02 Open and Closed Seasons

A. A closed season is hereby established for the hunting of migratory birds except for open seasons specified by resolution.

B. Except as otherwise expressly provided by this code, no person shall hunt migratory birds on any Reservation land during a closed season.

11.03 Firearms Restrictions

No person shall hunt migratory birds with:

A. A shotgun larger than a 10 gauge.

B. A shotgun capable of holding more than two (2) shells in the magazine.

C. A shotgun using a plug of two (2) or more pieces.

D. A rifle of any type.

E. A shotgun with a barrel less than 18 inches.

F. A handgun of any type.

G. With shot other than steel shot.

11.04 Bait Restrictions

It is unlawful to hunt over bait other than grain crops left in the field due to normal agricultural practices. It is unlawful to hunt in unharvested crops or grain fields such as creal crops, alfalfa, corn or sunflowers.

11.05 Live Decoys

It shall be unlawful to use live decoy birds for the purpose of hunting migratory birds. If live domestic geese or ducks are or have been present, they must be removed ten (10) days prior to hunting.

11.06 Permits and Tags

No person shall pursue or take any migratory birds on any lands of the Fort Belknap Indian Reservation without possessing a valid Tribal license, permit, require tags, or migratory bird stamp.

11.07 Hunting Season, Bag Limits and Shooting Hours

A. The establishment of migratory bird hunting seasons and bag limits shall be set in compliance with the Migratory Bird Treaty Act. In addition to any regulations provided for in this subsection, all rules and regulations provided for in 50 CFR 20, Migratory Bird Hunting, will be enforced.

B. The Tribal Fish and Wildlife Director, Commission and Council are responsible for establishing migratory bird seasons in compliance with the Migratory Bird

Possession Limit: The number of fish a person may have under his or her control such as in a portable cooler, a home freezer, or registered in his/her name in a commercial cold storage locker.

B. No person shall take, attempt to take, kill or possess any fish under or over the specified size limit.

12.05 Trespass

No person may fish on private waters without permission from the owner, lessee or tenant. No person may fish on Tribal, State, or Federal Refuge waters or protected waters without possessing the required license, permit tags, or unlawfully fish in t those designated waters.

12.06 Hook and Line Limitations

A. A maximum of two lines and three hooks per line is allowed for fishing open waters.
B. A maximum of four lines is allowed for fishing through the ice.
C. A maximum of one line and one hook is allowed for paddlefish snagging.
D. Only one end of each line may be equipped with hooks. An artificial lure constitutes one hook, regardless the number of gang hooks attached.

12.07 Bait

A. No person may possess carp, buffalo fish, carpsuckers, goldfish, or game fish (except cleanings) as bait for hook and line fishing.

B. Licensed anglers may take bait for non-commercial purposes and as provided below:

Bait Defined: Bait includes baitfish, frogs, salamanders, crayfish, freshwater shrimp, snakes, lizards, clams and snails.

Limit: Twelve (12) dozen any species.

Nets, and Traps: Any licensed angler taking bait may use a seine up to 30 feet long, 6 feet deep, and with a mesh 3/8 inch square or less; a dip net up to 30 inches in diameter and with a mesh 3/8 inch square or less; a cast net up to 24 feet in diameter and with mesh 3/8 inch square or less; or a trap no longer than 12 inches in diameter, 36 inches long, and with rigid entrances no wider than one inch.

Trap Marking Required: Bait traps must be clearly marked with the ownerís name and address.

Lost Traps: Traps lost or stolen must be reported within 10 days of knowledge of the lost to the Fish and Wildlife Director.

Trap Setting: Traps must be set so that not more than one half of width of a stream is blocked.

Trap Checking: To prevent loss of baitfish or other gill-breathing animals, traps must be checked and emptied at least once every 48 hours.

Game Fish Released: Game fish and endangered or threatened species must be released or returned to the water from which they were taken.

*(Consult Federal Agency listings for listing of endangered or threatened species.)

Non-Game Fish Destroyed: All other fish, excluding baitfish, taken in bait traps or seines must be destroyed and buried or disposed of in a manner conforming with Tribal health, pollution, and refuse laws.

12.08 Bait Wholesalers and Retailers License

A. A Tribal bait dealers license shall be issued by the Tribal Fish and Wildlife Director and will prescribe rules and regulations for the handling and care of bait. All Dealers are required to possess the requisite license or permit to sell, trap, the requisite license or permit to sell, trap, seine, or net bait. Each permit license will:

(1) Include the name, address, and location of dealer.

(2) Specify the type and amount to be possessed.

(3) Specify if purchased, trapped, seined, or netted, and where the bait was purchased, trapped, seined, or netted.

(4) A permit shall be valid for no more than 12 continous months from date issued.

B. It shall be unlawful to possess more than twelve (12) dozen minnows or bait species without maintaining a Tribal bait dealers license.

12.09 Commercial Sale of Fish

No person shall sell, barter, trade or offer to sell, barter or trade any fish taken from Reservation waters, except:

A. Without possessing a Commercial license issued by the Tribal Fish and Wildlife Director.

B. Channel catfish, flathead catfish, and non-game fish.

C. Persons operating a private fish hatchery.

12.10 Hoop Nets, Traps and Setlines

No person shall set any hoop net, traps or setlines except enrolled members of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation.

Restrictions:

License: No enrolled member of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation shall set, check, pull, or operate any hoop net, trap or setline without possessing a valid Tribal license or permit issued by the Fish and Wildlife Director.

Tags: Each hoop net, trap, or setline must be marked with a metal tage with the enrolled members name, address and telephone number.

Size and Construction of Hoop Nets and Traps: Hoop nets must not be more than 18 feet long nor more than 4 feet wide. No leads or wings are permitted. Only hoop nets constructed of facric mesh with twine size number 15 or larger and slat catfish traps constructed of wood or synthetic slats with at least two 1" inch openings in each end are allowed. Wire fish traps are prohibited.

Species: Hoop nets, traps and setlines may be used to take channel catfish, flathead catfish, and non-game gish in Reservation Waters. It is prohibited to take blue catfish, game fish or endangered or threatened fish. Any blue catfish, game fish, or endanger or threatened fish must be release in the waters from where they were caught.

Baitfish: Only prepared or cut bait, worms, frogs, crayfish, and toads my be used on setlines. Whole baitfish (minnows) are prohibited.
Checking: Hoop nets and setlines must be checked at least every 72 hours.

Catfish Minimum Length: All catfish less than 12 inches long taken by hoop nets, traps or setlines must be immediately returned to the water.

Limit: Unlimited numbers of channel catfish, flathead catfish, and non-game fish may be taken from Reservation waters.

Sale of Fish: Legal fish taken by hoop net, trap, or setlines from Reservation waters may be sold, bartered, or traded pursuant to subsection 12.09.

Unauthorized Use: No enrolled member may use or tend hoop nets, traps, or setlines of another enrolled member.

Setline Restrictions: No enrolled member may use a setline that operates by a reel or other mechanical device, or more than 20 hooks attached to one setline.

12.11 Gill Netting

It is unlawful to take any fish or attempt to take any fish with the use or aid of a gill net.

12.12. Spearing

No person may take fish with a spear, legal spear gun, or bow and arrow except enrolled members of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation.

A. Fish may be taken with spear, legal spear gun (a muscle-loaded device propelling a spear attached to a lanyard no more than 20 feet long), and bow and arrow (crossbows are illegal). Arrows may have only one point, which must be barbed and attached to the bow by a line. Daily and possession limits are the same as and in combination with hook and line limits.

B. Non-game fish may be taken between sunset and sunrise January 1, to December 31.

C. All species of fish, except paddlefish, pallid sturgeon, lake sturgeon, and endangered or threatened fish, amy be speared from sunrise to sunset during the seasons established by Tribal resolution.

D. Catfish may be taken without limit for non-commercial purposes from sunrise to sunset January 1, to December 31.

E. Underwater spearfishing is not permitted within 100 yards of designated swimming or waterskíng areas, boat docks, power intake tubes, or spillways. No underwater diving is permitted where placement of diver-down flag would restrict boat access into or out of a public access area.

F. Divers must display a Diverís Flag on the water on a float or buoy during any diving or underwater spearfishing. The flag must be at least 80 square inches and must be all red with a white diagonal beginning at the top of the flag where attached to the staff. The diverís Flag indicates a diver is submerged in the immediate area and boats are to avoid the area.

G. Person spearfishing may not possess game fish in areas not open to the spearing of game fish.

12.13 Landing Aids

Landing nets, gaffs, and similar devices may be used as an aid in landing fish.

12.14 Artificial Lights

Artificial lighst may be used as an aid in taking fish by legal methods.

12.15 Unattended Lines

Each line used must be under the direct supervision and within the unaided observation of the user.

12.16 Ice Houses

Each fish house, shanty, or other shelter must display on the outside, the name and address of the owner in letters at least two inches high. The door must permit entry except when unoccupied and locked from the outside. Shelters must be removed from the ice by March 5.

12.17 Transportation

A. No person shall transport dressed fish from the waters of the Reservation to his/her residence unless those fish can be readily counted. Mobiles recreational vehicles, trailers, or tents do not qualify as residences.

B. Any dressed fish transported, if frozen, must be packaged individually. Two fillets will be counted as one fish.

12.18 Interference

No person shall:

A. Deposit refuse in Reservation waters.

B. Leave or deposit fish on the shorelines of Reservation waters.

C. Empty receptacles containing bait into Reservation waters.

D. Transport or introduce fish or fish eggs into Reservation waters.

E. Release fish, reptiles, amphibians or crustaceans not native to the Reservation into Reservation waters without written authorization from the Fish and Wildlife Director.

F. Possess, have under control, or maintain trammel nets, gill nets, or seines except legal minnow seines.

G. Possess a spear on or near lakes or streams except during legal hours in open season.

H. Sell, buy or barter game fish.

I. Lend his/her license to another person or aid someone in securing a license fraudulently.

J. Use explosives, electrical devices, or poisonous or stupefying drugs to take fish.

K. Shoot fish, frogs or turtles with a firearm.

C. A person may carry or transport only his/her own lawfully possessed fish.

SECTION 13: BOATING

13.01 General Provisions

No person shall operate any boat, water-craft, water-vessel, or floating-device without complying with all rules and regualtions pertaining to safety and operation established by the U.S. Coast Guard.

No person shall operate any boat, water-craft, water-vessel, or floating device on Reservation waters without possessing the requisite license, permit or regulation.

13.02 Boating Safety Equipment

No person operate any boat, water-craft, water-vessel, or floating device without maintaining the following equipment on or within any boat, craft, vessel or device:

A. All motorboats less than 16 feet in length and non-motorized boats must have at least one Coast Guard approved Type I, II or IV floating device for each person on board. All boats 16 feet and over in length must have, in addition, at least one Coast Guard approved throwable Type IV device on-board.

B. All persons using water skis, surfboard or similar device must wear a Coast Guard approved Type I, II or III floatation device.

C. Any Enforcement Officer who observes a vessel being used in an unsafe condition or manner and in the Officerís judgement such use creates a hazardous condition may direct the operator to take whatever immediate and reasonable steps that would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring and to remain there until the situation creating the hazard is corrected or ended. For the purpose of this section an unsafe condition is defines as any one of the following:

(1) Operating without boating safety equipment.

(2) Operating in an overloaded condition.

(3) Fuel leakage or presence of fuel in bilges.

(4) Riding on the bow, gunwale, transom, or on the back of seats without taking precautions to prevent person falling overboard.

(5) Operating in weather or water conditions which endanger the boat and/or occupants.

(6) Operating a boat without a battery cover in place.

(7) Operating a boat without the necessary lights for low light conditions.

13.03 Prohibited Operation

No person shall:

A. Operate a boat at excessive speeds, or in a dangerous or reckless manner.

B. Operate a boat in an overloaded condition.

C. Operate a boat within designated swimming areas or in areas where swimmers are present.

D. Operate a boat within 100 yards of a skin-diving zone marked by the appropriate diving flags indicating the presence of skin divers below the surface.

E. Operating near dams or other hazardous waters.

F. Towing water skiers near other vessels, obstructions, hazardous waters, or in a reckless or dangerous manner.

G. Operate a boat in such a manner to cause a dangerous or damaging wake.

H. Operate a boat in such a manner as to molest, disturb or annoy persons lawfully engaged in fishing.

I. Continue to use or refuse to terminate use of a boat in a hazardous manner after being ordered to cease by and Enforcement Officer.

J. No person shall operate any motorboat, craft, vessel, or floatation device while under the influence of alcohol or drugs.

13.04 Collisions, Accidents, Casualties and Liability

It shall be the duty of the operator of a vessel involved in a collision, accident, or other casualty, so far as he/she can do without serious danger to his/her own life or property, to render aid to persons affected by the collision, accident, or other casualty. He/she shall give their name, address, and vessel identification in writing to any person injured and to the owner of any property damaged in excess of $100.00, or a person disappears from such vessel under circumstances that indicates death or injury, the operator thereof shall file with the Fish and Wildlife Director a full description of the collision, accident, or other casualty, including such information as said Agency may, by regulation required.

The owner of a vessel shall be liable for injury or damage occasioned by the negligent operation of such vessel, whether such negligence consists of a violation of state statutes, or neglecting to observe such ordinary care and such operation as the rules of the common law required. The owner shall not be liable unless such vessel is being used with his/her expressed or implied consent. It shall be presumed that such vessel is being operated with the knowledge and consent of the owner, if at the time of the injury or damage it is under control of his/her immediate family. Nothing herein relieves any other person from any liability he/she would otherwise have, and nothing contained herein authorizes or permits any recovery in excess of injury or damage actually incurred.

SECTION 14: GUIDING OR GUIDES FOR HIRE

14.01 General Provision

No person except enrolled members of the Gros Ventre and Assinboine tribes of the Fort Belknap Indian Reservation shall provide guiding services on any lands of the Reservation.

No person (enrolled member) shall guide or provide fee guiding services for the purpose of harvesting or attempting to harvest any fish or wildlife on any lands of the Fort Belknap Indian Reservation without proper authorization from the Fish and Wildlife Director.

No guide shall provide services that will allow clients to knowingly or unknowingly to take, attempt to take, kill, pursue or harass any fish or wildlife species during a closed season or in violation of any provisions of this code.

14.02 License Requirements

No person shall act as a guide for the purpose of hunting or fishing on any lands of the Fort Belknap Indian Reservation without possessing a valid permit or license issued by the Fish and Wildlife Director.

Licenses or permits will be issued annually in a form prescribed by the Fish and Wildlife Director.

14.03 Seasons and Limits

Except as otherwise provided, Guides will operate or provide services within the seasons and limits established by resolution.

14.04 Responsibility and Liability

Any person offering guiding services on any lands of the Fort Belknap Indian Reservation are responsible for:

A. Ensuring each client has a valid license or permit for the taking of fish or wildlife.

B. Ensuring each client does not exceed bag limits or season dates as established by resolution.

C. Ensure each client understands the rules and regulations prescribed by resolution and complies with those rules and regulations while under the direction of a guide and while afield.

D. Reporting any accidents or damage caused by their clients while hunting, fishing or recreating on the Reservation.

E. Ensure all clients under eighteen (18) have successfully completed a certified Hunter Safety Course and provide proof to the guide prior to hunting, fishing or recreating.

F. Any physical damages he/she or their clients may knowingly commit to any person or property in violation of this code.

H. Knowingly allow any violation of rules or regulations pursuant to this code.

I. Knowingly allow a client to hunt, fish, or recreate without possessing the requisite license, permit, or applicable hunter safety certification.

J. Knowingly being party to a violation or assisting in commission of a violation.

K. Damages caused by the guide or clients who goes afield under the influence of alcohol or drugs.

SECTION 15: TIMBER HARVEST

15.01 General Provisions

No person shall remove any timber, wood or plant from any lands of the Fort Belknap Indian Reservation without authorization from the Fish & Wildlife Department.

This shall not prohibit the removal of any timer, wood, or plant by a land-owner or by a person who has the ownerís permission to take such timber, wood or plant from said land.

15.02 Permits

Any person taking, cutting, or harvesting any timber, wood, or plant must possess a Tribal permit issued by the Natural Resources Director. The following information is needed for permit application:

(1) His/her name and address

(2) Location of removal area

(3) Type of timber, wood, or plant to be removed

(4) Amount of timber, wood or plant to be removed

(5) Purpose and need for timber, wood or plant

(6) Dates removal will begin and end

15.03 Responsibility and Liability

Any person removing any timber, wood or plant for their use or sale may be held responsible for knowingly causing physical damage to an area that exceeds normal harvesting or cutting practices such as:

A. Cutting any timber, wood or plant species not authorized by permit.

B. Cutting any timber, wood or plant which have nests or dens of birds or mammals greater than one (1) foot in diameter.

C. Causing environmental damages, such as erosion to soil, from vehicle use.

D. Failure to remove any cut timber, wood or plant.

E. Cutting any timber, wood or plant not marked or identified for harvest when applicable.

F. Causing a fire from careless use of equipment or careless behavior.

G. Deposit any litter while afield.

SECTION 16: SPECIAL PERMITS

16.01 General Provisions

It shall be unlawful for any person to harvest any fish, wildlife or plant for any special purpose without obtaining a permit or license from the Fish and Wildlife Director.

16.02 Permits

Special permits may be available upon request for taking or harvesting fish, wildlife or plants on lands of the Fort Belknap Indian Reservation. The following information is needed by permit application:

(1) Name and address or persons(s) making the request.

(2) Reason for request

(3) Name of person(s) who will be harvesting the fish, wildlife or plant, or name of person(s) responsible for the activity for which the special permit has been requested.

(4) Dates of harvest to occur.

(5) Area for harvest to occur in.

(6) Species and amount to be harvested.

The Fish and Wildlife Director shall:

(1) Present the permit request to the Tribal Council for approval.

(2) Determine sex, amount and methods of harvest.

(3) Provide assistance if requested.

(4) Request and collect any unused special permits.

SECTION 17: RESOLUTION HAS FORCE OF LAW

17.01 Any resolution issued by the Tribal Council shall have full force of law. Any person violating a provision of such order or resolution shall be subject to penalties and/or imprisonment within Section 6.06, Penalties and Sanctions. In addition to any fine and/or imprisonment, the violator shall be subject to forfeiture of his/her license, permit, lost of privileges for one year, and confiscation of privileges for one year, and confiscation of paraphernalia used in connection of the violation.

17.02 Resolution to be Published

Each resolution issued by the Tribes pursuant to this code shall be published at least once in a local or regional newspaper. The Fish and Wildlife Director shall post said resolution in public places.

17.03 Emergency Openings and Closures of Seasons

Any season established by resolution may be closed, modified, altered, or a closed season may be opened after investigations and recommendations by the Fish and Wildlife Director finds:

A. That a species of fish or wildlife for which an open season exists, are in danger of depletion or extinction, or when necessary for the proper protection during critical periods, the Director may close a season for proper protection of said species.

B. That any species of fish or wildlife have become sufficient in numbers or have over populated an area and are causing depredation problems, the Director may open or extend a season to control said depredating species.

C. That due to environmental or climatic conditions, a hunting season may create a hazard to life or property (i.e., fire), the Director may close or postpone a season and reopen a season at a later date upon reasonable notice through local media.

SECTION 18: PERFORMANCE STANDARDS

18.01 The Tribes hasl performthe Contracted Conservation Enforcement Program in with the quailifications, trainings, code of conduct, inspection and evaluation and other standards applicable to Bureau Law Enforcement personnel as follows:

A. In addition to Tribal personnel employment standards the contractor shall adhere to the Office of Personnel Management BIA accepted standars for skill level GA-1812 minimum job entry qualifications. Prior to hiring Conservation Enforcement Officers, formal backgound investigations must be completed. Areas to be considered should include, but not limited to: criminal record, traffice record, military, education and prior work experience. Background investigations shall remain in the employee's official personnel file.

B. In addition to requirements to the contractor's Policies and Procedures, the contractor prior to taking disciplinary action involving suspension, demotion or termination against the Conservation Enforcement employee shall taking the following steps:

(1) Notify employee of the contemplated aciton and give a full specification of the reasons such action is contemplated.

(2) Provide the employee with written statement of and specific violation of rules, regulations or statutes the contractor alleges the employee has committed and the names of all person upn whose testimony these allegations are based.

(3) Set a meeting date with the appropriate Administrative Personnel, Tribal Council or Division Director, the employee and employee's legal councsel if he/she has such counsel, not less thatn fifteen (15) days after the employee has been given written satements of allegations.