



# *Bois Forte*

## TRIBAL GOVERNMENT

### RESOLUTION NO. 58-2025

#### **Adopting VAWA '22 and Human Trafficking Revisions to the Bois Forte Tribal Code**

**WHEREAS,** the Bois Forte Band of the Minnesota Chippewa Tribe (the “Band”) is a federally-recognized Indian tribe organized under the Indian Reorganization Act of 1934 and operating under the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe; and

**WHEREAS,** as the Band’s governing body, the Bois Forte Reservation Tribal Council (“RTC”) has the authority to enact laws to implement its expanded Special Tribal Criminal Jurisdiction (“STCJ”) as authorized by the Violence Against Women Act as amended in 2022 (“VAWA ‘22”) and to protect victims of human trafficking that fall within the Band’s jurisdiction; and

**WHEREAS,** the RTC has previously adopted revisions to the Tribal Code for the purpose of implementing its Special Domestic Violence Criminal Jurisdiction (“SDVCJ”) as authorized by VAWA ‘13; and

**WHEREAS,** the RTC desires to amend its Criminal Code to remove outdated provisions specific to SDVCJ (VAWA ‘13) and to consolidate the broader provisions specific to STCJ (VAWA ‘22) in a newly added Part B to Chapter 5, to add and revise specific crimes in Chapter 6 to accord with the VAWA ‘22 definitions of Covered Crimes, and to update all relevant cross references in the Tribal Code; and

**WHEREAS,** the RTC further desires to expand its protection for victims of human trafficking by amending its Criminal Code to narrow the definition of Prostitution to criminalize only the direct transaction between two individuals over the age of 18 and to broaden the definition of Sex Trafficking to capture everything previously defined as Prostitution and Promoting Prostitution; and

**WHEREAS,** agencies of the Band with a direct interest in the implementation of the Band’s STCJ and in the protection of victims of crimes, including Victim Services, the Tribal Court, and Tribal law enforcement, have had the opportunity to provide direct feedback on proposed VAWA ‘22 and Human Trafficking revisions to the Tribal Code; and

**WHEREAS,** on October 4, 2024, the RTC published these VAWA ‘22 and Human Trafficking revisions to the Tribal Code for public comment, and as of December 3, 2024, when the public comment period closed, had received no comments; and

**WHEREAS**, the RTC now desires to adopt the proposed VAWA '22 and Human Trafficking revisions to the Tribal Code.

**NOW THEREFORE BE IT RESOLVED** that the Bois Forte Reservation Tribal Council hereby amends the Tribal Code, as shown in redlines to Chapters 4, 5, and 6 and in a clean version of Chapter 12 of the Tribal Code, attached hereto as Exhibits A-D and incorporated herein.


### Certification

We do hereby certify that the foregoing resolution was duly presented and enacted by a vote of 4 for, 0 against, 0 abstaining, at a meeting of the Bois Forte Reservation Tribal Council, a quorum being present, held on January 2, 2025 at Nett Lake, Minnesota.

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Cathy Chavers  
Chairwoman

DocuSigned by:  
  
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Tara Geshick  
Secretary-Treasurer

# CHAPTER IV – RULES FOR CRIMINAL PROCEEDINGS

## Table of Contents

CHAPTER IV – RULES FOR CRIMINAL PROCEEDINGS .....	1
400.01 Initiation of Proceedings .....	1
400.02 Citation.....	1
400.03 Complaint.....	1
401.01 Arrest - Warrant or Summons.....	2
402.01 Arrest Warrants.....	2
402.02 Arrest.....	2
402.03 Arrest without Warrants.....	3
403.01 Summons in Lieu of Warrant.....	3
404.01 Search Warrants .....	3
405.01 Search Without a Warrant.....	4
406.01 Disposition of Seized Property. ....	4
407.01 Arraignment .....	5
408.01 Receipt of Plea at Arraignment.....	6
408.02 Not Guilty Plea.....	6
408.03 Guilty Plea.....	6
408.04 No Contest Plea.....	6
409.01 Bail - Release Prior to Trial .....	6
409.02 Release from Custody upon Receipt of Bail.....	7
409.03 Forfeiture of Bail.....	7
409.04 Bail, Release by Police Officer. ....	7
410.01 Withdrawal of Guilty Plea .....	7
411.01 Trial.....	7
412.01 Jury Trial.....	7
413.01 Witnesses .....	8
414.01 Presence of Defendant .....	9
414.02 Rights of the Defendant .....	9
414.03 Writ of Habeas Corpus.....	10
415.01 Motions .....	12
416.01 Evidence.....	13
417.01 Harmless Error and Plain Error.....	13
418.01 Regulation of Conduct in the Court Room .....	13

419.01 Order of Trial Procedure .....	13
420.01 Presumption of Innocence.....	14
421.01 Joint Defendants.....	14
422.01 Discharge of Juror; New Trial.....	14
423.01 Judgment of Acquittal .....	14
424.01 Verdict.....	14
425.01 Execution of Judgment.....	14
426.01 Imprisonment for Fine .....	15
427.01 Suspension of Sentence.....	15
428.01 Probation. ....	15
429.01 Parole .....	15
430.01 New Trial .....	16
431.01 Appeal of Conviction. ....	16
432.01 Extradition.....	16
433.01 Rules of Court.....	18
434.01 Exclusion.....	18
435.01 Direct Contempt of Court .....	18
435.02 Constructive Contempt of Court.....	19

## CHAPTER IV – RULES FOR CRIMINAL PROCEEDINGS

**400.01 Initiation of Proceedings.** All prosecutions for alleged crimes and offenses under the laws and ordinances of the Bois Forte Band of Chippewa shall be initiated by serving either a citation or a complaint upon the defendant and filing the same with the Clerk of the Bois Forte Tribal Court. All criminal proceedings shall be recorded by audio or visual recording.

### **400.02 Citation.**

**Subd. 1.** A citation, in a form approved by the Court, may be issued by a duly authorized law enforcement officer and shall contain, at a minimum, the name, address, age and physical description of the defendant, the time and place of the alleged crime(s) or offense(s), reference to the section(s) of the Bois Forte Code or other applicable Band ordinance(s) alleged to have been violated and a brief description of the act(s).

**Subd. 2.** The citation shall also contain a conspicuous notice to the defendant to appear before the Bois Forte Tribal Court at a given time and date for the purpose of answering to the charge.

**Subd. 3.** The officer issuing the citation shall sign and date the same, swearing that the person named as a defendant committed the crime or offense charged.

### **400.03 Complaint.**

**Subd. 1. Plaintiff.** The Bois Forte Band of Chippewa shall always be the sole plaintiff named in a criminal Complaint.

**Subd. 2. Defendant May Request Formal Complaint.** Any defendant charged with a crime shall be served with a written citation or complaint that notifies the defendant of those charges. Any defendant charged with a crime for which incarceration may be imposed upon conviction may request, at the time of arraignment, that a formal complaint be prepared, served, and filed prior to entering a plea.

**Subd. 3. Contents of a Complaint.** Criminal Complaints shall be in a form approved by the Court and shall contain, at a minimum, the name, address and description of the defendant and the name of the complainant, the time and place of the alleged crime(s), reference to the section(s) of the Bois Forte Code or other applicable Band ordinance(s) alleged to have been violated, the maximum penalty which may be imposed upon conviction and a factual description of the act(s) alleged to have occurred. An affidavit of probable cause stating the basis for the Complainant's belief that the crime(s) occurred, that the defendant committed the crime(s) alleged and that the defendant is subject to the personal jurisdiction of the Bois Forte Tribal Court must be included.

**Subd. 4. Complainant.** The complainant may be the victim of the alleged crime(s), a law enforcement officer who investigated the alleged crime(s), or the law enforcement officer acting in a supervisory capacity over such other officer(s).

**Subd. 5. Duties of the Band Prosecutor.** All criminal citations and complaints shall be prepared by or under the supervision of the Band's prosecutor who shall be solely responsible for determining if probable cause does exist to proceed with prosecution prior to any subsequent ruling by the Court. The prosecutor shall also have sole discretion to request that a suitable law enforcement officer be the Complainant in lieu of the alleged victim of the crime(s). Further, the prosecutor shall have sole discretion to later move the Court on behalf of the Bois Forte Band of Chippewa to dismiss, continue for dismissal, suspend, reduce, or substitute a criminal charge whenever the prosecutor believes that the available evidence is insufficient to convict or that the interests of justice so require. A prosecutor who does not faithfully discharge his/her duties may be relieved or replaced at any time by the Bois Forte Reservation Tribal Council.

**401.01 Arrest - Warrant or Summons.** If the complaint, or the complaint together with other sworn statements, is sufficient to establish probable cause to believe that an offense had been committed by the person charged, the court shall issue a warrant instructing the police to arrest the named or otherwise described subjects or, in lieu thereof, the court shall issue a summons commanding the suspect(s) to appear before the court at a specified time and place to answer the charge. A summons shall be issued where the nature of the offense is such that in the discretion of the court arrest is not deemed essential, or where the court has reasonable grounds to believe the suspect(s) will appear upon summons.

**402.01 Arrest Warrants.**

(a) **Issuance.** Each judge and magistrate of the Tribal Court shall have authority to issue warrants to arrest, and arrest warrants shall be issued only upon a showing of probable cause in the complaint, or the complaint together with other sworn statements. The tribal judge or magistrate, may examine the complaining witness under oath to ascertain his knowledge of the facts alleged in the complaint. The tribal judge or magistrate may examine the complaining witness under oath to ascertain his knowledge of the facts alleged in the complaint. The tribal judge or magistrate shall deny the issuance of a warrant if he finds that there is not probable cause to believe that the named suspect committed the offense charged.

(b) **Contents.** The arrest warrant shall contain the following information:

- (1) The name or description and address, if known, of the person to be arrested;
- (2) The date the warrant is issued;
- (3) The description of the offense charged; and
- (4) The signature of the issuing judge or magistrate.

**402.02 Arrest.**

- (a) **Definition.** Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.
- (b) **When an Arrest can be Made.** No tribal law enforcement officer shall arrest any person for a criminal offense under the Tribal Code or otherwise take a person into custody unless:
- (1) The officer shall have a proper warrant commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued;
  - (2) The offense shall occur in his presence;
  - (3) The officer shall have probable cause to believe that the person arrested has committed an offense; or
  - (4) The person may be taken into custody pursuant to the provisions of 432.01.
- (c) **Notification of Rights at the Time of Arrest.** Upon arrest the subject shall be advised of the following rights:
- (1) That he or she has the right to remain silent;
  - (2) That any statements made by him or her may be used in court; and
  - (3) That he or she has the right to obtain counsel which may be appointed for him or her if he or she is charged with a crime that may result in a sentence that exceeds one year and unable to afford an attorney.

**402.03 Arrest without Warrants.** When an individual has been arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether probable cause existed for the arrest, and in no instance shall a complaint be filed later than at the time of arraignment.

**403.01 Summons in Lieu of Warrant.**

- (a) **Issuance.** When otherwise authorized to arrest a suspect a police officer or authorizing judge or magistrate may, in place of a warrant, issue a summons commanding the suspect to appear before the Tribal Court at a stated time and place to answer the charge. If a person fails to appear in response to a summons, a warrant for his arrest shall be issued.

**404.01 Search Warrants.** A search warrant is a written order, signed by a tribal judge or magistrate, and directed to a law enforcement officer ordering him to conduct a search and to seize items or property specified in the warrant. A warrant shall describe with reasonable particularity the property or place to be searched and any items to be seized and the time of day when the warrant may be executed.

- (a) **Issuance.** Every tribal court judge and, in the absence of the tribal judge, the magistrates, shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the court.
- (b) **Requisites for Issuance.** A warrant of search or seizure shall be issued by a neutral and detached judicial officer upon a finding of probable cause that a search will discover: stolen, embezzled, or contraband property; property which has been or is being used to commit a criminal offense; or property which constitutes evidence of criminal offense. Such probable cause shall be supported by a signed, written, and sworn statement of a police officer based upon his own knowledge or upon proven reliable information. A warrant may provide for its execution without announcement of authority and purpose if the application for the warrant sets forth exigent circumstances showing that announcement before entry will result in destruction of evidence or danger to the officers.

(Resolution 98-2004; March 22, 2004)

- (c) **Execution and Return.** Warrants of search and seizure shall only be executed by law enforcement officers. The executing officer shall return the warrant to the tribal court within the time limit shown on the face of the warrant, which in no case shall be longer than five (5) days from the date of issuance. Warrants not returned within such time limits shall be void.

**405.01 Search Without a Warrant.** No police officer shall conduct any search without a valid warrant except:

- (a) Incident to making a lawful arrest, and then only to the extent necessary to prevent the suspect from destroying evidence, and only of areas within the suspect's immediate reach.
- (b) With the knowing voluntary consent of the person being searched, or if the search is of a dwelling, with the knowing consent of the person affected or of someone authorized by that party to control access to the place or things searched.
- (c) When he has probable cause to believe that the person searched may be armed and dangerous, and then only to the extent necessary to detect the presence of a weapon.
- (d) When the search is of a motor vehicle capable of being driven away before a warrant can be obtained, if the officer has probable cause to believe that it contains contraband, stolen or embezzled property, or other criminally related objects.

**406.01 Disposition of Seized Property.**

- (a) **Inventory.** The police shall make an inventory of all property seized by warrant or otherwise, as soon as practicable after seizure, and an acknowledged copy of such inventory shall be given to the person from whose custody the property was taken, or



if no person is present, by leaving a copy of the warrant and inventory at the place where the property was seized. Property shall be stored so as to prevent loss or unreasonable deterioration.

- (b) **Hearing.** A hearing shall be held by the court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is contraband or is to be used as evidence in a pending case. Unless it is contraband or is forfeited to the Court, property taken as evidence shall be returned to the owner after final judgment. Property confiscated as contraband or otherwise forfeited by the Court shall become the property of the Band and may be either destroyed, sold at public auction, retained for the benefit of the Band, or otherwise lawfully disposed of as ordered by the Court.

#### **407.01 Arraignment.**

- (a) **Definition.** Arraignment is the bringing of an accused before the court, informing him of his rights and the charges against him, receiving his plea, and setting bail as appropriate in accordance with Section 409 of this Chapter.
- (b) **Procedure.** Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody. In no instance shall arraignment be later than the next regularly scheduled session of court, or within 48 hours, whichever occurs first, excluding Saturdays, Sundays, and legal holidays.
- (c) **Rights of the Accused.** Before an accused is required to enter his/her plea to any criminal charge against him, the judge shall:
- (1) Read to the accused and determine that he understands the complaint and the section of the Tribal Code which he is charged with violating, including the maximum authorized penalty;
  - (2) Advise the accused that he has the right to remain silent; to a trial; to be presumed innocent; to be found guilty only upon proof beyond a reasonable doubt; and to be represented by counsel at his own expense and that arraignment will be postponed a reasonable length of time should he desire to consult with counsel;
  - (3) Advise the accused subject to the penalties prescribed for a Felony under Chapter V, Section 508.01, subd. 2(a), of the Bois Forte Tribal Code of their rights under Chapter V, Section 508.02 of the Bois Forte Tribal Code; and
  - ~~(4) Advise the accused subject to Special Tribal Criminal Jurisdiction under Chapter V, Part B of the Bois Forte Tribal Code of their rights under Chapter V, Section 524 of the Bois Forte Tribal Code. Advise the accused subject to special domestic violence criminal jurisdiction under Chapter XII, Section 1202 of the Bois Forte Tribal Code of their rights under Chapter XII, Section 1204(b) of the Bois Forte Tribal Code.~~

**408.01 Receipt of Plea at Arraignment.** At the time of the arraignment of a defendant charged with a crime or offense, the Court shall ask the person charged if he understands the nature of the charge and of the rights of which he has been informed and, upon being satisfied that the defendant does understand, shall ask the defendant to plead either not guilty, guilty, or no contest. The plea of the defendant shall be entered in open court. In the event a defendant remains silent or refuses to plead, the Court shall enter a plea of not guilty.

**408.02 Not Guilty Plea.** Upon entry of a plea of “not guilty” the Court shall schedule the matter for pre-trial hearing and set conditions for bail, if any, supervised release upon the defendant’s personal recognizance. A plea of not guilty creates a presumption of innocence and places all factual issues in dispute which are then the burden of the prosecution to prove beyond a reasonable doubt.

**408.03 Guilty Plea.** If the accused pleads “guilty” to the charge, the judge shall not accept the plea without first addressing the accused personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the judge is satisfied that there is a factual basis for the plea, he may enter judgment and impose sentence or defer sentencing for a reasonable time to obtain any information he deems necessary for imposition of a just sentence. If sentencing is deferred, the accused may be released on such terms and conditions as may be imposed by the Court. If the Court is not satisfied that a factual basis exists to support a plea of “Guilty” it shall enter a plea of “Not Guilty” and proceed accordingly.

**408.04 No Contest Plea.** A plea of no contest means that the defendant does not challenge or contest the alleged facts and legal basis of the charge(s) set forth in the complaint or citation and leaves it to the determination of the Court as to whether or not the facts alleged constitute proof beyond a reasonable doubt. No such plea shall be accepted by the Court unless it is satisfied that the defendant clearly understands the consequences of such a plea. Upon accepting such a plea the Court shall then make its determination from the record as to whether or not the defendant is guilty of the crime(s) or offense(s) charged and shall enter the same and proceed accordingly.

**409.01 Bail - Release Prior to Trial.** Every person charged with a criminal offense before the court shall be entitled to release from custody pending trial under whichever of one or more of the following conditions is deemed necessary to reasonably assure the appearance of the accused at any time lawfully required:

- (a) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and at all other lawfully required times.
- (b) Release to the custody of a designated person or organization agreeing to assure the accused’s appearance.
- (c) Release after the deposit of a bond by the accused or a bondsman in an amount specified by the judge, the amount to be fixed so as to insure the presence of the accused at trial or other time, having due regard for the nature and circumstances of

the offense charged, the character and past history of the accused, the danger to the

community, and the record of appearing at prior hearings. In no case shall bail exceed three (3) times the maximum fine for each offense that has been charged.

- (d) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.
- (e) The Court may also impose any other conditions that are reasonably designed to ensure the safety of the community and the protection of witnesses and victims, if any.

**409.02 Release from Custody upon Receipt of Bail.** Upon receipt of the required recognizance or bond or other condition, the court shall if the accused is in custody, deliver an order to discharge him from custody.

**409.03 Forfeiture of Bail.** If the accused fails to appear for trial or when his appearance is lawfully required, such failure may be recorded, and the bond or any security deposited may be forfeited without further proceedings, and the Court may thereafter issue a warrant for the arrest of the accused.

**409.04 Bail, Release by Police Officer.** Any police officer may admit an arrested person to bail at a cash bond of ten (10) percent of the maximum fine for the offense charged when authorized to do so by the court or when arraignment will not be made within twenty-four (24) hours of the arrest. Any bail requirement set by a tribal police officer is subject to review by the Tribal Court.

**410.01 Withdrawal of Guilty Plea.** The court may, in its discretion, allow an accused to withdraw a plea of guilty whenever it appears that the interest of justice and fairness would be served by so doing.

**411.01 Trial.** Subject to the provisions of Section 412.01, subd. 1, cases shall be tried by the court unless the accused demands a jury trial at the time of arraignment. A demand for a jury trial shall be considered unreasonable if made after the date set for trial by the court.

**412.01 Jury Trial.**

**Subd. 1.** In any criminal or traffic case punishable by a sentence of incarceration upon conviction thereof, the defendant has a right, upon demand, to a jury trial. If the prosecutor informs the court at any time prior to trial, either in writing or upon the record in open court, that the imposition of a jail sentence will not be sought upon conviction, trial shall be before the court without a jury and the court may not thereafter impose a sentence of incarceration upon conviction of the crime and/or offense charged.

**Subd. 2.** A jury shall consist of six (6) persons who shall be selected from a list of eligible jurors prepared each year by the court. Subject to Section 412.01, subd. 3, an eligible

juror shall be at least eighteen (18) years of age; an Indian person who is either a permanent resident of the Bois Forte Indian Reservation or an enrolled member of the Bois Forte Band of Chippewa; shall not have been convicted of a felony; shall not be an employee of the Bois Forte

Tribal Court or the Nett Lake Police Department; and shall not be otherwise unqualified according to written standards established by the Court under its general rule-making authority. Until such time as the Court establishes such written standards, the present provisions contained in Section 412, Bois Forte Tribal Court Code (1980), as amended, shall remain in effect. Any party may challenge without cause not more than three members of the jury panel so chosen.

**Subd. 3.** Where the Bois Forte Band of Chippewa exercises Special Tribal Criminal Jurisdiction pursuant to Chapter V, Part B of the Bois Forte Tribal Code~~Where the Bois Forte Band of Chippewa exercises special domestic violence criminal jurisdiction pursuant to Chapter XII, Section 1202 of the Bois Forte Tribal Code~~, any potential juror must meet the eligibility requirements established in Section 412.01, subd. 2, except for the requirement that a juror must be an Indian person who is either a permanent resident of the Bois Forte Indian Reservation or an enrolled member of the Bois Forte Band of Chippewa. In such a case, the juror must be drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community.

**Subd. 4.** The Court shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of the law. The jury shall be sworn under oath in a manner and form prescribed by the Court prior to commencing its deliberations.

**Subd. 5.** The jury shall deliberate in secret and shall return a verdict of guilty or not guilty. All six (6) of the jurors must concur to render a verdict.

**Subd. 6.** Each juror trying a case shall be entitled to compensation for each day, or portion of a day, that the juror sits on the case. Such compensation may be established by order of the Tribal Court, provided that it is approved by the Bois Forte Reservation Tribal Council. Any such order shall be deemed approved if the Bois Forte Reservation Tribal Council does not reject or object to the order within sixty (60) days after the date that it is submitted for approval. In addition, each person called to serve on a jury, whether such person is selected or not, shall be entitled to reimbursement for their actual mileage not to exceed the maximum rate per mile established by the Bois Forte Reservation Tribal Council for tribal employees while traveling on official duties.

#### **413.01 Witnesses.**

- (a) **Subpoenas.** The trial judge shall have the power to issue subpoenas for the attendance of witnesses either on his or her own motion or on the request of any of the parties to the case. Such subpoena shall command the person named therein to attend and give testimony at a time and place specified, and may include direction to produce the books, papers, documents, and objects in the possession or under the control of the person served and designated in the subpoena. A subpoena must bear the signature of the issuing judge.

- (b) **Service.** Service of subpoenas shall be by a tribal police officer or by an adult member of the Band appointed by the Court for the purpose.
- (c) **Failure to Comply.** Failure by any person without adequate excuse to obey a subpoena served upon him shall constitute a violation of this Code.
- (d) **Quash.** Upon prompt notice by the person served with a subpoena, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.
- (e) **Witness Fees.**

- (1) Each witness answering a subpoena shall be entitled to a fee in accordance with the allowances of Section 412.01, subd. 6. The fee shall be the responsibility of the party requesting the subpoena, unless such fee is held by the Court to constitute court costs.

- (2) Witnesses who testify voluntarily shall be paid by the party calling them.

**414.01 Presence of Defendant.** The defendant in a criminal case shall be present in the court at arraignment, at every stage of the trial proceedings, including impaneling of the jury, the return of the verdict where trial is by jury, and at the imposition of sentence.

**414.02 Rights of the Defendant.**

**Subd. 1. Generally.** Subject only to the provisions of Section 412.01, subd. 1, in all criminal prosecutions, the defendant shall have the right:

- (a) To represent himself or herself in person or be represented by counsel at his or her expense;
- (b) To be informed of the nature of the charges against him or her and to have a written copy of those charges;
- (c) To confront and cross-examine, in person, all prosecution or hostile witnesses;
- (d) To compel by subpoena:
  - (1) The attendance of any witnesses necessary to defend against the charges; and
  - (2) The production of any books, records, documents, or other things necessary to defend against the charges; and
- (e) To a speedy and public trial;
- (f) To be free from excessive bail and cruel and unusual punishment;
- (g) Not to be compelled to give evidence against himself or herself or twice be put in

jeopardy of criminal trial and conviction for the same offense. No inference may be drawn from a defendant's exercise of the right not to testify;

(h) To all other rights listed in the Indian Civil Rights Act, 25 U.S.C. § 1302.

**Subd. 2.** Where the crime is punishable as a Felony under Chapter V, Section 508.01 of the Bois Forte Tribal Code, the defendant shall be entitled to those rights guaranteed under Chapter V, Section 508.02 of the Bois Forte Tribal Code.

**Subd. 3.** Where the defendant is being prosecuted under Special Tribal Criminal Jurisdiction pursuant to Chapter V, Part B of the Bois Forte Tribal Code, the defendant shall be entitled to those rights guaranteed under Chapter V, Section 524 of the Bois Forte Tribal Code. ~~Where the defendant is being prosecuted under special domestic violence criminal jurisdiction pursuant to Chapter XII, Section 1202 of the Bois Forte Tribal Code, the defendant shall be entitled to those rights guaranteed under Chapter XII, Section 1204(b) of the Bois Forte Tribal Code.~~

#### **414.03 Writ of Habeas Corpus.**

**(a) Availability.**

- (1) Except as provided in Section 414.03(a)(2), every person within the jurisdiction of the Bois Forte Band imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.
- (2) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.
- (3) When a person is imprisoned or detained in custody by the Bois Forte Band on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring the fact in his petition, without alleging that he is illegally confined.

**(b) Issuance.**

- (1) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Court. It must specify:

(A) That the petitioner is unlawfully imprisoned or restrained of liberty;

(B) Why the imprisonment or restraint is unlawful; and

(C) Where or by whom the petitioner is confined or restrained.

(2) The parties to a writ, namely the Bois Forte prosecutor, judge, and the Bois Forte Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

(3) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(c) **Granting the Writ.** Any appellate justice may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the justice's jurisdiction. If it appears to such justice that a writ ought to issue it shall be granted without delay, and may be returnable to the Court of Appeals.

(d) **Time of Issuance and Requirements for Service.**

(1) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and Judge of the Trial Court.

(2) The writ must be served upon the person to whom it is directed. If the writ is directed to a tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.

(3) The writ must be served by a Tribal Police Officer, or any other person directed to do so by the appellate justice, in the same manner as a civil summons, except where otherwise expressly directed by the appellate justice, the Court, or the employee of any correctional facility in which the petitioner is held.

(e) **Return of the Writ.** The Prosecutor or his or her designee shall make a return and state in that return:

(1) Whether the person is in custody or under that person's power of restraint; and

(2) If that person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(3) If the person has been transferred to the custody of or otherwise restrained by

another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

- (f) **Hearing.** The trial judge commanded by the writ shall cause the petitioner to be brought before an appellate justice as commanded by the writ unless the petitioner

cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.

- (g) **Refusal to Obey Writ is Contempt.** If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

- (h) **Disposition of the Petitioner.** If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

#### **415.01 Motions.**

- (a) **Definitions.** A motion is a formal method by which a party submits a proposed measure of resolution for the consideration and action of the Court.

- (b) **Pre-Trial Motions.** The following motions shall be made before trial, unless the accused shall show at trial that his rights will be prejudiced if the motion is not considered by the Court:

- (1) Motion to set aside complaint on the grounds that it does not comply with the requirements of Section 400.03; where it is found that the defendant has been charged without probable cause; or upon a determination that the Tribal Court has no jurisdiction over the person or the offense.
- (2) Motion for bill of particulars on the ground that the defendant must have facts other than those in the complaint in order to prepare his defense.



(3) Motion for a change of trial judge on the ground that there cannot be an impartial trial by reason of the bias or prejudice of the presiding trial judge.

(4) Motion to suppress evidence that has been obtained in an unlawful manner.

(c) **Ruling on Motions.** The Court shall either grant or deny all motions made to him and have his order entered in the record of the case along with his reasons for his ruling. If a motion is decided against a defendant, the trial shall proceed as if no

motion were made. If a motion is decided in favor of a defendant, the judge shall alter the proceeding or enter judgment as is appropriate in light of the decision.

**416.01 Evidence.** The admissibility of evidence and the competency and privileges of witnesses shall be governed by the Federal Rules of Evidence; subject to the exception contained in Section 610.08.

**417.01 Harmless Error and Plain Error.**

(a) Any error, defect, or irregularity or variance that does not affect substantial rights shall be disregarded.

(b) Errors or defects affecting substantial rights may be recognized and acted upon by the Court even though they were not brought to the attention of the Court by counsel.

**418.01 Regulation of Conduct in the Court Room.** The trial judge may regulate the conduct of persons in the courtroom to ensure a fair and impartial trial and may forbid the taking of photographs or other visual or audio recordation of proceedings occurring therein.

**419.01 Order of Trial Procedure.** Trials to the Court shall apply subsections (c)-(f) below, and subsections (a)-(f) below shall apply to jury trials.

(a) **Jury Impaneled.** In a jury trial, when a jury of six (6) persons are accepted by the prosecution and the defense, they shall be sworn by the Clerk of Court to try the facts.

(b) **Complaint Read.** In a jury trial, the clerk or trial judge shall then read the complaint and state the plea of the defendant to the jury.

(c) **Opening Statements.** Opening statements as to the facts to be proven by the evidence may be given by the tribal prosecutor, followed by the defendant or his counsel, provided that the latter's opening statement may be deferred until presentation of the defense's case.

(d) **Prosecution's Evidence.** The tribal prosecutor shall open the case and offer evidence in support of the charge. The defendant or his counsel shall have the right to question any witness called to testify by the tribal prosecutor.

- (e) **Defendant's Evidence.** The defendant or his counsel may then open the defense and offer evidence in support. The tribal prosecutor shall have the right to question any witness called to testify by the defendant or his counsel.
- (f) **Final Argument.** When all the evidence is before the Court or the Court and the jury, the tribal prosecutor, then the defendant or his counsel may argue the case to the Court or the Court and jury.
- (g) **Instructions to the Jury.** Upon the conclusion of the arguments, the Court shall charge the jury, if one is impaneled, stating the law of the case. The Court may, in its discretion, give the jury such instructions on the law applicable to the case at any time during the trial.

**420.01 Presumption of Innocence.** A defendant in a criminal action is presumed to be innocent of the charge until the prosecution proves his guilt beyond a reasonable doubt. The jury shall be instructed that the burden is on the Band to meet the requisite standard of proof; also, that the defendant need not testify, that his failure to testify on his own behalf may in no way be held against him. Such failure shall not be commented upon by the tribal prosecutor.

**421.01 Joint Defendants.** When two or more defendants are jointly charged with a tribal offense, they shall be prosecuted jointly; provided that the Court may, in its discretion, direct that separate trials be had in the interest of justice to each defendant.

**422.01 Discharge of Juror; New Trial.** If, before the jury has returned its verdict to the Court, a juror becomes ill or for other good cause shown to the judge is found to be unable to perform his duty, the Court may order the juror to be discharged. When a juror is discharged, the court may, upon agreement of prosecution and defense, proceed in the case in the absence of said juror.

**423.01 Judgment of Acquittal.** At any time after all the evidence of either side is before the Court, the judge may direct the jury to return a verdict of acquittal; in the event of the failure of the jury to return a verdict of acquittal, the judge may refuse to receive any other verdict and may discharge the jury and enter a judgment of acquittal.

**424.01 Verdict.** The verdict of the jury must be unanimous and returned in open court. A general verdict of "guilty" or "not guilty" must be rendered, and such verdict shall constitute a conviction or acquittal on every allegation of fact in the complaint upon which the defendant was charged. In its discretion or upon the motion of prosecutor or defendant, the Court may poll the jury to determine that the verdict entered was in fact the uncoerced decision of each juror.

**425.01 Execution of Judgment.**

- (a) **Imprisonment.** When a sentence of imprisonment is entered, a copy thereof signed by the trial judge shall be delivered to the police, which is a sufficient warrant for its

execution.

- (b) **Fine.** When a sentence is entered imposing a fine, payment of the fine by the defendant shall cause him to be immediately set free unless he is detained for other legal cause.
- (c) To the extent, if any, that this Section and Section 426 through 429 of Chapter IV may be inconsistent with any provisions set forth in Chapter V, Sections 509.01 through 513.01, as amended (2017), the amended provisions of Chapter V shall prevail.

#### **426.01 Imprisonment for Fine.**

- (a) **Inability to Pay.** Upon showing of indigency, a defendant may not be incarcerated solely because of his inability to pay the assessed fine but may, in the discretion of the court, be given the choice of:
  - (1) Performing services for the community which are within his or her range of skills and as provided in Section 510.01 until such time as the assessed fine and costs have been satisfied; or

(Resolution 84-2003; November 21, 2002)

- (2) Release on probation, one of the terms of which shall include the payment, in regular installments within his means, of the total fine and costs assessed.
- (b) **Failure to Comply with Sentence.** A defendant, indigent or not, may be incarcerated for his failure to comply with the court's order to perform services as is specified in Subsection (a)(1) above or his failure to comply with the terms of his probation with respect to timely payments as is specified in Subsection (a)(2) above.

**427.01 Suspension of Sentence.** The Court may, on such terms and conditions as the Court may impose, suspend the sentence and release a convicted person on probation for the duration of the sentence.

#### **428.01 Probation.**

- (a) **Conditions.** The Court may release on probation a convicted person on such terms and conditions as are just and appropriate, taking into consideration the prior criminal record of the defendant, his background, character, financial condition, family obligation, and any other pertinent circumstances.
- (b) **Violations of Probation Conditions.** Any person who violates the terms and conditions of his probation or suspension of sentence shall be required at the discretion of the Court to serve the original sentence.

#### **429.01 Parole.**

- (a) **Eligibility.** Any person confined to jail who shall have served without misconduct one-half of the sentence imposed shall be eligible to be considered for parole, upon written application to the Court.
- (b) **Granting Parole.** Paroles may be granted by the Court upon such terms and conditions, including the requirement of personal reports from the person paroled, as the Court may prescribe.
- (c) **Violation of Parole.** Any paroled person who shall violate any provision of his/her parole, at the discretion of the Court, shall be apprehended and confined to serve the remainder of the original sentence, diminished as to the time the person was released on parole.

#### **430.01 New Trial.**

- (a) **Application.** Application for a new trial may be made only by the defendant or his counsel and must be made before completion of the sentence to the judge before whom the case was tried.
- (b) **Grounds.** The judge on application from the defendant, may grant a new trial based upon a finding that any of the following has occurred:
  - (1) The jury has received any evidence, paper, or document out of court not authorized by the trial judge;
  - (2) The verdict has been decided by lot or by any other means that are not fair expression of opinion on the part of the jury; or
  - (3) The defendant has not received a fair and impartial trial for any other cause.
- (c) **Effect of New Trial.** The granting of a new trial places the parties in the same position as if no trial has been held; all testimony must be reproduced and the former verdict cannot be used or referred to either in the evidence or in argument.
- (d) **Status of Defendant.** Pending a new trial, the accused shall be entitled to bail under the same conditions and qualifications as for bail before trial.

**431.01 Appeal of Conviction.** A defendant convicted of a crime or an offense pursuant to the provisions of the Bois Forte Tribal Code may appeal a final judgment of conviction or of an order entered after judgment affecting his or her civil rights. Said appeal shall be taken to the Bois Forte Court of Appeals in the manner and within the time provided by Chapter III of the Bois Forte Tribal Code. Pending the outcome of said appeal, the Bois Forte Tribal Court may stay execution of any sentence imposed or order entered upon such conditions, including release of the defendant, as the Tribal Court deems just and reasonable under the circumstances.

## **432.01 Extradition.**

**Subd. 1. Tribal Court's Authority.** The Bois Forte Tribal Court may order transfer of custody to the proper state, tribal, or BIA law enforcement authorities of any person found within the jurisdiction of the Bois Forte Band of Chippewa who is sought by such authorities for the commission of an offense in another jurisdiction, including juveniles charged with committing a delinquent act which would be criminal if committed by an adult.

**Subd. 2. Certified Copies.** Certified copies of the criminal complaint, information, indictment, juvenile delinquency petition, judgement of conviction, arrest warrant, commitment order, juvenile detention order, or similar papers, received from the jurisdiction seeking transfer shall be promptly filed with the Clerk of the Bois Forte Court and no Order of Transfer shall be issued by the tribal court until such papers have been filed or the accused has waived extradition either in writing filed with the court or open court.

**Subd. 3. Hearing.** The accused shall be accorded a right to contest the propriety of a proposed order of transfer in a hearing before the court. The accused shall have the right to be represented by legal counsel chosen by him/her at his/her own expense. The parent, guardian, or other custodian of a juvenile accused shall be notified of the hearing and have the right to appear and participate. The court shall not determine the accused's guilt or innocence concerning the offense(s) for which he/she is being sought. Upon being satisfied that appropriate papers have been received and filed, the court shall order transfer of the accused to appropriate officials of the other jurisdiction if the offense for which the person has been charged or convicted is a felony and may order such transfer in any other case in which the interests of justice support such a transfer. The court may order a continuance of an extradition hearing for reasonable cause upon motion of the accused, the tribal prosecutor, or upon its own motion.

### **Subd. 4. Taking into Custody.**

- (a) Any law enforcement officer of the Bois Forte Band of Chippewa may take into custody, pending extradition, any person found within the jurisdiction of the Bois Forte Band of Chippewa alleged to have committed an offense in another jurisdiction, including juveniles alleged to have committed a delinquent act which would be criminal if committed by an adult, if the Bois Forte has probable cause to believe that an arrest warrant, commitment order, juvenile detention order, or similar order has been issued by a court of the other jurisdiction.
- (b) Any law enforcement officer of the Bois Forte Band of Chippewa may take into custody, without an arrest warrant or detention order and pending extradition, any person including juveniles found within the jurisdiction of the Bois Forte Band of Chippewa sought by law enforcement authorities of another jurisdiction for the alleged commission of a felony if the Bois Forte officer has probable cause to believe the accused committed the felony and is being sought by the other jurisdiction.

**Subd. 5. Waiver of Extradition Hearing.** Any person taken into custody pursuant to the provisions of Subdivision 4, above, may voluntarily waive his/her right to an extradition hearing by executing the same in writing and filed with the Clerk of Court upon a form prepared by the tribal prosecutor, copies of which form shall be supplied to the Nett Lake Police Department. A parent, guardian, or lawful custodian of a juvenile accused shall join in any such waiver.

**Subd. 6. Release from Custody.** The Bois Forte Tribal Court may, in its discretion, authorize the release of any person being held in custody pursuant to this section upon the posting of sufficient bail or other conditions imposed by the court to guarantee said person's

appearance at the extradition hearing. The court shall order the release of any such person where the other jurisdiction has failed to furnish the Clerk of Court with certified copies of the complaint, information, indictment, or judgement of conviction, and arrest warrant, within 72 hours of the person having been taken into custody or such longer time as the Bois Forte Tribal Court may direct for reasonable cause.

**Subd. 7. Transfer to Other Authorities.** No person taken into custody pursuant to the provisions of Subdivision 4, above, shall be transferred to any state or other authorities unless said transfer has been ordered by the Bois Forte Tribal Court or unless said person has voluntarily consented to such transfer provided herein.

(Resolution No. 128-97, April 3, 1997)

**433.01 Rules of Court.** The tribal judge may, in conjunction with the other tribal judges, promulgate rules governing criminal trial procedure not inconsistent with these rules and Bois Forte Tribal Code, and copies of such rules shall be made available for public inspection and copying. If no procedure is specifically prescribed by rule, the Court may proceed in any lawful manner not inconsistent with these rules on the principles of justice and fairness underlying these rules.

**434.01 Exclusion.**

**Subd. 1.** The Court may, upon application or petition of the Bois Forte Reservation Tribal Council or its authorized designee, and upon notice to all parties and a hearing, order any person, Indian or non-Indian, to be excluded from the territorial jurisdiction of the Bois Forte Band of Chippewa upon a showing, based upon clear and convincing evidence, that said person poses a substantial threat to the continued safety and well-being of the residents of the Bois Forte Reservation or to the orderly conduct of the official business of the Bois Forte Band of Chippewa by reason of said person's acts or conduct. The term and conditions of any such exclusion order may be such as the Bois Forte Tribal Court deems necessary and proper under the circumstances and may be stayed by the Court pending appeal.

**Subd. 2. Rescission.** The Court may rescind any previously-issued exclusion order upon its own motion or application or petition of the person excluded, his or her representative, the Bois Forte Reservation Tribal Council or its authorized designee, or any other interested party, and upon notice to all parties and after a hearing upon the application or petition and when the

interests or justice so require.

#### **435.01 Direct Contempt of Court.**

- (a) Whoever in the immediate view and presence of the Court engages in disorderly, contemptuous, or insolent behavior toward the judge while holding court or engages in boisterous or violent conduct tending to interrupt the business of the court may be found to be in direct contempt of court.
  
- (b) A direct contempt of court may be punished summarily, for which an order shall be made reciting the facts as occurring in the immediate view and presence of the Court and adjudging the person to be guilty of contempt.
  
- (c) The maximum punishment which the Court may impose for an act of direct contempt of court shall be five (5) days incarceration or a civil penalty not exceeding \$250.00, or both.

(Resolution No. 99-2007; September 21, 2006)

#### **435.02 Constructive Contempt of Court.**

- (a) Whoever does any of the following, whether by act or omission outside the immediate presence of the Court, may be found in constructive contempt of court:
  - (1) Deceit or abuse in the process or proceeding of the Court by a party to an action or special proceeding;
  - (2) Refusing to be sworn or answer as a witness;
  - (3) Disobedience of any lawful judgment, order, summons, subpoena, or other process of the Court; or
  - (4) Any other unlawful interference with the process or proceeding of the Court
  
- (b) Upon receipt of an affidavit receiving the facts and alleging a constructive contempt of court, the Court may bring the person charged to answer by issuing an arrest warrant, by notice without a previous arrest, or by an order to show cause.
  
- (c) If the Court finds the alleged constructive contempt of court has occurred, the Court may commit the person to be incarcerated, impose a civil penalty, or both, as provided in Section 435.01(c).
  
- (d) When the constructive contempt of court consists of an omission to perform an act that is yet in the power of the person to perform, the act shall be specified in a warrant of commitment to incarceration until the person performs the act specified, provided

that the term of incarceration in such cases shall not exceed five (5) days.

(Resolution No. 99-2007; September 21, 2006)

**436.01-499.01**      **Reserved for future use.**



# **CHAPTER V – CRIMES AND OFFENSES - GENERAL PROVISIONS**

## **Table of Contents**

CHAPTER V – CRIMES AND OFFENSES - GENERAL PROVISIONS.....	1
501.01 Purpose.....	1
502.01 Jurisdiction of Band over Persons Alleged to have Committed Crimes and Offenses. .....	1
502.02 Burden of Proof. ....	1
503.01 Definitions. ....	2
504.01 Crimes or Offenses Punishable under Different Provisions. ....	4
506.01 Foreign Conviction or Acquittal. ....	5
507.01 Liability for Crimes or Offenses of Another. ....	5
508.01 Sentences. ....	6
508.02 Enhanced Sentencing. ....	7
509.01 Presentence Investigation. ....	7
510.01 Stay of Imposition or Execution of Sentence. ....	8
511.01 Limits of Sentences.....	9
512.01 Sentence of Incarceration.....	9
513.01 Multiple Sentences.....	9
514.01 Liability of Children and Minors.....	10
515.01 Authorized Use of Force.....	10
516.01 Intoxication as Defense.....	10
516.02 Mental Disease or Defect.....	11
517.01 Duress. ....	12
517.02 Entrapment.....	12
518.01 Sending Written Communication. ....	12
519.01 Proof of Prior Convictions.....	12
520.01 Limitation of Actions.....	12
521.01 Waiver of Appearance and Plea of Guilty.....	13

## CHAPTER V – CRIMES AND OFFENSES - GENERAL PROVISIONS

**501.01 Purpose.** The provisions of this Chapter and of Chapter VI are hereby declared to be for the following purposes:

- (a) To protect the public safety and welfare by preventing the commission of crimes and offenses through the deterring effect of the sentences authorized, the rehabilitation of those convicted, and their confinement when the public safety and interests require; and
- (b) To protect the individual against the misuse of the criminal law by fairly defining the acts and omissions prohibited and authorizing sentences reasonably related to the conduct and character of the convicted person within the limits of the authority of the Bois Forte Reservation Tribal Council.

### **502.01 Jurisdiction of Band over Persons Alleged to have Committed Crimes and Offenses.**

**Subd. 1.** A person may be charged, tried, convicted, and sentenced under the criminal provisions of the Bois Forte Tribal Code if the person is subject to the personal jurisdiction of the Bois Forte Tribal Court by virtue of the Band's sovereign authority, by applicable federal law, or by the person's informed voluntary consent to and waiver of any defects in personal jurisdiction, and the person:

- (a) Commits a crime or an offense in whole or in part within the territorial jurisdiction of the Bois Forte Band of Chippewa; or
- (b) Being outside the territorial jurisdiction of the Bois Forte Band of Chippewa conspires with or aids or abets another to commit a crime or offense within the Bois Forte Band's territorial jurisdiction.

**Subd. 2.** It is not a defense that the defendant's conduct is also a criminal offense under the laws of the United States of America (unless otherwise proscribed by federal law to the contrary) or of one, or more, of the several states of the United States of America, or of another Indian tribe, band, or group (as defined in 25 U.S.C. § 1301), or of a foreign nation.

### **502.02 Burden of Proof.**

- (a) The Bois Forte Band of Chippewa has the burden of proving each element of an offense beyond a reasonable doubt.
- (b) Whenever the defendant introduces sufficient evidence of a defense to support a reasonable belief as to the existence of that defense, the Bois Forte Band of Chippewa has the burden of disproving such defense beyond a reasonable doubt unless the Bois Forte Tribal Code expressly requires the defendant to prove the defense by a preponderance of evidence.

(Resolution 39-2018; November 1, 2017)

**503.01 Definitions.**

**Subd. 1. Actor.** “Actor” means the person alleged in a citation, complaint, petition, motion, or other pleading to have committed an act constituting an offense.

**Subd. 2. Assault.** “Assault” is:

- (a) An act done with intent to cause fear in another of immediate bodily harm or death; or
- (b) The intentional infliction of or attempt to inflict bodily harm upon another.

**Subd. 3. Bodily harm.** “Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.

**Subd. 4. Conviction.** “Conviction” means any of the following accepted and recorded by the Court:

- (a) A plea of guilty;
- (b) A plea of no-contest; or
- (c) A verdict of guilty by a jury or a finding of guilty by the Court after trial.

**Subd. 5. Crime.** “Crime” means conduct which is prohibited by the Bois Forte Tribal Code or by any other duly enacted resolution or ordinance of the Bois Forte Reservation Tribal Council for which the actor may be sentenced to incarceration, with or without a fine, upon conviction thereof.

**Subd. 6. Dangerous weapon.** “Dangerous weapon” means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, or any flammable liquid or other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

**Subd. 7. Great bodily harm.** “Great bodily harm” means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

**Subd. 8. Mental state.**

- (a) When criminal intent is an element of a crime in this Chapter, such intent is indicated by the term “intentionally,” the phrase “with intent to,” the phrase “with intent that,” or some forms of the verbs “know” or “believe.”

- (b) “Know” requires only that the actor believes that the specified fact exists.
- (c) “Intentionally” means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result. In addition, except as provided in Subdivision (f) below, the actor must have knowledge of those facts, which are necessary to make the actor’s conduct criminal and which are set forth after the word “intentionally.”
- (d) “With intent to” or “with intent that” means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.
- (e) Criminal intent does not require proof of knowledge of the existence or constitutionality of the provision of the Bois Forte Tribal Code or other duly enacted resolution or ordinance of Reservation Tribal Council under which the actor is prosecuted or the scope or meaning of the terms used in such resolution, ordinance, or code provision.
- (f) Criminal intent does not require proof of knowledge of the age of a minor even though age is a material element in the crime in question.

**Subd. 9. Minnesota statutes.** “Minnesota statutes” means those provisions of existing Minnesota statutes in effect as of September 1, 1998, and thereafter, which have been enacted and incorporated by reference into the Bois Forte Tribal Code by resolution of the Bois Forte Reservation Tribal Council which have not otherwise been altered, amended, modified, or superseded by specific provisions of the Bois Forte Tribal Code.

**Subd. 10. Minor.** “Minor” means a person under the age of 18 years.

**Subd. 11. Misdemeanor.** “Misdemeanor” means a crime or offense for which the maximum sentence that may be imposed upon conviction shall not exceed one (1) year of incarceration or a fine of \$5,000.00, or both. Except for traffic and other similar offenses, misdemeanors shall be classified as being either Class 1 Misdemeanor, Class 2 Misdemeanor, or Class 3 Misdemeanor. The maximum sentence for each such class shall be as set forth in Section 508, below.

(Resolution 39-2018; November 1, 2017)

**Subd. 12. Offense.** “Offense” means a violation of the Bois Forte Tribal Code, including the Bois Forte Traffic Code, or any other duly enacted resolution or ordinance of the Bois Forte Reservation Tribal Council for which a penalty is prescribed.

**Subd. 13. Petty Misdemeanor.** “Petty Misdemeanor” means a petty offense which is prohibited by the Bois Forte Tribal Code or by any duly enacted resolution or ordinance of the Bois Forte Reservation Tribal Council which does not constitute a crime and for which the actor may be sentenced to pay a fine upon conviction thereof.

**Subd. 14. Second or subsequent violation, etc.** “Second or subsequent violation,” “second or subsequent crime” or “second or subsequent offense” means that prior to the commission of the violation, crime, or offense charged, the actor has been adjudicated guilty of a specified similar violation, crime, or offense.

**Subd. 15. Stalking.** “Stalking” means to engage in conduct that the offender knows or has reason to know would cause the victim under the circumstance to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the offender and the victim.

**Subd. 16 Substantial bodily harm.** “Substantial bodily harm” means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.

**Subd. 17. Threaten.** “Threaten” means to express a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act.

**Subd. 18. Tribal court.** “Tribal court” means any court of competent jurisdiction established by or for a federally recognized Indian tribe and includes a Court of Indian Offenses established pursuant to federal regulations, 25 CFR Part 11.

**Subd. 19. Victim.** “Victim” means any person at whom the commission of a crime or offense was directed or who suffered loss, damage, or bodily harm as a result of the commission of the crime or offense. “Victim” includes the parents, guardian, or other lawful custodian of a minor child, incapacitated person, incompetent, or decedent who was otherwise the victim of the commission of a crime or offense.

(Resolution 39-2018; November 1, 2017)

#### **504.01 Crimes or Offenses Punishable under Different Provisions.**

**Subd. 1.** If a person’s conduct constitutes more than one crime or offense under the laws of the Bois Forte Band of Chippewa, the person may be punished, upon conviction, for only one of the crimes and offenses. A conviction or acquittal of any one of such crimes or offenses is a bar to any subsequent prosecution for any other of them. All of the crimes and offenses, if prosecuted, may be included in one prosecution, which shall be stated in separate counts.

**Subd. 2.** In determining whether two or more crimes or offenses fall within the provisions of Subdivision 1, the factors to be considered shall include, but not necessarily be limited to, the singleness of purpose of the actor and the unity of time and place of the behavior.

#### **505.01 Conviction of Lesser Offense.**

**Subd. 1.** Upon prosecution for a crime or an offense, the actor may be convicted of either the crime or offense charged or an included crime or offense, but not both. An included crime or offense may be any of the following:

- (a) A lesser degree of the same crime or offense;
- (b) An attempt to commit the crime or offense charged;
- (c) An attempt to commit a lesser degree of the crime or offense charged;
- (d) A crime or offense necessarily proved if the crime or offense charged were proved; or
- (e) A petty misdemeanor necessarily proved if the misdemeanor were proved.

**Subd. 2.** A conviction or acquittal of a crime or offense is a bar to further prosecution of any included crime or offense, or other degree of the same crime or offense.

**506.01 Foreign Conviction or Acquittal.** If an act or omission within the jurisdiction of the Bois Forte Tribal Court constitutes a crime or offense under both the laws of the Bois Forte Band of Chippewa and the laws of another jurisdiction, a conviction or acquittal of the crime or offense in the other jurisdiction shall not bar prosecution for the crime within the jurisdiction of the Bois Forte Tribal Court unless (1) the elements of both law and fact are identical and (2) such prosecution is otherwise specifically prohibited by Federal law.

**507.01 Liability for Crimes or Offenses of Another.**

**Subd. 1.** A person is criminally liable for a crime or offense committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime or offense.

**Subd. 2.** A person liable under Subdivision 1 is also liable for any other crime or offense committed in pursuance of the intended crime or offense if reasonably foreseeable by the person as a probable consequence of committing or attempting to the commit the crime or offense intended.

**Subd. 3.** A person who intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit a crime or offense and thereafter abandons that purpose and makes a reasonable effort to prevent the commission of the crime or offense prior to its commission is not liable if the crime or offense is thereafter committed.

**Subd. 4.** A person liable under this section may be charged with and convicted of the crime or offense although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or offense or of some other crime or offense based upon the same act, or if the person is a juvenile who has not been found delinquent for the act.

**Subd. 5.** For purposes of this section, a crime or offense also includes an act committed by a juvenile that would be a crime or offense if committed by an adult.

**508.01 Sentences.**

**Subd. 1.** Upon a conviction of a crime or of an offense and compliance with other applicable provisions of the Bois Forte Tribal Code, the Court, if it imposes sentence, may sentence the defendant to the extent authorized by law as provided by this section.

**Subd. 2.** Crimes are divided into the following four (4) classes and, unless otherwise specified by the Bois Forte Tribal Code, each class is subject to the following penalties:

- (a) Felony, for which a maximum penalty of incarceration for three (3) years, a fine of up to \$15,000, or both, may be imposed.
- (b) Class 1 Misdemeanor, for which a maximum penalty of incarceration for one (1) year, a fine of up to \$5,000, or both, may be imposed.
- (c) Class 2 Misdemeanor, for which a maximum penalty of incarceration for six (6) months, a fine of up to \$1,000, or both, may be imposed.
- (d) Class 3 Misdemeanor, for which a maximum penalty of incarceration for ninety (90) days, a fine of up to \$500, or both, may be imposed.

(Resolution 39-2018; November 1, 2017)

**Subd. 3.** The maximum penalty which may be imposed for the commission of a “Petty Misdemeanor” is a fine not exceeding \$250.00.

(Resolution 39-2018; November 1, 2017)

**Subd. 4.** The maximum sentence which may be imposed for the commission of traffic violations under Chapter VIII, or any other unclassified misdemeanor, for which no other sentence is provided and for which reference is made therein to this section or to the previous Section 508, now amended, is one year incarceration or a fine not exceeding \$5,000.00, or both.

**Subd. 5.** In addition to imposing any sentence as set forth above, the Court may order the person convicted to make reasonable restitution and/or apology to the victim(s) of the crime or offense.

**Subd. 6.** Upon any conviction, the Court may also assess reasonable costs against the defendant including court costs, costs of prosecution, expert witnesses, jury fees, and the cost of court-appointed counsel for the defendant, provided, that any such costs so assessed are based upon the ability of the defendant to pay.

**508.02 Enhanced Sentencing.** To impose a total term of incarceration for more than one (1) year, the Tribal Court shall:

- (a) Grant the defendant all rights enumerated under the Bois Forte Tribal Code, including those provided for by 25 U.S.C. § 1302;
- (b) Grant the defendant the effective assistance of counsel at least equal to that guaranteed by the United States Constitution, including the appointment of a public defender for any indigent defendant at no cost to the defendant. Defense attorneys shall be licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and professional responsibility standards to its licensed attorneys;
- (c) Notify the defendant of his or her right to file a writ of habeas corpus pursuant to 25 U.S.C. §§ 1303 and 1304(e);
- (d) Ensure that the judge presiding over the criminal proceeding has sufficient legal training to preside over the criminal proceeding and is licensed to practice law by any jurisdiction in the United States;
- (e) In coordination with the Tribe, make publicly available the criminal laws, rules of evidence, and rules of criminal procedure prior to charging the defendant; and
- (f) Maintain a verbatim record of criminal proceedings, with a copy of any and all such records available upon request and payment of any reasonable fee for production of the copy, provided that such a fee may be waived for an indigent defendant at the Tribal Court's discretion.

(Resolution 39-2018; November 1,2017)

**509.01 Presentence Investigation.**

**Subd. 1.** When a defendant has been convicted of any crime or offense, the Court may order such pre-sentence investigation as the Court deems necessary before imposing sentence. The report of such an investigation may be ordered to be submitted in writing or orally. It may include matters concerning the defendant's individual characteristics, circumstances, needs, potentialities, criminal record and social history, the circumstances of the crime or offense, and the harm caused by it to others and to the community. The Court may also direct that the investigation include a chemical dependency assessment, mental health evaluation, or any similar examination or study. If directed by the Court, any such reports as are made shall include an estimate of the defendant's rehabilitation and recommendations as to the sentence, which should be imposed.

**Subd. 2.** In all instances, a good faith effort should be made by those persons operating under the direction of the Court and conducting a pre-sentence investigation to contact the victim(s) of the crime and or offense, and



- (a) To inform such victim(s) of the charge or juvenile court petition to which the defendant has been convicted or pleaded guilty or to which the juvenile respondent has admitted in court or has been found to have committed by the juvenile court;
- (b) To obtain from such victim(s) information regarding the harm, damage, expense, loss, or injury suffered by such victim(s) as a result of the commission of the crime and or offense;
- (c) To inform the victim(s) of the victim's right to seek restitution for any such harm, damage, expense, loss, or injury; and
- (d) To inform the victim(s) of the pending sentencing or juvenile disposition date, the victim's right to be present at said sentencing or juvenile disposition hearing, and the victim's right to be heard by the Court at such hearing with regard to the proposed sentencing or juvenile disposition.

**Subd. 3.** Any report made pursuant to Subdivision 1 shall be, if written, made available to counsel for all parties prior to sentencing or juvenile disposition. If the report is made orally, the defendant and/or the defendant's attorney shall be entitled to hear the report. The Court may determine, in a summary hearing, any issues regarding said report raised by the prosecuting attorney, the defendant or his attorney, or the victim. The Court may, at its discretion, withhold revealing confidential sources of information referred to within such reports.

#### **510.01 Stay of Imposition or Execution of Sentence.**

**Subd. 1.** The Court may stay either the imposition or the execution of sentence, or any part thereof, and;

- (a) May order noninstitutional sanctions without placing the defendant on probation; or
- (b) May place the defendant on probation with or without supervision and on the terms the Court prescribes, including noninstitutional sanctions.

**Subd. 2.** The Court may order the supervision to be under the probation officer of the court, or, if there be none, by some suitable and consenting person.

**Subd. 3.** The term "noninstitutional sanctions" includes but is not limited to fines, community work service, electronic monitoring, and work in lieu of or to work off fines. Such community work service and work in lieu of or to work off fines shall be performed at the equivalent of Five Dollars (\$5.00) per hour.

**Subd. 4.** The duration of stay of either imposition or execution of any sentence shall not be for more than one (1) year from the date of the order staying said sentence. At the expiration of such stay, unless the stay has been revoked or the defendant discharged prior thereto, the defendant shall be discharged.

**Subd. 5.** If a person is convicted of any crime or offense involving assault, domestic violence, sex crime, abuse of an elder, or the use or threat of the use of force capable of producing bodily harm or death to the intended victim, and the Court stays imposition or execution of the sentence, or any part thereof, the Court may order the defendant's participation in undergoing evaluation, counseling, or other appropriate programs selected by the Court.

(Resolution 39-2018; November 1, 2017)

**Subd. 6.** If a person is convicted of any crime or offense, including traffic offenses, in which the Court has a reasonable basis upon which to form a belief that the defendant's use of alcohol or other mood-altering chemicals was a contributing factor to the commission of the crime or offense, and the Court stays imposition or execution of the sentence, or any part thereof, the Court may order the defendant's participation in undergoing evaluation, counseling, or other appropriate programs selected by the Court.

**Subd. 7.** If a person is convicted of any crime or offense involving theft, embezzlement of public funds, or forgery, in which the Court has a reasonable basis upon which to form a belief that the defendant's compulsive gambling was a contributing factor to the commission of the crime or offense, and the Court stays imposition or execution of the sentence, or any part thereof, the Court may order the defendant's participation in undergoing evaluation, counseling, or other appropriate programs selected by the Court.

**511.01 Limits of Sentences.** No other different sentence or punishment shall be imposed for the commission of a crime or an offense than is authorized by the provisions of this Chapter, Chapter VIII, and Chapter XII, subsequently-enacted Band ordinances, or other applicable law.

**512.01 Sentence of Incarceration.**

**Subd. 1.** A sentence of incarceration shall be to the supervisory officer of the Nett Lake Police Department for custodial placement in the Nett Lake Jail, or to any other similar facility under the supervision of or approved by the Bureau of Indian Affairs or the Bois Forte Reservation Tribal Council, or to a similar facility under state or county supervision.

**Subd. 2.** In appropriate cases where the safety of the community and other members of the defendant's household are not likely to be endangered, the Court may order a convicted defendant to serve the period of incarceration under "house arrest" by being confined to his/her residence under such terms and conditions as are reasonably designed to ensure compliance.

**513.01 Multiple Sentences.**

**Subd. 1.** When separate sentences of incarceration are imposed upon a defendant for conviction of two or more crimes under any criminal provisions of the Bois Forte Tribal Code, whether charged in a single complaint or separately, or when a person who is under sentence of incarceration within this jurisdiction is being sentenced to incarceration for another crime committed prior to or while subject to such former sentence, the Court in the later sentences shall

specify whether the sentences shall run concurrently or consecutively. If the Court does not so specify, the sentences shall run concurrently.

**Subd. 2.** If the Court specifies that the sentence shall run consecutively, the total of all sentences shall not exceed three (3) years.

**514.01 Liability of Children and Minors.** Children under the age of 7 years are incapable of committing crime. Unlawful acts committed by persons under the age of 18 years who are 7 years of age, or older, shall be dealt with in accordance with the provisions of Chapter VII of the Bois Forte Tribal Code.

**515.01 Authorized Use of Force.** Reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the person reasonably believes them to exist:

- (a) When used by a public officer or one assisting a public officer under the public officer's directions:
  - (1) In effecting a lawful arrest;
  - (2) In the execution of legal process;
  - (3) In enforcing an order of the court; or
  - (4) In executing any other duty imposed upon the public officer by law;
- (b) When used by a person not a public officer in arresting another in the cases and in the manner provided by law and delivering the other to an officer competent to receive the other into custody;
- (c) When used by any person in resisting or aiding another to resist an offense against the person;
- (d) When used by any person in lawful possession of real or personal property, or by another assisting the person in lawful possession, in resisting a trespass upon or other unlawful interference with such property;
- (e) When used by any person to prevent the escape, or to retake following the escape, of a person lawfully held on a charge or conviction of a crime; or
- (f) When used by a parent, guardian, teacher, or other lawful custodian of a child or pupil, in the exercise of lawful authority, to restrain or correct such child or pupil.

**516.01 Intoxication as Defense.** An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into

consideration in determining such intent or state of mind. Intoxication does not, in itself, constitute a mental disease or defect within the meaning of Section 516.02.

(Resolution 39-2018; November 1, 2017)

### **516.02 Mental Disease or Defect.**

**Subd. 1.** A person will not be held responsible for criminal conduct if at the time such conduct, by reason of mental disease or defect, the actor lacks substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirement of law. As used in this section, the terms “mental disease or defect” do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

**Subd. 2.** A person will not be tried or convicted of a crime or offense if, at the time of trial, the defendant is not able, by reason of mental defect, to understand the charges against him/her or is not able, by reason of mental disease or defect, to assist or participate in the defense to such charges.

(Resolution 39-2018; November 1, 2017)

**Subd. 3.** The Court, based upon its own motion at any time, upon a written motion submitted to the Court prior to trial by either the prosecutor, the defendant, or counsel for the defendant, may order a psychiatric or other mental examination of the defendant to be conducted by a qualified medical examiner in order to determine if either, or both, of the defenses set forth in Subdivisions 1 and 2, above, apply.

**Subd. 4.** A written report of any such examination conducted in accordance with Subdivision 3, above, shall be promptly returned to the Court and copies shall be timely made available to the prosecutor and to the defendant or his counsel. The report shall fully set forth the nature of the examination conducted and the results thereof. Statements, if any, made by the defendant in the course of such examination may not be used against the defendant at any subsequent trial or be used to as evidence for charging or proving any other crimes or offenses against the defendant.

**Subd. 5.** If the results of said examination establish the defense set forth in Subdivision 1, above, the Court shall enter a finding of not guilty by reason of insanity to the crimes or offenses to which the defendant was charged.

**Subd. 6.** If the results of said examination establish the defense set forth in Subdivision 2, above, the Court may order the trial continued until the defendant’s condition no longer exists. If, after a period of three years from the time of such a continuance, the defendant still suffers from the same or similar condition the charges against the defendant shall be dismissed with prejudice.

**Subd. 7.** If the results of the examination further establish that the defendant’s mental condition giving rise to either of the defenses set forth above, and the safety of the defendant or

the safety of others, requires the defendant being involuntarily placed in a treatment facility, the Court in either event may order the defendant to be held in further custody until reasonable arrangements may be made to effectuate such placement. In any other event, the defendant shall be ordered released from custody.

**Subd. 8.** A defendant who otherwise raises either of the defenses set forth in Subdivision 1 or Subdivision 2 shall so inform the Court and the prosecutor in writing before trial commences and shall have the burden of proving the same by a preponderance of the evidence.

(Resolution 39-2018; November 1, 2017)

**517.01 Duress.** When any crime or offense is committed or participated in by two or more persons, any one of whom participates only under compulsion by another engaged therein, who by threats creates a reasonable apprehension in the mind of such participator that in case of refusal that participator will suffer great bodily harm, such threats and apprehension constitute duress which will excuse such participator from criminal liability.

(Resolution 39-2018; November 1, 2017)

**517.02 Entrapment.** Entrapment is a defense only where a law enforcement officer induces the actor to commit an offense using persuasion or other means such as would cause a normally law-abiding person to commit the act or acts that are elements of the offense. Conduct merely affording the defendant an opportunity to commit the offense does not constitute entrapment.

**518.01 Sending Written Communication.** When the sending of a letter or other written communication is made an offense, the offense is complete upon the deposit of the letter or communication in any official depository of mail or given to another for the purpose of delivery to the receiver.

**519.01 Proof of Prior Convictions.** In a prosecution for any crime or offense, including traffic offenses, in which the degree of the crime or offense or the penalty for the crime or offense depends, in whole or in part, on proof of the existence of a prior conviction, if the defendant contests the existence of or factual basis for a prior conviction, proof of it is established by competent and reliable evidence, including a court record certified to by the Clerk of Court or another court officer but not including the person presently prosecuting the charge.

#### **520.01 Limitation of Actions.**

**Subd. 1. Statute of Limitations, Generally.** Subject to Section 520.01, subd. 2 and subd. 3, no prosecution of an alleged crime or offense shall be commenced later than five (5) years from the commission of the alleged crime or offense.

**Subd. 2. Statute of Limitations for Traffic Offenses and Petty Misdemeanors.** Prosecution of traffic offenses and Petty Misdemeanors shall not be commenced later than one (1) year from the commission of the alleged offense or violation.

**Subd. 3. Statute of Limitation for Sex Crimes, Homicide, and Abduction.**

Notwithstanding the limitations in Section 520.01, subd. 1, the following statute of limitations shall apply to situations described below:

- (a) Prosecution for violation of Section 610.02 (Criminal Sexual Conduct), Section 610.03 (Sexual Assault), Section 610.06 (Solicitation of Children to Engage in Sexual Conduct), Section 610.09 (Prostitution and Sex Trafficking), Section 611.02 (Pornography Involving Juveniles), or Section 611.03 (Computer-Aided Solicitation of a Minor), if the victim was under the age of 18 years at the time the offense was committed, shall be commenced within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities.
- (b) Notwithstanding Section 520.01, subd. 3(a), prosecution for violation of Section 610.02 (Criminal Sexual Conduct), Section 610.03 (Sexual Assault), Section 610.06 (Solicitation of Children to Engage in Sexual Conduct), Section 610.09 (Prostitution and Sex Trafficking), Section 611.02 (Pornography Involving Juveniles), or Section 611.03 (Computer-Aided Solicitation of a Minor) may be commenced at any time after commission of the offense, if physical evidence is collected and preserved that is capable of being tested for its DNA characteristics. If this evidence is not collected and preserved and the victim was 18 years old or older at the time of the offense, the prosecution must be commenced within nine (9) years after the commission of the offense.
- (c) Prosecution for violation of Section 603.09 (Criminal Homicide) or Section 605.01 (Abduction) may be commenced at any time after commission of the offense.

**521.01 Waiver of Appearance and Plea of Guilty.**

**Subdivision 1.** In any case involving a Petty Misdemeanor or where the prosecutor has informed the Court that a sentence of incarceration will not be sought, the defendant may enter a plea of guilty and pay the fine imposed by doing so in writing without making any further court appearance. The writing shall be in a form and manner prescribed by the Court under its general rulemaking authority.

**Subdivision 2.** The defendant shall pay to the Clerk of Court at the time of entering the plea of guilty in writing the total amount of the fine imposed by the Court for the commission of said crime and/or offense according to a written schedule of fines to be imposed for such crime and/or offenses as set by the Court. Any failure on the part of the defendant to pay said fine in full as provided herein shall result in the defendant being required to make all future scheduled court appearances.

**Subdivision 3.** The Court shall prepare a schedule of fines for the crimes and/or offenses described herein, including the effective date thereof, and a copy shall be furnished to the Clerk of Court, to the Nett Lake Police Department, and to the Bois Forte Reservation Tribal Council. The Court may, from time to time, amend said schedule in the same manner, subject to the review of the Reservation Tribal Council.

## PART B – SPECIAL TRIBAL CRIMINAL JURISDICTION

**522. Special Tribal Criminal Jurisdiction.** Pursuant to 25 U.S.C. § 1304<sup>1</sup>, the Band is a participating tribe in the expansions of tribal criminal jurisdiction authorized by the Indian Civil Rights Act, as amended by the Violence Against Women Act Reauthorization Act of 2022, and exercises its “Special Tribal Criminal Jurisdiction” as follows:

- (a) The Band’s Special Tribal Criminal Jurisdiction applies to any person in the Band’s Indian country;
- (b) The Band’s exercise of Special Tribal Criminal Jurisdiction applies to offenses that are Covered Crimes, as defined in Section 523, subd. 1-10;
- (c) In exercising its Special Tribal Criminal Jurisdiction, the Band (including its agents and officers) has all authority required to carry out the grant of jurisdiction under 25 U.S.C. § 1304, including, without limitation, the powers of investigation, arrest, detention, prosecution, adjudication, and execution of sentences;
- (d) The Band may exercise Special Tribal Criminal Jurisdiction over an alleged offense if the offender is non-Indian and the victim is Indian, provided the Band may exercise Special Tribal Criminal Jurisdiction over an alleged offensee if both the offender and victim are non-Indians only in cases of obstruction of justice or assault of Tribal justice personnel; and,
- (e) No provision of this Chapter shall be interpreted to restrict a law enforcement officer’s duty to keep the peace, or to prohibit a law enforcement officer from detaining non-Indian offenders and turning them over to the proper authorities for prosecution.

**523. Covered Crimes.** The Band shall exercise its Special Tribal Criminal Jurisdiction under this Chapter over conduct in the Band’s Indian country that falls into one or more of the following categories of Covered Crime:

**Subd. 1. Assault of Tribal Justice Personnel** is any violation of the Band’s criminal law that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the Band or serving the Band, or because of, the performance or duties of that individual in— (A) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime; (B) adjudicating, participating in

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<sup>1</sup> The term “Special tribal criminal jurisdiction” is defined as “the criminal jurisdiction that a participating tribe may exercise under [VAWA] but cannot otherwise exercise.” 25 U.S.C. § 1304(a)(14). The term “participating tribe” is defined as “an Indian tribe that elects to exercise special Tribal criminal jurisdiction over the Indian country of that Indian tribe.” 25 U.S.C. § 1304(a)(10).

the adjudication of, or supporting the adjudication of a covered crime; or (C) detaining, providing supervision for, or providing services for persons charged with a covered crime; or (D) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime. Assault of Tribal Justice Personnel includes, without limitation, a violation of Section 603.075 (Assault of Tribal Justice Personnel) under the circumstances described in this subdivision.

**Subd. 2. Child Violence** is the use, threatened use, or attempted use of violence against a child proscribed by the Band's criminal law. Child Violence includes, without limitation, the following offenses identified in Chapter 6, in which a victim is a Child: Part B, Sections 603.01–.06 (Assault), 603.09 (Homicide), 604.01 (Robbery), 605.01 (Abduction) and 607.01 (Domestic Violence); Part C, Sections 610.02–.04 (Criminal Sexual Conduct), .06 (Solicitation of Children to Engage in Sexual Conduct), .09 (Sex Trafficking); Part E, Sections 612.01 (Incest) and 614.01, subd. 2 (f) (Unreasonable Force or Cruel Discipline); or Part K, Sections 639.03, .05 (Reckless Use or Discharge of a Firearm, Dangerous Weapon, or Explosive), and 650.01 (Terroristic Threats) in which a victim is a Child.

**Subd. 3. Dating Violence** is any violation of the Band's criminal law where the violation is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence includes, without limitation, the following offenses identified in Chapter 6, when committed under the circumstances provided in this subdivision: 605.01 (Abduction); 610.02 (Criminal Sexual Conduct); 610.03 (Sexual Assault); 610.09 (Prostitution and Sex Trafficking); 603.01 (Simple Assault); 603.02 (Aggravated Assault–Substantial Bodily Harm); 603.03 (Aggravated Assault – Dangerous Weapon); 603.04 (Aggravated Assault–Dangerous Weapon, Substantial Bodily Harm); 603.05 (Assault–Strangulation); 603.06 (Assault – Great Bodily Harm); 603.08 (Stalking); 608.01 (Harassment); 609.01 (Abuse of an Elder or Vulnerable Adult); 629.01 (Arson); or 604.01 (Robbery), or any other crimes of violence as defined by 18 U.S.C. § 16.

**Subd. 4. Domestic Violence** is any violation of the Band's criminal law that is committed by: (A) a current or former spouse or intimate partner of the victim; (B) a person with whom the victim shares a child in common; (C) a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner. Domestic Violence includes, without limitation, the following offenses identified in Chapter 6, when committed under the circumstances provided in this subdivision: 605.01 (Abduction); 610.02 (Criminal Sexual Conduct); 610.03 (Sexual Assault); 610.09 (Prostitution and Sex Trafficking); 603.01 (Simple Assault); 603.02 (Aggravated Assault–Substantial Bodily Harm); 603.03 (Aggravated Assault – Dangerous Weapon); 603.04 (Aggravated Assault–Dangerous Weapon, Substantial Bodily Harm); 603.05 (Assault–Strangulation); 603.06 (Assault – Great Bodily Harm); 603.08 (Stalking); 608.01 (Harassment); 609.01 (Abuse of an Elder or Vulnerable Adult); 629.01 (Arson); or 604.01 (Robbery), or any other crimes of violence as defined by 18 U.S.C. § 16..

**Subd. 5. Obstruction of Justice** is any violation of the Band's criminal law that involves interfering with the administration or due process of the laws of the Band, including any Tribal criminal proceeding or investigation of a crime. Obstruction of Justice includes, without limitation,



the offenses identified in Chapter 6 Part G (Crimes Against the Administration of Justice) and Section 603.075 (Assault of Tribal Justice Personnel) when committed under the circumstances provided in this subdivision.

**Subd. 6. Sexual Violence** is any nonconsensual sexual act or contact proscribed by the Band’s criminal law, including in any case in which the victim lacks the capacity to consent to the act. Sexual Violence includes, without limitation, the offenses identified in Chapter 6 Parts C (Sex Crimes) and D (Computer-Aided Sexual Offenses Involving Minors) when committed under the circumstances provided in this subdivision.

**Subd. 7. Sex Trafficking** is conduct within the meaning of 18 U.S.C. § 1591(a), including the offense of Aggravated Sex Trafficking as defined under Section 610.09, Subds. 1(k) and 5.5.

**Subd. 8. Stalking** is engaging in a course of conduct directed at a specific person, in violation of the Band’s criminal law, that would cause a reasonable person—(A) to fear for the person’s safety or the safety of others; or (B) to suffer substantial emotional distress. Stalking includes, without limitation, the offense identified in Section 603.08 when committed under the circumstances provided in this subdivision.

**Subd. 9. Violation of a Protection Order** is an act that— (A) occurs in the Band’s Indian country; and (B) violates a provision of a protection order that— (i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; (ii) was issued against the defendant; (iii) is enforceable by the Band; and (iv) is consistent with 18 U.S.C. § 2265(b).<sup>2</sup>

**Subd. 10. Offenses Not Enumerated.** Any person who engages in conduct that constitutes an offense under the Band’s criminal law, where such offense is committed under circumstances that constitute the elements of any Covered Crime, shall be subject to the Band’s Special Tribal Criminal Jurisdiction, whether or not the particular offense is identified in Subdivisions 1-9 as an example of a Covered Crime.

## **524. Rights and Procedural Requirements.**

(a) Any defendant subject to the Band’s Special Tribal Criminal Jurisdiction and accused of committing a Covered Crime, irrespective of the term of imprisonment that may be imposed, shall:

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<sup>2</sup> VAWA requires jurisdictions to give full faith and credit to protection orders issued by other jurisdictions, if the protection order is consistent with subsection (b) of 18 U.S.C. § 2265 ( “A protection order issued by a State, tribal or territorial court is consistent with [subsection (b)] if— (1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person’s right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.”).

(1) be afforded the rights provided under Chapter IV of the of the Bois Forte Tribal Rules for Criminal Proceedings, including those enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302;

(2) be entitled to a jury trial drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, as provided for by Chapter IV, Section 412.01 of the Bois Forte Tribal Rules for Criminal Proceedings;

(3) be entitled to each of the enhanced sentencing requirements enumerated in Chapter V, Section 508.02 of the Bois Forte Tribal Code, Crimes and Offenses; and

(4) at the defendant’s arraignment, be advised by the judge presiding over the defendant’s proceedings of the rights enumerated herein, including the right to petition for a writ of habeas corpus in federal court pursuant to 25 U.S.C. §§ 1303 and 1304(e).<sup>3</sup>

(b) A defendant convicted and sentenced in the Tribal Court for a Covered Crime may file a petition for a writ of habeas corpus in a court of the United States under 25 U.S.C. § 1303, and shall be advised of such right, in writing, at the time of sentencing. The defendant’s application for a writ of habeas corpus in federal court must show that all remedies available in Bois Fort Tribal Court have been exhausted.

(c) Should there be any inconsistency between Chapter IV of the Bois Forte Tribal Rules for Criminal Proceedings and 25 U.S.C. § 1302 (Constitutional rights), those of 25 U.S.C. § 1302 shall apply.

### **525. Determination of Jurisdiction.**

**Subd. 1.** In addition to the procedures set forth in Title II of the Code, at the arraignment for a defendant arrested for or charged with a Covered Crime as defined under this Chapter, the judge shall make findings of fact and law that clearly state whether the Tribal Court has jurisdiction over the defendant. In doing so, the Tribal Court shall ascertain whether:

(a) The charged offense was allegedly committed within the Band’s Reservation;

(b) Whether the defendant or a victim are Indian, unless the defendant is charged with an offense that constitutes Assault of Tribal Justice Personnel or Obstruction of Justice, as defined in Section 523, subds. 1 or 5.

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<sup>3</sup> “The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.” 25 U.S.C. § 1303.

**Subd. 2.** In order to make the determination required under Subdivision 1, the judge may receive any evidence relevant to the issue of whether the Tribal Court has jurisdiction over the defendant from any reliable sources as may be available.

**Subd. 3.** If the judge's findings establish the Tribal Court's jurisdiction, the determination shall identify whether the Tribal Court is exercising its general jurisdiction or Special Tribal Criminal Jurisdiction pursuant to Section 522. The Tribal Court shall then proceed with remainder of the procedures provided for by the Bois Forte Tribal Code and promptly ensure that each defendant is afforded the rights provided for under Section 524.

**Subd. 4.** If the judge determines that the Tribal Court does not have jurisdiction, the judge shall notify the law enforcement agency holding the defendant in custody, dismiss the Band's charges, and release the defendant to the appropriate jurisdiction.

**Subd. 5.** If the defendant exercises his or her right to remain silent, the judge may detain the defendant to determine jurisdiction without prejudice to the defendant's right to challenge jurisdiction at a later date. If the defendant is too intoxicated or impaired for the judge to conduct the inquiry under Subdivision 1, the judge may order that the defendant appear before the Tribal Court on the following business day for the conclusion of the proceeding. Nothing herein shall prevent the judge from using evidence relevant to the inquiries regarding jurisdiction from any other reliable sources as may be available and making a determination based solely on those alternative sources.

**526. Severability.** If any part, or parts, or the application of any part of this Chapter is held invalid, such holding shall not affect the validity of the remaining parts of this Chapter.

**527. Nonwaiver of Sovereign Immunity.** Nothing in this Chapter shall be deemed to constitute a waiver of the Band's inherent sovereign authority and correlating immunity from suit for any reason whatsoever.

**528. Savings.** This Part takes effect on October 1, 2022 and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this Chapter and such law shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty therefrom, forfeiture, or liability.

**529. Definitions.** For the purposes of this Chapter, the following definitions shall apply:

**Subd. 1.** Child means a person who has not attained the age of 18.

**Subd. 2.** Coercion has the meaning given in 18 U.S.C. § 1591(e)(2).

**Subd. 3.** Commercial Sex Act has the meaning given in 18 U.S.C. § 1591(e)(3).

Subd. 4. Indian Country shall mean the definition given in 18 U.S.C. § 1151.<sup>4</sup>

Subd. 5. Protection Order means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person. It includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a Pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of the person seeking protection.

Subd. 6. Spouse or Intimate Partner has the meaning given in 18 U.S.C. § 2266.

[Resolution #; Date]

**530.01-599.99          Reserved for future use.**

Source: Title V was adopted by Resolution No. 145-99, May 19, 1999

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<sup>4</sup>“Except as otherwise provided in sections 1154 and 1156 of [Title 18], the term “Indian country” . . . means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C. § 1151.

# CHAPTER VI – CRIMES AND OFFENSES - VIOLATIONS

## Table of Contents

CHAPTER VI – CRIMES AND OFFENSES - VIOLATIONS .....	i
CHAPTER VI – CRIMES AND OFFENSES - VIOLATIONS .....	1
PART A – ANTICIPATORY CRIMES .....	1
601.01 Attempts.....	1
602.01 Conspiracy. ....	1
PART B – CRIMES AGAINST THE PERSON .....	2
603.01 Simple Assault. ....	2
603.02 Aggravated Assault - Substantial Bodily Harm.....	2
603.03 Aggravated Assault - Dangerous Weapon.....	2
603.04 Aggravated Assault - Dangerous Weapon; Substantial Bodily Harm.....	2
603.05 Assault - Strangulation.....	2
603.06 Assault - Great Bodily Harm. ....	3
603.07 Aggravated Assault - Law Enforcement, Conservation, Security Guards, Firefighters, Emergency Medical Personnel, and Other Tribal Officers.....	3
603.075 Assault of Tribal Justice Personnel.....	3
603.08 Stalking. ....	3
603.09 Criminal Homicide.....	4
604.01 Robbery.....	4
605.01 Abduction.....	5
606.01 Depriving Another of Custodial or Parental Rights.....	5
607.01 Domestic Violence.....	6
608.01 Harassment.....	6
609.01 Abuse of an Elder or Vulnerable Adult. ....	7
PART C – SEX CRIMES .....	15
610.01 Definitions.....	15
610.02 Criminal Sexual Conduct.....	17
610.03 Sexual Assault.....	18
610.04 Statutory Rape.....	19
610.05 Indecent Exposure.....	19
610.06 Solicitation of Children to Engage in Sexual Conduct. ....	20
610.07 Medical Purposes; Exclusion.....	20
610.08 Evidence.....	20

610.09 Prostitution and Sex Trafficking .....	20
<b>PART D – COMPUTER-AIDED SEXUAL OFFENSES INVOLVING MINORS .....</b>	<b>27</b>
611.01 Definitions.....	27
611.02 Pornography Involving Juveniles. ....	28
611.03 Computer-Aided Solicitation of a Minor.....	30
<b>PART E – CRIMES AGAINST THE FAMILY .....</b>	<b>32</b>
612.01 Incest.....	32
613.01 Non-Support of Spouse or Child.....	32
614.01 Neglect, Abuse, or Endangerment of a Child. ....	32
<b>PART F – CRIMES AFFECTING TRIBAL GOVERNMENT.....</b>	<b>34</b>
615.01 Bribery. ....	34
615.02 Corruptly Influencing Tribal Officer or Employee.....	34
616.01 Misconduct of Tribal Officer or Employee. ....	34
617.01 Misuse of Tribal Property.....	35
618.01 Permitting False Claims Against Tribal Government.....	35
618.02 Presenting False Claims to Tribal Officer or Body. ....	35
619.01 Impersonating Tribal Officer or Employee.....	35
620.01 Violations of Approved Tribal Ordinances.....	35
620.02 Conducting Unauthorized Gaming. ....	36
621.01 Interference with Tribal Officers and Employees in the Lawful Performance of their Duties.....	36
<b>PART G – CRIMES AGAINST THE ADMINISTRATION OF JUSTICE.....</b>	<b>36</b>
622.01 Perjury.....	36
623.01 Escape from Custody.....	37
623.02 Fleeing a Peace Officer in a Motor Vehicle.....	38
624.01 Release, Failure to Appear.....	38
625.01 Disobedience of a Lawful Order of the Court. ....	38
626.01 Obstructing Legal Process. ....	39
626.02 Aiding an Offender. ....	39
626.03 Harboring an Excluded Person. ....	39
627.01 Initiating False Reports.....	39
628.01 Resisting Arrest with Force or Violence.....	40
<b>PART H – CRIMES AGAINST PROPERTY .....</b>	<b>40</b>
629.01 Theft.....	40
630.01 Tampering with Motor Vehicles.....	43

PART I – DAMAGE OR TRESPASS TO PROPERTY .....	43
631.01 Negligent Fires.....	43
632.01 Arson.....	43
633.01 Burglary.....	44
634.01 Criminal Damage to Property.....	44
635.01 Trespass.....	44
636.01 Theft from Gaming Establishments.....	44
PART J – FORGERY AND RELATED CRIMES .....	45
637.01 Forgery.....	45
637.02 Obtaining Signature by False Pretense.....	45
638.01 Fraudulent Statements.....	45
PART K – CRIMES AGAINST PUBLIC SAFETY AND HEALTH.....	45
639.01 Possession of Firearm by Convicted Felon.....	45
639.02 Concealed Use of Firearm.....	45
639.03 Reckless Use of a Firearm, Dangerous Weapon, or Explosive.....	46
639.04 Dangerous Weapons.....	46
639.05 Discharge of Firearm in Inhabited Areas.....	46
639.06 Possession of Loaded Firearms.....	46
640.01 Curfew.....	46
640.02 Curfew/Liability of Adults.....	46
641.01 Mandatory Reporting of Certain Offenses.....	47
642.01 Interference with Mandatory Reporting.....	47
643.01 Intoxicating Liquors or Alcoholic Beverages, Illegal Use.....	47
644.01 Contributing to Delinquent Acts of Minors.....	48
645.01 Controlled Substances, Definitions.....	48
645.02 Possession of a Controlled Substance.....	50
645.03 Possession of Drug Paraphernalia Prohibited.....	51
645.04 Manufacture or Delivery of Drug Paraphernalia Prohibited.....	51
645.05 Delivery of Drug Paraphernalia to a Minor Prohibited.....	51
645.06 Conspiracies Prohibited.....	51
645.07 Prohibited Acts; Fraud, Deceit.....	51
645.08 Methamphetamine-Related Crimes Involving Children and Vulnerable Adults.....	52
645.09 Heroin and Opium Use Involving Children and Vulnerable Adults.....	53
645.10 Abuse of Psychotoxic Chemical Solvents.....	53

645.11 Mandatory Sentences.....	55
645.12 Stayed Adjudication and Stayed Sentence Limited.....	55
645.13 Permissive Inference of Knowing Possession. ....	55
646.01 Unlawful Smoking.....	56
647.01 Unlawful Assembly. ....	56
648.01 Presence at Unlawful Assembly. ....	56
649.01 Riot.....	56
650.01 Terroristic Threats.....	56
651.01 Disorderly Conduct.....	57
652.01 Public Nuisance. ....	57
653.01 Environment, Criminal Acts. ....	57
PART L – MISCELLANEOUS CRIMES.....	58
654.01 Obscene or Harassing Communications. ....	58
655.01 Coercion.....	58
656.01 Public Indecency.....	59



## CHAPTER VI – CRIMES AND OFFENSES - VIOLATIONS

**600.00 Reserved for future use.**

### PART A – ANTICIPATORY CRIMES

**601.01 Attempts.**

**Subd. 1. Prohibited Acts.** Whoever, with intent to commit a crime, does an act which is a substantial step toward, and more than preparation for, the commission of the crime is guilty of an attempt to commit that crime, and may be sentenced as provided in Subdivision 4.

**Subd. 2. Impossibility of Act.** An act may be an attempt notwithstanding the circumstances under which it was performed or the means employed to commit the crime intended or the act itself were such that the commission of the crime was not possible, unless such impossibility would have been clearly evident to a person of normal understanding.

**Subd. 3. Defense.** It is a defense to a charge of attempt that the crime was not committed because the accused desisted voluntarily and in good faith abandoned the intention to commit the crime.

**Subd. 4. Sentences.** Whoever attempts to commit a crime or offense may be sentenced upon conviction as follows:

- (a) If the maximum sentence provided for the crime or offense includes incarceration, to not more than one-half of the maximum period of incarceration or one-half of the maximum fine which could be imposed, or both, provided for the crime or offense attempted; or
- (b) If the crime or offense attempted is a Petty Misdemeanor, to a fine not exceeding \$250.00.

**602.01 Conspiracy.**

**Subd. 1. Prohibited Acts.** Whoever conspires with another to commit a crime and in furtherance of the conspiracy one or more of the parties does some overt act in furtherance of such conspiracy may be sentenced upon conviction as follows:

- (a) If the maximum sentence provided for the crime intended includes incarceration, to not more than one-half of the maximum period of incarceration or one-half of the maximum fine which could be imposed, or both, provided for the crime intended; or
- (b) If the crime or offense intended is a Petty Misdemeanor, to a fine not exceeding \$250.00.

**Subd. 2. Application.** This section applies if:

- (a) The defendant is within the Bois Forte Indian Reservation and conspires with another person who is outside the Bois Forte Indian Reservation;
- (b) The defendant is outside the Bois Forte Indian Reservation and conspires with another person who is inside the Bois Forte Indian Reservation;
- (c) The defendant is outside the Bois Forte Indian Reservation and conspires with another person who is outside the Bois Forte Indian Reservation and an overt act in furtherance of the conspiracy is committed within the Bois Forte Indian Reservation by either of them; or
- (d) The defendant is within the Bois Forte Indian Reservation and conspires with another person who is inside the Bois Forte Indian Reservation.

## **PART B – CRIMES AGAINST THE PERSON**

**603.01 Simple Assault.** Whoever does any of the following commits simple assault and is guilty of a Class 3 Misdemeanor and, upon conviction, may be sentenced accordingly:

- (a) Commits an act with intent to cause fear in another of immediate bodily harm or death; or
- (b) Intentionally inflicts or attempts to inflict bodily harm upon another.

(Resolution 39-2018; November 1, 2017)

**603.02 Aggravated Assault - Substantial Bodily Harm.** Whoever assaults another and inflicts substantial bodily harm is guilty of a Class 2 Misdemeanor and, upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**603.03 Aggravated Assault - Dangerous Weapon.** Whoever assaults another with a dangerous weapon is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**603.04 Aggravated Assault - Dangerous Weapon; Substantial Bodily Harm.** Whoever assaults another with a dangerous weapon and inflicts substantial bodily harm is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.

**603.05 Assault - Strangulation.** Whoever assaults another by means of intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person is guilty of a Class 1 Misdemeanor and, upon conviction may be sentenced accordingly.

**603.06 Assault - Great Bodily Harm.** Whoever assaults another and inflicts great bodily harm is guilty of a Felony, and upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**603.07 Aggravated Assault - Law Enforcement, Conservation, Security Guards, Firefighters, Emergency Medical Personnel, and Other Tribal Officers.** Whoever assaults, resists, impedes, intimidates, or interferes with a law enforcement officer, conservation officer, security guard, a firefighter, emergency medical personnel, or other tribal officer when that officer is engaged in the lawful performance of his/her duties or on account of the performance of his/her duties is guilty of a Class 2 Misdemeanor and if the actor commits aggravated assault and inflicts substantial bodily harm, he/she is guilty of a Class 1 Misdemeanor provided that a person who commits an assault described in Section 603.03, 603.04, or 603.05 is guilty of a Felony and, upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**Section 603.075 Assault of Tribal Justice Personnel.** Whoever uses, attempts to use, or threatens use of physical force against a Tribal Justice Personnel is guilty of a Class 2 Misdemeanor, provided that a person who inflicts substantial bodily harm on the Tribal Justice Personnel is guilty of a Class 1 Misdemeanor, and provided further that a person who commits an assault described in Sections 603.03, 603.04, or 603.05 is guilty of a Felony, and, upon conviction, may be sentenced accordingly. For purposes of this Section, a Tribal Justice Personnel shall mean any individual authorized to act for, or on behalf of, the Band or serving the Band for the performance of duties, and engaged in such duties at the time of the assault, which include: 1) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a crime; 2) adjudicating, participating in the adjudication of, or supporting the adjudication of a crime; 3) detaining, providing supervision for, or providing services for persons suspected of committing a crime, charged with a crime, or convicted of a crime; or 4) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons charged with a crime or convicted of a crime.

[placeholder for resolution number and date]

### **603.08 Stalking.**

**Subd. 1. Prohibited Acts.** Whoever stalks another person by committing any of the following acts is guilty of a Class 3 Misdemeanor and, upon conviction, may be sentenced accordingly:

- (a) directly or indirectly, or through third parties, manifests a purpose or intent to injure the person or property of another by commission of an unlawful act;
- (b) follows, monitors, or pursues another, whether in person or through any available technological or other means;

- (c) returns to the property of another if the offender is without a right to the property or consent of one with authority to consent;
- (d) repeatedly makes telephone calls or send text messages to the victim whether or not conversation ensues;
- (e) repeatedly makes or delivers or causes the delivery by any means, including electronically, of letters, messages, or packages; or
- (f) use another's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with a victim.

**Subd. 2. Aggravated Violation.** Whoever commits any of the following acts is guilty of an aggravated violation of Section 603.08:

- (a) A person who commits any offense described in Section 603.08, subd. 1(b), is subject to a Class 2 Misdemeanor and, upon conviction, may be sentenced accordingly.
- (b) A person who commits any offense described in Subdivision 1 of this Section 603.08 against a victim under the age of eighteen (18), if the offender is more than thirty-six (36) months older than the victim, and the act is committed with sexual or aggressive intent, is guilty of a Class 1 Misdemeanor and, upon conviction may be sentenced accordingly.

**Subd. 3. No Proof of Specific Intent Required.** In a prosecution under this section, the Band is not required to prove that the offender intended the victim to feel frightened, threatened, or intimidated or, except as otherwise provided in Subdivision 2(b) of this Section 603.08, that the offender intended to cause any other result.

(Resolution 39-2018; November 1, 2017)

**603.09 Criminal Homicide.** Whoever intentionally and without lawful excuse, or during the commission of an assault, robbery, abduction, burglary, or sex crime, or through gross negligence and/or recklessness, causes the death of another human being shall be guilty of a Felony and, upon conviction, sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**604.01 Robbery.** Whoever, having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person, with or without employing a dangerous weapon, to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

### **605.01 Abduction.**

**Subd. 1. Prohibited Acts.** Whoever, for any of the following purposes, confines or removes from one place to another, any person without the voluntarily-given consent of such person or, if the person so confined or so removed is under the age of 16 years, without the voluntarily-given consent of such person's parent, guardian, or other legal custodian, is guilty of abduction:

- (a) to hold for ransom or reward for release, or as shield or hostage;
- (b) to facilitate commission of any crime or flight thereafter;
- (c) to commit substantial bodily harm or to terrorize the victim or another; or
- (d) to hold in involuntary servitude.

**Subd. 2. Penalty.** Whoever violates Subdivision 1 is guilty of a Class 1 Misdemeanor; however, if the victim suffers great bodily harm during course of the abduction, or the person abducted is under the age of 16, the offender is guilty of a Felony.

(Resolution 39-2018; November 1, 2017)

### **606.01 Depriving Another of Custodial or Parental Rights.**

**Subd. 1. Prohibited Acts.** Whoever intentionally does any of the following acts is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly:

- (a) Conceals a minor child from the child's parent where the action manifests an intent substantially to deprive that parent of parental rights or conceals a minor child from another person having the right to visitation or custody where the action manifests an intent to substantially deprive that person of rights to visitation or custody;
- (b) Takes, obtains, retains, or fails to return a minor child in violation of a lawfully issued order of the Bois Forte Tribal Court, or of any other state or tribal court having personal jurisdiction over such child at the time such order was issued, which order has transferred legal custody of such child to another person or to a tribal or state agency, department, institution, or governmental subdivision or unit having powers to accept, place, and supervise the placement of minor Indian children; or
- (c) Takes, obtains, retains, or fails to return a minor child from or to a parent after commencement of an action relating to child visitation or custody but prior to the issuance of an order determining custody or visitation rights, where the action manifests an intent to substantially deprive that parent of parental rights.

**Subd. 2. Defenses.** No person violates Subdivision 1 if the action:

- (a) Is taken to protect the child from physical or sexual assault or substantial emotional harm;
- (b) Is taken to protect the person taking the action from physical or sexual assault;
- (c) Is consented to by the parent, step-parent, or legal custodian of the child; or
- (d) Is otherwise authorized by a court order issued prior to the violation of Subdivision 1.

The defenses provided in this subdivision are in addition to and do not limit other defenses, if any, available under this Chapter or other provisions of the Bois Forte Tribal Code.

**Subd. 3. Dismissal of Complaint.** A complaint brought under this section shall be dismissed if:

- (a) The person voluntarily returns the child within fourteen (14) days after taking, detaining, or failing to return the child in violation of this section; or
- (b) The person taking the action and the child remain within the Bois Forte Indian Reservation and within a period of fourteen (14) days after taking the action, the person commences a child custody proceeding, by motion or otherwise, in a court having jurisdiction to hear such a matter or the attorney representing the person taking the action consents to service of process in child custody proceedings in a court having competent jurisdiction to hear such a matter commenced, by motion or otherwise, by the party whose rights are being deprived.

(Resolution 39-2018; November 1, 2017)

**607.01 Domestic Violence.** Whoever intentionally commits an act of Domestic Violence, as defined in Chapter XII, Section 1201, shall be subject to the penalties imposed by Chapter XII Section 1209.

**608.01 Harassment.** A person who knowingly and repeatedly commits unwanted or intrusive communications, acts, or gestures, including using a telephone, the Internet, a computer-aided device, cellular telephone, facsimile machine, video recorder, or any other similarly situated communication device, to repeatedly transmit images, writing, or sounds to another person for no lawful purpose, or who records images, writings, or sounds of another person for no lawful purpose, or who stalks, follows, peers or peeps into windows, or who commits any similar acts that are intended to adversely and unlawfully affect the safety, security, or privacy of another, regardless of the relationship between the offender and the victim, is guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly.

**609.01 Abuse of an Elder or Vulnerable Adult.**

**Subd. 1. Definitions.** For the purposes of this section, the following definitions shall apply:

(a) “Abuse” means any conduct, which is not performed for a lawful, medical, or therapeutic purpose, that:

(1) Inflicts, or could reasonably be expected to inflict, physical pain or injury to an elder or vulnerable adult, including hitting, slapping, biting, kicking, pinching, or similar types of conduct;

(2) Inflicts, or could reasonably be expected to inflict, emotional distress or mental anguish to an elder or vulnerable adult, including by using words or conduct that a reasonable person would find cruel, disparaging, derogatory, humiliating, harassing, or threatening;

(3) Results in the unreasonable confinement or involuntary seclusion of an elder or vulnerable adult, including separating victim from other persons against the victim’s will or against the will of the victim’s legal representative; or

~~(4)~~(4) Constitutes the commission of any one of the following offenses, as prescribed by the Bois Forte Tribal Code, against an elder or vulnerable adult: Attempts to commit an act of abuse (Section 601.01); Conspiracy to commit an act of abuse (Section 602.01); any form of Assault defined in Sections 603.01 through 603.06; Stalking (Section 603.08); Criminal Homicide (Section 603.09); Robbery (Section 604.01); Abduction (Section 605.01); Depriving Another of Custodial or Parental Rights (Section 606.01); Domestic Violence (Section 607.01 and Chapter XII, Section 1201); Criminal Sexual Conduct (Section 610.02); Sexual Assault (Section 610.03); Indecent Exposure (Section 610.05); Prostitution and Sex Trafficking (Section 610.09); Incest (Section 612.01); Obscene or Harassing Communications (Section 654.01); or Coercion (Section 655.01).

~~“Abuse” means an act against an elder or vulnerable adult that constitutes a violation of or an attempt to violate:~~

~~Assault as defined in Sections 603.01 through 603.06 or Section 608.05 (Indecent Exposure)~~

~~Sex crime as defined in Part C;~~

~~In addition, abuse means:~~

~~Conduct which is not performed for any lawful or therapeutic purpose, which produces or could reasonably be expected to produce physical pain or injury or emotional distress to an elder or vulnerable adult, including hitting, slapping, biting, kicking, pinching, or other similar conduct, or the use of~~

~~repeated or malicious oral, written, or gestured language that would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening; or  
The use of any deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the elder or vulnerable adult from other persons against the will of the elder or vulnerable adult or the legal representative of the elder or vulnerable adult.~~

(b) “Aggravated elder abuse” means:

(1) Any intentional act of abuse or any act of neglect that causes an elder or vulnerable adult to suffer grave bodily injury, death, or extreme emotional distress;

(2) Any intentional act of financial exploitation that deprives an elder or vulnerable adult of the basic necessities of life or subsistence, including, but not limited to, being homeless or residing in unsanitary or uninhabitable living conditions, being unclothed, having severely limited access to food or water, or having severely limited access to life-sustaining medication or medically necessary healthcare;

(3) Any violation of a crime enumerated under Subdivision 2 of this Section that occurs within one (1) year of a conviction for the same crime; or

~~(2)~~(4) Any act of abuse, neglect, financial exploitation, or violation of a protection order committed by a caretaker.

(c) “Bois Forte Elder Services” means the Bois Forte Band of Chippewa’s agency or officials responsible for providing services to elders and vulnerable adults who are victims of the crimes enumerated under this Section or the subject of protection under Chapter XV of the Bois Forte Tribal Code.

~~(b)~~(d) “Bois Forte Police Department” means the law enforcement agency charged with exercising the criminal or civil jurisdiction of the Bois Forte Band of Chippewa and enforcing the Bois Forte Tribal Code.

~~(e)~~(e) “Caregiver” means a person who, by operation of federal, state, or tribal law, tribal custom, or their own volition, has care, custody, or control of, or who stands in a position of trust with, an elder or vulnerable adult. ~~an individual or facility who has responsibility for the care of an elder or vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of an elder or vulnerable adult voluntarily, by contract, or by agreement.~~

~~(d)~~(f) “Elder” means a person who is fifty-five (55) years of age or older.

~~(e)~~(g) “Financial ~~exploitation~~exploit” means:



- (1) The improper or unauthorized use, withholding, or disposition of an elder or vulnerable adult's funds, property, or resources;
- (2) Forcing, compelling, coercing, or enticing an elder or vulnerable adult to perform services, or withholding or disposing of his or her funds, property, or resources, for the profit or advantage of another;
- (3) A caretaker's failure, without lawful excuse or reason, to use or manage an elder or vulnerable adult's funds, property, or resources in the manner prescribed by the elder or vulnerable adult; or
- (4) Using the property or personal identifying information of an elder or vulnerable adult to commit, or committing against an elder or vulnerable adult, any one of the following offenses, as prescribed by the Bois Forte Tribal Code: Theft (Section 629.01); Forgery (Section 637.01); Obtaining Signature by False Pretense (Section 637.02); or Fraudulent Statements (Section 638.01).
- ~~(1) Willfully using, withholding, or disposing of funds or property of an elder or vulnerable adult; or~~
- ~~(2) Forcing, compelling, coercing, or enticing an elder or vulnerable adult against the elder's or vulnerable adult's will to perform services for the profit or advantage of another.~~

~~(f)~~(h) "Neglect" means:

- (1) A caretaker's wanton, reckless, or grossly negligent failure to provide for the basic needs of an elder or vulnerable adult by not supplying the resources, services, or supervision necessary to maintain the victim's physical, emotional, and mental health, including the failure to provide services or resources that are central to the practice of the victim's customs, traditions, or religion; or
- ~~(1)~~(2) An act or omission by any person that either interferes with or prevents the delivery of services or resources that are necessary to maintain an elder or vulnerable adult's physical, emotional, and mental health.

~~a caregiver's failure to supply an elder or vulnerable adult with care or services, including food, clothing, shelter, health care, or supervision which is:~~

~~Reasonable and necessary to obtain or maintain the elder's or vulnerable adult's physical or mental health or safety considering the physical and mental capacity or dysfunction of the elder or vulnerable adult; and~~

~~Which is not the result of an accident or therapeutic conduct.~~

(i) “Protective order” means an emergency protective order or an elder or vulnerable adult protection order issued pursuant to Chapter XV – Tribal Elder and Vulnerable Adult Civil Protection Code, of the Bois Forte Tribal Code.

~~(g)~~(j) “Vulnerable adult” means any person eighteen (18) years or older who is unable to make decisions or take action to protect him or herself from abuse, neglect, or financial exploitation due to a physical or mental impairment, illness, or chronic condition, including alcoholism or chemical dependency, a developmental disability, or a cognitive degenerative condition.:

~~Is a resident or inpatient of a facility or receives services from a licensed medical, therapeutic, or home care provider;~~

~~Regardless of residence or whether any type of service is received, possesses an infirmity or other physical, mental, or emotional dysfunction that impairs the individual’s ability to provide adequately for the individual’s own care without assistance and because of the dysfunction or infirmity and the need for care or services, the individual ability to protect the individual’s self from abuse, neglect, or financial exploit is impaired.~~

## **Subd. 2. Crimes and Penalties.**

### **(a) Abuse of an Elder or Vulnerable Adult.**

(1) Crime. A person who commits any act of abuse commits the crime of Abuse of an Elder or Vulnerable Adult.

(2) Penalty. A person convicted of Abuse of an Elder or Vulnerable Adult shall be subject to the greater of the following penalties:

(A) The penalties prescribed for persons convicted of committing a Class 1 Misdemeanor; or

(B) If the conviction hereunder is for a crime enumerated in Subdivision 1(a)(4) and designated as a Felony by the Bois Forte Tribal Code, then the penalties prescribed for persons convicted of committing a Felony shall apply.

### **(b) Financial Exploitation of an Elder or Vulnerable Adult.**

(1) Crime. A person who does any act of financial exploitation commits the crime of Financial Exploitation of an Elder or Vulnerable Adult.

(2) Penalty. A person who commits Financial Exploitation of an Elder or Vulnerable Adult is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(c) Neglect of an Elder or Vulnerable Adult.

(1) Crime. A person who does any act of neglect commits the crime of Neglect of an Elder or Vulnerable Adult.

(2) Penalty. A person who commits Neglect of an Elder or Vulnerable Adult is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(d) Aggravated Elder Abuse.

(1) Crime. A person who does any act of aggravated elder abuse commits the crime of Aggravated Elder Abuse.

(2) Penalty. A person who commits Aggravated Elder Abuse is guilty of a Felony and, upon conviction, shall be sentenced accordingly.

(e) Violation of a Protective Order.

(1) Crime. A person commits Violation of a Protective Order if he or she willfully violates any term or condition of a protective order or any term or condition of a lawful order issued by a properly constituted judicial authority pursuant to a criminal or civil case in tribal, federal, or state court that:

(A) Enjoins the perpetrator from threatening to commit or committing any acts of abuse, financial exploitation, or neglect against an elder or vulnerable adult;

(B) Prohibits the perpetrator from intimidating, harassing, menacing, annoying, contacting, or otherwise communicating with an elder or vulnerable adult;

(C) Removes and/or excludes the perpetrator from the residence or a reasonable area surrounding the residence of an elder or vulnerable adult;

(D) Requires the perpetrator to stay away from the residence, place of employment, place of worship, or another specified and regularly visited place of an elder or vulnerable adult; or

(E) Prohibits the perpetrator from using or possessing a firearm or other weapon specified in the order.

(2) Penalty. A person who commits Violation of a Protective Order is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

**Subd. 3. Mandatory Investigations; Tribal Court's Duty to Deliver Orders.**

- (a) Upon receipt of a protective order issued by the Bois Forte Tribal Court or any report of suspected abuse, financial exploitation, or neglect, the Bois Forte Police Department shall promptly conduct an investigation for the purposes of determining whether probable cause exists to prosecute an offense under the Bois Forte Tribal Code, including under this Section 609.01; provided, however, that no such investigation is required if the Bois Forte Police Department determines that the investigation would duplicate an existing investigation involving the same facts, alleged perpetrator, and victim.
- (b) The Bois Forte Tribal Court shall promptly deliver a copy of any protective order it issues under Chapter XV, or extension, modification, or termination thereof, or any conviction it orders under this Section 609.01 to the Bois Forte Police Department and Bois Forte Elder Services.

#### **Subd. 4. Video Tape Depositions.**

- (a) Video Tape Depositions Authorized. In any case where a defendant is charged with a crime against an elder or vulnerable adult, or in any case involving a victim or witness who is an elder or vulnerable adult, the Tribal Prosecutor may file a motion with the Bois Forte Tribal Court at any time prior to the commencement of the trial for an order that a deposition be taken of the testimony of the elder or vulnerable adult victim or witness and that the deposition be recorded and preserved on a video imaging format. The Bois Forte Tribal Court shall identify the witness and fix the date and time for the deposition in the order.
- (b) Timing; Cross-Examination. The Tribal Prosecutor shall file a motion requesting a recorded deposition prior to the commencement of the trial and at least fourteen (14) days prior to the taking of the deposition, except that for good cause shown, the Bois Forte Tribal Court may permit the filing of a motion requesting a recorded deposition less than fourteen (14) days prior to taking the deposition. The defendant shall receive reasonable notice of the date, time, and place of the deposition. The defendant shall have the right to be present and to be represented by counsel at the deposition, which right the defendant waives by failing to appear after receiving notice of the date, time, and place of the deposition.
- (c) Types of Depositions; Discovery; Process. Notwithstanding any other provision of the Bois Forte Tribal Code:
- (1) To the greatest extent possible, the Bois Forte Tribal Court shall schedule a deposition to take place within fourteen (14) days of the date it receives the motion, unless the Tribal Prosecutor establishes good cause for scheduling the deposition at an earlier time.
  - (2) The Bois Forte Tribal Court shall grant a motion for a deposition if the Tribal Prosecutor provides a reasonable basis for why the victim or witness may not be available for trial and that the victim or witness's testimony will be material to the case. Filing the motion creates a rebuttable presumption that a deposition should be

taken to prevent injustice. The Bois Forte Tribal Court may deny the motion for deposition if it finds that granting the motion will not prevent injustice. The Tribal Prosecutor may file a new request for a deposition if circumstances change prior to trial.

(3) The Tribal Prosecutor and the defendant shall exchange all available discovery not later than five days (5) prior to the scheduled deposition. If the discovery is not timely provided, either party may file a motion with the Bois Forte Tribal Court to reschedule the deposition in order to obtain the discovery required to adequately prepare for the deposition.

(4) A deposition authorized under this Subdivision 4 must be taken, preserved on a video imaging format, and conducted as directed by the Bois Forte Tribal Court. After the deposition is taken, the Tribal Prosecutor shall transmit the recording to the Bois Forte Tribal Court. At least five (5) days before trial, the Tribal Prosecutor shall provide a copy of the deposition to the defendant or the defendant's attorney.

(d) Admissibility. If at the time of trial the Bois Forte Tribal Court finds that the victim or witness is unavailable, consistent with the meaning of Rule 804(a) of the Federal Rules of Evidence, the Bois Forte Tribal Court may admit the recording of the victim's or witness' deposition as former testimony under Rules 804(b)(1) of the Federal Rules of Evidence.

#### **Subd. 5. Rights of Elders and Vulnerable Adults as Victims.**

(a) An elder or vulnerable adult who is the victim of a crime enumerated under Subdivision 2 of this Section shall have the following rights:

(1) The right to have the Bois Forte Police Department or responding law enforcement officer(s) obtain transportation to an emergency medical treatment facility, if medical treatment is required;

(2) The right to have the Bois Forte Police Department or responding law enforcement officer(s) remain at the scene until the victim, and any minor child or other family or household member present at the location at the time of the incident, can be transported to shelter or until the safety of all family or household members is otherwise obtained;

(3) The right to ask the Tribal Prosecutor to file a criminal complaint;

(4) The right to petition the Tribal Court for a protection order or appointment of a guardian under Chapter XV of the Bois Forte Tribal Code;

(5) If the crime resulted in any damages incurred by an elder or vulnerable adult, including damages resulting from the loss of property or monies spent on medical services to treat physical or emotional injuries, the Tribal Prosecutor shall seek restitution for those losses against the perpetrator;

- (6) The right to be informed by the Tribal Court of all hearing dates and continuances;
- (7) The right to request a copy of the police report and arrest data from law enforcement at no cost;
- (8) The right to be informed by the Tribal Prosecutor of the release of the defendant and of the prosecutor's decision to decline prosecution of the defendant or to dismiss criminal charges filed against the defendant;
- (9) The right to be informed by law enforcement, with the assistance of Bois Forte Elder Services, by telephone or in person, when bail and conditions of release have been established, before the defendant is released from custody;
- (10) The right to be present at the sentencing hearing or at the hearing during which a plea is presented to the Tribal Court, and to express orally or in writing, at the victim's option, any objection to the plea agreement or other proposed disposition (or if not present, to communicate objections to the Tribal Prosecutor who shall make these objections known to the Tribal Court);
- (11) The right to submit a presentence victim-impact statement, consistent with the statement described in Chapter XII, Part F, Section 1226, Subd. 2 of the Bois Fort Tribal Code, to the Tribal Court at the time of sentencing or a dispositional hearing, which may be presented to the Tribal Court orally or in writing or by the Tribal Prosecutor upon the victim's request; and
- (12) If the defendant is eligible for probation, the right to advise the Tribal Court of the conditions of probation required to assure the safety of the victim.

(b) The duly appointed guardian of an elder or vulnerable adult victim may exercise the rights guaranteed under Subdivisions 5(a)(3)-(4) and (6)-(12) of this Section 609.01. Upon a request granted by the Bois Forte Tribal Court, a caretaker or family member who is not the guardian of an elder or vulnerable adult victim may exercise the rights guaranteed under Subdivisions 5(a)(3)-(4) and (6)-(12) of this Section 609.01.

**Subd. 6. Severability; Prior Inconsistent Laws Repealed.**

(a) Severability. In the event that a court finds invalid any clause or provision of this Section 609.01, such invalid clause or provision shall be severed from the remaining body of the Section, and the remainder of this Section shall remain in full force and effect.

(b) Prior Inconsistent Laws Repealed. Any existing laws that are inconsistent with this Section 609.01 are expressly repealed.

**Subd. 2. Prohibited Acts.** ~~A caregiver who knowingly and intentionally neglects, abuses, or financially exploits an elder or vulnerable adult commits abuse of an elder or vulnerable adult.~~

~~Subd. 3. Penalty. A person who commits abuse of an elder or vulnerable adult is guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly, except that a person who commits an act that also violates Section 603.03 or Section 603.04 is guilty of a Class 1 Misdemeanor and a person who commits an act that also violates Section 603.05 or Subdivision (1)(a)(2) of this Section is guilty of a Felony and, upon conviction, shall be sentenced accordingly.~~

(Resolution 39-2018; November 1, 2017; Resolution to amend; date ~~Amended~~)

## **PART C – SEX CRIMES**

### **610.01 Definitions.**

- (a) “Sexual penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of the complainant’s body of any part of the actor’s body or any object used by the actor for this purpose, where the act is committed without the complainant’s consent, except in those cases where consent is not a defense.
- (b) “Sexual contact” includes any of the following acts committed without the complainant’s consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:
  - (1) The intentional touching by the actor of the complainant’s intimate parts;
  - (2) The touching by the complainant of the actor’s, the complainant’s, or another’s intimate parts effected by coercion or the use of a position of authority, or by inducement if the complainant is under 13 years of age or mentally impaired;
  - (3) The touching by another of the complainant’s intimate parts effected by coercion or the use of authority; or
  - (4) In any of the cases above, the touching of the clothing covering the immediate area of the intimate parts.
- (c) “Complainant” means the victim or intended victim of the sex crime without regard to whether or not said “complainant” is the person who actually signed the criminal complaint.
- (d) “Actor” means the person alleged to have committed an act of criminal sex crime.
- (e) “Coercion” means words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon, or hold in confinement, the

complainant or another, or force the complainant to submit to sexual penetration or contact, but proof of coercion does not require proof of a specific act or threat.

- (f) “Consent” means a voluntary uncoerced manifestation of a present agreement to perform a particular sexual act with the actor.
- (g) “Mentally incapacitated” means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person’s agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.
- (h) “Mentally impaired” means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or penetration.
- (i) “Physically helpless” means that a person is:
  - (1) Asleep or not conscious;
  - (2) Unable to withhold consent or to withdraw because of a physical condition; or
  - (3) Unable to communicate non-consent and the condition is known or reasonably should have been known to the actor.
- (j) “Position of authority” includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent’s rights, duties, or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.
- (k) “Significant relationship” means a situation in which the actor is:
  - (1) The complainant’s parent, stepparent, or guardian;
  - (2) Any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt, or
  - (3) An adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant’s spouse.
- (l) “Force” means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which:
  - (1) Causes the complainant to reasonably believe that the actor has the present ability to execute the threat; and



(2) If the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

(m)“Intimate parts” includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

(Resolution 39-2018; November 1, 2017)

## **610.02 Criminal Sexual Conduct.**

**Subd. 1. Prohibited Acts.** Whoever engages in sexual penetration with another person or in sexual contact with a complainant under thirteen (13) years of age is guilty of criminal sexual conduct if any one or more of the following circumstances exist;

- (a) The complainant is under thirteen (13) years of age and the actor is more than thirty-six (36) months older than the complainant. Neither mistake as to the complainant’s age nor consent to the act by the complainant is a defense;
- (b) The complainant is at least thirteen (13) years of age but less than sixteen (16) years of age and the actor is more than forty-eight (48) months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant’s age nor consent to the act by the complainant is a defense;
- (c) The actor uses force or coercion to accomplish the sexual penetration;
- (d) The actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;
- (e) The actor is aided or abetted by one or more accomplices and either an accomplice uses force or coercion to cause complainant to submit or an accomplice is armed with a dangerous weapon and uses or threatens to use the weapon to cause the complainant to submit;
- (f) The actor has a significant relationship to the complainant and the complainant was under sixteen (16) years of age at the time of the sexual penetration. Neither mistake as to the complainant’s age nor consent to the act by the complainant is a defense; or
- (g) The actor has a significant relationship to the complainant, the complainant was under sixteen (16) years of age at the time of the sexual penetration, and;
  - (1) The actor or accomplice used force or coercion to accomplish the penetration;
  - (2) The complainant suffered personal injury; or

- (3) The sexual abuse, as defined in Section 614.01, involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act is a defense.

**Subd. 2. Penalty.** A person who commits criminal sexual conduct is guilty of a Felony and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

### **610.03 Sexual Assault.**

**Subd. 1. Prohibited Acts.** Whoever engages in sexual contact with another person is guilty of sexual assault if any of the following circumstances exist:

- (a) The complainant is under thirteen (13) years of age and the actor is more than thirty-six (36) months older than the complainant. The prosecutor is not required to prove that the sexual contact with a complainant under thirteen (13) years of age was coerced. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (b) The complainant is at least thirteen (13) but less than sixteen (16) years of age and the actor is more than forty-eight (48) months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age or consent to the act is a defense;
- (c) Circumstances existing at the time of the sexual contact cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;
- (d) The actor is armed with a dangerous weapon and uses or threatens to use the dangerous weapon to cause the complainant to submit;
- (e) The actor uses force or coercion to accomplish the sexual contact;
- (f) The actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated or physically helpless;
- (g) The actor is aided or abetted by one or more accomplices and the accomplice uses force or coercion to cause the complainant to submit;
- (h) The actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent by the complainant is a defense;
- (i) The actor has a significant relationship to the complainant, the complainant was under sixteen (16) years of age at the time of the sexual contact, and

- (1) The actor or an accomplice used force or coercion to accomplish the contact;
- (2) The complainant suffered personal injury; or
- (3) The sexual abuse, as defined in Section 614.01, involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

- (j) The complainant is in official custody or otherwise detained in a hospital, prison or other similar institution and the actor has supervisory or disciplinary authority over the detained person.

**Subd. 2. Penalty.** A person who commits sexual assault is guilty of a Class 1 Misdemeanor, except that a person who commits and act that violates Subdivision 1(i) is guilty of a Felony and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

#### **610.04 Statutory Rape.**

**Subd. 1. Prohibited Acts.** A person eighteen (18) years of age or older who engages in a sexual act, with consent, with another person who is fourteen (14) years of age or older but less than sixteen (16) years of age, when the difference between the age of the victim and the age of the offender is two (2) years or greater, commits statutory rape.

**Subd. 2. Penalty.** A person who commits statutory rape is guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

#### **610.05 Indecent Exposure.**

**Subd. 1. Prohibited Acts.** A person who exposes his or her genitals or other intimate parts under circumstances likely to cause affront or alarm commits indecent exposure.

**Subd. 2. Penalty.** A person who commits indecent exposure is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly. On a second or subsequent conviction under this section, the offender shall be guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**610.06 Solicitation of Children to Engage in Sexual Conduct.** Whoever, being eighteen (18) years of age or older, commands, entreats, or attempts to persuade an individual under the age of fifteen (15) years to engage in sexual contact or sexual penetration with the intent to engage in such or similar conduct is guilty of a Felony and, upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**610.07 Medical Purposes; Exclusion.** Section 610 does not apply to sexual penetration or sexual contact when done for a bona fide medical purpose.

(Resolution 39-2018; November 1, 2017)

**610.08 Evidence.** In any prosecution under Section 610, the Court may be guided by the principles of evidence contained in Minnesota Statutes (1998) § 609.347, or any subsequent amendments thereto, except insofar as such principles may have been specifically rejected by resolution enacted by the Bois Forte Reservation Tribal Council or which have been determined by written decision of the Court to be a denial of either equal protection or due process rights or are otherwise invalid as being contrary to federal or tribal law.

(Resolution 39-2018; November 1, 2017)

## **610.09 Prostitution and Sex Trafficking.**

### **Subd. 1. Definitions.**

#### **(a) “Coercion” means:**

- (1) Threatening to use force on the individual or a child, family member, or pet of the individual;**
- (2) Abusing a position of power or another individual’s position of vulnerability;**
- (3) Abusing or threatening to abuse the law or legal process;**
- (4) Controlling or threatening to control an individual’s access to an intoxicating beverage or toxic or controlled substance, as defined in this Chapter;**
- (5) Destroying, taking, or threatening to destroy or take an individual’s property;**
- (6) Inducing an individual to provide commercial sexual activity in payment toward a real or purported debt;**
- (7) Exploiting an individual’s physical or mental impairment when the impairment has a substantial adverse effect on the individual’s cognitive or volitional function; or**

- (8) Threatening any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.
- (b) “Commercial sexual activity” means sexual activity for which anything of value is given to, promised to, or received by an individual.
- (c) “Force” includes, but is not limited to, abduction, physical restraint or confinement, sexual or physical violence, or serious harm.
- (d) “Fraud” means intentional misrepresentation of a material existing fact made with knowledge of its falsity, including, but not limited to, written or verbal statements about employment, wages, working conditions, or other financial opportunities.
- (e) “Prostitute” means an individual 18 years of age or older who engages in Prostitution by offering or agreeing to be hired by another individual to engage in commercial sexual activity.
- (f) “Prostitution” means a Prostitute engaging, offering, or agreeing to engage for hire in commercial sexual activity with a Patron. Prostitution excludes any third party benefit.
- (g) “Patron” means an individual who engages in Prostitution by hiring, offering to hire, or agreeing to hire a Prostitute to engage in commercial sexual activity.
- (h) “Promoting Prostitution” means any of the following:
- (1) Soliciting or procuring Patrons for a Prostitute;
  - (2) Providing, leasing, or otherwise permitting premises or facilitates owned or controlled by the person to aid in Prostitution;
  - (3) Knowingly owning, managing, supervising, controlling, keeping, or operating, either alone or with others, a place where Prostitution occurs for the purpose of promoting Prostitution; or
  - (4) Knowingly admitting a Patron to a place for the purpose of Prostitution.
- (i) “Sexual activity” means sexual penetration or sexual contact, as defined in Section 610.01.
- (j) “Sex Trafficking” means, while acting other than a Patron, knowingly:

(1) Soliciting, recruiting, enticing, harboring, providing, transporting, patronizing, or obtaining by any means a person to engage in a commercial sex act; or

(2) Benefiting financially or receiving anything of value, other than as a Sex Trafficking Victim, from participation in a venture which has engaged in an act described above in paragraph (1).

(k) “Aggravated Sex Trafficking” means any person engaging in any of the acts defined in subsection (j), subdivisions (1) and (2):

(1) knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion, or any combination of such means will be used to cause the person to engage in a commercial sex act; or

(2) knowing, or having had a reasonable opportunity to observe, that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act.

(l) “Participation in a venture” means knowingly assisting, supporting, or facilitating a violation of subsection (j)(1).

(m) “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

(n) “Sex Trafficking Victim” means a person subjected to the practices described in Subdivision 1, subsections (j) and (k).

**Subd. 2. Prostitution – Prohibited Acts.** Whoever engages in Prostitution or Promoting Prostitution is guilty of a Class 3 Misdemeanor and, upon conviction, may be sentenced accordingly.

**Subd. 3. Prostitution – Increased Sentences.** Whoever violates Subdivision 2 of this section after having been previously convicted of a similar violation within a period of one (1) year prior to the second or subsequent offense is guilty of a Felony and, upon conviction, may be sentenced accordingly.

**Subd. 4. Sex Trafficking – Prohibited Acts.** Whoever intentionally or knowingly engages in Sex Trafficking is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.

**Subd. 5. Sex Trafficking – Increased Sentences.** Whoever violates Subdivision 4 of this section after having been previously convicted of a similar violation within a period of one (1) year prior to the second or subsequent offense is guilty of a Felony and, upon conviction, may be sentenced accordingly.

**Subd. 6. Aggravated Sex Trafficking – Prohibited Acts.** Whoever intentionally or knowingly engages in Aggravated Sex Trafficking is guilty of a Felony and, upon conviction, may be sentenced accordingly.

**Subd. 7. Victim Immunity; Victim Access to Expungement.**

- (a) A person is not criminally liable for the offenses of Prostitution, Sex Trafficking, or any other nonviolent offense if the person committed the offense while being a Sex Trafficking Victim.
- (b) A person may not be arrested or charged with the offenses of Prostitution, Sex Trafficking, or any other nonviolent offense if the person committed the offense as a Sex Trafficking Victim and as a minor.
- (c) A person convicted of a non-violent offense, including Prostitution and Sex Trafficking, committed while being victim of, or as a result of being a victim of Sex Trafficking, may apply to the Bois Forte Tribal Court to expunge the applicant's record of conviction for the offense. The Court may grant such application on a finding that the applicant's participation in the offense occurred while being a Sex Trafficking Victim or as a result of being a Sex Trafficking Victim.

**Subd. 8. Forfeiture of Assets Aiding In or Derived From a Prostitution or Sex Trafficking Crime.** Upon conviction of a Class 1 Misdemeanor or Felony violation of Prostitution or Sex Trafficking, the Court, in addition to imposing a sentence on such person, may order forfeiture of any of the foregoing property:

- (a) Any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as a result of such violation; and
- (b) Any of the person's property used, intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

**Subd. 9. Rights of Sex Trafficking Victims.** All Sex Trafficking Victims shall have the following rights:

- (a) The right to have law enforcement obtain transportation to an emergency medical treatment facility, if medical treatment is required;
- (b) The right to have law enforcement remain at the scene until the victim, and any minor child or other family or household member present at the location at the time of the incident, can be transported to shelter or until the safety of all family or household members is otherwise obtained;
- (c) The right to ask the Tribal Prosecutor to file a criminal complaint;

- (d) If applicable relationship exists, the right to go the Tribal Court and file an application requesting a Domestic Violence protection order and obtain the relief described in Section 1227, Subd. 5;
- (e) If the offense resulted in damage to or loss of property to the Sex Trafficking Victim, the Tribal Prosecutor shall seek restitution for those losses;
- (f) The right to be informed by the Tribal Court of all hearing dates and continuances;
- (g) The right to request a copy of the police report and arrest data from law enforcement at no cost;
- (h) The right to be informed by the Tribal Prosecutor of the release of the defendant, if the Tribal Prosecutor has decided to decline prosecution of the defendant or to dismiss the criminal charges filed against the defendant;
- (i) The right to be informed by law enforcement, with the assistance of the Bois Forte Victim Services, by telephone or in-person when bail and conditions of release have been established, before the defendant is released;
- (j) The right to be present at the sentencing hearing and at the hearing during which a plea is presented to the Tribal Court and to express orally or in writing, at the victim's option, any objection to the plea agreement or other proposed disposition (or if not present, to communicate objections to the Tribal Prosecutor who shall make these objections known to the Tribal Court);
- (k) The right to submit a presentence victim-impact statement, as described in Section 1226 Subd. 2, to the Tribal Court at the time of sentencing or disposition hearing, which may be presented to the Tribal Court orally or in writing, at the victim's option, or by the Tribal Prosecutor if the victim requests; and
- (l) If the defendant is eligible for probation, the right to advise the Tribal Court of conditions of probation required to assure the safety of the victim.

**Sub. 10. Lack of Knowledge of Victim's Age and Consent Not Defenses.** A Defendant's lack of knowledge of a victim's age or consent provided by the victim are not defenses to the offenses of Prostitution or Sex Trafficking.

#### **Subd. 11. Mandated Reporting.**

- (a) Suspected Prostitution or Sex Trafficking of a person under the age of eighteen (18) years old shall constitute a mandated report for individuals required to make such reports under applicable Bois Forte, state, or federal law.



- (b) Bois Forte Victim Services shall deliver any report of suspected Sex Trafficking within a reasonable time of the grant of consent of the adult victim and taking care to protect the confidentiality rights of the adult victim.
- (c) The Bois Forte Police Department shall deliver any report of Sex Trafficking, irrespective of how the report was delivered or the report's source, to Bois Forte Victim Services within thirty-six (36) hours of receiving the report.
- (a)(d) No report shall be deemed a public record and all reports are subject to all applicable Bois Forte, state, or federal victim confidentiality laws.

(Resolution 39-2018; November 1, 2017; **PLACEHOLDER FOR RESOLUTION AND DATE**)

### ~~610.09 Prostitution and Sex Trafficking.~~

#### ~~Subd. 1. Definitions.~~

- ~~(a) "Prostitution" means engaging or offering or agreeing to engage for hire in sexual penetration or sexual conduct.~~
- ~~(b) "Patron" means an individual who engages in prostitution by hiring, offering to hire, or agreeing to hire another individual to engage in sexual activity or sexual contact.~~
- ~~(c) "Promotes the prostitution of an individual" means any of the following:
  - ~~(1) Solicits or procures patrons for a prostitute;~~
  - ~~(2) Provides, leases, or otherwise permits premises or facilitates owned or controlled by the person to aid the prostitution of an individual;~~
  - ~~(3) Owns, manages, supervises, controls, keeps, or operates, either alone or with others, a place of prostitution to aid the prostitution of any individual;~~
  - ~~(4) Owns, manages, supervises, controls, operates, institutes, aids, or facilitates, either alone or with others, a business of prostitution to aid the prostitution of an individual;~~
  - ~~(5) Admits a patron to a place of prostitution to aid the prostitution of an individual; or~~
  - ~~(6) Transports an individual within the jurisdiction of the Bois Forte Band or brings an individual into the jurisdiction of the Bois Forte Band to aid the prostitution of the individual.~~~~
- ~~(d) "Sex trafficking" means:~~

- ~~(1) Receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual; or~~
- ~~(2) Receiving profit or anything of value, knowing or having reason to know it is derived from an act of prostitution.~~
- ~~(e) “Sex trafficking victim” means a person subjected to the practices described in Subdivision 1(d).~~
- ~~(f) “Prostitute” means an individual who engages in prostitution by being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual activity or sexual contact.~~

~~————~~ **Subd. 2. Prohibited Acts.**

- ~~(a) Whoever practices prostitution, solicits or provides patrons for a prostitute, knowingly keeps, maintains, or rents a place for the purpose of prostitution, solicits another to engage in the practice of prostitution, or who hires or agrees to hire another individual to engage in sexual penetration or sexual contact is guilty of a Class 3 Misdemeanor and, upon conviction, may be sentenced accordingly.~~
- ~~(b) Whoever, while acting other than as a prostitute or patron, intentionally does any of the following is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly:~~
  - ~~(1) Solicits or induces an individual under the age of 18 years to practice prostitution;~~
  - ~~(2) Promotes the prostitution of an individual under the age of 18 years;~~
  - ~~(3) Receives profit, knowing or having reason to know that it is derived from the prostitution, or the promotion of prostitution, of an individual under the age of 18 years; or~~
  - ~~(4) Engages in the sex trafficking of an individual under the age of 18 years old.~~

~~(Resolution 39-2018; November 1, 2017)~~

~~————~~ **Subd. 3. Increased Sentences.**

- ~~(a) Whoever violates Subdivision 2 of this section after having been previously convicted of a similar violation within a period of one (1) year prior to the second or subsequent offense is guilty of a Felony and, upon conviction, may be sentenced accordingly.~~

~~(b) Whoever violates Subdivision 2 of this section with an individual, whether the individual be the prostitute or the patron, who is under the age of sixteen (16) years is guilty of a Felony and, upon conviction, may be sentenced accordingly.~~

~~(Resolution 39-2018; November 1, 2017)~~

## **PART D – COMPUTER-AIDED SEXUAL OFFENSES INVOLVING MINORS**

**611.01 Definitions.** For purposes of this Part D alone, the following terms shall have the following definitions:

- (a) “Access software provider” means a provider of software, including client or server software, or enabling tools that do any one or more of the following:
  - (1) File, screen, allow, or disallow content;
  - (2) Select, choose, analyze, or digest content; or
  - (3) Transmit, receive, display, forward, cache, search, organize, reorganize, or translate content.
- (b) “Cable operator” means any person or group of persons who provides cable service over a cable system and directly or through one or more affiliates, owns a significant interest in such cable system, or who otherwise controls or is responsible for, through any management, the management and operation of such a cable system.
- (c) “Coerce” shall include any of the following:
  - (1) Causing or threatening to cause serious bodily injury;
  - (2) Physically restraining or threatening to physically restrain another person;
  - (3) Abduction or threatened abduction of an individual;
  - (4) The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraining of an individual;
  - (5) The abuse or threatened abuse of law or legal process; or
  - (6) Threatening to use or the use of debt bondage or fraud.
- (d) “Debt bondage” means inducing an individual to provide commercial sexual activity in payment toward or satisfaction of a real or purported debt.

- (e) “Distribute” means to issue, sell, give, provide, lend, mail, deliver, transfer, transmute, distribute, circulate, or disseminate by any means.
- (f) “Electronic textual communication” means a textual communication made through the use of a computer on-line service, Internet service, or any other means of electronic communication, including but not limited to an Internet chat room, electronic mail, or online messaging service.
- (g) “Interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and such systems operated or services offered by government, libraries, or educational institutions.
- (h) “Pornography involving juveniles” is any photograph, videotape, film, or other reproduction, whether electronic or otherwise, of any sexual performance involving a child under the age of eighteen (18).
- (i) “Produce” means to photograph, videotape, film, or otherwise reproduce pornography involving juveniles, or to solicit, promote, or coerce any child for the purpose of pornography involving juveniles.
- (j) “Sexual conduct” means actual or simulated sexual intercourse, deviant sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or any lewd exhibition of the genitals or anus.
- (k) “Sexual performance” means any performance or part thereof that includes actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse, or lewd exhibition of the genitals or anus.
- (l) “Telecommunications service” means the offering of telecommunications for a fee directly to the public, regardless of the facilities used.

## **611.02 Pornography Involving Juveniles.**

**Subd. 1. Prohibited Acts.** It shall be unlawful for:

- (a) A person to produce, promote, advertise, distribute, possess, or possess with the intent to distribute pornography involving juveniles; or
- (b) A parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles.

**Subd. 2. Prima Facie Evidence.** The following shall be prima facie evidence of the intent to sell or distribute:

- (a) Possession of three or more similar photographs, images, films, videotapes, or other visual reproductions; or
- (b) Possession of three or more photographs, images, films, videotapes, or other visual reproductions and possession of any type of file sharing technology or software.

**Subd. 3. Defenses Prohibited.** The following shall not serve as a defense to prosecution for a violation of this Section:

- (a) Lack of knowledge of the juvenile's age; or
- (b) The juvenile's consent to participating in the activity prohibited by this section.

**Subd. 4. Penalty.**

- (a) **Possession.** Whoever intentionally possesses pornography involving juveniles is guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly. On a second conviction under this Subdivision 4(a), the offender shall be guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly without the benefit of parole, probation, or suspension of the sentence.
- (b) **Distribution.** Whoever distributes or possesses with the intent to distribute pornography involving juveniles shall be guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly. On a second conviction under this Subdivision 4(b), the offender shall be guilty of a Felony and, upon conviction, shall be sentenced accordingly.
- (c) **Parent, Guardian, or Custodian Consent.** Any parent, legal guardian, or custodian of a child who consents to the participation of the child in pornography involving juveniles shall be guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly. On a second conviction under this Subdivision 4(c), the offender shall be guilty of a Felony and, upon conviction, shall be sentenced accordingly without the benefit of parole, probation, or suspension of the sentence.
- (d) **Production.** Whoever engages in the promotion, advertisement, or production of pornography involving juveniles shall be guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly. On a second conviction under this Subdivision 4(d), the offender shall be guilty of a Felony and, upon conviction, shall be sentenced accordingly without the benefit of parole, probation, or suspension of the sentence.
- (e) **Pornography Involving Juveniles Under the Age of Thirteen.** Whoever commits the crime of pornography involving juveniles punishable by the penalties prescribed in Subdivisions 4(a)-(d) when the juvenile victim is under the age of thirteen (13) years and the offender is eighteen (18) years of age or older shall be guilty of a Felony and, upon conviction, shall be sentenced accordingly. On a second conviction

under this Subdivision 4(e), the offender shall be guilty of a Felony and upon conviction, shall be sentenced accordingly without the benefit of parole, probation, or suspension of the sentence.

**Subd. 5. Determining the Age of the Victim.** In prosecutions for violations of this section, the trier of fact may determine, utilizing the following factors, whether the person displayed or depicted in any photograph, videotape, film, or other video reproduction introduced in evidence was under the age of eighteen (18) or thirteen (13) at the time of the filing or recording:

- (a) The general body growth, bone structure, and bone development of the person;
- (b) The development of pubic or body hair on the person;
- (c) The development of the person's sexual organs;
- (d) The context in which the person is placed or the age attributed to the person in any accompanying video, printed, or text material;
- (e) Available expert testimony and opinion as to the chronological age or degree of physical or mental maturity or development of the person; and
- (f) Such other information, factors, and evidence available to the trier of fact which the court determines as relevant, probative, and reasonably reliable.

**Subd. 6. Inapplicability.** The provisions of this section shall not apply to a provider of an interactive computer service, provider of a telecommunications service, or a cable operator as defined by the provisions of this section.

### **611.03 Computer-Aided Solicitation of a Minor.**

**Subd. 1. Prohibited Acts.** Computer-aided solicitation of a minor is committed when:

- (a) A person seventeen (17) years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen (17) where there is an age difference of greater than two (2) years, or a person reasonably believed to have not yet attained the age of seventeen (17) and reasonably believed to be at least two (2) years younger, for the purpose of or with the intent to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct, or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet attained the age of seventeen (17), or person reasonably believe to have not yet attained the age of seventeen (17);
- (b) A person seventeen (17) years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet

attained the age of seventeen (17) where there is an age difference of greater than two (2) years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two (2) years younger, for the purpose of or with the intent to arrange for any third party to engage in any of the conduct proscribed by the provisions of Subdivision 1(a); or

- (c) The contact or communication subject to Subdivision 1(a)-(b) is initially made through electronic textual communication and subsequent communication is made through the use of any other form of communication.

**Subd. 2. Defenses Prohibited.** The following shall not serve as a defense to prosecution violation of this Section:

- (a) That the person reasonably believed to be under the age of seventeen (17) is a commissioned law enforcement officer or peace officer acting in his official capacity;
- (b) That the juvenile consented to participation in the activity prohibited by this section.

**Subd. 3. Penalty.**

- (a) **Victim thirteen years or more.** Whoever violates the provisions of this section when the victim is thirteen (13) years or more but has not attained the age of seventeen (17) shall be guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly. On a second conviction under this Subdivision 3(a), the offender shall be guilty of a Felony and, upon conviction, shall be sentenced accordingly.
- (b) **Victim under the age of thirteen.** Whoever violates the provisions of this section when the victim is under thirteen (13) years of age shall be guilty of a Felony and, upon conviction, shall be sentenced accordingly. On a second conviction under this Subdivision 3(b), the offender shall be guilty of a Felony and, upon conviction, shall be sentenced accordingly without the benefit of parole, probation, or suspension of the sentence.
- (c) **Offender reasonably perceived age of victim.** Whoever violates the provisions of this section, when the victim is a person reasonably believed to have not yet attained the age of seventeen (17), is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly. On a second conviction under this Subdivision 3(c), the offender shall be guilty of a Felony and, upon conviction, shall be sentenced accordingly.
- (d) **Sexual conduct involved.** If the computer-aided solicitation results in actual sexual conduct between the offender and victim and the difference between the age of the victim and the age of the offender is five (5) years or greater, the offender is guilty of a Felony and, upon conviction, shall be sentenced accordingly without the benefit of parole, probation, or suspension of the sentence.

(Resolution 39-2018; November 1, 2017)

## **PART E – CRIMES AGAINST THE FAMILY**

**612.01 Incest.** Whoever has sexual intercourse with another nearer of kin to the actor than second cousin, computed by the rules of civil law, whether or not of the half or the whole blood, with knowledge of the relationship is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

### **613.01 Non-Support of Spouse or Child.**

**Subd. 1. Prohibited Acts.** Whoever is legally obligated to provide care or support for a spouse who is in necessitous circumstances, or whoever is legally obligated to provide care or support of a minor child, whether or not said child is in the custody of another, and who knowingly omits and fails to provide such care and support without lawful excuse to do so is guilty of a Class 3 Misdemeanor and, upon conviction, may be sentenced accordingly.

**Subd. 2. Increased Sentence.** If the knowing omission or failure without lawful excuse to provide such care and support continues for a period in excess of ninety (90) days, the person is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

### **614.01 Neglect, Abuse, or Endangerment of a Child.**

#### **Subd. 1. Definitions.**

- (a) “Child” means any person under the age of eighteen (18) years.
- (b) “Caretaker” means an individual who has responsibility for the care of a child as result of a family relationship or who has assumed responsibility for all or a portion of the care of a child.
- (c) “Sexual abuse” means the subjection of a child by a person responsible for the child’s care by a person who has a significant relationship to the child, as defined in Section 610.01(k), or by a person in a position of authority, as defined in Section 610.01(j), to any act which constitutes a crime or offense as defined in Sections 608.02 through 610.09.

**Subd. 2. Prohibited Acts.** Whoever, being a parent, legal guardian, or caretaker does any of the following is guilty of a Class 1 Misdemeanor, except where the abuse involved any form of criminal sexual conduct, as defined Section 610.02, in which case the offender is guilty of a Felony and, upon conviction, shall be sentenced accordingly:



- (a) Willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, legal guardian, or caretaker is reasonably able to make the necessary provisions and which deprivation substantially harms the child's physical or emotional health;
- (b) Knowingly permits the continuing physical abuse or sexual abuse of a child;
- (c) Intentionally causing or permitting a child to be placed in a situation likely to substantially harm the child's physical or mental health or cause the child's death;
- (d) Knowingly causing or permitting the child to be present where any person is selling or possessing a controlled substance;
- (e) Knowingly causing or permitting the child, if under the age of sixteen, to habitually and/or continually be absent from school attendance without lawful excuse; or
- (f) By an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances.

**Subd. 3. Defenses.** It is defense to a prosecution under Subdivision 2 that at the time of the neglect, abuse, or endangerment there was a reasonable apprehension in the mind of the defendant that acting to stop or prevent the neglect, abuse, or endangerment would result in substantial bodily harm to the defendant or to the child in retaliation.

**Subd. 4. Permitted Actions.**

- (a) If a parent, legal guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is "health care" within the meaning of this section.
- (b) This section does not prevent a parent, legal guardian, or caretaker from causing or permitting a child to engage in activities that are appropriate to the child's age, stage of development, and experience, or from selecting health care as permitted in Subdivision 4(a) above.
- (c) Reasonable force may be used upon or toward the person of a child without the child's consent when used by a parent, legal guardian, teacher, or other caretaker of a child, or of a pupil, in the exercise of lawful authority, to restrain or correct the child or pupil or when necessary to restrain the child or pupil from self-injury or injury or any other person or property.

**Subd. 5. Order for Protection.** Upon application, petition, or motion of the tribal prosecutor, or the Chief of Police or other designated deputy of the Nett Lake Police Department, or upon the Court's own motion, the Bois Forte Tribal Court may issue an order for protection of

any child who is the victim of a violation of this section when the same is deemed necessary for the protection of the physical or emotional health of said child. The procedures for seeking, obtaining and issuing such an order for protection shall be as set forth in Chapter XII.

(Resolution 39-2018; November 1, 2017)

## **PART F – CRIMES AFFECTING TRIBAL GOVERNMENT**

### **615.01 Bribery.**

**Subd. 1. Prohibited Acts.** Whoever commits any of the following acts is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly:

- (a) Offers, gives, or promises to give, directly or indirectly, to any tribal officer, official, employee, or to any member of a Bois Forte Tribal Court jury or other deliberative panel, any benefit, reward, consideration, or other thing of value to which said officer, official, employee, member of a tribal court jury or other deliberative panel is not legally entitled with the intent to influence such person in the official discharge of said person's duties, conduct, or deliberations; or
- (b) Being a tribal officer, official, employee, member of a Bois Forte Tribal Court jury or other deliberative panel knowingly accepts, solicits, or attempts to solicit any benefit, reward, consideration, or other thing of value to which said officer, official, employee, member of a Bois Forte Tribal Court jury or other deliberative panel, is not entitled.

(Resolution 39-2018; November 1, 2017)

**615.02 Corruptly Influencing Tribal Officer or Employee.** Whoever by menace, deception, concealment of facts, or other corrupt means, attempts to influence the vote or other performance of duty of any member of the Bois Forte Reservation Tribal Council, or of any other person who is an employee of the Bois Forte Reservation Tribal Council or its agencies, divisions, and departments is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**616.01 Misconduct of Tribal Officer or Employee.** A tribal officer or employee who commits any of the following acts is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly:

- (a) Intentionally fails or refuses to perform a known mandatory, non-discretionary, ministerial duty of the office or employment within the time or in the manner required by law;

- (b) In the capacity of such officer or employee, does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity;
- (c) Under the pretense or color of official authority intentionally and unlawfully injures another in the other's person, property, or rights; or
- (d) In the capacity of such officer or employee, makes a return, certificate, official report, or other like document having knowledge it is false in any material respect.

(Resolution 39-2018; November 1, 2017)

**617.01 Misuse of Tribal Property.** Whoever intentionally takes, uses, conceals, transfers, damages, or destroys any public property, real or personal, of the Bois Forte Band without the lawful authority to do so is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**618.01 Permitting False Claims Against Tribal Government.** A tribal officer or employee who intentionally audits, allows, or pays any claim or demand upon the Bois Forte Reservation Tribal Council, or upon any agency, division, or department thereof, which the tribal officer or employee knows is false or fraudulent in whole or in part is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**618.02 Presenting False Claims to Tribal Officer or Body.** Whoever, with intent to defraud, presents a claim or demand, with knowledge that it is false in whole or in part, for audit, allowance, or payment to a tribal officer or body authorized to make such audit, allowance, or payment is guilty of a Class 1 Misdemeanor, and upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**619.01 Impersonating Tribal Officer or Employee.** Whoever falsely impersonates a tribal officer or employee with the intent to mislead another into believing that the impersonator is actually such officer or employee, or has the powers and authority of such an officer or employee, is guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**620.01 Violations of Approved Tribal Ordinances.** Whoever intentionally violates an ordinance designed to preserve the peace, safety, and welfare of the Bois Forte Band of Chippewa which has been hereafter duly enacted by the Bois Forte Reservation Tribal Council is

guilty of a Petty Misdemeanor and, upon conviction, shall be sentenced accordingly unless said ordinance specifically provides that a violation thereof constitutes a greater offense.

**620.02 Conducting Unauthorized Gaming.** Whoever conducts any form of gaming regulated by Bois Forte Reservation Tribal Council Ordinance No. 43-94 without a valid license or in a manner not authorized by tribal law is guilty of a Class 1 Misdemeanor, and upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**621.01 Interference with Tribal Officers and Employees in the Lawful Performance of their Duties.**

**Subd. 1. Prohibited Acts.** Whoever intentionally interferes with or obstructs any tribal officer or employee engaged in the lawful performance of their duties for the purpose of preventing or obstructing said officer or employee from performing said duties and, after being requested to cease said interference or obstruction, knowingly continues to do so is guilty of a Class 3 Misdemeanor and, upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**Subd. 2. Exercise of Civil Rights.** Nothing contained herein shall be construed to restrict any tribal member, or any other person, from freely exercising their constitutionally protected rights of free speech, freedom of assembly or the right to peacefully petition for redress of grievances.

**PART G – CRIMES AGAINST THE ADMINISTRATION OF JUSTICE**

**622.01 Perjury.**

**Subd. 1. Acts Constituting.** Whoever makes a false material statement not believing it to be true in any of the following cases is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly:

- (a) In or for an action, hearing, or proceeding of any kind in which the statement is required or authorized by law to be made under oath or affirmation;
- (b) In any writing which is required or authorized by law to be under oath or affirmation including an application for a license or other benefit from the Bois Forte Band; or
- (c) In any other case in which the penalties for perjury are imposed by law and no specific sentence is provided.

(Resolution 39-2018; November 1, 2017)

**Subd. 2. Defenses Not Available.** It is not a defense to a violation of this section that:

- (a) The oath or affirmation was taken or administered in an irregular manner;
- (b) The declarant was not competent to give the statement;
- (c) The declarant did not know that the statement was material or believed it to be immaterial;
- (d) The statement was not used or, if used, did not affect the proceeding for which it was made; or
- (e) The statement was inadmissible under the law of evidence.

**Subd. 3. Inconsistent Statements.** When the declarant has made two inconsistent statements under such circumstances that one or the other must be false and not believed by the declarant when made, it shall be sufficient for conviction under this section to charge and the trier of fact to find that, without determining which, one or the other of such statements was false and not believed by the declarant. The period of limitations for prosecution under this subdivision runs from the first such statement.

### **623.01 Escape from Custody.**

#### **Subd. 1. Prohibited Acts.**

- (a) Whoever, being held in lawful custody on a charge or conviction of a crime, escapes or attempts to escape, or who escapes while detained in a jail or other correctional facility, is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.
- (b) Whoever intentionally permits or assists another person, said other person being in the actor's lawful custody on a charge or a conviction of a crime, to escape is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.
- (c) Whoever, whether being detained pursuant to lawful arrest or being held in lawful custody on a charge or conviction of a crime, escapes or attempts to escape and uses physical force or a dangerous and/or deadly weapon to effect said escape or attempted escape is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.
- (d) Whoever, being held in lawful custody on a charge or a conviction of a crime, escapes or attempts to escape without using physical force or a dangerous and/or deadly weapon is guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly.

- (e) Whoever, being detained pursuant to a lawful arrest, escapes or attempts to escape without using physical force or a dangerous and/or deadly weapon is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**623.02 Fleeing a Peace Officer in a Motor Vehicle.**

**Subd. 1. Definitions.**

- (a) “Flee” means to increase speed, extinguish motor vehicle headlights or taillights, or to use any other means with intent to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle.
- (b) “Peace officer” means any law enforcement officer of the Bureau of Indian Affairs and/or the Nett Lake Police Department, any Bois Forte Conservation Officer, or any other tribal, federal, or state law enforcement officer charged with the prevention of and detection of crime and the enforcement of general criminal and conservation laws and who, at the time of the act, has the full power of arrest within the Bois Forte Indian Reservation.

**Subd. 2. Prohibited Acts.** Whoever by means of a motor vehicle flees or attempts to flee a peace officer who is acting in the lawful exercise of an official duty, and the actor knows or should reasonably know the same to be a peace officer, is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**624.01 Release, Failure to Appear.** Whoever, being charged with or convicted of an offense and being held in lawful custody therefor, is released from custody with or without bail or recognizance or to perform work, community service, or for any other purpose, on condition that the release personally appear before the tribal court when required to do so with respect to such charge or conviction, and intentionally fails, without lawful excuse, to so appear when required or return to custody upon completion of the work, community service, or other purpose for which release from custody was permitted, is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**625.01 Disobedience of a Lawful Order of the Court.** Whoever intentionally and without lawful excuse, disobeys, refuses to obey, or fails to perform as required, a lawful order, subpoena, warrant, or command duly issued, made, or given by the tribal court is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**626.01 Obstructing Legal Process.** Whoever intentionally obstructs, hinders, or prevents the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or conviction of a criminal offense or interferes with a peace officer while the officer is engaged in the performance of official duties, or by force, threat of force, coercion, inducement, or duress prevents or dissuades or attempts to prevent or dissuade a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law, or from providing information to any law enforcement authorities concerning a crime, is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**626.02 Aiding an Offender.**

**Subd. 1.** Whoever harbors, conceals, aids, or assists by word or acts another whom the actor knows or has reason to know has committed a crime under the laws of this or another jurisdiction with intent that such offender shall avoid or escape from arrest, trial, conviction, or punishment, is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.

**Subd. 2.** Whoever knowingly harbors, conceals, or aids a person who is on probation, parole, or supervised release because of a felony level conviction and for whom an arrest and detention order has been issued, with intent that the person evade or escape being taken into custody under the order, is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.

**626.03 Harboring an Excluded Person.**

**Subd. 1.** Whoever knowingly harbors, conceals, or aids a person's entrance and presence on the Bois Forte Reservation who has been excluded from the Bois Forte Reservation and whom the actor knows or has reason to know has been excluded from the Bois Forte Reservation, is guilty of a Class 2 Misdemeanor and, upon conviction, may be sentenced accordingly.

**Subd. 2.** As used in this section, exclusion from the Bois Forte Reservation means exclusion pursuant Section 434.01 of the Bois Forte Tribal Code, exclusion or banishment pursuant to the inherent authority of the Bois Forte Reservation Tribal Council, or restricted access to the Bois Forte Reservation by a lawful court order.

**627.01 Initiating False Reports.** Whoever initiates a false alarm or report which is transmitted to any organization that deals with emergencies involving danger to life or property, or initiates a false report to any law enforcement agency alleging the commission of a criminal offense, or who initiates a false report to any governmental agency of an act required by this code to be reported to any such agency, and the actor knows or reasonably should know that said alarm or report is false, is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**628.01 Resisting Arrest with Force or Violence.** A person commits resisting arrest with force or violence if the person has reasonable ground to believe the victim is a law enforcement officer acting in the performance of his or her official duties and the person does any of the following:

- (a) Intentionally inflicts bodily injury upon a law enforcement officer after being told that he or she is under arrest; or
- (b) Knowingly uses force or violence to resist arrest and creates a substantial risk of bodily harm to a law enforcement officer.

**Subd. 2. Penalty.** A person who commits resisting arrest with force or violence is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

**Subd. 3. Legality of Arrest Irrelevant.** A person is guilty of resisting arrest with force or violence regardless of whether the arrest is lawful.

**Subd. 4. Affirmative Defense.** It is a defense to a prosecution under this section to resist force that is clearly excessive.

(Resolution 39-2018; November 1, 2017)

## **PART H – CRIMES AGAINST PROPERTY**

### **629.01 Theft.**

#### **Subd. 1. Definitions.**

- (a) “Property” means all forms tangible property, whether real or personal, without limitation including documents of value, electricity, gas, water, corpses, domestic animals, dogs, pets, fowl, and heat supplied by pipe or conduit by tribal agencies, municipalities, or public utilities.
- (b) “Movable property” means property whose physical location can be changed, including without limitation things growing on, affixed to, or found in land.
- (c) “Value” means the retail market value at the time of the theft, or if the market value cannot be ascertained, the cost of the replacement of the property within a reasonable time after the theft.
- (d) “Representing” means describing, depicting, containing, constituting, reflecting, or recording.
- (e) “Services” includes but are not limited to labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations,



restaurant services, entertainment services, advertising services, telecommunication services, and the supplying of equipment for use.

- (f) “Property of another” includes property in which the actor is a co-owner or has a lien, pledge, bailment, or lease or other subordinate interest, and the property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife. It does not include property in which the actor in good faith asserts a claim as a collection fee or commission out of property or funds recovered, or by virtue of a lien, setoff, or counterclaim.
- (g) “Motor vehicle” for the purpose of this section means a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water, or in the air.
- (h) “False representation” includes a promise made with the intent not to perform or the issuance of a check, draft, or order for the payment of money, except a forged instrument punishable under Section 637.01, or the delivery of property knowing that the actor is not entitled to draw upon the drawee therefor or to order the payment or delivery thereof.

**Subd. 2. Prohibited Acts.** Whoever does any of the following is guilty of the offense of theft and may be sentenced as provided in Subdivision 3 herein:

- (a) Intentionally and without claim of right takes, uses, transfers, conceals, or retains possession of property of another without the other’s consent and with the intent to deprive the owner permanently of possession of the property;
- (b) Having a legal interest in movable property, intentionally and without consent, takes the property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of the property;
- (c) Obtains for the actor or another the possession, custody, or title to property of or performance of services by a third person by intentionally deceiving the third person with a false representation which is known to be false;
- (d) By swindling, whether by artifice, trick, or device, or any other means, obtains property of service from another person;
- (e) Finds lost property, including property that was mislaid or misdelivered, and, knowing or having reasonable means to ascertain the true owner, appropriates it to the finder’s own use or to that of another not entitled thereto without first having made reasonable effort to find the owner and offer and surrender the property to the owner;

- (f) Intentionally obtains property or services, offered upon the deposit of a sum of money or tokens in currency, coin, or token operated machine or other receptacle, without making the required deposit or otherwise obtaining the consent of the owner;
- (g) Leases or rents personal property under a written instrument and who with intent to place the property beyond the control of the lessor conceals or aids or abets the concealment of the property, or any part thereof, or any lessee of property who sells, conveys, or encumbers the property or any part of the property without the written consent of the lessor, without informing the person to whom the lessee, conveys, or encumbers that the same is subject to such lease and with intent to deprive the lessor of possession thereof;
- (h) Intentionally takes or drives a motor vehicle without the consent of the owner or an authorized agent of the owner;
- (i) Receives, retains, conceals, or disposes of property of another, knowing or having good reason to know that the property was stolen, either within or without the Bois Forte Indian Reservation; or
- (j) Commits any of the acts listed in this subdivision but with intent to exercise temporary control only, and:
  - (1) The control exercised manifests an indifference to the rights of the owner or the restoration of the property to the owner;
  - (2) The actor pledges or otherwise attempts to subject the property to an adverse claim; or
  - (3) The actor intends to restore the property only on condition that the owner pay a reward or buy back or make any other consideration.

**Subd. 3. Sentences.**

- (a) Whoever commits a violation of Subdivision 2, Paragraphs (a) through (i), and the value of the property or services taken exceeds \$300.00, is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly.
- (b) Whoever commits a violation of Subdivision 2, Paragraphs (a) through (i), and the value of the property taken is more than \$50.00 but does not exceed \$300.00, or whoever commits a violation of this section, Subdivision 2, Paragraph (j), and the value of the property or services taken is more than \$50.00, is guilty of a Class 2 Misdemeanor and, upon conviction, may be sentenced accordingly.
- (c) Whoever commits a violation of Subdivision 2 and the value of the property taken does not exceed \$50.00 is guilty of a Class 3 Misdemeanor.

(Resolution 39-2018; November 1, 2017)

### **630.01 Tampering with Motor Vehicles.**

**Subd. 1. Definitions.** “Motor vehicle” for the purpose of this section means a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water, or in the air.

**Subd. 2. Prohibited Acts.** Whoever does any of the following acts is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly:

- (a) Rides in or on a motor vehicle knowing that the vehicle was taken and is being driven by another without the owner’s permission; or
- (b) Tampers with or enters into or on a motor vehicle without the owner’s permission.

## **PART I – DAMAGE OR TRESPASS TO PROPERTY**

**631.01 Negligent Fires.** Whoever is culpably negligent in causing a fire to burn or get out of a control thereby causing loss, damage, or injury to another and:

- (a) Bodily harm is incurred by another person, or property of another is destroyed, damaged, or is expended in a reasonable effort to extinguish said fire and the value of the property is in excess of \$300.00, the actor is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly; or
- (b) Property of another is destroyed, damaged, or is expended in a reasonable effort to extinguish said fire and the value of the property damaged is \$300.00 or less, is guilty of a Class 3 Misdemeanor.

(Resolution 39-2018; November 1, 2017)

### **632.01 Arson.**

**Subd. 1. Definition.** Arson is the intentional destruction or damage of any real or personal property by means of fire and/or explosives without the lawful consent of the owner thereof, or which is set for the purpose of causing bodily harm or fear of bodily harm to another, or which is set for the purpose of collecting insurance or similar proceeds that the actor or the owner, occupant, or possessor of the property would not otherwise be entitled to receive except for said fire and/or explosion.

**Subd. 2. Penalties.** Whoever commits arson is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

**633.01 Burglary.** Whoever enters a structure suitable for affording shelter for human beings, including any appurtenant or connected structure, without consent and with intent to commit a crime is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

**634.01 Criminal Damage to Property.**

- (a) Whoever intentionally, and without the consent of the lawful owner thereof or without other lawful authority, disturbs, injures, damages, or destroys any livestock, domestic animals, or real or personal property of another having a value of \$100.00 or less is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly.
- (b) Whoever shall intentionally, and without the consent of the lawful owner thereof, disturb, injure, damage or destroy any livestock, domestic animals, or real or personal property of another having a value in excess of \$100.00 but not in excess of \$300.00 is guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly.
- (c) Whoever shall intentionally, and without the consent of the lawful owner thereof, disturb, injure, damage or destroy any livestock, domestic animals, or real or personal property of another having a value in excess of \$300.00 is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**635.01 Trespass.** Whoever, without lawful authority, shall willfully enter upon the lands or premises owned or lawfully occupied by another or owned by or on behalf of the Bois Forte Band of Chippewa, after having been forbidden to do so by the owner or lawful occupant or by the authorized agent or representative of the Bois Forte Band of Chippewa, or who after being asked to leave said lands or premises refuses to do so without lawful excuse, is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**636.01 Theft from Gaming Establishments.**

- (a) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value of \$1,000 or less belonging to an establishment licensed by the Bois Forte Band pursuant to Reservation Tribal Council Ordinance No. 43-94 is guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly.
- (b) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value in excess of \$1,000 belonging to an establishment licensed by the Bois Forte Band pursuant to Reservation Tribal

Council Ordinance No. 43-94 is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

## **PART J – FORGERY AND RELATED CRIMES**

**637.01 Forgery.** Whoever, with intent to defraud, falsely signs, executes, or alters a writing or written instrument so that it purports to be have been made by another or by himself under an assumed fictitious name, or at another time, or with different provisions, or by authority of one who did not give such authority is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**637.02 Obtaining Signature by False Pretense.** Whoever, by false pretense, obtains the signature of another to a writing, which is the subject of forgery under Section 634.01 is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**638.01 Fraudulent Statements.** Whoever, with intent to injure or defraud, circulates or publishes a false statement, oral or written, relating to a corporation, association, or individual, intending thereby to give a false apparent value to the property, whether real or personal, of such corporation, association or individual is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

## **PART K – CRIMES AGAINST PUBLIC SAFETY AND HEALTH**

**639.01 Possession of Firearm by Convicted Felon.** Whoever, having been previously convicted of a felony under federal law or under the laws of the State of Minnesota or of any other state, and who has in his possession, custody, or control a firearm, whether loaded or not, which is either concealed from open view in any manner or which is capable of being so concealed about the person, or which is possessed in violation of any existing terms of probation or parole under either federal or state law is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**639.02 Concealed Use of Firearm.** Whoever shall go about in public places armed with a firearm, whether loaded or not, which is concealed from open view upon his person, unless said person shall have on his person a valid permit to do so issued by either the Bois Forte Reservation Tribal Council or its designee, is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**639.03 Reckless Use of a Firearm, Dangerous Weapon, or Explosive.** Whoever recklessly handles or uses a firearm, other dangerous weapon, or an explosive so as to endanger the safety of another, or who intentionally points a firearm of any kind which is capable of killing or injuring a human being, whether the firearm is loaded or not, at or toward another person is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**639.04 Dangerous Weapons.** Whoever possesses any other dangerous article, device, or substance for the purpose of said article, device, or substance being used unlawfully as a dangerous weapon shall be guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**639.05 Discharge of Firearm in Inhabited Areas.** Whoever intentionally discharges a firearm without lawful excuse in any inhabited area of the Bois Forte Indian Reservation or in close proximity to any dwelling, school, public building, church, public area, or in an area designated as “no hunting” under the Conservation Code is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**639.06 Possession of Loaded Firearms.** Whoever possesses a loaded and/or uncased firearm in any residential area of the Bois Forte Reservation and not within his or her own place of abode is guilty of a Petty Misdemeanor and, upon conviction, shall be punished accordingly.

**640.01 Curfew.** Any person under the age of sixteen (16) years who is unaccompanied by a parent or guardian, or unless in attendance at or returning directly from an organized school, church, youth organization, or tribal function, or is in a private or public place other than the place where the person intends to spend the night with the permission of the owner or lawful, adult occupant of such place, or is in a motor vehicle driving or riding about except as allowed above, after the hour of 11:00 p.m. is guilty of an offense which shall be dealt with in accordance with the juvenile delinquency provisions of Chapter VII, Bois Forte Tribal Code, as if it were a Petty Misdemeanor had it been committed by an adult.

**640.02 Curfew/Liability of Adults.** Any parent, guardian, or custodian of a child less than sixteen (16) years of age who permits such child to violate Section 640.01 or negligently fails to require such child to obey Section 640.01, is guilty of a Petty Misdemeanor, and if convicted shall be sentenced accordingly, and in addition thereto may be liable for any property damage caused by such child while in violation of curfew.

### **641.01 Mandatory Reporting of Certain Offenses.**

**Subd. 1.** Whoever, by reason of their profession, occupation, or employment is required by applicable federal and/or state law to report certain incidents, acts, or offenses to federal, tribal, or local law enforcement and/or child protection agencies, is hereby required to report the same in a like manner to the Nett Lake Police Department.

**Subd. 2.** Whoever, without lawful excuse, refuses or fails to report as required in Subdivision 1, above, is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**642.01 Interference with Mandatory Reporting.** Whoever is in a position of supervisory or administrative authority over a person mandated under applicable federal and/or state law to report certain incidents, acts, or offenses to federal, tribal, or local law enforcement and/or child protection agencies and prevents, hinders, inhibits, or interferes with such reporting is guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

### **643.01 Intoxicating Liquors or Alcoholic Beverages, Illegal Use.**

**Subd. 1.** “Intoxicating liquor” or “alcoholic beverages” means ethyl alcohol, distilled, fermented, spirituous, vinous and malt liquors, regardless of percentage of alcohol by weight and includes, but is not limited to, beer, ale, wine, whiskey, gin, rum, brandy, vodka, schnapps, and all other liquor and alcoholic beverages whether commercially sold or home-made.

**Subd. 2.** “Possess” includes, but is not limited to, being in a room, any motorized vehicle including snowmobiles and ATV’s, a boat, trailer, or a public or private place where the intoxicating liquor or alcoholic beverage is openly displayed and accessible to the person under the age of twenty-one (21) years. Lack of knowledge of the existence of or lack of accessibility to of such intoxicating liquor or alcoholic beverage shall be an affirmative defense which must be asserted and established by a preponderance of the evidence.

**Subd. 3.** Whoever, being under the age of twenty-one (21), purchases, receives, possesses, or consumes any intoxicating liquors or alcoholic beverage is guilty of an offense and, upon conviction, shall be sentenced to not more than ninety (90) days incarceration or to pay a fine not exceeding Three Hundred Dollars (\$300.00), or both.

**Subd. 4.** Whoever, being under the age of twenty-one (21), misrepresents his age in order to obtain intoxicating liquor or alcoholic beverages for consumption by himself or others is guilty of an offense and, upon conviction, shall be sentenced to not more than thirty (30) days incarceration or to pay a fine not exceeding Three Hundred Dollars (\$300.00), or both.

**Subd. 5.** Whoever knowingly furnishes, supplies, sells, barter, or gives any person under the age of twenty-one (21) any intoxicating liquors or alcoholic beverages is guilty of an offense and, upon conviction, shall be sentenced to not more than one hundred eighty (180) days incarceration or to pay a fine not exceeding Seven Hundred Fifty Dollars (\$750.00), or both.

**644.01 Contributing to Delinquent Acts of Minors.** Whoever by any act, deed, or word encourages, contributes toward, or causes or tends to cause any minor to commit an offense in violation of the Bois Forte Tribal Code is guilty of a Class 2 misdemeanor and, upon conviction, shall be sentenced accordingly.

**645.01 Controlled Substances, Definitions.**

**Subd. 1. Definitions.** The following terms shall apply to Sections 645:

- (a) “Controlled substance” means a drug, substance, or immediate precursor listed in 21 CFR Part 1308, as amended. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors or tobacco.
- (b) “Park zone” means an area designated as a public park by tribal or federal government. “Park zone” includes the area within 3,000 feet of the park boundary.
- (c) “Person” includes every individual, co-partnership, corporation or association of one or more individuals.
- (d) “School zone” means:
  - (1) Any property owned, leased, or controlled by a school district, a tribal government, or an organization operating a nonpublic school where an elementary, middle, secondary school, secondary vocational center, or other school providing educational services in grade pre-kindergarten through grade 12 is located, or used for educational purposes, or where extracurricular or co-curricular activities are regularly provided; including, but not limited to, property regularly used for activities for children such as day-care centers, Boys and Girls Clubs, and teen centers;
  - (2) The area surrounding the property as described in Subdivision 1(d)(1) to a distance of 3,000 feet beyond the property; and
  - (3) The area within a school bus when that bus is being used to transport one or more elementary or secondary school students.
- (e) “Immediate precursor” means a substance which the Minnesota Board of Pharmacy has found to be and by rule designates as being the principal compound commonly used or produced for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled



substance, the control of which is necessary to prevent, curtail, or limit such manufacture.

- (f) “Sell” means:
- (1) To sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture;
  - (2) To offer or agree to perform an act listed in Subdivision 1(f); or
  - (3) To possess with intent to perform an act listed in Subdivision 1(f).
- (g) “Subsequent controlled substance conviction” means that before commission of the offense for which the person is convicted under Section 645, the person was convicted of a Felony, or previously denominated “Class I Misdemeanor,” violation of Section 645, or an attempt or conspiracy to violate Section 645, or was convicted elsewhere for a felony controlled substance offense.
- (h) “Drug paraphernalia” means all equipment, products, and materials of any kind, except those items used in conjunction with permitted uses of controlled substances under Section 645 or the Uniform Controlled Substances Act, which are knowingly or intentionally used primarily in:
- (1) Manufacture a controlled substance;
  - (2) Injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance;
  - (3) Testing the strength, effectiveness, or purity of a controlled substance; or
  - (4) Enhancing the effect of a controlled substance.
- Notwithstanding the above, “drug paraphernalia” does not include the possession, manufacture, delivery, or sale of hypodermic needles or syringes in a manner consistent with Minnesota Statutes § 151.40, subd. 2.
- (i) “Public housing zone” means any public housing project or development administered by the Bois Forte Housing Division, plus the area within 3,000 feet of the property’s boundary.
- (j) “Unlawfully” means selling or possessing a controlled substance in a manner not authorized by law.
- (k) “Analog” means a substance, the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II:

- (1) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
- (2) With respect to a particular person, if the person represents or intends that the substance have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

“Analog” does not include:

- (1) A controlled substance;
- (2) Any substance for which there is an approved new drug application under the Federal Food, Drug, and Cosmetic Act; or
- (3) With respect to a particular person, any substance, if an exemption is in effect for investigational use, for that person, as provided by 21 U.S.C. § 355, and the person is registered as a controlled substance researcher as required under federal law to the extent conduct with respect to the substance is pursuant to the exemption and registration.

#### **645.02 Possession of a Controlled Substance.**

- (a) It is unlawful for a person to unlawfully possess or sell any controlled substance listed in 21 CFR Part 1308, as amended, or controlled substance analog unless:
  - (1) The Controlled Substances Act or Drug Enforcement Agency regulations specifically authorizes possession of sale of the substance; or
  - (2) The substance or preparation is excluded or exempted by 21 CFR § 1308.21 through 1308.35, as amended.
- (b) Violations of Subsection (a) of this section are punishable as a Class 1 Misdemeanor.
- (c) Any controlled substance involved in violation of this section is declared to be contraband. Upon proof of a violation of this section, the controlled substance must be forfeited to the Bois Forte Tribal Government by order of the court, after public notice and an opportunity for any person claiming an interest in the substance to be heard.
- (d) Any personal property used to transport, conceal, manufacture, cultivate, or distribute a controlled substance in violation of this section is subject to forfeiture to

the Bois Forte Tribal Government by order of the court upon proof of this use, following public notice and opportunity for any person claiming an interest in the property to be heard.

- (e) Notwithstanding Section 642.02, whoever possesses a small amount of marijuana (less than 42 grams) is guilty of a Petty Misdemeanor [up to \$250.00] and, upon conviction, the violator must participate in a drug education program sponsored by Bois Forte Human Services or other similar entity.

**645.03 Possession of Drug Paraphernalia Prohibited.**

- (a) It is unlawful for any person knowingly or intentionally to use or to possess drug paraphernalia. Any violation of this section is a Class 1 Misdemeanor.
- (b) Notwithstanding Section 643.02(a), whoever knowingly or intentionally uses or possesses marijuana-related drug paraphernalia is guilty of a Petty Misdemeanor [up to \$250.00] and, upon conviction, the violator must participate in a drug education program sponsored by Bois Forte Human Services or other similar entity.

**645.04 Manufacture or Delivery of Drug Paraphernalia Prohibited.** It is unlawful for any person knowingly or intentionally to deliver drug paraphernalia or knowingly or intentionally to possess or manufacture drug paraphernalia for delivery. Any violation of this section is a Class 1 Misdemeanor.

**645.05 Delivery of Drug Paraphernalia to a Minor Prohibited.** Any person eighteen (18) years of age or older who violates Section 645.04 by knowingly or intentionally delivering drug paraphernalia to a person under eighteen (18) years of age is guilty of a Class 1 Misdemeanor.

**645.06 Conspiracies Prohibited.**

**Subdivision 1. Prohibited Acts; Penalties.** Any person who conspires to commit any act prohibited by Section 645, is guilty of a Class 1 Misdemeanor and upon conviction may be imprisoned, fined, or both, up to the maximum amount authorized by law for the act the person conspired to commit.

**Subdivision 2. Conviction of Co-Conspirator Not Required.** A person liable under this section may be charged with and convicted of conspiracy although the person or persons with whom that person conspired have not been convicted or have been convicted of some other crime based on the same act.

**645.07 Prohibited Acts; Fraud, Deceit.**

- (a) It is unlawful for any person to obtain or attempt to obtain any preparation excepted from the provisions of Controlled Substances Act or attempt to procure the administration of the controlled substance:

- (1) By fraud, deceit, misrepresentation of a prescription or subterfuge;
  - (2) By the forgery or alteration of a prescription or of any written order;
  - (3) By the concealment of a material fact; or
  - (4) By the use of a false name or the fiving of a false address.
- (b) Information communicated to a physician in an effort to unlawfully procure a dangerous controlled substance, or unlawfully to procure the administration of such drug, shall not be deemed a privileged communication.
- (c) Any person who violates this section is guilty of a Class 1 Misdemeanor.

#### **645.08 Methamphetamine-Related Crimes Involving Children and Vulnerable Adults.**

**Subd. 1. Definitions.** As used in this section, the following terms have the meanings given.

- (a) “Chemical substance” means a substance intended to be used as a precursor in the manufacture of methamphetamine or any other chemical intended to be used in the manufacture of methamphetamine.
- (b) “Child” means any person under the age of eighteen (18) years.
- (c) “Methamphetamine paraphernalia” means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in manufacturing, injecting, ingesting, inhaling, or otherwise introducing methamphetamine into the human body.
- (d) “Methamphetamine waste products” means substances, chemicals, or items of any kind used in the manufacture of methamphetamine or any part of the manufacturing process, or the by-products or degradates of manufacturing methamphetamine.
- (e) “Vulnerable adult” has the meaning given in Section 609.01, subd. 1(f), of the Bois Forte Tribal Code.

#### **Subd. 2. Prohibited Conduct.**

- (a) No person may knowingly engage in any of the following activities in the presence of a child or vulnerable adult; in the residence of a child or a vulnerable adult; in a building, structure, conveyance, or outdoor location where a child or vulnerable adult might reasonably be expected to be present; in a room offered to the public for overnight accommodation; or in any multiple unit residential building:

- (1) Manufacturing or attempting to manufacture methamphetamine;
  - (2) Storing any chemical substance;
  - (3) Storing any methamphetamine waste products; or
  - (4) Storing any methamphetamine paraphernalia.
- (b) No person may knowingly cause or permit a child or vulnerable adult to inhale, be exposed to, have contact with, or ingest methamphetamine, a chemical substance, or methamphetamine paraphernalia.

**Subd. 3. Criminal Penalty.** A person who violates Subdivision 2 is guilty of a Class 1 Misdemeanor.

**Subd. 4. Multiple Sentences.** A prosecution for or conviction under this section or Section 645.09 is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

**Subd. 5. Protective Custody.** A peace officer may take any child present in an area where any of the activities described in Subdivision 2(a) are taking place into protective custody. A child taken into protective custody under this subdivision shall be provided health screening to assess potential health concerns related to methamphetamine. A child not taken into protective custody under this subdivision but who is known to have been exposed to methamphetamine shall be offered health screening for potential health concerns related to methamphetamine.

**Subd. 6. Reporting Maltreatment of Vulnerable Adult.** A peace officer shall make a report of suspected maltreatment of a vulnerable adult if the vulnerable adult is present in an area where any of the activities described in Subdivision 2(a) are taking place, and the peace officer has reason to believe the vulnerable adult inhaled, was exposed to, had contact with, or ingested methamphetamine, a chemical substance, or methamphetamine paraphernalia.

#### **645.09 Heroin and Opium Use Involving Children and Vulnerable Adults.**

**Subd. 1.** A person who does any act prohibited by Section 645.08, subd. 2, with regard to the manufacture, storage, use, exposure to, or contact with heroin or any opium or opium derivative that is a controlled substance shall be guilty of a Class 1 Misdemeanor.

#### **645.10 Abuse of Psychotoxic Chemical Solvents.**

- (a) It is unlawful for any person to:
- (1) Intentionally smell or inhale the fumes of any psychotoxic chemical solvent or possess, purchase, or attempt to possess or purchase any psychotoxic chemical

solvent, for the purpose of causing intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system; or

- (2) Sell, give away, dispense, or distribute, or offer to sell, give away, dispense, or distribute, any psychotoxic chemical solvent knowing or believing that the purchaser or another person intends to use the solvent in violation of this section.
- (b) This section does not apply to inhalation of anesthesia for medical or dental purposes.
- (c) As used in this section, “psychotoxic chemical solvent” means any glue, gasoline, paint, hair spray, Lysol, or other substance containing one or more of the following chemical compounds:
- (1) Acetone and acetate;
  - (2) Benzene;
  - (3) Butyl-alcohol;
  - (4) Methyl ethyl;
  - (5) Peptone;
  - (6) Pentachlorophenol;
  - (7) Petroleum ether; or
  - (8) Any other chemical substance the inhalation of whose fumes or vapors can cause intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system.
- (d) The statement listing the contents of a substance packaged in a container by the manufacturer or producer thereof is rebuttable proof of the contents of the substance without further expert testimony if it reasonably appears that the substance in the container is the same substance placed therein by the manufacturer or producer.
- (e) Abuse of psychotoxic chemical solvents, as defined in this section, is punishable as a Class 1 Misdemeanor, and the Court may order any person using psychotoxic chemical solvents as described in Subsection (a) of this section to be committed to a facility for treatment for up to six (6) months.
- (f) Psychotoxic chemical solvents kept or used in violation of this section are declared contraband. Upon proof of a violation, these solvents must be forfeited to the Bois Forte Tribal Government by order of the court, following public notice and an opportunity for any person claiming an interest in the solvents to be heard.

### **645.11 Mandatory Sentences.**

- (a) A defendant convicted and sentenced to a mandatory sentence under Section 645 is not eligible for probation, parole, discharge, or supervised release until that person has served the full term of imprisonment as provided by law.
- (b) A defendant convicted of Sections 645.02, 645.03, 645.04 or 645.05 is subject to a mandatory minimum sentence of incarceration of ninety (90) days if the offense occurred in a school zone, park zone, or public housing zone.
- (c) A defendant convicted of a subsequent controlled substance offense shall be subject to a mandatory minimum sentence of incarceration of ninety (90) days.

**645.12 Stayed Adjudication and Stayed Sentence Limited.** If a person is convicted under Section 645, the Court may stay adjudication or stay imposition or execution of the sentence only as provided in this section. The sentence may be stayed based on amenability to probation only if the offender presents adequate evidence to the Court that the offender has been accepted by, and can respond to, a treatment program that has been approved by an authorized tribal, state, or federal agency.

### **645.13 Permissive Inference of Knowing Possession.**

**Subd. 1. Residences.** The presence of a controlled substance in open view in a room, other than a public place, under circumstances evincing an intent by one or more of the persons present to unlawfully mix, compound, package, or otherwise prepare for sale the controlled substance permits the fact finder to infer knowing possession of the controlled substance by each person in close proximity to the controlled substance when the controlled substance was found. This permissive inference does not apply to any person if:

- (a) One of them legally possesses the controlled substance; or
- (b) The controlled substance is on the person of one of the occupants.

**Subd. 2. Passenger Automobiles.** The presence of a controlled substance in a passenger automobile permits the fact finder to infer knowing possession of the controlled substance by the driver or person in control of the automobile when the controlled substance was in the automobile. This inference may only be made if the defendant is charged with violating Section 645.02. This permissive inference does not apply:

- (a) To a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of the operator's trade;
- (b) To any person in the automobile if one of them legally possesses a controlled substance; or

- (c) When the controlled substance is concealed on the person of one of the occupants.

(Approved by Resolution No. 82-2015, May 27, 2015, and effective upon adoption)

**646.01 Unlawful Smoking.** Whoever intentionally smokes in a public building, area, or common carrier in which “No Smoking” notices have been prominently posted, or when requested not to smoke by the person or persons in charge of such public building or area, or by the operator of such common carrier, is guilty of a Petty Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 1-2011; July 7, 2010; Resolution 39-2018; November 1, 2017)

**647.01 Unlawful Assembly.** When three or more persons assemble, each participant is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly, if the assembly is:

- (a) With intent to commit any unlawful act by force;
- (b) With intent to carry out any purpose in such manner as will disturb or threaten the public peace; or
- (c) Without unlawful purpose, but the participants conduct themselves in a disorderly manner so as to disturb or threaten the public peace.

(Resolution 39-2018; November 1, 2017)

**648.01 Presence at Unlawful Assembly.** Whoever, without lawful purpose, is present at the place of an unlawful assembly and refuses to leave when so directed by a law enforcement officer is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**649.01 Riot.** When three or more persons assembled disturb the public peace by an intentional act or by threat of unlawful force or violence to person or property, each participant therein is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**650.01 Terroristic Threats.** Whoever intentionally commits any of the following acts is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly:

- (a) Threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly or facility of public transportation or otherwise cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience; or



- (b) Communicates to another with purpose to terrorize another or in reckless disregard of the risk of causing such terror that explosives or an explosive device or any incendiary device is present at a named place or location, whether or not the same is in fact present.

(Resolution 39-2018; November 1, 2017)

**651.01 Disorderly Conduct.** Whoever commits any of the following acts in a public or private place, knowing, or having reasonable grounds to know, that it will or will tend to alarm, anger, or disturb others or provoke an assault or breach of the peace is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly:

- (a) Engages in brawling or fighting;
- (b) Disturbs an assembly or meeting, not unlawful in its character; or
- (c) Engages in offensive, obscene, or abusive language or in boisterous and noisy conduct tending reasonably to arouse alarm, anger, or resentment in others.

(Resolution 39-2018; November 1, 2017)

**652.01 Public Nuisance.** Whoever, by an act or failure to perform a legal duty, intentionally does any of the following is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly:

- (a) Maintains or permits a condition which unreasonably annoys, injures, or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public;
- (b) Interferes with, obstructs, or renders dangerous for passage any public highway or right-of-way, or waters used by the public; or
- (c) Being the owner or in possession of or control, permits an unused refrigerator or other container, sufficiently large to retain any child and with doors which fasten automatically when closed, to be exposed and accessible to children without removing the doors, lids, hinges, or latches.

(Resolution 39-2018; November 1, 2017)

**653.01 Environment, Criminal Acts.** Whoever commits any of the following acts is guilty of a Petty Misdemeanor and, upon conviction, shall be sentenced accordingly:

- (a) Unlawfully deposits garbage, rubbish, offal or the body of a dead animal, or other litter in or upon any public highway, public waters or the ice thereon, shore land areas adjacent to rivers or streams, public lands, or, without the consent of the owner or occupant, private lands or water or ice thereon; or

- (b) Violates any provision of any environmental protection, waste management code, or similar ordinance duly enacted by the Bois Forte Reservation Tribal Council which does not already contain a provision establishing a criminal offense and a sentence for violation thereof.

(Resolution 39-2018; November 1, 2017)

## **PART L – MISCELLANEOUS CRIMES**

**654.01 Obscene or Harassing Communications.** Whoever, by means of a telephone does, or having control of a telephone knowingly permits it be used for, any of the following is guilty of a Class 3 Misdemeanor and, upon conviction, shall be sentenced accordingly:

- (a) Makes any comment, request, suggestion or proposal which is obscene, lewd, or lascivious;
- (b) Repeatedly makes telephone calls, whether or not conversation ensues, with intent to abuse, threaten, or harass; or
- (c) Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number.

(Resolution 39-2018; November 1, 2017)

**655.01 Coercion.** Whoever orally or in writing makes any of the following threats and thereby causes another to act against the other's will to do any act or forebear doing a lawful act is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly:

- (a) A threat to unlawfully inflict bodily harm upon, or hold in confinement, the person threatened or another, when robbery or attempt to rob is not committed thereby;
- (b) A threat to unlawfully inflict damage to the property of the person threatened or another;
- (c) A threat to unlawfully injure a trade, business, profession, or calling;
- (d) A threat to expose a secret or deformity, publish a defamatory statement, or otherwise to expose any person to disgrace or ridicule; or
- (e) A threat to make or cause to be made a criminal charge, whether true or false; provided that a warning of the consequences of a future violation of law given in good faith by a peace officer, judge, or prosecuting attorney to any person shall not be deemed a threat for the purposes of this section.

(Resolution 39-2018; November 1, 2017)

**656.01 Public Indecency.** Whoever, in a public place, or in a private dwelling but in a manner so as to be viewed from outside of the dwelling, intentionally exposes his or her intimate parts, or engages in any form of sexual intercourse, is guilty of a Class 3 Misdemeanor and, upon conviction, may be sentenced accordingly. On a second or subsequent conviction under this section, the offender shall be guilty of a Class 2 Misdemeanor and, upon conviction, shall be sentenced accordingly.

(Resolution 39-2018; November 1, 2017)

**657.01 Animal Cruelty.**

**Subd. 1. Prohibited Acts; Generally.** Whoever shall overdrive, overload, torture, cruelly beat, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when it is unfit for labor, or deprive any animal over which the person has charge or control of necessary food, water, or shelter, is guilty of a Class 3 Misdemeanor and, upon conviction, may be sentenced accordingly.

**Subd. 2. Prohibited Acts; Service Animals.** Whoever shall intentionally and without justification cause substantial bodily harm to a service animal, or otherwise render a service animal unable to perform its duties, when the service animal is performing its duties or in the custody of the person it serves, is guilty of a Class 2 Misdemeanor and, upon conviction, may be sentenced accordingly.

**Subd. 3. Prohibited Acts; Public Safety Dogs.** Whoever shall intentionally and without justification cause the death of or great bodily harm to a police dog, a search and rescue dog, or an arson dog when the dog is in service or in the custody or control of a peace officer or trained handler, is guilty of a Class 1 Misdemeanor and, upon conviction, may be sentenced accordingly. Whoever shall intentionally and without justification cause substantial bodily harm to a police dog, a search and rescue dog, or an arson dog when the dog is in service or in the custody or control of a peace officer or trained handler, is guilty of a Class 2 Misdemeanor and, upon conviction, may be sentenced accordingly.

**658.00-699.01. Reserved for future use.**

## CHAPTER 12 – DOMESTIC VIOLENCE

### Part A – Policy and Jurisdiction

**1200. Purpose.** The purpose of this Chapter is to recognize Domestic Violence as severe crimes against society, the Band, and the family, and to assure the victim of Domestic Violence the maximum protections from further abuse that the law, and those who enforce it, can provide. It is the intent of the Band’s Reservation Tribal Council that the official response to Domestic Violence is to enforce the law to protect the victim and to hold the defendant accountable, which communicates the Band’s policy that violent behavior against intimate partners is not excused or tolerated. Rather, the Band values and seeks to nurture nonviolence and respect within families. This Chapter shall be interpreted and applied to give it the broadest possible scope to give effect to its purpose.

**1201. General Jurisdiction.** The Band’s criminal jurisdiction shall be exercised pursuant to Chapters V and VI of the Bois Forte Tribal Code, Crimes and Offenses. The Band has full civil regulatory and adjudicatory jurisdiction, as recognized and affirmed in 18 U.S.C. § 2265<sup>1</sup> and 25 U.S.C. § 1304,<sup>2</sup> to issue and enforce civil protection orders involving any person, including the violation of such orders alleged to have occurred outside the boundaries of the Reservation where such orders are entitled to recognition outside the Reservation as a matter of full faith and credit.

#### 1202. Definitions.

**Subd. 1.** “Arrest data” means the data created or collected by a law enforcement agency that document any actions taken by them to cite, arrest or incarcerate a defendant, including:

- (a) time, date and place of action;
- (b) the charge, arrest or search warrants, or other legal basis for the action;
- (c) the identities of the agencies and individual persons taking the action;
- (d) whether and where the defendant is being held in custody or is being incarcerated;
- (e) the date, time and legal basis for any transfer of custody and the identity of the agency that received custody; and

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<sup>1</sup> The Violence Against Women Reauthorization Act (VAWA) requires states, tribes and territories to give full faith and credit to protection orders issued by other jurisdictions. Full faith and credit means that jurisdictions must enforce criminal and civil protection orders issued in other states, tribes and territories.

<sup>2</sup> VAWA is codified at 25 U.S.C. § 1304, and “recogniz[es] and affirms” tribes’ “inherent power...to exercise special Tribal criminal jurisdiction over all persons”—including non-Indians.

(f) the date, time and legal basis for any release from custody or incarceration.

**Subd. 2.** “Bodily injury” means any act, except one done in self-defense, which results in physical injury or sexual abuse.

**Subd. 3.** “Emergency” means a condition or circumstance in which any individual is, or reasonably believes themselves to be, in imminent danger of Domestic Violence or in which property is or is reasonably believed by the individual to be, in imminent danger of damage or destruction.

**Subd. 4.** “Domestic violence” means the commission of any one of the following crimes where the defendant is or was a family or household member or dating partner:

- (a) Any violation of the Band’s criminal law that constitutes an offense under Section 523, subd. 4, including, without limitation, the following offenses identified in Chapter 6: 605.01 (Abduction); 610.02 (Criminal Sexual Conduct); 610.03 (Sexual Assault); 610.09 (Prostitution and Sex Trafficking); 603.01 (Simple Assault); 603.02 (Aggravated Assault–Substantial Bodily Harm); 603.03 (Aggravated Assault – Dangerous Weapon); 603.04 (Aggravated Assault–Dangerous Weapon, Substantial Bodily Harm); 603.05 (Assault–Strangulation); 603.06 (Assault – Great Bodily Harm); 603.08 (Stalking); 608.01 (Harassment); 609.01 (Abuse of an Elder or Vulnerable Adult); 629.01 (Arson); or 604.01 (Robbery), or any other crimes of violence as defined by 18 U.S.C. § 16.
- (b) Physically harming, attempting to physically harm, or placing the victim in reasonable fear of physical harm to himself or herself. Reasonable fear may be produced by behavior which induces fear in the victim, including harassment, stalking, destruction of property, controlling the victim’s conduct by threat of force, or physical harm or threat of harm or bodily injury to members of the victim’s family or household member or household pets; and/or
- (c) Preventing a victim from accessing victim or social services or interfering with an emergency call (911, emergency medical or ambulance services, or any call for assistance from a police or fire department, or for other assistance needed in an emergency to avoid harm to person or property; and includes any method of communication).

**Subd 5.** “Domestic violence protection order” means a temporary or permanent court order related to Domestic Violence, harassment, and/or sexual abuse, issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person. Protection order includes any temporary or final order issued in the civil or criminal context, whether obtained by filing an independent action or as an order awaiting further litigation in another proceeding, provided the order was issued in response to an application, complaint, petition, or motion filed by or on behalf of a person seeking protection.

**Subd. 6.** “Bois Forte Victim Services” means the agency established by the Bois Forte Band of Chippewa to provide services to victims of Domestic Violence, sexual assault, and stalking under the Band’s jurisdiction, including, but not limited to:

- (a) Counseling, crisis intervention, emergency shelter, advocacy, protection orders, court accompaniment, transportation, relocation and other similar services that incorporate traditional beliefs and cultural practices and utilize tribal elders to improve the health and safety of victims and their dependents; and
- (b) Referrals to other agencies that provide housing, counseling, advocacy, medical treatment, legal services or other similar services to victims and their dependents.

**Subd. 7.** “Family or household member or dating partner” means:

- (a) Current or former spouses or intimate partners;
- (b) Parents, guardian, step-parent and children;
- (c) Persons related to the victim by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt;
- (d) Persons who are presently residing together or who have resided together in the past;
- (e) Persons who have a child in common regardless of whether they have been married or have lived together at any time;
- (f) 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;
- (g) Persons involved in a significant romantic, dating, or sexual relationship; or
- (h) Persons who are or have been in a social relationship of a romantic nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

A person’s gender or sexual orientation shall not be relied upon to determine whether that person is a family or household member.

**Subd 8.** “Indian Country” shall mean the definition given in 18 U.S.C. § 1151.<sup>3</sup>

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<sup>3</sup> “Except as otherwise provided in sections 1154 and 1156 of [Title 18], the term “Indian country” . . . means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the

**Subd. 9.** “Law enforcement officer” means any person employed or commissioned as a police officer of law enforcement officer by a government entity or law enforcement agency with the authority to make arrests on the Reservation.

**Subd. 10.** “No contact order” means an order issued by the Tribal Court against a defendant in a criminal proceeding for a Domestic Violence offense, violation of a Domestic Violence protection order or violation of a prior no contact order, or order issued in conjunction with, or included within, bond or bail conditions for an individual charged with an offense under this Chapter or Chapters V and VI of the Bois Forte Tribal Code, Crimes and Offenses, that either prohibits or restricts such an individual’s contact with the protected party named in the order. A no contact order may be imposed independently by the Tribal Court as a pretrial order before final disposition of the underlying criminal case or as a probationary order upon final disposition. A no contact order is independent of any condition of release or probation imposed on a defendant. A no contact order may be issued in addition to a similar restriction imposed as a condition of release or probation. In the context of a probationary order, a no contact order may be issued for a Domestic Violence offense or for a conviction or entry of a guilty plea or other disposition for any criminal offense arising out of the same set of circumstances as a Domestic Violence offense.

**Subd. 11.** “Non-member Indian” means a member of a federally recognized tribe other than the Band, but residing within the Band’s Reservation.

**Subd 12.** “Position of authority” means includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

**Subd. 13.** “Probable cause” for arrest means that the law enforcement officer, acting as a person of reasonable caution, has reasonable grounds to believe that the person to be arrested has committed a crime as defined by this Chapter, based on all the facts known to the officer, including the officer’s personal observations, statements made by parties involved in the incident, statements made by witnesses, if any, and any other reliable information.

**Subd. 14.** “Reservation” means the Indian Country of the Bois Forte Band of Chippewa.

**Subd. 15.** “Sexual abuse” means the subjection of a child by a person responsible for the child’s care by a person who has a significant relationship to the child, or by a person in a position of authority, to any act which constitutes a crime or offense as defined in Sections 608.02 through 608.09 of Chapters VI of the Bois Forte Tribal Code, Crimes and Offenses.

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borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C. § 1151.

**Subd. 16.** “Victim” means any person who incurs physical harm, bodily injury, or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, fear of physical harm by stalking, threatening or harassing acts, as a result of a crime of Domestic Violence.

## **PART B – CRIMINAL ACTIONS AND PENALTIES**

### **1203. Domestic Violence.**

**Subd. 1. Prohibited Acts.** A person who does any act of Domestic Violence commits the crime of Domestic Violence.

**Subd. 2. Penalties.** For purposes of this Chapter XII, punishment for the crime of Domestic Violence is divided into the following three (3) classes, and each class is subject to the following penalties:

- (a) Felony, for which a maximum penalty of incarceration for three (3) years, a fine of up to \$15,000, or both, may be imposed.
- (b) Class 1 Misdemeanor, for which a maximum penalty of incarceration for one (1) year, a fine of up to \$5,000, or both, may be imposed.
- (c) Class 2 Misdemeanor, for which a maximum penalty of incarceration for six (6) months, a fine of up to \$1,000, or both, may be imposed.

**Subd. 3. Sentencing.** Upon conviction of or entry of a plea to a crime of Domestic Violence, the Tribal Court may sentence the defendant to the extent authorized by law as follows:

- (a) **First Conviction.** Except for a crime classified as a Felony or Class 1 Misdemeanor, a person who commits Domestic Violence for the first time and pleads guilty to or is convicted of the offense is guilty of a Class 2 Misdemeanor and shall be sentenced accordingly.
- (b) **Second Conviction.** Except for a crime classified as a Felony, a person who commits a second act of Domestic Violence within five (5) years of the first act, and pleads guilty to or is convicted of the second offense, is guilty of a Class 1 Misdemeanor and shall be sentenced accordingly.
- (c) **Third or Subsequent Conviction.** A person who commits a third or subsequent act of Domestic Violence within five (5) years of the second offense, and pleads guilty to or is convicted of the third or subsequent offense, is guilty of a Felony and shall be sentenced accordingly.



- (d) **Sentencing Limitations and Enhancements.** Where the current offense of Domestic Violence is classified as a Felony or Class 1 Misdemeanor and the defendant has a prior conviction of or entry of guilty plea to Domestic Violence within five (5) years of the prior conviction of or entry of plea of guilty to a Domestic Violence offense, the Tribal Court shall impose the maximum penalty of incarceration authorized by law without probation.
- (e) **Habitual Offender.** In the event a defendant charged with a crime of Domestic Violence has plea bargained to a lesser offense, the underlying factual basis of which has been found by the court on the record to include an act of Domestic Violence, and that defendant has two (2) times been previously convicted or plead guilty within five (5) years of the current charge, upon charges separately brought and tried and arising out of separate and distinct criminal episodes, of a felony or misdemeanor offense, the underlying factual basis of which was found by the court on the record to include an act of Domestic Violence, the Tribal Court shall adjudge the defendant a habitual Domestic Violence offender, and such person shall be convicted of a Felony. If the defendant is adjudged a habitual Domestic Violence offender, the Tribal Court shall sentence the defendant to the maximum penalty of incarceration permitted by law without probation.
- (f) **Additional Penalties.** The court may require a person who pleads guilty to or is convicted of Domestic Violence, regardless of how many prior guilty pleas or convictions the person has under this Chapter, to pay for and complete a counseling assessment with a focus on violence, controlling behavior, chemical dependency, and any other subject the Court deems appropriate. Upon any conviction of or plea of guilty to Domestic Violence, the Court may also assess reasonable costs against the defendant in accordance with Section 507.01, Subd. 6, of the Bois Forte Tribal Code, Crimes and Offenses.

**Subd. 4. Multiple Sentences.**

- (a) When separate sentences of incarceration are imposed upon a defendant upon entry of a plea of guilty or conviction of two or more crimes under any criminal provisions of the Bois Forte Tribal Code, whether charged in a single complaint or separately, or when a person who is under sentence of incarceration under the Band's jurisdiction is being sentenced to incarceration for another crime committed prior to or while subject to such former sentence, the Tribal Court in the later sentences shall specify whether the sentences shall run concurrently or consecutively. If the Tribal Court does not so specify, the sentences shall run concurrently.
- (b) If the Tribal Court specifies that the sentence shall run consecutively, the total of all sentences shall not exceed three (3) years.

**1204. Violation of a No Contact Order.**

**Subd. 1. Prohibited Acts.** A person who knowingly violates a no contact order commits violation of a no contact order.

**Subd. 2. Penalties.**

(a) **First Offense.** A person who commits violation of a no contact order is guilty of a Class 2 Misdemeanor and, upon a first conviction or entry of a pleas of guilty, shall be sentenced accordingly.

(b) **Second or Subsequent Offense.** A person who receives a second or subsequent conviction for committing violation of a no contact order is guilty of a Class 1 Misdemeanor and, upon conviction or entry of a plea of guilty, shall be sentenced accordingly.

**Subd. 3. Consent is Not a Defense.** The victim's consent to contact with the defendant is not a defense to a charge of violating a no contact order.

**Subd. 4. Charges May Not be Reduced.** The charge of violation of a no contact order shall not be reduced to a lesser charge or offense.

**Subd. 5. No Contact Order as a Condition of Release from Detention.** If a no contact order is imposed independently by the Tribal Court as a condition of release from detention, it will remain in effect until a defendant is convicted or enters a guilty plea or is acquitted of the Domestic Violence crime or the charge is dismissed.

**Subd. 6. No Contact Order Issued by Court Either as a Pre-trial Order or Probationary Order.** Once a no contact order has been issued by the Tribal Court as a pre-trial order or as a probationary order, the defendant must petition the Tribal Court in order for a no contact order to be lifted. In the Tribal Court's sole discretion, the no contact order may be lifted or modified after consideration of factors including, but not limited to: time since the alleged offense, prior criminal record, the wishes of the victim, and counseling or psychological evaluations the defendant has had since the offense.

**1205. Violation of a Domestic Violence Protection Order.**

**Subd. 1. Prohibited Acts.** A person who knowingly violates any Domestic Violence protection order commits violation of a Domestic Violence protection order.

**Subd. 2. Penalties.**

(a) **First Offense.** A person who commits a violation of a Domestic Violence protection order is guilty of a Class 2 Misdemeanor and, upon a first conviction or entry of a plea of guilty, shall be sentenced accordingly.

(b) **Second or Subsequent Offense.** A person who receives a second or subsequent conviction for committing violation of a Domestic Violence protection order is guilty

of a Class 1 Misdemeanor and, upon conviction or entry of a plea of guilty, shall be sentenced accordingly.

**Subd. 3. Consent is Not a Defense.** The victim's consent to contact with the defendant is not a defense to the charge of violating a Domestic Violence protection order.

**Subd. 4. Charges May Not be Reduced.** The charge of violation of a Domestic Violence protection order shall not be reduced to a lesser charge or offense.

## **PART C – POWERS AND DUTIES OF LAW ENFORCEMENT**

### **1206. Duties to Victims.**

**Subd. 1.** A law enforcement officer who responds to an allegation of Domestic Violence shall use all reasonable means to protect the victim and any family or household member, and prevent further violence, including, but not limited to:

- (a) Taking necessary actions to provide for the safety of the victim and any family or household member or witness;
- (b) Arresting the alleged defendant or primary aggressor, if the law enforcement officer finds probable cause to believe that an act of Domestic Violence was committed;
- (c) Transporting or obtaining for transportation for the victim, and any child or other person present at the location at the time of the incident, to shelter;
- (d) Assisting the victim in removing essential personal effects, at the victim's request;
- (e) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility; and
- (f) Confiscating any weapon as provided within this Chapter.

**Subd. 2.** When a law enforcement officer responds to a Domestic Violence call, the officer shall advise victims of all reasonable means to prevent further abuse, including advising victims of the services provided by Bois Forte Victim Services and giving each victim immediate written notice of the rights of victims described in Section 1226.

### **1207. Protecting Evidence.**

**Subd. 1.** All law enforcement officers who investigate an allegation of Domestic Violence, whether or not an arrest is made, shall make a detailed written police report of the alleged abuse and submit it to the prosecutor within 48 hours of the reported incident.

**Subd. 2.** All law enforcement officers who respond to an allegation of a crime involving Domestic Violence shall take reasonable steps to collect and record sufficient evidence to enable

the prosecutor to secure a conviction of the defendant without the testimony of any victim. Reasonable steps include:

- (a) photographing injuries to any victim, any damage to property and the location, and the location and surroundings of the alleged incident;
- (b) taking follow-up photographs of victim within 48 hours after the physical abuse and note any changes to injuries;
- (c) describing strangulation attempts, noting whether hands or a ligature device was used and the force of the attempt (including details regarding loss of consciousness, hoarse or raspy voice as a result of the injuries, or indication of petechiae);
- (d) describing both the physical and emotional condition of the victim in detail;
- (e) interviewing or re-interviewing the victim, witnesses and defendant, as necessary;
- (f) noting the identity of the witnesses to the incident and determining what they observed;
- (g) identifying all persons present at the location at the time of the incident, including children, whether or not they witnessed the incident;
- (h) recording any oral comments;
- (i) gathering a history of the relationship and duration, including past history of assault or stalking and verbal threats; and
- (j) describing the scene of the alleged crime on first contact and other physical evidence.

**Subd. 3.** In all Domestic Violence incidents, the law enforcement officer shall:

- (a) Obtain authorization for release of medical records from the victim, if possible.
- (b) Document extent of injuries and treatment, if known.
- (c) Obtain names, addresses and phone numbers emergency medical personnel treating the victim, if possible.
- (d) Transport or call for transport of the victim and other family or household members to a medical facility for treatment, if necessary.
- (e) Determine if a victim has been strangled and call for immediate medical care or advise the victim to seek medical care even if there is no visible injury.

**Subd 4.** A law enforcement officer who responds to an allegation of Domestic Violence shall encourage any victim to make an oral and written statement concerning the incident.

**Subd. 5.** A law enforcement officer who responds to an allegation of Domestic Violence shall ensure that the victim is made aware of the importance of preserving evidence of the incident, such as documentation of threatening communication (written, oral, electronic), photographs of injuries, medical records.

### **1208. Mandatory Arrest.**

**Subd. 1.** A law enforcement officer shall, without unnecessary delay, arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed or is committing the offense of Domestic Violence, even if a warrant has not been issued and the offense was committed outside the presence of the officer.

**Subd. 2.** The law enforcement officer shall make an arrest upon probable cause regardless of the express wishes of the victim.

**Subd. 3.** If a law enforcement officer receives conflicting complaints of Domestic Violence from two or more family or household members involving an incident of Domestic Violence, the officer shall evaluate each complaint separately to determine who was the primary aggressor. In determining whether a person was the primary aggressor, the officer shall not rely on who hit who first, nor shall the officer rely on the relative intoxication of either person, but shall consider the following factors and any other factors the officer considers relevant:

- (a) offensive and defensive injuries;
- (b) seriousness of injuries received by each person;
- (c) threats made by a party against the other party or a family or household member;
- (d) whether a party acted in self-defense or in defense of another;
- (e) which party has the potential to seriously injure the other party;
- (f) any history of Domestic Violence between the parties;
- (g) prior convictions of assault;
- (h) orders for protection that have been filed by a party;
- (i) whether a party has a fearful demeanor;
- (j) whether a party has a controlling demeanor; and
- (k) witness statements.

**Subd. 4.** If the law enforcement officer determines that one person was the primary aggressor, the officer need not arrest the other person accused of having committed Domestic Violence. The officer must arrest the person whom the officer determines to be the primary aggressor.

**Subd. 5.** Any determination of the primary aggressor, and the reasons for that determination, must be included in the police report. A law enforcement officer who does not make an arrest, or who arrests two or more persons after investigating conflicting complaints of Domestic Violence, must include in the police report a detailed explanation why the officer did not make an arrest or arrested two or more parties.

**Subd. 6.** Persons arrested shall be held in custody pending arraignment.

**Subd. 7.** A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party.

**Subd. 8.** A law enforcement officer shall not consider the use or abuse of alcohol or controlled substance by either party in making a determination as to whether the crime of Domestic Violence has been committed.

**Subd. 9.** When two or more family or household members are charged with a crime involving Domestic Violence arising from the same incident and the Tribal Court finds that one party was the primary aggressor, the Tribal Court, if appropriate, may dismiss charges against the other party or parties.

**1215. Mandatory Arrest for Violation of Domestic Violence Protection Order, No Contact Order or Ex Parte Order.** If a law enforcement officer has probable cause to believe that a person has violated a valid Domestic Violence protection order, no contact order or ex parte order, whether deemed civil or criminal, or whether issued by the Tribal Court or another jurisdiction, the officer shall, without a warrant, arrest the defendant. The defendant shall be held without bail pending arraignment, at which time bail and conditions of release shall be established.

**1216. Authority to Seize and Hold Weapons.** Incident to arrest for a crime involving Domestic Violence, a law enforcement officer shall seize all weapons that are alleged to have been involved or were threatened to be used in the commission of the crime, and may seize any weapons that are in plain view that the officer reasonably believes would expose the victim to a risk of serious bodily injury, or weapons that are discovered pursuant to a consensual search, an officer safety pat-down, or a search incident to arrest as necessary for the protection of the officer or other persons. Weapons seized under this Section shall be held until arraignment, at which time the weapon may be released or disposed of as ordered by the Tribal Court.

**1217. Violations of Conditions of Release.** If a law enforcement officer has probable cause to believe that a person has violated a condition of release from arrest or judgment in a Domestic

Violence case, the officer shall, without a warrant, arrest the defendant. The defendant shall be held without bail pending arraignment, at which time bail and conditions of release shall be established.

**1218. Duty to Expedite Service of Protection Orders.** The Band's law enforcement agency shall serve orders of protection on an expedited basis, attempt to complete service within forty-eight (48) hours, and provide a declaration of such service to the Tribal Court by the next judicial day.

**1219. Law Enforcement Records on Domestic Violence.** The Band's law enforcement agency shall maintain written records of arrests, incident reports, and initial contacts related to Domestic Violence in such a manner as to allow efficient tracking and identification of the records. A copy of the written police report and arrest data must be provided upon request, at no cost, to the victim of Domestic Violence, the victim's attorney, or the Bois Forte Victim Services or other organization designated by the Bois Forte Victim Services to provide services to the victim. However, the Band's law enforcement agency shall not provide any records relating to alleged incidents of Domestic Violence or related offenses to the defendant. Such records may be obtained by the defendant by Tribal Court order after notice to the prosecutor and a hearing. In ordering disclosure, the Tribal Court may order that the victim's identity and location be redacted, and make other orders as necessary to protect the confidentiality and/or identity of a victim, victim's dependents, victim's family or household members, and/or any information regarding a witness.

**1220. Liability of Law Enforcement Officers.** A law enforcement officer or his or her legal adviser shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of any Tribal Court order, or any other action or omission made in good faith under this Chapter arising from an incident of alleged Domestic Violence or violations of one of the named criminal or civil protection orders identified within this Chapter.

### **1209. Pre-trial and Release Conditions.**

**Subd. 1. 48-Hour Mandatory Hold.** No person charged with a crime of Domestic Violence or violation of a Domestic Violence protection order shall be released from detention until after the expiration of 48 hours from arrest (excluding weekends and holidays), notwithstanding the ability to pose a cash or surety bond.

**Subd. 2. Arraignment.** Any person charged with a crime of Domestic Violence shall be arraigned within 48 hours (excluding weekends and holiday) of their arrest in open court or on the record by telephone or live audiovisual means, at which time the Tribal Court shall establish bail and conditions of release.

**Subd. 3. Release Conditions.** The Tribal Court shall consider the following factors when setting bail:

- (a) The person has been charged with a crime of violence and the person has been recently convicted of another crime of violence, or the person has committed this offense while on probation or other release for another crime of violence;
- (b) The person has been charged with obstructing justice by having threatened, injured, or intimidated a judge, witness, or juror, or has attempted such threat, injury or intimidation;
- (c) There is a strong likelihood of flight to escape trial. This requires a documented history of such flight, or evidence or circumstances indicating that such flight is potential; and/or
- (d) The person represents a danger to the community. This requires a pattern of behavior evidenced by past and present conduct and no conditions for release are available which would reasonably assure the safety of the community.

**Subd. 4. Notice When Conditions of Release are Imposed.** If conditions of release are imposed, the Tribal Court shall:

- (a) Issue a written order for conditional release;
- (b) Immediately distribute a copy of the order to the prosecutor's office and appropriate law enforcement agency; and
- (c) Provide the law enforcement agency with any available information about the location of the defendant as is required to protect the safety of the victim.

**Subd. 5. Bail Modification.** Nothing in this Section precludes a defendant from moving the Tribal Court to modify bail and/or conditions of release, provided that the only authorized form of bail is cash bail.

**Subd. 6. No Contact Order.** When any person is arrested for or charged with a crime of Domestic Violence, the Tribal Court may issue a no contact order prohibiting the defendant from having any contact with the victim, including a victim who is neither a family or household member and does not qualify for a Domestic Violence protection order, or the victim's dependents or other family and household members. Such an order shall be entered at the first opportunity with no additional hearing required, subject to the following requirements:

- (a) The protected party that is the subject of a no contact order shall be provided with a certified and stamped copy of the order.
- (b) In issuing a no contact order, the Tribal Court shall consider whether the defendant should forfeit his or her firearms.



- (c) The Tribal Court shall not vacate a no contact order issued under this Section without notice to the prosecutor, the victim, and a hearing requested by either the prosecutor or the victim.

**1223. Mediation and Alternative Justice Prohibited.** The Tribal Court shall not order parties into mediation or any type of alternative justice or dispute resolution process or program that would put the victim in the position of dealing directly or negotiating with the defendant to resolve any issues related to a civil or criminal case that involves an act of Domestic Violence, even if the victim has the right to decline to participate.

## **PART E – DUTIES OF THE PROSECUTOR**

**1224. Domestic Violence Identified in Charging Document.** The Band’s prosecutor shall denote in the charging document that the defendant is being accused of a crime of Domestic Violence, violation of a no contact order, violation of a Domestic Violence protection order and/or violation of an ex parte order. The designation of Domestic Violence may be removed as part of a plea bargain; however, the Tribal Court may require the defendant to pay for and complete a counseling assessment with a focus on violence, controlling behavior, chemical dependency, and any other subject the Tribal Court deems appropriate.

### **1210. Duties to the Band and Victim.**

**Subd. 1.** The Band’s prosecutor must adhere to the following guidelines when prosecuting cases of Domestic Violence, the violation of a no contact order, violation of a Domestic Violence protection order or violation of an ex parte order:

- (a) In all cases, a good faith effort should be made by law enforcement, the prosecutor or persons operating under direction of the Tribal Court to contact the victim to obtain the victim’s information regarding the harm, damage, expense, loss or injury suffered by such victim as a result of the crime of Domestic Violence;
- (b) The prosecutor should seek to ensure that the employment, economic, educational, physical and/or mental health and political status of the defendant and victim will not factor into the determinations regarding Domestic Violence crimes;
- (c) The prosecutor should seek to respectfully dissuade victims from withdrawing charges;
- (d) The prosecutor should seek to utilize advocates and/or representative of Bois Forte Victim Services during every phase of criminal justice proceedings, provided that such advocates are available;
- (e) The prosecutor shall not dismiss a Domestic Violence case without prior consultation and review with the law enforcement officer involved in the case, and the extent that either is involved in the case, the advocate and/or a representative of the Bois Forte Victim Services;

- (f) The prosecutor shall make every reasonable effort to notify a victim of Domestic Violence, before the defendant is released from custody, that the prosecutor has decided to decline prosecution of the defendant or to dismiss the criminal charges filed against the defendant by: (i) contacting the victim and Bois Forte Victim Services by telephone, and (ii) contacting the victim by mail;
- (g) The prosecutor will expedite proceedings with a minimum of continuances and shall consider the present residency of the victim as it relates to continuances, especially if the victim has relocated off the Reservation for safety;
- (h) The prosecutor shall obtain information from the victim regarding costs and losses sustained as a result of the defendant's act(s) of Domestic Violence and shall seek restitution for the victim under the petition for relief; and
- (i) The prosecutor shall obtain the victim's relevant medical records through Tribal Court order, if the victim refuses to sign a release of medical records.

**Subd. 2.** The prosecutor shall provide all victims a written notice of the rights of victims of Domestic Violence by mail or personal delivery, within a reasonable time after the defendant is arrested. This written notice must provide an explanation of the rights and procedures of victims of Domestic Violence under this Chapter.

## **PART F – RIGHTS OF VICTIMS**

### **1211. Rights of Victims.**

**Subd. 1. Rights of Victims.** All victims shall have the following rights:

- (a) The right to have the law enforcement obtain transportation to an emergency medical treatment facility, if medical treatment is required;
- (b) The right to have law enforcement remain at the scene until the victim, and any minor child or other family or household member present at the location at the time of the incident, can be transported to shelter or until the safety of all family or household members is otherwise obtained;
- (c) The right to ask the prosecutor to file a criminal complaint;
- (d) The right to go the Tribal Court and file an application requesting a Domestic Violence protection order and obtain the relief described in Section 1227, Subd. 5;
- (e) If the Domestic Violence resulted in damage to or loss of property, the prosecutor shall seek restitution for those losses;
- (f) The right to be informed by the Tribal Court of all hearing dates and continuances;

- (g) The right to request a copy of the police report and arrest data from law enforcement at no cost;
- (h) The right to be informed by the prosecutor of the release of the defendant, if the prosecutor has decided to decline prosecution of the defendant or to dismiss the criminal charges filed against the defendant;
- (i) The right to be informed by law enforcement, with the assistance of the Bois Forte Victim Services, by telephone or in-person when bail and conditions of release have been established, before the defendant is released;
- (j) The right to be present at the sentencing hearing and at the hearing during which a plea is presented to the Tribal Court and to express orally or in writing, at the victim's option, any objection to the plea agreement or other proposed disposition (or if not present, to communicate objections to the prosecutor who shall make these objections known to the Tribal Court);
- (k) The right to submit a presentence victim-impact statement, as described in Subd. 2 below, to the Tribal Court at the time of sentencing or disposition hearing, which may be presented to the Tribal Court orally or in writing, at the victim's option, or by the prosecutor if the victim requests; and
- (l) If the defendant is eligible for probation, the right to advise the Tribal Court of conditions of probation required to assure the safety of the victim.

**Subd. 2. Presentence Victim Impact Statement.**

- (a) A victim, or any family or household member of the victim, may present a written a presentence impact statement to the Tribal Court, or the victim may appear personally at the sentence proceeding and present the statements orally. Provided, however, if any family or household member designated by the victim or by another family or household member of a victim wishes to appear personally, the person shall have the absolute right to do so.
- (b) In any case which is plea bargained, victim impact statements may be presented by the prosecutor or the victim at the time of sentencing.
- (c) The prosecutor's office and Bois Forte Victim Services will provide victims help with preparing a victim impact statement. The impact statement may include the following (without profanity or threats against the defendant):
  - (1) a clear and concise description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant;

- (2) an explanation of the economic loss or property loss suffered by the victim as a result of the offense committed by the defendant;
  - (3) a description of the medical or psychological treatments required by the victim or the victim's family or household member; and
  - (4) the victim's reaction to the Trial Court's proposed sentence or disposition.
- (d) No victim shall be required to offer evidence of the impact of the crime of Domestic Violence. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime of Domestic Violence. At the victim's request, and subject to cross-examination by the defendant or defendant's attorney, the prosecutor's office, law enforcement or the Bois Forte Victim Services may offer evidence of the impact of the crime of Domestic violence on the victim to the Tribal Court.
- (e) If the Tribal Court permits the defendant or anyone speaking on the defendant's behalf to present a statement to the Tribal Court, the court shall limit the response to factual issues that are relevant to sentencing. Any victim or family or household member of the victim who appears personally at the sentence proceeding shall not be cross-examined by the defendant or defendant's attorney. After a plea or disposition, if the Tribal Court has discretion as to the extent of sentencing, and if the defendant suggests that there are aggravating or mitigating circumstances which may be properly considered in imposing sentence, the Tribal Court may hear the issue summarily, at a specified time, and upon notice to the victim. The aggravating or mitigating circumstances must be presented by the testimony of witnesses examined in open court.

## **PART G – CIVIL DOMESTIC VIOLENCE ORDERS FOR PROTECTION**

### **1212. Domestic Violence Protection Orders.**

**Subd. 1. Commencement of the Action.** An action for a Domestic Violence protection order commenced by a qualified application, as described in Subd. 2 of this Section, alleging the existence of Domestic Violence may be brought in Tribal Court by any family or household member personally or by a family or household member, a guardian or conservator (who is qualified by testamentary or court appointment), or, if the Tribal Court finds that it is in the best interests of a minor or incapacitated person, by a reputable adult on behalf of the minor or incapacitated family or household members.

**Subd. 2. Qualified application.** A qualified application may be on a form created and provided by the Tribal Court or in another form. At a minimum, to be qualified, the form must identify the defendant, allege that the applicant is in danger of abuse from the respondent and/or has been the victim of abuse committed by the respondent, and describe the nature of the abuse and the approximate dates of the abuse.

**Subd. 3. Hearing Scheduled.** Upon receipt of the application, the Tribal Court shall order a hearing to be held within fourteen (14) days of the date the application was filed unless extended pursuant to Subd. 4 of this Section.

**Subd. 4. Service.** Service of the application and the order establishing the date of the hearing ordered pursuant to Subd. 3 of this Section shall be made upon the respondent at least seven (7) days prior to the scheduled hearing. Service shall be made by a law enforcement officer. If service cannot be made, the Tribal Court may set a new date for the hearing. Proof of service shall be filed with the Court after service is made and prior to the scheduled hearing date.

**Subd. 5. Relief.** Upon showing of actual or imminent Domestic Violence, the Tribal Court may enter a protection order after due notice and a hearing. The relief provided by the Tribal Court may include any or all of the following:

- (a) Prohibiting any party from having any contact or communication, direct or indirect, including by phone, email, text message, written letter, in-person or through third-person, with a petitioner, the petitioner's dependents or the petitioner's family or household member;
- (b) Prohibiting the respondent from being within a specified distance from the petitioner, the petitioner's dependents, or the petitioner's family or household member;
- (c) Prohibiting any party from threatening, molesting, or injuring any other person;
- (d) Excluding and/or prohibiting the respondent from a specified household, from the residence of another person against whom the Domestic Violence is occurring or from a Domestic Violence or domestic abuse care facility, where this exclusion is necessary to the physical or mental well-being of the applicant or other persons;
- (e) Prohibiting the individual from entering the petitioner's residence, school, business, or place of employment, or the children's school or daycare;
- (f) Prohibiting the individual from being in possession of a firearm and/or dangerous weapon;
- (g) Recommending or requiring counseling services with a Domestic Violence or abuse program or other agency that provides services that the Tribal Court deems appropriate. The Tribal Court may request a report from the designated agency within a time period established by the Tribal Court's order;
- (h) Any other order the Tribal Court deems necessary or appropriate to ensure the safety of the petitioner's minor children or petitioner's family or household members;
- (i) Award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. In addition to the primary safety considerations, the Tribal Court may consider particular best interest factors that are found to be relevant

to the temporary custody and parenting time award. If the Tribal Court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted parenting time, the Tribal Court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of the victim and the children. The Tribal Court's decision on custody and parenting time shall in no way delay the issuance of a Domestic Violence protection order granting other relief provided for in this Chapter;

- (j) An order requiring the defendant to pay restitution to the victim, including, but not limited to, medical expenses, non-medical care and treatment, physical therapy, rehabilitation, lost wages, counseling expenses for victim or minor children, lost or damages property, funeral expenses, and other out-of-pocket expenses, and any other expenses the Tribal finds are the direct result of the defendant's act(s) of Domestic Violence. An order for restitution issued under this subdivision is enforceable as a civil judgment; and
- (k) 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 according to applicable provisions of the Bois Forte Tribal Code.

**Subd. 6. Duration of Permanent Protection Order and Modification.**

- (a) **Duration.** The provisions of the protection order shall remain in effect for the period of time stated in the order, not to exceed two years, unless Tribal Court determines that a longer period is appropriate at the request of the petitioner or at the request of Bois Forte Victim Services. A Domestic Violence protection order is not voided by the admittance of the defendant into the dwelling from which the defendant is excluded.
- (b) **Subsequent Orders and Extensions.** Upon application, notice to all parties and the Bois Forte Victim Services, and hearing, the Tribal Court may extend the relief granted in an existing Domestic Violence protection order or, if a victim's protection order is no longer in effect when an application for subsequent relief is made, grant a new Domestic Violence protection order. If a victim seeks only the relief under Section 1228 (ex parte order), a hearing is not required unless the Tribal Court declines to order the requested relief.

(1) The Tribal Court may extend the terms of an existing Domestic Violence protection order or, if an order is no longer in effect, grant a new order upon showing that:

- (A) The defendant has violated a prior or existing Domestic Violence order for protection, no contact order or ex parte order;
- (B) The defendant is reasonably in fear of physical harm from the defendant;

(C) The defendant has engaged in the act of stalking; or

(D) The defendant is incarcerated and about to be released, or has recently been release from incarceration.

(2) A victim does not need to show that physical harm is imminent to obtain an extension or a subsequent order under this subdivision.

(c) **Modifying Domestic Violence Protection Order.** Upon application, notice to all parties and the Bois Forte Victim Services, and hearing, the Tribal Court may modify the terms of and existing Domestic Violence protection order.

(1) If the defendant named in the Domestic Violence protection order is a habitual Domestic Violence offender, as defined in Section 1209(e), the defendant may request to have the order vacated or modified if the order has been in effect for at least five years and the respondent has not violated the order during that time. At the hearing, the defendant named in the Domestic Violence protection order has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the Tribal Court relied in granting or extending the order no longer apply and are unlikely to occur. If the Tribal Court finds that the defendant has met the burden of proof, the Tribal Court may vacate or modify the order. If the Tribal Court finds that the defendant has no met the burden of proof, the Tribal Court shall deny the request and no request may be made to modify or vacate the order for protection until one year has elapsed from the date of denial.

(2) Before the Tribal Court may modify or vacate a Domestic Violence protection order at the request of the defendant, the defendant shall provide the Tribal Court with all pertinent documents, affidavits, compliance forms or any other information required by the Tribal Court.

(3) Any Domestic Violence protection order modified under this paragraph subdivision must be personally served on the victim named in the order.

**Subd. 7. Filing Fee Waived.** No filing fee shall be required for any individual who seeks a Domestic Violence protection order under this Section.

### **1213. Ex Parte Temporary Domestic Violence Protection Orders.**

**Subd. 1. Ex Parte Temporary Order.** Where an application under Section 1227, Subd. 1, alleges an immediate and present danger of Domestic Violence to the applicant based upon an allegation of a recent incident of Domestic Violence or threat of Domestic Violence, the Tribal Court, upon finding by a preponderance of the evidence that the petitioner is in immediate

danger of Domestic Violence, may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the Tribal Court deems proper.

**Subd. 2. Relief.** An ex parte temporary protection order may include any relief within the Tribal Court's authority to provide under Section 1227, Subd. 5.

**Subd. 3. Duration.** An ex parte temporary protection order shall remain in effect for not more than thirty (30) days, unless otherwise terminated or amended by the Tribal Court.

**Subd. 4. Hearing.** A full hearing, as provided under Section 1227, shall be set for no later than thirty (30) days from the issuance of the temporary order.

**Subd. 5. Service.** Law enforcement shall promptly personally serve the respondent with a copy of the order along with a copy of the application and notice of the date set for the hearing. If the respondent cannot be personally served within seven (7) days of issuance of the temporary order, the Clerk of Court for the Tribal Court shall mail a copy of the order, return receipt requested, or deliver the temporary order, to the last known address of the respondent. Proof of service shall be filed with the Tribal Court.

**Subd. 6. Notice to Appropriate Law Enforcement Agency.** The Clerk of Court for the Tribal Court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day which the order was granted, to the law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual Domestic Violence, which is the subject of the temporary protection order, allegedly occurred or is likely to occur.

**Subd. 7. Filing Fee Waived.** No filing fee shall be required for any individual who seeks an ex parte temporary protection order under this Section.

**Subd. 8. Registration of Tribal Court Protection Orders.** The Tribal Court shall register each Domestic Violence protection order issued by the Tribal Court within 24 hours with the Minnesota Court Information System.

#### **1214. Recognition and Enforcement of Foreign Protection Orders.**

**Subd. 1. Full Faith and Credit.** Pursuant to 18 U.S.C. § 2265, the Tribal Court shall accord full faith and credit to a Domestic Violence protection order issued by a court of competent jurisdiction, provided that:

- (a) The court had jurisdiction over the parties and the matter; and
- (b) Reasonable notice and opportunity to be heard was given to the person subject to the order, sufficient to protect that person's right to due process, to the extent required under 18 U.S.C. § 2265.<sup>4</sup>

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<sup>4</sup> See note 4.



**Subd. 2. Foreign Ex Parte Orders.** Ex parte foreign injunctions for protection are not eligible for enforcement under this Section unless notice and opportunity to be heard have been provided within the time required by the foreign state or tribal laws and, in any event, within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

**Subd. 3. Domestication.** Persons protected by foreign protection order may domesticate the order according to the following:

- (a) A protected person who has a valid foreign protection order may file that order by presenting a certified or otherwise authenticated copy of the foreign protection order with a Clerk of Court. Any out-of-state department, agency, or court responsible for maintaining protection order records may by facsimile or electronic transmission send a reproduction of the foreign protection order to the Clerk of Court as long as it contains a facsimile or digital signature by any person authorized to make such transmission.
- (b) There shall be a presumption in favor of validity where a protection order appears authentic on its face.
- (c) Filing of a protection order with a court and entry of the foreign protection order into any computer-based criminal intelligence information system available in the United States used by law enforcement agencies to list outstanding warrants are not prerequisites for enforcement of the foreign protection order.
- (d) The Tribal Court shall accept the filing of a foreign protection order without a fee or cost.
- (e) The Clerk of Court shall provide information to a person entitled to protection of the availability of Domestic Violence or other abuse services to victims.
- (f) The Clerk of Court shall assist the person entitled to protection in providing and committing to writing the information necessary to enforce the foreign protection order, including:
  - (1) the name of the person entitled to protection and any other protected parties;
  - (2) the name and address of the person who is subject to the restrain provisions of the foreign protection order;
  - (3) the date the foreign protection order was entered;
  - (4) the date the foreign protection order expires;
  - (5) the source of law for the relief granted, including citations;

- (6) the judicial district and contact information of the court administration for the court in which the foreign protection order was originally entered;
  - (7) the date of birth and description of the person subject to the restraint provisions of the foreign protection order;
  - (8) whether the person who is subject to the restraint provisions of the foreign protection order is believed to be armed and dangerous;
  - (9) whether the persons who is subject to the restraint provisions of the foreign protection order was served by that order, and if so, the method used to serve the order;
  - (10) the type and location of any other legal proceedings between the person who is subject to the restraint provisions and the person entitled to protection; and
  - (11) an inability to answer any of the above questions does not preclude the filing or enforcement of the foreign protection order.
- (g) The Clerk of Court shall provide the person entitled to protection with a copy bearing proof of filing with the Tribal Court.
  - (h) The Tribal Court judge shall review all foreign protection orders filed with the Tribal Court and, upon review, may order a hearing for the sole purpose of ascertaining the validity of the foreign protection order.
  - (i) Any assistance provided by the Clerk of Court under this Section does not constitute the practice of law. The Clerk of Court is not liable for any incomplete or incorrect information that he or she is provided.

**Subd. 4. Transmittal of Filed Foreign Protection Orders to Law Enforcement.** The Clerk of Court shall forward a copy of the foreign protection order that is filed under this Chapter on or before the next judicial day to the Band's law enforcement agency and surrounding local law enforcement agencies.

**Sub. 5. Enforcement.**

- (a) Subject to Subd. 2 of this Section and the limitations herein, law enforcement shall enforce a foreign order for protection against Domestic Violence as if they were entered by the Tribal Court, irrespective of the respondent's residence or the failure to domesticate the foreign order. Upon presentation of a foreign protection order by a protected person, the law enforcement officer shall assist in enforcing all of its terms, except matters related to child custody, visitation, and support. A foreign protection order that includes terms regarding child custody, visitation, and/or support must be domesticated before those terms can be enforced.

- (b) Before enforcing a foreign order for protection, a law enforcement officer should, to the best of the officer's ability, confirm the identity of the parties present and review the order to determine that, on its face, it has not expired or is not otherwise inoperative. Enforcement shall not be a condition on the presentation of a certified or true copy of the protection order, provided that a conflicting certified copy is not presented by the respondent or the individual subject to the order.
- (c) A law enforcement officer shall use reasonable efforts to verify service of process.

## **PART H – FIREARMS**

### **1215. Domestic Violence Defendant in Possession of a Firearm.**

**Subd. 1. Prohibited Acts.** A person who possesses a firearm commits Domestic Violence defendant in possession of a firearm if that person:

- (a) Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, threatening, having contact or assaulting a family or household member or engaging in any other conduct that would place a family or household member in reasonable fear of physical harm, except that this Subsection shall apply only to those orders that:
  - (1) were issued at a hearing at which such person was present and had the opportunity to participate or at a hearing of which such person had notice and the opportunity to be heard, whether or not that person was present;
  - (2) include a finding that such person represents a credible threat to the physical safety of such victim, or victim's family or household member; and
  - (3) by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such family or household member.
- (b) Has been convicted under the law of any state, territory, possession, tribe, or United States military tribunal of any crime involving Domestic Violence, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a dangerous weapon against a family or household member.

**Subd. 2. Penalties.** A person who commits the crime of Domestic Violence Defendant in Possession of a Firearm is guilty of a Class 1 Misdemeanor and, upon conviction, shall be sentenced accordingly.