

BOIS FORTE TRIBAL CODE

PREAMBLE

The purpose of the Bois Forte Tribal Code (BFTC) is to, whenever possible, restore Minobimaadiziwin (the Good Path of Life) to all persons it serves by providing a progressive, non-judgmental path to health and forgiveness, in accordance with the community's traditional practices and values. First and foremost, the Bois Forte Tribal Court shall be guided by the seven defining Anishinabe teachings or core values:

1. *Nibwaakaawin* — Wisdom;
2. *Zaagi'idiwin* — Love;
3. *Minaadendamowin* — Respect;
4. *Zoongide'ewin* — Bravery;
5. *Gwayakwaadiziwin* — Honesty;
6. *Dabaadendiziwin* — Humility; and
7. *Debwewin* — Truth.

If necessary, the presiding Judge may consult a community spiritual leader or elder for guidance when endeavoring to adhere to these principles and the Bois Forte Reservation Council may enact a resolution designating appropriate spiritual leaders or elders available for such consultation.

CHAPTER I – ESTABLISHMENT OF THE COURT

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CHAPTER I – ESTABLISHMENT OF THE COURT

PART A – THE BOIS FORTE TRIBAL COURT

100. Creation of the Court. Pursuant to the inherent and sovereign powers of the Bois Forte Band of Chippewa Indians, there is hereby established the Bois Forte Tribal Court, which may be referred to as the Tribal Court.

101. Jurisdiction.

- (a) **Policy.** It is hereby declared as a matter of Band policy and legislative determination, that the public interest and the interests of the Bois Forte Band of Chippewa Indians demand that the Band provide itself, its members, and other persons living within the territorial jurisdiction of the Band an effective means of redress against Indians who commit criminal offenses within the territory of the Band.
- (b) **Territory.** The jurisdiction of the Tribal Court shall extend to all Indian Country, as defined in 18 U.S.C. §1151, over which the Bois Forte Band has governmental jurisdiction. This territory shall include, but is not limited to, those areas known as the Nett Lake Reservation, the Vermillion Lake Reservation, and Indian allotments on public domain (styled Outside Nett Lake), the Indian title to which has not been extinguished.

102. Judges.

- (a) **Number.** The Tribal Court shall consist of one (1) trial judge, three (3) appeals judges, and not more than two (2) magistrates.
- (b) **Selection.** The trial judge and magistrates shall be elected by the Bois Forte Reservation Tribal Council by a majority vote of the members of the Reservation Tribal Council at a regular meeting. The three (3) appeals judges shall be elected by a majority vote of the members of the Reservation Tribal Council by secret ballot at a regular meeting.
- (c) **Term, Compensation, Qualifications.**
 - (1) The terms of office of such judges and magistrates shall be determined by the Bois Forte Reservation Tribal Council. Provided, however, that a judge or magistrate once appointed shall not have his compensation decreased during his term of office, and no judge or magistrate shall be suspended or removed from office prior to the expiration of his term except as provided hereinafter. Judges and magistrates may be appointed to successive terms of office.
 - (2) No person shall be eligible for election as a judge or magistrate of the Bois Forte Tribal Court unless he or she:

- (A) is at least twenty-five (25) years of age;
- (B) is of good moral character and integrity;
- (C) is capable of preparing papers and conducting hearings incident to the office; and
- (D) has demonstrated to the Bois Forte Reservation Tribal Council knowledge of the Bois Forte Tribal Code and understanding of federal and state laws.

(3) Preference in selection may be given to otherwise qualified persons who have had education or training in Indian law and tribal judiciary or the law in general, or who are actively enrolled in and pursuing such a course or program, or who declare an intention to pursue such a course or program upon election to a magistrate or judge position.

(d) **Removal.** A judge or magistrate may be removed from office prior to the expiration of his term of office by the affirmative vote of three (3) members of the Bois Forte Reservation Tribal Council only for neglect of duty or gross misconduct, and only after a public hearing at which the judge or magistrate, after being given not less than ten (10) days' notice and written charges, is given an opportunity to answer all charges and present evidence in his own defense.

(e) **Disqualification.** The trial judge shall disqualify himself in any case in which he has any direct interest, is or has been a pre-trial witness, or is so related to a party as to render it improper for him to sit in any proceeding on the matter. Upon his disqualification, the appellate court shall appoint a judge to sit on the case. An appellate judge shall be disqualified to hear the appeal in any case in which he has a direct interest, has been a witness at trial, or is so related to a party as to render it improper for him to hear the appeal.

103. Use of Other Judges. Upon disqualification of any judge, or if a judge is unable to preside or sit for other good cause, the Bois Forte Reservation Tribal Council may arrange for the services of another tribal judge, or, if necessary, of any other qualified individual. Such appointment shall be for a designated proceeding and compensation shall be as provided herein.

104. Clerk of Court. The Bois Forte Reservation Tribal Council shall appoint a Clerk of Court who shall serve as clerk for the Tribal Court, the Tribal Court sitting as the Juvenile Division, and the Appellate Court. Such additional assistants as necessary may be appointed. The appointment, qualifications, terms of office, and compensation of clerks shall be determined by the Bois Forte Reservation Tribal Council.

104.1 Clerk's Duties. The Clerk shall render assistance to the court, to the tribal police, and to members of the public in drafting complaints, subpoenas, petitions, warrants, notices of appeal, and other documents required in the functions of the court. The Clerk shall supervise and keep

written records of all proceedings of the court. The Clerk is authorized to administer oaths to witnesses and to collect fines and other monies; and shall account to the Bois Forte Reservation Tribal Council for all monies collected and deposit such monies in a separate account. The Clerk shall be bonded in an amount to be fixed by the Bois Forte Reservation Tribal Council.

105. Magistrate's Duties. The magistrate of the Bois Forte Tribal Court shall have the power to arraign any person charged with an offense under Chapters VI, VII, and VIII of the Tribal Code, to issue warrants and summons in the absence of the Judge, to impose sentence upon any person pleading guilty to any speeding violation under Chapter VII, and to perform any other duties provided by the court rules, as promulgated under Section 433.01.

106. Prosecutor. A prosecutor to represent the Bois Forte Band may be appointed by the Bois Forte Reservation Tribal Council for service when occasion requires and on such terms and conditions as may be fixed by the Bois Forte Reservation Tribal Council. Qualifications for prosecutors shall be determined by the Bois Forte Reservation Tribal Council.

107. Officers of the Tribal Court. Officers of the Bois Forte Tribal Court shall include all police officers and all judges, magistrates, and clerks of the court. The term "police" shall include tribal police and their deputies, and all Bureau of Indian Affairs law enforcement personnel.

PART B – MISCELLANEOUS PROVISIONS

108. Prior Inconsistent Ordinances Repealed. Any and all ordinances of the Bois Forte Reservation Tribal Council which conflict in any way with the provisions of this Law and Order Code are hereby repealed to the extent they are inconsistent with or conflict with, or are contrary to the spirit and/or purpose of this Law and Order Code.

109. Amendment of Code. This code may be amended, additions made hereto, or deletions made here from in the manner provided for the adoption of tribal ordinances. Amendments and additions to this Code shall become a part hereof for all purposes and shall be codified and incorporated herein in a manner consistent with the organization hereof. Any new amendments, additions, or deletions made to the code shall be effective when enacted by the Bois Forte Reservation Tribal Council and received by the Bois Forte Judicial Director.

110. Words Used in Present Tense. Unless otherwise provided, words used in this Code in the present tense include the future as well as the present. Words used in the masculine gender include the feminine and the neuter, and plural includes the singular and vice versa.

111. Construction of the Code. This code, together with any additions hereto which may be enacted, is to be construed according to the plain import of its language. No person shall be punished for an offense which is not made penal by the plain import of the offense's definition upon the pretense that the person has offended against the statute's spirit. Words not specifically defined herein are to be taken according to their ordinary meaning.

112. Applicability of Code - Offense Committed Before Adoption of Code. The provisions of this Code shall not apply nor extend to any act done or offense committed prior to the effective date of the Code, except as to matters of procedure and as to provisions alleviating the punishment to be imposed upon conviction in any case.

113. Choice of Law. When there is a conflict of law or an absence of law pertaining to a legal issue involved in a case, the Court may, in its discretion, utilize laws from other jurisdictions for guidance in the following priority:

- (a) Other Ojibwe tribes;
- (b) Other tribal nations;
- (c) Federal laws; and
- (d) State laws.

PART C – ADMISSION TO THE COURT

114. Representation in Tribal Court.

- (a) Any person brought before the Tribal Court in any proceeding may be represented by counsel of his choice. Such counsel may be a lay person; provided, that the lay person meets minimum criteria as the tribal judge is hereby empowered to establish.
- (b) Any lay person who desires to represent a person before the Tribal Court shall attest to the following:
 - (1) That he will advocate his client’s position;
 - (2) That he will abide by the rules of the Tribal Court and the principles of the Tribal Code;
 - (3) That he has an understanding of the law as it pertains to his client’s case; and
 - (4) That he has not been convicted of an offense involving moral turpitude or dishonesty within the last six (6) months.

The trial judge in his discretion may require the person to demonstrate proof of attestations at subsection (3) and (4) above to satisfaction of the trial judge.

- (c) Except with respect to Section 115, when the term “attorney” is used in this Code it shall be read as including a counselor as provided in this section.

115. Attorneys; Admission to Practice; Rules of Professional Conduct; Discipline.

- (a) **Practice before the Tribal Court.** No attorney shall represent any person in an action before the Tribal Court unless such attorney is duly admitted to practice before the Bois Forte Tribal Court.
- (b) **Practice for Admission.** Any attorney wishing to practice before the Tribal Court shall file a written request for admission with the court, accompanied by a Certificate of Good Standing from the State Bar or Supreme Court of the state in which such attorney is duly licensed to practice law. In addition, the applicant must certify under oath, in writing, that if admitted he will accept and represent indigent clients without compensation or without full compensation, when asked by a judge of the court to do so. Such request shall be accompanied by an admission fee of \$100.00 except that such admission fee may be reduced by the tribal judge upon a showing that the accused will be denied effective counsel if a reduction is not made. No filing fee shall be required in any instance if the applicant is a member of the Bois Forte Band of Chippewa Indians. After submission of the requisite documents and fee, they shall be reviewed by the trial judge who shall, after being satisfied that the requirements have been met, cause the Clerk to enter the attorney's name on the roster of attorneys admitted to practice before the court and to issue a certificate evidencing the same to the attorney. Such entry shall constitute certification to practice before the Bois Forte Tribal Court until such time as the attorney files a notice of retirement, dies, becomes incapacitated, or is suspended or disbarred from practice before the court.
- (c) **Rules of Professional Conduct.** The Tribal Court may, in its discretion, promulgate rules of professional conduct applicable to attorneys admitted to practice before the court, provided that such rules are approved by the Bois Forte Reservation Tribal Council. Any such rules 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 it is submitted for approval.
- (d) **Attorney Discipline.**
- (1) **Disciplinary Authority.** An attorney admitted to practice in this jurisdiction is subject to the disciplinary authority of the Bois Forte Tribal Court, regardless of where the attorney's conduct occurs. An attorney not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the attorney provides or offers to provide any legal services in this jurisdiction. An attorney may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.
- (2) **Attorney Misconduct.** It is professional misconduct for an attorney to:
- (A) Violate or attempt to violate any rules of professional conduct promulgated by this Court, knowingly assist or induce another to do so, or do so through the acts of another;

- (B) Commit a criminal act that reflects adversely on the attorney's honesty, trustworthiness, or fitness as an attorney in other respects;
- (C) Engage in conduct involving dishonesty, fraud, deceit; or misrepresentation;
- (D) Engage in conduct that is prejudicial to the administration of justice;
- (E) State or imply an ability to influence improperly a tribal agency or official or to achieve results by means that violate the rules of the Court or other applicable tribal law;
- (F) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
- (G) Engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status in conduct related to the practice of law; or
- (H) Repeatedly neglect or fail to fulfill professional responsibilities and duties or orders or rules of the court.

(3) **Discipline, Sanction, Disqualification.** The Tribal Court, in its sole discretion, shall have the authority to issue the following forms of discipline for attorney misconduct or violation of rules of professional conduct:

- (A) Disbarment;
- (B) Suspension;
- (C) Public or private censure;
- (D) Sanction; or
- (E) Disqualification.

CHAPTER II – RULES FOR CIVIL PROCEEDINGS

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CHAPTER II – RULES FOR CIVIL PROCEEDINGS

PART A – RULES OF CIVIL PROCEDURE

201. Purpose. The purpose of this Code is to promote the health, welfare, economic security, and political integrity of the Bois Forte Band of Chippewa Indians; to preserve and maintain justice; to accord the equal protection of the laws; and to provide a forum and a civil procedure for the hearing and disposition of disputes involving the Bois Forte Band of Chippewa Indians or persons within the civil jurisdiction of the Bois Forte Band.

202. Authority. This Code is adopted pursuant to the inherent sovereign authority of the Bois Forte Band of Chippewa Indians, as set forth in Article VI of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, and as recognized under the Indian Reorganization Act of 1934.

203. One Form of Action. There shall be one form of action known as a “civil action.”

204. Original Jurisdiction. The Bois Forte Tribal Court shall have exclusive original jurisdiction over all civil actions to which the Bois Forte Band of Chippewa Indians, any of its subordinate entities, programs, or enterprises, or any of its officers and employees in their official capacity are parties, where such action arises within the Nett Lake Reservation, the Lake Vermilion Reservation, or other Indian Country over which the Bois Forte Band exercises jurisdiction (hereafter, “the territory of the Band”).

205. Concurrent Jurisdiction. The Bois Forte Tribal Court shall exercise concurrent jurisdiction with other courts of competent jurisdiction over those civil actions arising within the territory of the Band where such action is recognized as a civil cause of action by the Bois Forte Band of Chippewa Indians, and to which at least one of the real parties in interest is a member of the Bois Forte Band of Chippewa Indians.

206. Sovereign Immunity of the Band. The Bois Forte Band possesses inherent sovereign immunity from suit, and the provisions of this Civil Code and Rules of Procedure shall not be construed as a waiver of such immunity, unless the Bois Forte Reservation Tribal Council has given its express consent to such suit in a valid resolution adopted by the Reservation Tribal Council. No waiver of sovereign immunity may be implied from any action of the Band or its officials, and the bringing of an action by the Reservation Tribal Council or any tribal officer, employee, or agent acting in his or her official capacity shall not be construed as a waiver of sovereign immunity.

207. Actions, Parties, Commencement. The party making the complaint in a civil action before the Bois Forte Tribal Court shall be called the Plaintiff, and the party against whom the complaint was made shall be called the Defendant. A civil action is commenced against each defendant by filing a complaint, along with a twenty dollar (\$20.00) filing fee, with the Clerk of Court. Commencement of an action shall be ineffectual unless a summons is actually served upon the Defendant with the Complaint. No filing fee shall be required of the Bois Forte Reservation Tribal Council or its subordinate entities, programs, or enterprises.

208. Limitations of Time.

Subd. 1. Application; Limitation. Actions can only be commenced within the periods prescribed by this Code after the cause of action has accrued. Except as otherwise prescribed, the following actions shall be commenced within three (3) years:

- (a) Upon a contract, express or implied.
- (b) Upon a liability created by an ordinance of the Bois Forte Band of Chippewa Indians.
- (c) Trespass upon real estate, forcible entry, or unlawful detainer.
- (d) For taking, detaining, or injury to personal property, including actions for the specific recovery thereof.
- (e) For any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated.
- (f) For libel, slander, assault, battery, false imprisonment, or other tort resulting in personal injury.

Subd. 2. Periods of Disability Not Counted. Any of the following grounds of disability existing at the time when a cause of action accrued, or arising any time during the period of limitation, shall suspend the running of the period of limitation until such disability is removed:

- (a) That a party has not attained the age of 18.
- (b) A party's insanity.
- (c) A party is not a resident of the territory of the Band.

Where two or more disabilities coexist, the suspension shall continue until all are removed.

Subd. 3. Exceptions. Exceptions to the three-year period during which a suit must be brought are as follows:

- (a) Where a party is incarcerated;
- (b) Where a party is in military service;
- (c) Where a party is willfully absent for the purpose of avoiding suit; or
- (d) Where the cause of action is a claim of the Bois Forte Band which arose more than three years prior to the effective date of this Code and continued in existence as of such date.

209. Complaint. A complaint shall contain the following information:

- (a) The name of the Bois Forte Tribal Court;
- (b) The names of the parties;
- (c) A short and plain statement of the claim showing that the pleader is entitled to relief;
and
- (d) A demand for judgment for the relief to which the pleader deems himself to be entitled. If the demand is for property, a definite description of the property shall be made. If the demand is for money, the amount demanded shall be stated.

210. Summons. A summons shall contain the following:

- (a) The name of the Bois Forte Tribal Court;
- (b) The names of the parties;
- (c) The signature of the Clerk of Court;
- (d) It shall state that the Defendant has 20 days following service in which to serve his answer; and
- (e) It shall notify the Defendant that failing to answer the complaint and to serve his answer within 20 days will result in a default judgment against him and an award by the Court of the relief requested in the complaint.

211. Form. The Court may prescribe a form that includes both complaint and summons.

212. Service of Complaint. A copy of the complaint shall be served with the summons.

213. Service. Service of a summons within the territory of the Bois Forte Band of Chippewa shall be made upon an individual residing or physically present within the territory of the Band by delivering a copy of the complaint and summons to him personally, to his attorney, or by leaving a copy of the complaint and summons at his usual place of abode with some person of suitable age and discretion residing there. As an alternative to personal service, a copy of the complaint and summons may be mailed to the Defendant at his last known address by Certified Mail with a return receipt requested. In actions to recover possession of real or personal property or to foreclose on a mortgage, service may be by publication in a newspaper of general circulation in the territory of the Band, provided that the notice must describe the property and the nature of the action in a manner capable of being understood by a reasonable person. An affidavit of publication shall be filed with the Court.

214. Service; When Required. Service is required, pursuant to Section 213, for all claims, pleadings, notices, appearances, motions other than those heard ex parte, order and judgments of the Court and appeals, except that no service shall be required where a party has defaulted for failure to appear or where the party has received notice by the Court.

215. Service; How Made. Service by the Bois Forte Tribal Court may be made by any peace officer authorized to enforce the laws of the Bois Forte Band or by a designated agent of the Court who is not a party to the action, on any person within the jurisdiction of the Court or their competent agent or representative.

216. Return of Service. The officer or person causing the service to be made shall attach to the summons and file with the Bois Forte Clerk of Court a Return of Service stating the place, date, time, and person on whom the service was made. If service was made by Certified Mail, the return receipt shall be filed with the Clerk of Court.

217. Filings. All pleadings, affidavits, and other papers in connection with a civil action shall be filed with the Clerk of Court unless otherwise provided by this Code or by order of the Court.

218. Facsimile Transmission. Any paper may be filed with the Court by facsimile transmission, provided that the original signed document is filed with the Court within five (5) days, along with the \$5.00 transmission fee and any applicable filing fee. Failure to comply with this rule may result in a striking by the Court of any subject pleadings or parts thereof, staying of further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

219. Answer.

Subd. 1. Generally. The Defendant shall state, in short and plain terms, his defenses to each claim asserted by the Plaintiff. The original answer shall be filed with the Bois Forte Clerk of Court, and a copy of the answer shall be mailed by the Defendant to the Plaintiff within the time period prescribed by Section 210(d).

Subd. 2. Types of Defenses. The answer may contain the following types of defenses to the claim asserted by the adverse party:

- (a) Admission to the entire claim or to any part of the claim.
- (b) Denial of the entire claim or of any part of the claim.
- (c) A statement that the pleading party is without knowledge or information sufficient to form a belief as to the truth of the claim or any part of the claim. This statement shall have the same effect as a denial of the claim.
- (d) A statement that the Court lacks jurisdiction over the subject matter of the action or over the parties.

- (e) A statement that the facts stated by the adverse party do not constitute a cause of action for which relief can be granted.
- (f) A statement that the action is barred by the statute of limitations.
- (g) Any and all other matters constituting avoidance of the claim shall also be stated.

220. Counterclaim. The defendant may assert in his answer a counterclaim stating any claims that he has against the Plaintiff relating to the same subject matter, and in that event the Plaintiff shall have 10 days from the date of service of the counterclaim upon him to file an original of his reply to the counterclaim with the Bois Forte Clerk of Court and to serve a copy of the reply upon the Defendant. The original reply to the counterclaim shall be filed by the Clerk of Court.

221. Third-Party Intervention. Any third party seeking to intervene as a plaintiff or defendant in an action brought before the Bois Forte Tribal Court may file such motions as appear necessary, together with supporting briefs and affidavits, where such party's interest is direct and substantial and is otherwise brought in accordance with the provisions of this Code. The standing of such party and the disposition of such claims shall rest with the sound discretion of the Court.

222. Time. In computing any period of time prescribed or allowed by these rules, Saturdays, Sundays, or holidays recognized by the Bois Forte Band of Chippewa shall not be counted.

223. Pre-Trial Conferences. Within 15 days after the answer has been filed with the Bois Forte Clerk of Court, the Clerk shall schedule a pre-trial conference and shall notify the parties of the time, date, and place of the conference. At the pre-trial conference, the presiding judge shall ascertain the following:

- (a) Whether or not some or all of the issues in the dispute can be settled without adjudication;
- (b) Whether or not justice requires any party to answer written interrogatories, produce any documents, or other evidence or otherwise engage in any pre-trial discovery considered proper by the judge. If the judge determines that pre-trial discovery is proper, he shall set forth the nature, extent and time schedule for its completion;
- (c) Whether or not the claim is ready for trial:
 - (1) if the claim is ready for trial, the judge shall set a date for trial as soon as practicable; or
 - (2) if the claim is not ready for trial, the judge shall set a subsequent date for trial; and

- (d) Whether or not resolution is required of constitutional or evidentiary issues. Constitutional and evidentiary issues must be raised in writing at the first pre-trial conference.

224. Issuance of Subpoenas.

Subd. 1. Upon request of any party or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. An officer of the Court may issue a subpoena on behalf of the Court where it has been signed by a judge and when where it is to be served within the territory of the Bois Forte Band of Chippewa.

Subd. 2. A subpoena shall bear the name of the Bois Forte Tribal Court and the signature of the authorizing judge, shall state the name of the person or a description of the physical evidence subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

225. Service of Subpoenas. A subpoena shall be served in the manner prescribed under Sections 213-216 of this Code.

226. Failure to Obey a Subpoena. In the absence of a compelling justification, a party who fails to obey a subpoena issued by the Bois Forte Court in accordance with the provisions of this Code may be cited and held in contempt of the Court.

227. Trials. All trials shall be court trials.

228. Trial Procedure. In a civil case, the trial shall proceed in the following order:

- (a) The Plaintiff shall orally state his case and then shall produce the evidence and witnesses on his part.
- (b) The Defendant may then state his case and produce his evidence and witnesses in support of his case.
- (c) The parties may then respectively offer rebuttal evidence only.
- (d) When the evidence has been concluded, the parties may present closing arguments with the Defendant proceeding first.
- (e) When the arguments are closed, the Court shall deliberate, and may issue a ruling from the bench or render a written opinion within 10 days.

229. Standards of Evidence and Proof.

Subd. 1. Testimonial and Physical Evidence. All testimony of witnesses shall be given orally under oath in open Court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open Court. Findings shall be based upon competent evidence only. The hearing shall be conducted so as to ascertain the substantial rights of the parties.

Subd. 2. Standard of Proof. The party asserting a claim in a civil matter before the Bois Forte Tribal Court shall have the burden of proving the claim so asserted by a fair preponderance of all the evidence.

230. Application of Federal Rules. The Bois Forte Tribal Court may, in its sound discretion, resolve interpretational, procedural, or evidentiary issues arising under this Code by reference to the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

231. Civil Contempt of Court. Any person who demonstrates intentional disobedience or disregard towards the authority of the Bois Forte Tribal Court, or who engages in the disorderly disruption of the proceedings of the Court, shall be held in contempt of court and shall be subject to a civil fine not to exceed two hundred dollars (\$200.00), and/or removal from the courtroom.

232. Judgment Definitions; Requirements. A judgment shall be entered in each civil case. The Judgment shall be for money, for other relief, or for dismissal. A judgment is complete and is entered when it is signed by the judge and filed with the Bois Forte Clerk of Court. A judgment may include, in the court's discretion, all reasonable costs and disbursements made by the prevailing party in pursuing or defending the action, including, but not limited to, filing fees, service of process fees and mileage, attorney's fees, witness fees, discovery fees, or other costs reasonably incurred in the maintenance of the action.

233. Judgment by Default. When a party against whom a judgment for relief is sought has failed to defend or otherwise answer the claim in accordance with the provisions of this Code, and that fact is made to appear by an affidavit, judgment by default shall be entered by the presiding Judge against the non-answering party for the relief in which the party in whose favor the judgment is rendered, sought in his pleading. The judgment by default shall not be different in kind or exceed in amount prayed for in the demand for judgment.

234. Satisfaction of Judgment. A judgment may be satisfied in whole or in part as to any or all of the judgment debtors by the owner of the judgment executing under oath and filing with the Clerk of Courts an acknowledgement of satisfaction specifying the amount paid and whether it is full or partial satisfaction.

235. Judgment Constitutes a Lien. A judgment shall constitute a lien on any property subject to judgment as defined by Section 240 of this Code. Notice of this lien may be placed by the judgment creditor with the appropriate public agency.

236. Life of Judgment. No judgment of the Court for money shall be enforceable after five (5) years of filing with the Clerk of Court, unless application to renew the judgment has been filed before the expiration pursuant to Section 237.

237. Renewal of Judgment. Upon application of the judgment creditor prior to the expiration of five (5) years after the date of the filing of a judgment for the payment of money, the Clerk of Court shall renew the judgment and extend it for an additional five (5) years.

238. Enforcement of Judgment. If any final judgment for money rendered by the Bois Forte Tribal Court is not satisfied within thirty (30) days of its filing by the Clerk of Court, it may be executed or enforced in a manner consistent with Sections 240 and 241 of this Code, provided that a certified copy of the judgment has been served upon the party to whom it is directed, and if that party refuses to obey the judgment, he may be held in contempt of court.

239. Stay of Judgment. Except as provided in this section, no execution or enforcement of a judgment shall be issued until the expiration of the 30 days after its filing. When an appeal has been taken from the judgment, the Court may stay the enforcement of its judgment or it may stay or grant an injunction during the pendency of the appeal on such terms as it considers just for the security of the adverse party to the appeal.

240. Property Subject to Judgments. The following property of the judgment debtor shall be subject to the satisfaction of judgments issued by the Bois Forte Tribal Court:

- (a) Up to twenty percent of the judgment debtor's net earnings as an employee of the Bois Forte Reservation Tribal Council or any of its subdivisions or subordinate entities.
- (b) Any moneys held by the Reservation Tribal Council or its subdivisions or subordinate entities in the name of the judgment debtor including any per capita payments made by the Band to its members except to the extent prohibited by federal law.
- (c) Any real or personal property and monies of the judgment debtor, as provided under Minnesota law including Minnesota Statutes Chapter 550.
- (d) The Court may order a judgment debtor disclosure in the form and manner set forth in Minn. Stat. § 550.11.

241. Execution of Judgment. Upon application to the Court by the judgment creditor, the Court shall issue a Writ of Execution. The Writ of Execution shall refer to the judgment, the names of the parties to the judgment, the amount of the judgment, and the date and time that the judgment was entered. The Writ shall then be directed to the appropriate officer or division of the Bois Forte Reservation Tribal Council or its subordinate subdivision or entity.

PART B – RULES FOR SMALL CLAIMS

242. Applicability. Sections 242 through 251 apply to all small claims proceedings in the Bois Forte Tribal Court.

243. Small Claims Defined. “Small claims” means civil claims in which the amount of money or property that is the subject matter of the claim does not exceed \$7,500.00, and over which the Bois Forte Tribal Court has jurisdiction as provided in Sections 204 and 205.

244. Commencement of Action. An action is commenced against a defendant when a statement of claim as required by Section 245 is filed with the Bois Forte Clerk of Court and the applicable fee is paid as provided in Section 207.

245. Statement of Claim, Contents. Each statement of claim and each counterclaim shall be made in the form approved by the Court and shall contain a brief statement of the amount and nature of the claim, including relevant dates, and the name and address of the plaintiff and defendant. The Clerk of Court shall assist with the completion of the statement of claim and counterclaim upon request. Each statement of claim and each counterclaim shall also be signed and sworn by the party, or the lawyer representing the party in the presence of a notary public or the Clerk of Court.

246. Summons; Trial Date; Service.

- (a) **Trial Date.** When an action has been properly commenced, the Clerk of Court shall set a trial date and prepare a summons. Unless otherwise ordered by a judge, the trial date shall not be less than 10 days from the date of mailing or service of the summons.
- (b) **Contents of Summons.** The summons shall state the amount and nature of the claim; require the defendant to appear at the trial in person or if a corporation, by officer or agent; shall specify that if the defendant does not appear judgment by default may be entered for the amount due to the plaintiff, including fees, expenses, and other items provided by law or by agreement, and where applicable, for the return of property demanded by the plaintiff; and shall summarize the requirements for filing a counterclaim.
- (c) **Service on Plaintiff.** The Clerk of Court shall summon the Plaintiff by first class mail.
- (d) **Service on Defendant.** The Clerk of Court shall summon the Defendant by certified mail and proof of service must be filed with the Clerk, provided that service on a Defendant whose address is within the territory of the Band may be by first class mail or personal service as provided in Section 213.

247. Failure to Serve Defendant. If the summons is not properly served on the Defendant and proof of service filed with the Clerk of Court within sixty (60) days after issuance of the summons, the action shall be dismissed without prejudice.

248. Counterclaims.

- (a) **Counterclaims Allowed.** The Defendant may assert a counterclaim which the Defendant has against the Plaintiff, arising out of the transaction or occurrence which is the subject matter of Plaintiff's claim.
- (b) **Assertion of Counterclaim.** To assert a counterclaim the Defendant shall perform all the following not less than five days prior to the date set for trial of Plaintiff's claim:
 - (1) File with the Clerk of Court administrator a counterclaim required by Section 245; and
 - (2) Pay to the court administrator the applicable fee prescribed in Section 207.
- (c) **Clerk's Duties.** The Clerk of Court shall assist with the preparation of the counterclaim on request. When the counterclaim has been properly asserted, the Clerk shall note the filing of the counterclaim on the original claim, promptly mail notice of the counterclaim to the Plaintiff and set the counterclaim for trial on the same date as the original claim.
- (d) **Late Filing.** No counterclaim shall be heard if filed less than five days before the trial date of a plaintiff's claim except by permission of the judge, who has discretion to allow a filing within the five-day period.

249. Settlement. If the parties agree on a settlement prior to trial, each party who has made a claim or counterclaim shall promptly advise the court in writing that the claim or counterclaim has been settled and that it may be dismissed.

250. Trial.

- (a) **Trial Format.** Trial shall be as provided in Part A of this Chapter.
- (b) **Representation by Counsel.** The parties shall appear in person and may be represented by an attorney admitted to practice before the Bois Forte Tribal Court. A corporation or a governmental entity may be represented by an authorized agent or employee.
- (c) **Conciliation; Judgment.** The judge may attempt to conciliate disputes and encourage fair settlements among the parties. If at the trial the parties agree on a settlement, the judge shall order judgment in accordance with the settlement. If no agreement is reached, the judge shall hear, determine the cause, and order judgment. Written findings of fact or conclusions of law shall not be required.
- (d) **Failure of Defendant to Appear.** If the Defendant fails to appear at the trial, after being summoned as provided in these rules, the judge may hear the Plaintiff and may:

(1) Order judgment in the amount due to the Plaintiff, including fees, expenses and other items provided by law or by agreement, and where applicable, order return of property to the Plaintiff; or

(2) Otherwise dispose of the matter.

(e) **Failure of Plaintiff to Appear, Defendant Present.** Should the Plaintiff fail to appear at the trial, but Defendant appears, the judge may hear the Defendant and may:

(1) Order judgment of dismissal on the merits or order a dismissal without prejudice on the Plaintiff's statement of claim, and, where applicable, order judgment on Defendant's counterclaim in the amount due the Defendant, including fees, expenses and other items provided by law or by agreement, and where applicable, order return of property to the Defendant; or

(2) Otherwise dispose of the matter.

(f) **Continuances.** On proper showing of good cause, a continuance may be granted by the court on request of either party.

251. Vacation of Judgment. When a default judgment or judgment of dismissal on the merits has been ordered for failure to appear, the judge within twenty days after notice was mailed may vacate said judgment order ex parte and grant a new trial on a proper showing by the defaulting party of lack of notice, mistake, inadvertence, or excusable neglect as the cause of that party's failure to appear.

CHAPTER III – RULES OF APPELLATE PROCEDURE

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CHAPTER III – RULES OF APPELLATE PROCEDURE

301.01 Purpose. The purpose of this Appellate Code is to promote the health, welfare, economic security, and political integrity of the Bois Forte Band of Chippewa Indians; to preserve and maintain justice; to accord the equal protection of the laws; and to further provide due process of law by creating an appellate panel to review criminal and civil decisions of the Bois Forte Tribal Court and by adopting rules of appellate procedure.

302.01 Creation of the Bois Forte Court of Appeals. There shall be a Bois Forte Court of Appeals consisting of appellate justices who may consent from time to time to sit on a panel of three to hear appeals from the Bois Forte Tribal Court. The Bois Forte Reservation Tribal Council shall approve a standing slate of appellate justices authorized to hear appeals.

302.02 Appellate Justices, Qualifications. At least one or more of the appellate justices selected for each appellate panel shall be learned in law as evidenced by graduation from an accredited law school and having been admitted to practice before a tribal, state, or federal court. Each of the justices shall be knowledgeable about the Bois Forte Tribal Court Code, the Minnesota Chippewa Tribe constitution and by-laws, the Indian Civil Rights Act, 25, U.S.C. Section 1301-03, and the Indian Child Welfare Act, 25 U.S.C., Section 1901 et seq.

302.03 Term of Office. Each of the appellate justices selected for the standing panel shall be appointed for a term of four (4) years and may be reappointed at the end of their terms.

302.04 Compensation. The Reservation Tribal Council shall from time to time set the amount, terms, and nature of compensation of the appellate justices.

302.05 Duties. The duties of the appellate justices selected to sit on a panel shall be to meet as needed for the purpose of fairly, impartially, and timely considering appeals from decisions of the Bois Forte Tribal Court as authorized by the provisions of this Chapter and to render their written opinion as to the merits of the appeal. One law trained member of each panel shall be designated as the Chief Justice and his or her duties are to:

- (a) Preside over the panel hearing the appeal.
- (b) Assign to one member of the panel, which may be himself/herself, the task of writing the opinion of the Court of Appeals.
- (c) Ensure that each of the remaining members of the panel have reviewed that written opinion and have either joined in, concurred in whole or part, dissented in whole or part, or have written a separate opinion which shall be reviewed by the other panel members.
- (d) Confer with the other panel members and rule upon any motions directed by any party to the Court of Appeals pursuant to this Chapter by issuing such orders as may be necessary to carry out such ruling.

302.06 Vacancies. The Reservation Tribal Council shall promptly fill any vacancy in the standing panel that may occur because of the death, disablement, disqualification, resignation, or removal of an appellate justice, by making temporary appointments if necessary.

302.07 Disqualification of an Appellate Justice. An appellate justice is disqualified to sit on the appeal of any case in which:

- (a) The justice has a direct interest in the outcome.
- (b) The justice performed some role in the trial of the case such as a witness, an advocate, a juror, an arbitrator, or any similar function.
- (c) The justice is so related to any party as to bring into question the justice's ability to render an impartial decision.

302.08 Removal. An appellate justice may be removed from office by the Reservation Tribal Council for just cause including but not limited to dereliction of duty, bribery, abuse of power, and unethical conduct or conduct that reflects unfavorably upon the Bois Forte Band of Chippewa. Any such removal shall be in accordance with the Bois Forte Tribal Court Code provisions for removal of trial judges.

303.01 Clerk of Appellate Court. The Clerk of Court for the Bois Forte Tribal Court shall serve as Clerk for the Court of Appeals. She or he may be assisted by a deputy clerk or clerks as needed for the efficient administration of the work of the Court of Appeals. Such deputy clerks shall be under the supervision of the Bois Forte Judicial Administrator and may be part or full-time and/or perform other outside duties that do not interfere with the function of the appellate court.

303.02 Selection of Appellate Panels. Upon the filing of an appeal, the Clerk of Court shall promptly select justices to serve on the appellate panel by lot or draw from the list of justices approved by the Bois Forte Reservation Tribal Council and shall insure that at least one of the panel members is law-trained as set forth in Section 302.02 of this code.

303.03 Duties of Clerk of Appellate Court. The Clerk of Court serving as the appellate court clerk shall promptly file all papers, pleadings, orders, materials, etc. in each appellate case; assign an appellate court file number to each appeal; ensure that each appellate justice is provided with a copy of the entire appeal file; file and serve upon all parties the written opinion of the Court of Appeals together with any concurring, dissenting, or separate opinions; and perform any other functions necessary to carry out the purpose of this Chapter.

304.01 Jurisdiction of the Court of Appeals. The Bois Forte Court of Appeals shall have exclusive jurisdiction to review decisions of the Bois Forte Tribal Court as provided in this Chapter.

304.02 Who May Appeal. Any party adversely affected by a decision of the Tribal Court in a civil case, including civil child protection and conservation cases, may appeal subject to

provisions set forth in Section 304.04. Any defendant in a criminal proceeding may appeal a conviction, a sentence, or any other adverse decision of the Tribal Court subject to the provisions set forth in Section 304.04. Any juvenile respondent in a delinquency proceeding and/or his or her parent, guardian, or custodian, adversely affected by a decision of Tribal Court may appeal subject to the provisions of Section 304.04. The prosecution in a criminal case and in a juvenile delinquency case adversely affected by a decision of the Tribal Court may appeal any such decision subject to the provisions of Section 304.04; provided, however, no appeal can be taken by the prosecution from a jury verdict or Tribal Court finding of not guilty or a finding in a delinquency proceeding that no delinquency occurred.

304.03 Joint and Consolidated Appeals. If two or more parties are entitled to appeal from a judgment or order in the same action and their interest are such as to make joinder practicable, they may file a joint Notice of Appeal or may join in the appeal after filing separate timely Notices of Appeal and they may then proceed on appeal as a single appellant. Appeals in separate actions may be consolidated by Order of the Court of Appeals on its own motion or upon motion of a party.

304.04 Subject of Appeal. An appeal is properly before the Court of Appeals if it concerns:

- (a) A final order or judgment of the Tribal Court;
- (b) A criminal conviction arising from a jury or trial court verdict; or
- (c) An order of the Tribal Court affecting a substantial right and which determines the action and prevents a judgment from which an appeal can be made.

304.05 Scope of Review. In reviewing a matter upon appeal, the Court of Appeals may:

- (a) Increase or decrease a sentence imposed in a criminal case but no sentence can be increased beyond the limit set by the Bois Forte Criminal Code for the offense upon which the conviction was based.
- (b) Affirm, modify, vacate, set aside, or reverse any judgment, decree, or order of the Tribal Court including any conviction of a criminal offense, a probation violation, or a finding of delinquency.
- (c) Remand the case and direct entry of any judgment, decree or order, or require such further proceedings in the Tribal Court that are determined to be just and equitable under the circumstances.

305.01 Time Period for Appeal.

- (a) **Criminal Cases.** An appeal to the Court of Appeals in criminal cases shall be made no later than thirty (30) calendar days after entry of the jury verdict or, in court trials, probation violations, sentencing, and the like, no later than thirty (30) calendar days after the issuance by the Tribal Court of its written or oral judgment or order.

- (b) **Juvenile Delinquency Cases.** An appeal to the Court of Appeals in juvenile delinquency proceedings shall be made no later than thirty (30) calendar days after the issuance by the Tribal Court of its written or oral judgment or order.
- (c) **Civil Cases.** An appeal to the Court of Appeals in civil cases shall be made no later than twenty (20) calendar days after entry of the written judgment or order of the Tribal Court.
- (d) **Untimely Appeals.** Subject to the exception contained in subsection (e) below, failure to file an appeal with the period provided by this Section deprives the Court of Appeals of subject matter jurisdiction to hear the appeal. Late appeals shall be denied filing by the Clerk of Court.
- (e) **Grounds for Granting Late Appeals.** The Court of Appeals may, at its discretion, grant leave to appeal after the expiration of the time allowed for filing, only upon a showing, supported by a sworn affidavit, that there is merit to the appeal and that the late filing was not due to appellant's negligence.
- (f) **Entry Defined.** A judgment or order from which an appeal may be taken is "entered" when it is filed by the Clerk of Court and mailed to the parties at their last known address or to their attorney of record, if any.
- (g) **Calculating Time to File Appeal.** The day an order or judgment is entered shall not be counted in computing the number of days to file an appeal. If the 30th day to file an appeal falls on a Saturday, Sunday, or legal holiday, the party filing the appeal shall have until the next regular business day to file.

306.01 Notice of Appeal; Procedure.

- (a) **Filing and Service Required.** An appeal is made by filing by a written notice of appeal with the Clerk of Court and serving said notice on the opposing party or parties.
- (b) **Content of Notice of Appeal.** The Notice of Appeal shall bear the caption and case number of the case in Tribal Court be labeled "Notice of Appeal" and shall contain the following:
 - (1) Proof of service on the adverse party or parties;
 - (2) The names, addresses, telephone numbers, and email addresses, if any, of opposing counsel and the parties they represent of the parties, if unrepresented by counsel;
 - (3) The date and the decision maker (judge or jury) of the decision being appealed;

- (4) A statement specifying, identifying, and describing the verdict, judgment, or order from which the appeal is being taken. If the decision is in written form certified copy of the decision must be attached to the Notice of Appeal;
 - (5) A brief statement summarizing the reasons for the appeal. If the appeal is based upon an alleged violation of the Bois Forte Tribal Court Code and/or the Indian Civil Rights Act by the Tribal Court, a copy of the section(s) of the Tribal Code and/or federal statute alleged to have been violated shall be attached to the Notice of Appeal; and
 - (6) The Notice of Appeal shall be accompanied by a statement of case and by payment of the filing fee or, in lieu thereof, an affidavit of indigency unless no filing fee is required pursuant to Section 306.04 below.
- (c) **Appellant's Statement of Case.** The appellant's statement of case shall be in writing and contain a brief summary of the case's history in the Tribal Court; a concise statement of the facts admitted into evidence before the Tribal Court; a listing of the issues being raised upon appeal and how those issues were decided, if at all, by the Tribal Court; the need, if any, for briefing and or oral argument before the Court of Appeals; and the desired outcome being sought by appellate review.
- (d) **Respondent's Statement of Case.** The respondent(s) may file a statement of case, which shall be in writing and conform to the format required of the appellant by this Section. Respondent's statement of case shall set forth any differences as to the case history, evidentiary facts, issues and Tribal Court rulings, the perceived need for briefing and/or oral argument, and the desired outcome of the appellate review. Respondent's statement of case shall be served upon the appellant and filed with the Clerk of Court no later than fifteen (15) calendar days after service of the Notice of Appeal.

306.02 Docketing of Appeal. Upon receipt of the Notice of Appeal and any filing fee required by the Court of Appeals, the Clerk of Court shall docket the appeal, assign an appellate court file number, and notify the appellate judges of the pending appeal.

306.03 Service. Service of the Notice of Appeal and all other papers required to be served by this Chapter upon any party shall be made personally or by first class mail, sufficient postage affixed, addressed to the recipient at his or her residence, last known address the party has provided to the Clerk of Court, or addressed to his or her legal counsel, if any. Service by mail is complete on mailing; however, whenever a party is required or permitted to do an act within a prescribed period, three (3) calendar days shall be added to the prescribed period after service by mail.

306.04 Filing Fee. There shall be no fee required for an appeal from any decision in a criminal or juvenile delinquency proceeding. There shall be no fee required in any appeal, filed by or behalf of the Bois Forte Band of Chippewa, its agencies, divisions, and/or employees acting in

their official capacity. There shall be no fee required of an appellant in a civil proceeding who has filed a sworn affidavit of indigence or has been found by either the Tribal Court or the Court of Appeals to be indigent. In all other cases, there shall be a filing fee of One Hundred (\$100.00) Dollars, to be paid at the time of filing to the Clerk of Court.

306.05 Bond. Upon notification of the filing of an appeal of a civil judgment or order or criminal fine, the Tribal Court may order the filing of a bond or cash equivalent thereof in an amount sufficient to guarantee payment or satisfaction of the judgment or fine, including costs, in the event the judgment or fine is affirmed on appeal. The Court of Appeals may waive this requirement upon the petition of the appellant.

307.01 Effect on Decision by Filing Appeal. The filing of an appeal does not cause an automatic stay of the decision appealed. A motion seeking a stay shall be addressed in writing to the Court of Appeals either before or after the filing of the Notice of Appeal. In criminal appeals, the appellant may be released on bail, or continued to be released on bail, pending the final determination of the appeal.

308.01 Record of Appeal. Upon receiving the Notice of Appeal, the Clerk of Court shall compile for transmittal to the Court of Appeals the record of the case, consisting of:

- (a) **Pleadings, Orders, and Judgments.** All written documents filed with the Tribal Court, including, but not limited to, pleadings, reports, notices, depositions, orders, judgments, jury instructions, and verdicts, shall constitute the written record of the case on appeal. The Clerk of Court shall certify the contents of the records as true, correct, and complete as part of the transmittal to the Court of Appeals.
- (b) **Hearing Transcript(s).** The Clerk of Court shall also prepare a computer disc copy of the proceedings in Tribal Court for each party and each member of the appeals panel. Any party may request a typed transcript of the proceedings in the trial court. Any justice sitting on the appellate panel may request that the proceedings in the trial court transcribed in which case copies of said transcript shall be furnished to all parties without charge. The cost of a transcript requested by any party shall be borne by that party unless waived by written Order of the Tribal Court pursuant to a petition for waiver of costs, bond, and/or fees. The party requesting a transcript may specify, in writing to the Clerk which proceedings or part thereof, is necessary for the Court of Appeals to review the Tribal Court's decision. If only portions of the proceedings are requested, any other party may request in writing within fifteen (15) calendar days of the initial request, transcription of any other portion and shall pay the costs of preparation to the Clerk unless waived by written Order of the Tribal Court pursuant to a petition or motion for waiver of costs.
- (c) **Notice of Record Transmittal.** The Clerk of Court shall serve upon each of the parties and file with the Court of Appeals a notice of transmittal of the record, identifying each item included therein, together with a copy of any transcript.

- (d) **Effect of Transmittal.** No appeal issue may be considered by the Court of Appeals until the Notice of Record Transmittal has been served and filed with the appellate court clerk.

309.01 Briefing. The appellant shall file a written brief concerning the issue(s) on appeal in order to assist the Court of Appeals in its review. The following requirements for briefing shall apply:

- (a) **Time to File Brief.** The appellant shall file its brief within thirty (30) calendar days of receiving notice of transmittal of the record to the Court of Appeals. If respondent wishes to file a brief, he/she must do so within fifteen (15) calendar days of receiving appellant's brief. A reply brief, limited only to previously unaddressed matters raised in respondent's brief, may be submitted by the appellant within fifteen (15) calendar days of receiving respondent's brief.
- (b) **Format of Briefs.** Briefs shall be typewritten, double-spaced, on white paper 8 ½ by 11 inches in size. No brief shall exceed thirty (30) pages in length, including its table of contents, table of authorities, statement of facts, and statement of case. Reply briefs shall not exceed fifteen (15) pages. Four (4) copies of each brief shall be submitted for filing to the Court of Appeals. One copy of each brief shall be served upon each opposing party and an Affidavit of Service shall be filed with the appellate court clerk.
- (c) **Content of Briefs.** The appellant's brief shall contain a short statement of the case's history and a listing of the issues presented on appeal and how, if at all, the issues were decided. All briefs shall contain a table of contents, a table of authorities, an argument, a conclusion, and a listing of attached exhibits, if any.

310.01 Oral Argument. If any of the parties have requested oral argument and/or if any of the appellate justices believes that oral argument will be helpful, the Chief Justice shall order that the same be scheduled to be heard after briefing is completed. Written notice of such scheduling date, time, and place shall be sent to the parties and/or their counsel. The length of the oral argument shall be determined by the appellate judges and shall be stated in the notice scheduling oral argument. Oral argument may be held through teleconference or video conferencing technology in the discretion of the Chief Justice of the panel hearing the appeal.

311.01 Motions Before the Court of Appeal. Any party requesting action by the Court of Appeals on a matter unrelated to its decision on a pending appeal, such as waiver of filing fee or stay pending appeal, shall file a written motion with the Clerk of the Court serving as the appellate court clerk clearly stating the action requested and the reasons why the Court should do what is asked of it. Any motion shall be served upon all other interested parties, who may file within five (5) calendar days of receipt a response with the Court of Appeals indicating agreement or disagreement with the motion and the reasons therefor. The Court of Appeals shall issue a written order disposing of any motion filed.

312.01 Standard of Review. In deciding an appeal, the Court of Appeals shall apply the following standards:

- (a) A finding of fact by a judge shall be sustained unless clearly erroneous.
- (b) A finding of fact by a jury shall be sustained if there is any admissible and credible evidence to support it.
- (c) A factual inference by a judge or a jury shall be reviewed as a finding of fact if more than one reasonable inference can be drawn from the fact(s).
- (d) A finding, whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact.
- (e) A conclusion of law shall be reviewed without deference to the trial court's determination, *i.e.*, review is de novo.
- (f) A stipulated uncontested fact is reviewed as a conclusion of law.
- (g) An unambiguous contract term is reviewed as a conclusion of law.
- (h) A matter that is a mixture of law and fact is reviewed by the standard applicable to each element.
- (i) A matter that is determined as within the Tribal Court's discretion shall be sustained if it is reflected in the record that the Tribal Court exercised its discretionary authority and applied the appropriate legal standard to the facts.
- (j) A sentence and the imposition of fine, forfeiture, and/or other penalty, excluding the assessment of damages, shall be reviewed as a discretionary authority of the Tribal Court.
- (k) A matter committed to the discretionary authority of the Tribal Court shall not be subject to the substituted judgment of the Court of Appeals.

313.01 Issues Preserved on Appeal. In deciding an appeal, the Court of Appeals shall consider issues pursuant to these requirements:

- (a) Unless a miscarriage of justice would result, the Court of Appeals shall not consider issues that were not raised before the Tribal Court.
- (b) An issue not raised before the Tribal Court nor raised in the Notice of Appeal in either the appellant's or the respondent's statement of case shall not be reviewed by the Court of Appeals.

- (c) No issue that is moot at the time of briefing or oral argument shall be decided by the Court of Appeals unless it is capable of repetition yet likely to evade review by its nature.
- (d) Facts that are not in the record shall not be presented to the Court of Appeals and, if presented, shall not be considered by that Court.

314.01 Content of Order or Judgment Appeal. Orders and judgments subject to an appeal shall contain the following in order to facilitate justice by the Court of Appeals:

- (a) In any proceeding tried to a judge without a jury, the judge shall make separate findings of facts and conclusions of law. The Tribal Court may do this orally on the record in open court or issue a written opinion and order.
- (b) In the absence of findings of fact by the Tribal Court, the Court of Appeals may affirm the judgment if supported by the record, reverse the judgment if the record does not support it, or remand the case for the issuance of findings and conclusions.

315.01 Decisions of the Court of Appeals. All decisions of the appellate court upon appeal, and all determinations of motions, shall be made as follows:

- (a) **Panel Majority.** Any decision of the Court of Appeals shall be made by the majority of judges on the panel. If no majority is reached on a decision, the jury verdict, order or judgment of the Tribal Court is upheld.
- (b) **Content.** In the exercise of its jurisdiction, the decision of the Court of Appeals shall be in written form which shall state the facts and issues to be decided, the rules of law applied, and the reasoning of the Court. The Chief Justice shall select the justice, including himself/herself, to write the decision, which, upon completion, shall be circulated among the panel members. If the decision receives the approval of one or more of the remaining justices, it shall be the majority decision of the Court.
- (c) **Dissenting Opinion.** Any member of the panel who disagrees with the majority decision in whole or part may issue a written dissent, which shall comply with the content requirements of subsection (b) above and be circulated among the panel members for their consideration. If the dissenting opinion receives majority approval, it shall become the majority decision in whole or in part as the case may be.
- (d) **Order.** The Court of Appeals shall issue an order conforming to the decision, which shall direct the Tribal Court in its disposition of the case that is the subject of the appeal. Such order shall include the continuance or termination of any order relating to a stay and the posting of bond. The order, or a subsequent order entered pursuant to a proper motion served and filed by either party, shall address the issue of reimbursement of costs, if any, incurred by the prevailing party.

- (e) **Distribution of Decision.** Within two (2) calendar days of issuance, the Clerk of Court serving as the appellate court clerk shall transmit by first class mail a copy of the decision to each interested party, to the Clerk of the Tribal Court; and to the editor of the Bois Forte News or other appropriate publication, and shall inform all of the date on which the decision was filed.
- (f) **Official Reporter.** Any decision that determines an issue of law shall be exported to the official reporter of the Court of Appeals. The Indian Law Reporter is designated as the Court's official reporter.

316.01 Voluntary Dismissal. If the parties to an appeal execute and file with the appellate court clerk a stipulation that the proceedings be dismissed, the matter will be dismissed upon approval of the Court of Appeals.

316.02 Involuntary Dismissal and/or Sanctions. The Court of Appeals may, after a hearing upon its own motion or motion of any aggrieved party, issue an order dismissing the appeal, taxing costs, or imposing reasonable sanctions against a party which has failed or neglected to comply with the provisions of this Code and said failure or neglect has resulted in unreasonable delay and/or harm to the other party.

317.01 Remand. The Clerk of Court serving as the appellate court clerk shall transmit the entire record of the Tribal Court, together with the decision and order of the Court of Appeals and any motions and orders made in furtherance thereof, to the Clerk of Tribal Court within fifteen (15) calendar days of disposition.

318.01 Rules of Court. A majority of the justices of the Court of Appeals may make and amend such rules as are deemed by them from time to time appropriate for the proper and efficient administration of the Court. Such rules shall be filed with the appellate court clerk. The Bois Forte Judicial Administrator shall promptly transmit a copy of such rules as issued to the Bois Forte Reservation Tribal Council for its approval and copies shall be made available as issued to the editor of the Bois Forte News or other appropriate publication, to all persons admitted to practice before the Tribal Court, and to all interested parties to an appeal.

CHAPTER IV – RULES FOR CRIMINAL PROCEEDINGS

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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 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 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 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

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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.

522.01-599.99 Reserved for future use.

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

CHAPTER VI – CRIMES AND OFFENSES - VIOLATIONS

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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)

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 an act against an elder or vulnerable adult that constitutes a violation of or an attempt to violate:
 - (1) Assault as defined in Sections 603.01 through 603.06 or Section 608.05 (Indecent Exposure)
 - (2) Sex crime as defined in Part C;

In addition, abuse means:

- (3) 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

- (4) 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) “Caregiver” means 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.
- (c) “Elder” means a person who is 55 years of age or older.
- (d) “Financial exploit” means:
- (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.
- (e) “Neglect” means 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:
- (1) 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
 - (2) Which is not the result of an accident or therapeutic conduct.
- (f) “Vulnerable adult” means any person eighteen (18) years or older who:
- (1) Is a resident or inpatient of a facility or receives services from a licensed medical, therapeutic, or home care provider;
 - (2) 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. 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)

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) “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.

(Resolution 39-2018; November 1, 2017)

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 VII – RULES FOR CHILDREN’S COURT

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CHAPTER VII – RULES FOR CHILDREN’S COURT

PART A – GENERAL PROVISIONS

701. Children’s Court. While proceeding under this Chapter, the Court shall be termed the Bois Forte Children’s Court.

702. Purpose. This Chapter shall be liberally interpreted and construed as an exercise of the inherent sovereignty of the Bois Forte Band of Chippewa to fulfill the following express purposes:

- (a) Children are the Band’s most vital and cherished resource. The Band’s future depends on the health and well-being of its children. Children have a sacred right to receive the care and guidance necessary for their spiritual, emotional, mental, and physical development. Feeling pride from their identity as Anishinabe will help them grow into strong, healthy responsible adult Band members.
- (b) To embody and promote the basic traditional values of the Band regarding the protection and care of the tribe’s children. The Band believes that it is the responsibility of the Band, its communities, and its extended families to protect, care for, and nurture our children. The Band recognizes that individual families may at times struggle to care for and guide their children in a healthy and meaningful way and is committed to providing services and supports, when necessary, on both a voluntary and involuntary basis, to support and strengthen families.
- (c) To promote the belief of the Band that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language, religion, and values.
- (d) To provide for the safety and well-being of the Band and its members and residents by affording judicial processes addressing offenses and violations of Bois Forte laws committed by juveniles and conferring jurisdiction upon the Bois Forte Children’s Court to hear such matters.
- (e) To afford judicial processes which allow for formal adjudications that address the issues of the rights, responsibilities, care, custody, and control of minor children when parents, guardians, or custodians are unable or unwilling to provide a safe, stable, nurturing, and permanent environment for their children by conferring jurisdiction upon the Bois Forte Children’s Court to hear and adjudicate such matters.
- (f) To ensure that children receive their rightful care, and to protect them from abuse and neglect, by helping and treating families, and placing children when necessary for their care. Specifically:

- (1) The Children's Court shall protect the rights and interests of its young and unborn by proceeding with a course of action that will provide for the welfare, care, and protection of its children and their families;
- (2) To preserve the unity of the family, by separating the children from their parents and siblings, only as a course of last resort;
- (3) To take action that will best meet the mental, physical, emotional, and spiritual needs of the children, and preserve the interest and culture of the Bois Forte Band;
- (4) To recognize and acknowledge the traditional customs and practices of the Band regarding child rearing;
- (5) To preserve and strengthen children's cultural ethnic identity whenever possible;
- (6) To provide procedures for intervention in state court proceedings involving Indian Children and for the transfer of jurisdiction over Indian children from state and other tribal courts to the Bois Forte Children's Court;
- (7) To secure the rights of and ensure fairness to the children, their parents, guardians, custodians, extended family members, and other parties who come before this Court under the provisions of this Chapter, and
- (8) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention, and community based alternatives.

703. Definitions. The following terms shall have the meanings described below for the purposes of this Chapter:

- (a) "Abandon" means failure of an able parent or legal custodian of a child to provide for the necessary physical, emotional, and financial support and care of the child as required by the child's age and development for a period of six months.
 - (1) Services in the U.S. Armed Forces, Custody with extended family, out of home placement during Child Protection Proceedings, and voluntary consent to placement of a child, or Incarceration of a parent or legal custodian will not support a finding of abandonment unless the parent or legal custodian ceases contact with the child and fails to arrange for care of the child.
 - (2) Failure to maintain contact with the child and to maintain a substantial and positive relationship with the child, without cause, for a period of one year shall constitute prima facie evidence of abandonment.

- (b) “Active Efforts” means the provision of appropriate, available, and meaningful services to the family and the child based upon that family’s specific needs and may include, but are not limited to, financial assistance, food, housing, health care, transportation, in-home services, community support services, identification and engagement of extended family and community members to support the child’s family and to provide permanency for the child, and specialized services through the pendency of the case or through voluntary services.
- (c) “Adequate Care means sustaining a meaningful and positive relationship with the child that supports the child’s physical, spiritual, and emotional development and needs.
- (d) “Adoptee” means a child who is adopted or is to be adopted.
- (e) “Adoptive Parent” means a person who has established or is seeking to establish a permanent parent-child relationship with a child who is not their biological child.
- (f) “Adult” means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
- (g) “Best Interests of the Child” means a variety of factors including: the ability of the tribe and reservation community to provide for the care of the child; the wishes of the tribe, parents, party, or parties; the preference of the child if the child is of sufficient age to express a preference; the intimacy of the relationship between the parties and the child; the child’s adjustment to home, school, and tribal community; the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; the permanence, as a family unit, of the existing or proposed adoptive home; the mental and physical health of all individuals involved; the capacity and disposition of the parties to give the child love, affection, guidance, and to continue educating the child in the child’s tribal culture and heritage.
- (h) “Best Interest of the Tribe” means a variety of factors including but not limited to the ability of the tribe and its members to provide for the child; the ability of the tribe and its members to provide for the continuation of the tribe’s culture, language, history, religion, traditions, and values through its children if those children are taken away and not taught these things throughout their daily lives. The ability of the Tribe to continue as a viable cultural entity will be hindered by the loss of its children. Every child is a gift from the creator and is viewed by the Tribe as crucial to the future of the tribe as a whole.
- (i) “Birth Parent” means the biological parent of a child.
- (j) “Child” means an unmarried person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction and includes the unborn child of a pregnant female.

(k) “Child Born Out of Wedlock” means a child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.

(l) “Child in Need of Protective Services (CHIPS)” means a child:

- (1) Who has no parent(s), guardian, or custodian available and willing to care for him;
- (2) Who has suffered domestic violence as defined by Chapter XII, Section 1208, Subdivision 4, Bois Forte Tribal Code, or who has witnessed domestic violence and court intervention is necessary to protect the child from physical, emotional, or mental harm;
- (3) Whose home environment is so dysfunctional because of the abuse of alcohol or drugs by others in the household that court intervention is necessary to protect the child from physical, emotional, or mental harm;
- (4) Whose parent(s), guardian, or custodian is unwilling to provide adequate food, clothing, shelter, medical care, education, or supervision necessary for the child’s health and well-being, or whose parent(s), guardian, or custodian is willing but unable to provide the same without court intervention;
- (5) Who has committed delinquent acts because of parental pressure, guidance, approval, or failure to properly supervise;
- (6) Who, prior to birth and during the mother’s pregnancy, has been so exposed to the use of alcohol or other chemicals that a substantial danger exists that the child may suffer physical and/or mental harm without court intervention;
- (7) Who, due to his emotional or mental health, poses a danger to himself or to others;
- (8) Who is habitually truant, a runaway or unwilling to allow his parent(s), guardian, or custodian care for him, or who violates the Band’s “Curfew” ordinance, Section 640.01;
- (9) Who is alleged to have committed delinquent acts while under seven (7) years of age; or
- (10) Who is a sexually exploited minor.

(Resolution 39-2018; November 1, 2017)

- (m) “Citation” means a short form summons and complaint ordinarily used by law enforcement in adult criminal, traffic, and conservation violations, which may also be used by law enforcement for juvenile traffic and conservation violations.
- (n) “Court” means the Bois Forte Children’s Court, a division of the Bois Forte Tribal Court.
- (o) “Court Administrator” means the Judicial Administrator or Chief Clerk or their designee of the Bois Forte Tribal Court.
- (p) “Custodian” means a person, other than a parent or guardian, to whom legal custody of the child has been given or a person, other than a parent, guardian or legal custodian, who has actual physical custody and control of a child.
- (q) “Customary Adoption” means a traditional tribal practice recognized by the community and the Band that gives a child a permanent parent-child relationship with someone other than the child’s biological parent(s).
- (r) “Delinquent Act” means an act that if committed by an adult would constitute an offense in violation of the Band’s criminal, traffic, or conservation code.
- (s) “Domicile” means a person’s permanent home, legal home, or main residence. The domicile of a child is generally that of the custodial parent, guardian, or custodian. Domicile includes the intent to establish a permanent home or place where the child’s parent, guardian, or custodian considers his permanent home.
- (t) “Extended Family” means a person who is the child’s grandparent, great-aunt or uncle, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.
- (u) “Family Member” means a person related by blood or marriage who maintains some form of significant contact with the child. The term includes spouses, parents, children, siblings, aunts, uncles, grandparents, grandchildren, cousins, significant others, and any other persons who might be considered a family member or a relative under tribal law or custom.
- (v) “Father” means a man married to the mother at any time from a child’s conception to the child’s birth unless the child is determined to be a child born out of wedlock, or a man who legally adopts the child, or a man whose paternity is established in one of the following ways:
 - (1) The man and the mother of the child acknowledge that he is the child’s father in writing executed and notarized and filed in accordance with applicable tribal or state law;

- (2) The man and the mother file a joint written request for a correction of the certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the birth;
 - (3) The man acknowledges the child, without the acknowledgment of the mother, with the approval of the court; or
 - (4) A man, who by order of filiation or by judgment of paternity, is determined to be the father of the child.
- (w) “Final Decree of Customary Adoption” means the final court order which establishes the permanent legal relationship between the child and the adoptive parent(s) and establishes any contact which may be allowed with the biological parent.
- (x) “Final Order Suspending Parental Rights” means a final order of the court that permanently suspends the rights of a biological parent to provide for the care, custody, and control of their child. Said order may establish the parameters of contact between the birth parent and the child if said contact is in the child’s best interests.
- (y) “Guardian” means a person, other than a parent, assigned by a court of law who has legal duty and authority to provide care and control of a child.
- (z) “He/His” means he or she, him or her, and singular includes plural.
- (aa) “Immediate danger” means a hazard, peril, or harm that is currently present and is likely to affect the physical, mental, or emotional wellbeing of the child.
- (bb) “Indian” means any member of a federally recognized Indian tribe, band, or community, or Alaska Natives; any person so defined by federal or state law, and any person of indigenous descent who holds himself out to be an “Indian” person and is recognized by the Bois Forte community as such.
- (cc) “Indian Child” means a child whose mother or father is an “Indian” as defined above.
- (dd) “Juvenile” or “Minor” means a person under the age of eighteen (18) years.
- (ee) “Juvenile Offender” means a juvenile offender is a child who has committed an act that would be designated as a crime if committed by an adult under the laws of the Bois Forte Band of Chippewa Indians. The term “Juvenile Offender” does not include a juvenile alleged to have engaged in conduct which would, if committed by an adult, violate any provision of the Bois Forte Band’s criminal code relating to being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual contact.

(Resolution 39-2018; November 1, 2017)

- (ff) “Least Restrictive Alternative” means the placement alternative that is the least restrictive method, in terms of restrictions to be placed upon the child and family, of obtaining the objectives of the Court and this Chapter.
- (gg) “Legal Custody” unless otherwise agreed to by the parties or limited by order of a court having jurisdiction, means the right to determine a minor child’s upbringing, including education, health care, and religious training.
- (hh) “Legal Standing” means that the person or entity has a sufficient connection to and harm from the potential outcome of the case that warrants their participation in that portion of the case proceedings.
- (ii) “Parent” means a person who is legally responsible for the control and care of the child, including a mother, father, guardian, custodian, or a natural or adoptive parent or any person who has assumed legal responsibility for the control and care of a child, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
- (jj) “Participant” is any individual or entity who has right to attend hearings and to make the Court aware of the strengths and needs of the family and children, including, but not limited to:
- (1) Financially responsible agency;
 - (2) Grandparents;
 - (3) Extended family members living in the home of the child;
 - (4) Foster parents; and
 - (5) Any other person or entity upon motion and approval by the Court.
- (kk) “Party” is any individual or entity who has the right to attend hearings, to receive copies of records pertaining to themselves or their duties under this Chapter, to file motions, to be heard on matters before the court, to call witnesses at trial or contested hearing, including, but not limited to:
- (1) Parents;
 - (2) Band;
 - (3) Protective Services Agency;
 - (4) Guardian Ad Litem, where appointed by the Court; and

- (5) Any other person or entity upon motion and approval by the Court.
- (ll) “Probation Officer” means staff persons of the Children’s Court who monitor and supervise the restrictions related to probationary status imposed by the Court.
- (mm) “Protective Services Agency” means the agency, department, or division of the Bois Forte Band, or of any other tribe, county, or state which is required by applicable law to provide protective services to children and to investigate allegations of child abuse and/or neglect.
- (nn) “Responsible Person” means a person who is of adequate age, maturity, and morals and who has the ability and authority to provide for the child’s care in the absence of a parent or custodian.
- (oo) “Suspension of Parental Rights” means the suspension of the rights of biological parents to provide for the care, custody, and control of their child.
- (pp) “Tribe” and/or “Band” means the Bois Forte Band of Chippewa Indians.
- (qq) “Tribal Council” means the Bois Forte Reservation Tribal Council.
- (rr) “Tribal Court” means the tribal court of the Bois Forte Band of Chippewa Indians.
- (ss) “Tribal Health & Human Services” mean the agencies, divisions, and/or departments of the Tribe which provides health, human, and social services to the residents and guests of the Bois Forte Band of Chippewa Indians.
- (tt) “Truant” means failing or refusing without justifiable cause to comply with the requirements of any duly enacted Band ordinance requiring compulsory education of Indian children residing within the boundaries of the Bois Forte Reservation or, in the event no such ordinance has been enacted or does not apply to the child in question, failing or refusing to comply with the requirements of Chapter 122A.22, Minnesota Statutes (2007), and any subsequent amendment thereof, requiring compulsory instruction of children within the State of Minnesota.

704. Jurisdiction of the Bois Forte Children’s Court. Except as provided herein, the Bois Forte Children’s Court shall have:

- (a) Exclusive original jurisdiction, regardless of any other court proceedings, concerning any Indian child over the age of seven (7) years who commits a delinquent act within the territorial jurisdiction of the Bois Forte Band of Chippewa Indians.
- (b) Jurisdiction over any child alleged to be in need of protective services who is found, domiciled, or resides within the territorial jurisdiction of the Bois Forte Band of Chippewa Indians.

- (c) Jurisdiction over the child's immediate family and over the child's extended family residing in the household whenever the court deems it appropriate and necessary to carry out its responsibility to protect the child and prevent family dysfunction.
- (d) Jurisdiction over any adult whose behavior causes or tends to cause the child to come within the jurisdiction of the Court.
- (e) Jurisdiction over any proceeding that is transferred to the Children's Court by a state or tribal court.
- (f) Jurisdiction to hear petitions for child in need of protection and services, petitions for appointment of guardians for children, petitions for suspension of parental rights, petitions for decrees of customary adoption, and petitions for awards of permanent custody of children.
- (g) Once jurisdiction over a child has been exercised by the Children's Court, the Court shall maintain jurisdiction over the child after the case closes despite the domicile of the child.
- (h) Jurisdiction over a juvenile offender under this Chapter shall remain after he attains the age of eighteen (18) if he has committed an offense prior to such age and one or more of the following conditions exist:
 - (1) He has not been arraigned on a juvenile offender petition;
 - (2) He has been arraigned and the matter is still pending for adjudication;
 - (3) He has been arraigned and adjudicated but the terms imposed at the time of a dispositional hearing, including an order for restitution, have not been satisfactorily completed or he remains on probations;
 - (4) He has not been referred to stand trial as an adult, or
 - (5) He has not attained the age of nineteen (19).

705. Conduct of Hearings. The Court shall conduct all hearings pursuant to this Chapter in an informal but orderly manner and insuring that the respective parties are fully informed of and understand their due process rights. In any hearing related to a petition commenced pursuant to this Chapter, the general public may be excluded and only such persons admitted as are parties and/or as proper and necessary to the proceeding.

706. Record of the Proceedings. In all proceedings conducted pursuant to this Chapter, the Court shall take and preserve an accurate stenographic or recording of the proceeding. In addition, the Clerk of Court shall prepare and keep minutes of each hearing.

707. Service by Publication. In any proceeding commenced pursuant to the provisions of this Chapter where a responding party cannot be located for either personal service or for service by mail, the Court may order service of a summons or of notice of hearing to be made by publication in the Bois Forte newspaper and in any other regularly published newspaper serving the area where the respondent is thought to be. A copy of the order authorizing such service and an affidavit of service by publication shall be filed as a part of the court record.

708. Notice to Financially Responsible County Agencies. In any proceeding commenced pursuant to this Chapter where court-ordered placement of the child in relative care, other foster care, or in residential treatment is contemplated, and where a county agency and/or the State of Minnesota may be expected to pay some or all of the costs of any such out-of-home placement or residential treatment, notice of hearing shall be provided to the financially responsible county agency and it shall have the right to appear and take part as an interested party. It shall also be entitled to receive copies of all documentary evidence considered by the Court and to receive copies of all Findings and Orders entered by the Court in those proceedings.

709. Court Files and Records. All files and records in a proceeding under this Chapter are open to inspection only by:

- (a) The judge(s), officer, and professional staff of the Court;
- (b) The parties to the proceeding, their counsel(s), and their representatives;
- (c) A public or private agency or institution providing supervision or having custody of the child under an order of the Court;
- (d) A court and its staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in the Children's Division; and
- (e) With leave of the Court, any other person, agency, or institution having a legitimate interest in the proceeding or the work of the Court.

710. Right of Appeal. Any party aggrieved by a final order, judgment or decree of the Children's Court arising under the provisions of this Chapter may appeal such order, judgment, or decree to the Bois Forte Court of Appeals in accordance with the procedures set forth in Chapter III of the Bois Forte Tribal Code.

711. Severability. If any provision of this Chapter, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Chapter which can be given effect without the invalid provisions, and to this end the provisions of this Chapter are declared severable.

PART B – JUVENILE OFFENDERS

712. Apprehension of Juvenile Offenders. An alleged juvenile offender may be apprehended and taken into custody by a law enforcement officer:

- (a) Pursuant to a court order under this Chapter;
- (a) If the juvenile has committed an offense in violation of the Bois Forte Tribal Code and the offense has occurred in the presence of the officer;
- (b) If the officer has probable cause to believe that the juvenile arrested has committed an offense in violation of the Bois Forte Tribal Code;
- (c) If the officer has a proper warrant or detention order from a federal, state, or other tribal court having jurisdiction commanding the arrest or detention of the said juvenile, or the officer knows for a certainty that such a warrant or detention order has been issued, or
- (d) If there is probable cause to believe that the child has run away from his parent(s), guardian, custodian, or court-ordered placement and would continue to run if not temporarily placed in a secured facility.

713. Temporary Detention of Juvenile Offenders.

- (a) Unless otherwise ordered by the Court, an alleged juvenile offender who has been apprehended pursuant to Section 712, above, shall be released to the custody of his parent(s), guardian, or custodian upon their promise to bring the alleged offender before the Court in the event a citation is issued or a juvenile offender petition is filed.
- (b) In the event the parent(s), guardian, or custodian cannot be found or either refuse or are not in a condition to reasonably care for and/or supervise the alleged offender then he shall be temporarily placed in a suitable home, shelter, or juvenile detention facility until such time as a petition is filed.
- (c) In no event shall an alleged juvenile offender be placed in a jail or similar facility for the incarceration of adults.

714. Use of Citations. A law enforcement or conservation officer may issue a citation in lieu of a juvenile offender petition in those instances where the alleged offense is a violation of either the Bois Forte Conservation Code or the Bois Forte Traffic Code. The citation shall contain, at a minimum, the name, address, age and date of birth of the alleged offender, the date and location of the alleged offense(s), the section(s) of the tribal code alleged to have been violated, a short statement of fact (*example: speeding; 55 in 30 mph zone*), and the day, time and place of the juvenile offender hearing. A copy of the citation shall be given by the officer to the alleged juvenile offender or to his parent, guardian, or custodian who shall be responsible for ensuring that the juvenile subsequently appears before the Court.

715. Commencement of Juvenile Offender Proceedings. A juvenile offender proceeding shall be commenced either by filing the original of a citation issued pursuant to Section 714, above, or by filing a juvenile offender petition as provided herein.

716. Juvenile Offender Petition.

- (a) **Authorization to File.** The Chief of the Bois Forte Police Department or his designee is authorized to file on behalf of the Band, a petition alleging that a minor subject to the jurisdiction of the Tribal Court is a juvenile offender.
- (b) **Contents of Petition.** The juvenile offender petition shall set forth the following with specificity:
 - (1) The name, birth date, age, sex, residence, and tribal affiliation of the juvenile;
 - (2) The basis for the Court's jurisdiction;
 - (3) The specific allegations that cause the juvenile to be an offender, including the specific code provision(s), if any, alleged to be violated;
 - (4) A plain and concise statement of facts upon which the allegations of juvenile offender are based, including the date, time, and location at which the alleged facts occurred;
 - (5) The names, residences and tribal affiliation of the juvenile's parents, guardians, or custodians, if known;
 - (6) If the child is in temporary detention, the location of placement and the facts on which the determination to place was based, including the time and date of placement; and
 - (7) Law enforcement investigation or incident reports, truancy officer's reports, school attendance records, or any other similar documents that relate to the offense(s) shall be included by reference with copies attached.
- (c) **Verification.** The petition shall be sworn to and signed in the presence of the Clerk or of a notary by a law enforcement officer having knowledge of the facts upon which the petition is based who shall affirm that the same are true and correct to the best of his knowledge and belief and that the allegations set forth probable cause to believe that the minor is a juvenile offender.

717. Time Limitations. If an alleged juvenile offender has been placed in temporary detention without a court order, a juvenile offender petition shall be filed with the Court and a preliminary hearing held within 72 hours, excluding weekends and holidays, following such placement or the juvenile shall be released from detention. This hearing may be conducted by telephone conference call and shall be recorded.

718. Summons and Notice. After a juvenile offender petition has been filed, the Court shall timely schedule a preliminary hearing thereon and shall direct the issuance of a Summons and Notice of Hearing to be served, together with a copy of the petition and all attachments, upon the minor and his parent(s), guardian, or custodian requiring them to appear before the Court at the time fixed to answer the allegations of the petition and directing that the person having physical custody and control of the minor to bring the minor to the hearing. Service may be made personally by a law enforcement officer, including leaving the same with a responsible adult at the minor's usual place of abode, or by USPS mail addressed to the minor's parent(s), guardian, or custodian with sufficient postage attached thereto. The person making service shall file an affidavit of service with the court.

719. Preliminary Hearing. After the petition has been filed and served, the Court shall conduct a preliminary hearing for the purpose of informing the minor and his parent(s), guardian, or custodian of the nature of the proceedings, the rights of the parties, the allegations giving rise to the petition, and the consequences in the event the allegations are proven to be true.

(a) **Absence of Parent at Preliminary Hearing.** If the child's parent, guardian, or custodian is not present at the preliminary hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the child's parent, guardian, or custodian, the Court may continue the matter for a reasonable period of time and direct the Clerk or petitioner to make continued efforts to obtain the presence of the child's parent's, guardian or custodian. However, the preliminary hearing may be conducted in the absence of the parent(s), guardian, or custodian if they cannot be located.

(b) **Rights of the Parties.** The Court shall inform the parties that they have the following rights:

(1) **Generally.**

(A) To be represented by counsel of their choosing at their own expense or by the Band's Public Defender if his services are available;

(B) To be provided with a copy of the juvenile offender petition, any attachments to it, and with copies of all documents, records, reports, or similar materials the prosecution may possess or have access to which may tend to prove or disprove the allegations contained in the petition;

(C) To request and be granted a reasonable continuance for the purpose of obtaining and/or consulting with counsel;

(D) To be informed of the possible consequences in the event the Court finds that the minor committed the delinquent acts alleged in the petition, and

(E) To be provided with notice as to the date, time, and place of any and all future hearings before the Court.

(2) **The Alleged Juvenile Offender.** In addition to the above, the alleged juvenile offender shall have the following rights:

(A) To either admit or deny the petition;

(B) To have a trial before the Court on the merits if a denial is entered and to be presumed innocent until and unless found by proof beyond a reasonable doubt to have committed the delinquent acts alleged in the petition;

(C) To be informed of all evidence and all witnesses that the prosecution may be aware and to cross-examine all witnesses called to testify by the prosecution;

(D) To produce evidence and call witnesses to testify on his own behalf should he so desire and to utilize the subpoena powers of the Court to compel the attendance of any such witnesses or the production of such evidence;

(E) To remain silent and not be required to testify nor shall any failure to testify be construed against him; and

(F) To voluntarily waive any and/or all of the above stated rights either orally on the record in open court or in a writing sworn and executed before the Clerk or a notary and filed with the Court.

720. Admission or Denial. Unless the preliminary hearing is otherwise continued for cause, the minor shall then either admit or deny the allegations contained in the petition.

(a) **Denial.** If the petition is denied, the matter shall be set for a pre-trial or an adjudicatory hearing and the minor shall be released to the custody of his parent(s), guardian, or custodian under such terms and conditions as may be necessary to ensure his future appearance before the Court and to adequately protect the minor, any alleged victims and the community at large. The minor shall not be kept in detention unless an evidentiary showing has been made that the minor represents a danger to himself or to others or will not appear for future hearings.

(b) **Admission.** If the petition is admitted, sworn testimony shall be taken from the minor so as to form a factual basis for the acceptance of the admission following the Court may proceed immediately to disposition or it may continue the matter for a reasonable period to obtain chemical dependency and/or psychological evaluations and recommendations, school reports, records of delinquent acts, if any, and

dispositions in other jurisdictions, home studies, and an any other reports, materials, testimony or other evidence which may assist the Court in making the best possible disposition.

721. Adjudicatory Hearing. An adjudicatory hearing shall be a trial on the merits of the petition to the court without a jury. The alleged juvenile offender shall be presumed to be innocent until proven to have committed the delinquent act(s) by proof beyond a reasonable doubt. The burden of proof shall remain with the prosecution until the case is submitted for consideration. The order of trial shall be as follows:

- (a) **Opening Statements.** Opening statements as to the facts to be proven by the evidence may be given by the Band Prosecutor, followed by the alleged juvenile offender or his counsel provided that the latter's opening statement may be deferred until presentation of the respondent's case.
- (b) **Prosecution's Evidence.** The Band's prosecutor shall open the case and offer evidence in support of the petition. The respondent or his counsel shall have the right to question any witness called to testify by the prosecutor.
- (c) **Respondent's Evidence.** The respondent or his counsel may then open their case and offer evidence in support of the denial of the petition but are under no obligation to do so. The alleged juvenile offender may testify under oath if he so chooses but cannot be compelled to testify. The prosecutor shall have the right to question any witness, including the respondent, called to testify by the respondent.
- (d) **Rebuttal.** The prosecution may call or recall any witness for the purpose of rebutting any evidence submitted by the respondent and the respondent may similarly rebut any new evidence offered by the prosecution.
- (e) **Final Argument.** When all of the evidence is before the court and both parties have rested their case, the prosecutor, followed by the respondent or his counsel, may argue the case to the court.
- (f) **Findings and Judgment.** After hearing all of the evidence and the arguments of counsel and weighing and considering the same, the Court may take the matter under advisement before rendering its findings and judgment in writing or it may enter it from the bench followed by a written judgment or order. If the Court finds the allegation that the minor is a juvenile offender has not been established by proof beyond a reasonable doubt, it shall dismiss the petition and further order the minor to be released and returned to his parent(s), guardian, or custodian in the event the minor is being held in detention or temporary placement. If the Court finds the allegation that the minor is a juvenile offender has been established by proof beyond a reasonable doubt then, in such an event, the Court shall proceed to a dispositional hearing

722. Dispositional Hearing. A dispositional hearing shall be conducted to determine measures to be taken by the Court with respect to the child properly within its jurisdiction and, when applicable, against any adult, once the Court has determined following trial, plea of admission or no contest that the child comes within its jurisdiction.

- (a) **Time for Hearing.** The dispositional hearing may be held immediately after the adjudicatory hearing. The interval if any, between the adjudicatory hearing and the dispositional hearing is within the discretion of the Court. When the minor is in temporary detention or out-of-home placement, the interval may not be more than 60 days except for good cause. If the dispositional hearing is not held immediately after the adjudication, notice of hearing may be given by scheduling it on the record in the presence of the parties but written notice shall also be served in accordance with Section 718, above.
- (b) **Pre-disposition Investigation and Evaluations.** The Court may order the probation officer and/or the Bois Forte Divisions of Health or Human Services or any other agency of the Band to conduct an investigation of the minor's circumstances, including his schooling, living arrangements, record (if any) in this or other juvenile courts, and to render a written report and recommendations. The Court may also order the minor and any adult who is a party to the proceeding to submit to an evaluation to determine the need, if any, for counseling, treatment, or education pertaining to chemical dependency, anger management, mental health, or other condition affecting the ability of the child to remain safely in the home. The Court's order shall also include a requirement that the minor or adult so ordered to be evaluated execute a waiver and release of information so that copies of the evaluation will be timely received by the Court and can be provided to the prosecutor and the minor and/or his counsel.
- (c) **Evidence.** All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value, even though such evidence may not be otherwise admissible at an adjudicatory hearing or trial.
 - (1) The parties shall be given an opportunity to examine and controvert written reports so received and may cross-examine individuals making reports when such individuals are reasonably available.
 - (2) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court ordered examination, interview or course of treatment.
- (d) **Dispositional Order.** The Court shall enter an order of disposition after considering the pre-disposition investigation report(s), evaluations, and recommendations, if any, and any other evidence offered bearing on disposition. The Court may order

compliance with all or part of any recommended treatment plans and may enter such orders as it considers necessary in the interest of the minor and of the Band.

- (e) **Dispositional Alternatives.** The Court may order any one or more of the following dispositions, including placing the juvenile offender on supervised or unsupervised probation for either a specific or an indefinite period of time; ordering him to perform community service, and:
- (1) Permit the juvenile offender to remain with his parent, guardian, or custodian subject to such reasonable terms and conditions, including house arrest with or without an ankle bracelet, as the Court may prescribe;
 - (2) Place the juvenile offender with a suitable relative or a licensed or unlicensed foster home subject to such reasonable terms and conditions, including house arrest with or without an ankle bracelet, as the Court may prescribe
 - (3) Place the juvenile offender in a chemical dependency treatment center, group home, or a residential care facility designated by the Court subject to such reasonable terms and conditions as the Court may prescribe;
 - (4) Place the child in a juvenile offender facility designated by the Court;
 - (5) In addition, the Court may require any juvenile offender to pay a fine commensurate with the fine which would be imposed on an adult convicted of the same offense or, in the case of conservation violations, the Court may impose a civil fine or remedial forfeiture commensurate with that which would be imposed upon an adult found to have committed the same offense. A juvenile offender who is without the resources to pay a fine or civil remedial forfeiture may perform community service in lieu thereof subject to approval by the Court;
 - (6) The Court may also require a juvenile offender to pay restitution for any damage, including medical or similar expenses suffered by the victim(s), resulting from his delinquent act(s).

723. Dispositional Review Hearings.

- (a) **Initiation of Review.** The Court in its discretion or at the request of the petitioner, the probation officer, the juvenile offender or the juvenile offender's parent, guardian or custodian may conduct a dispositional review hearing.
- (b) **Notice of Review.** Notice of review hearing shall be provided on the record or by ordinary mail as provided in Section 714.
- (c) **Purpose and Content of Review.** The purpose of the review hearing shall be to determine the extent, if any, of the juvenile offender's compliance with the

dispositional order; the progress, if any, that has been made in any treatment or rehabilitative program and the need, if any, to restructure the dispositional order to facilitate any such progress.

724. Violation of Probation. A juvenile offender who is alleged to have violated the terms of any probation imposed shall be brought before the Court for a hearing to determine (a) if he has violated the terms of his probation and (b) if so, what additional or further consequences may be imposed. Notice of a probation violation hearing shall be served upon the minor and his parent, guardian, or custodian in the same manner as set forth in Section 718, above. The same rights, burden of proof, standard of proof, and procedures for an adjudicatory hearing shall apply with regard to a probation violation hearing. If the Court finds that the minor did not violate the terms of probation, the proceeding shall be dismissed. If the Court finds that the terms of probation were violated it may order execution of any previously suspended consequences or it may impose any further consequences as provided in Section 722(e), above, except it cannot impose a greater monetary fine or amount of restitution than originally imposed.

725. Trial as an Adult. Upon motion of the Band Prosecutor at the time of filing a juvenile offender petition or after it has been filed but prior to a hearing on the merits of the petition, the Court may order a juvenile accused of an offense prohibited by Chapters VI and/or VIII, Bois Forte Tribal Code, to be tried as an adult if the juvenile was sixteen (16) or more years of age at the time of the alleged offense and, after a hearing on the motion, the Court finds that there are reasonable grounds to believe that:

- (a) The juvenile committed the offense(s) alleged, and
- (b) Either:
 - (1) The juvenile is not amenable to treatment or rehabilitation as a juvenile through available facilities, or
 - (2) The juvenile poses a significant threat to the safety and welfare of the Band.

PART C – CHILD IN NEED OF PROTECTIVE SERVICES (CHIPS)

726. Temporary Removal of Child Alleged to be in Need of Protective Services.

- (a) A child alleged to be in need of protective services may be removed from its parent(s), guardian, custodian, or other surroundings and taken into temporary custody by a law enforcement officer:
 - (1) Pursuant to a court order under this Chapter;
 - (2) If there is probable cause to believe that:
 - (A) The child is abandoned or without a responsible person to provide adequate care and/or supervision;

(B) The child is in immediate danger from his condition or surroundings and removal is necessary to protect the child from physical, mental, or emotional harm, and there are not alternatives available to safely mitigate the immediate danger;

(C) The child has been the victim of or has witnessed domestic abuse and removal is necessary to protect the child from further harm or abuse, or

(D) The child by reason of his physical, emotional, or mental health poses an immediate danger to himself or others.

(b) Whenever it is reasonably possible, a child protective services worker shall accompany the law enforcement officer at the time of a child's removal pursuant to this section.

727. Ex Parte Orders. Upon written application by a law enforcement officer, child protection worker, or other interested party setting forth a need for the emergency removal of a child described in Section 726(a), above, the Court may issue a temporary order without a prior hearing authorizing such removal, out-of-home placement and transfer of custody, setting a subsequent hearing date within at least 72 hours thereof, and granting such other temporary relief as the Court may deem just and necessary under the circumstances. The Court may, or its own or by request of a party, conduct the hearing by telephonic or other electronic appearance. Copies of the application and the ex parte order shall be promptly served upon the child's parent(s), guardian, or custodian.

728. Commencement of CHIPS Proceedings. A child-in-need-of-protective services, a/k/a CHIPS, proceeding shall be commenced by filing a petition as provided herein.

729. CHIPS Petition.

(a) **Authorization to File.** The Band's Child Protective Services Supervisor or ICWA Supervisor or their designee is authorized to file on behalf of the Band, a petition alleging that a child subject to the jurisdiction of the Tribal Court is a child-in-need-of-protective services.

(b) **Contents of Petition.** The petition shall set forth the following with specificity:

(1) The name, birth date, age, sex, residence, and tribal affiliation of the child;

(2) The basis for the Court's jurisdiction;

(3) The specific allegations that cause the petitioner to believe that the child is in need of protective services, including a plain and concise statement of the facts supporting the allegations.

- (4) The names, residences, and tribal affiliation of the child's parent(s), guardian, or custodian, if known;
 - (5) If the child is in a placement, the location of placement and the facts upon which the determination to place was based, including the time and date of placement;
 - (6) Law enforcement investigation or incident reports, child protection workers, medical reports, truancy officer's reports, school attendance records, or any other similar documents that relate to the offense(s) shall be included by reference with copies attached; and
 - (7) Whether the agency is seeking custody or protective supervision;
 - (8) If the agency is seeking custody, a description of alternatives considered and why rejected; and
 - (9) A description of active efforts provided or reasons active efforts were not possible.
- (c) **Verification.** The petition shall be sworn to and signed in the presence of the Clerk or of a notary by a law enforcement officer or child protection worker having knowledge of the facts upon which the petition is based who shall affirm that the same are true and correct to the best of his knowledge and belief and that the allegations set forth probable cause to believe that the child is in need of protective services.

730. Time Limitations. If a child alleged to be in need of protective services has been removed from his parent(s), guardian, or custodian pursuant to Section 726, above, and placed in temporary custody without a court order, a child in need of protective services petition shall be filed with the Court and an initial hearing thereon shall be held within 72 hours, excluding weekends and holidays, following said placement or the child shall be returned to his parent, guardian, or custodian. This hearing may be conducted by telephone conference call and shall be recorded.

731. Summons and Notice. After a CHIPS petition has been filed, the Court shall timely schedule a preliminary hearing thereon and shall direct the issuance of a Summons and Notice of Hearing to be served, together with a copy of the petition and all attachments, upon the child's parent(s), guardian, or custodian requiring them to appear before the Court at the time fixed to answer the allegations of the petition. Service may be made personally by a law enforcement officer, including leaving the same with a responsible adult at the minor's usual place of abode, or by USPS mail addressed to the minor's parent(s), guardian, or custodian with sufficient postage attached thereto. The person making service shall file an affidavit of service with the court.

732. Presence of the Child. The Court in its discretion may allow children who are the subject of the CHIPS petition to be present during some or all of the proceedings and with regard to children twelve (12) years of age and older shall use its best efforts to include them in the proceedings.

733. Initial Hearing. After the petition has been filed and served, the Court shall conduct an initial hearing for the purpose of informing the child's parent(s), guardian, or custodian of the nature of the proceedings, the rights of the parties, the allegations giving rise to the petition, and the consequences in the event the allegations are proven to be true.

- (a) **Absence of Parent at Initial Hearing.** If the child's parent, guardian, or custodian is not present at the initial hearing, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the child's parent, guardian, or custodian, the Court may continue the matter for a reasonable period of time and direct the Clerk or petitioner to make continued efforts to obtain the presence of the child's parent's, guardian, or custodian. However, the initial hearing may be conducted in the absence of the parent(s), guardian, or custodian if they cannot be located.

- (b) **Rights of the Parties.** The Court shall inform the parties that they have the following rights:
 - (1) To be represented by counsel of their choosing at their own expense or by the Band's Public Defender if such services are available;
 - (2) To be provided with a copy of the child-in-need-of-protective services petition, any attachments to it, and with copies of all documents, records, reports, or similar materials the prosecution may possess or have access to which may tend to prove or disprove the allegations contained in the petition;
 - (3) To request and be granted a reasonable continuance for the purpose of obtaining and/or consulting with counsel;
 - (4) To be informed of the possible consequences in the event the Court finds that the allegations contained in the petition are true and the child is in need of protective services;
 - (5) To either admit or deny the petition;
 - (6) To have a trial before the Court on the merits if a denial is entered;
 - (7) To be informed of all evidence and all witnesses of which the prosecution may be aware and to cross-examine all who are called to testify by the prosecution;

- (8) To produce evidence and call witnesses to testify on their own behalf should they so desire and to utilize the subpoena powers of the Court to compel the attendance of any such witnesses or the production of such evidence;
- (9) To voluntarily waive any and/or all of the above stated rights either orally on the record in open court or in a writing sworn to and executed before the Clerk or a notary and filed with the Court; and
- (10) To be provided with notice as to the date, time, and place of any and all future hearings before the Court.

734. Admission or Denial. Unless the initial hearing is otherwise continued for cause, the parent(s), guardian, or custodian shall then either admit or deny the allegations contained in the petition.

- (a) **Denial.** If the petition is denied, the matter shall be set for a pre-trial or an adjudicatory hearing.
- (b) **Admission.** If the petition is admitted, sworn testimony shall be taken from the respondent so as to form a factual basis for the acceptance of the admission following the Court may proceed immediately to disposition or it may continue the matter for a reasonable period to obtain chemical dependency and/or psychological evaluations and recommendations, school reports, dispositions in other jurisdictions if any, home studies, and an any other reports, materials, testimony, or other evidence which may assist the Court in making the best possible disposition.
- (c) **Placement and Conditions after Denial or Admission.** In the event the petition is denied and set for pre-trial or an adjudicatory hearing or the petition is admitted and continued for later disposition, the child may be released to the physical custody of his parent(s), guardian, or custodian under such terms and conditions as may be necessary to adequately protect the child or the child's custody may be temporarily transferred to the Band's Child Protective Services Division (and jointly with St. Louis County Social Services Department if need be) for placement in relative or other foster care. The Court may also impose such terms and conditions as may be necessary to adequately protect the child.

735. Adjudicatory Hearing. An adjudicatory hearing shall be a trial on the merits of the petition to the Court without a jury. The petitioner shall have the burden of proving the allegations contained in the petition by a mere preponderance of the evidence. Once the petitioner has met its burden of proof, the burden of disproving the petition shall shift to the respondent. The respondent may be called by the petitioner as adverse witnesses to testify in support of the allegations contained in the petition. The order of trial shall be as follows:

- (a) **Opening Statements.** Opening statements as to the facts to be proven by the evidence may be given by the petitioner's attorney, followed by the respondent or his

counsel provided that the latter's opening statement may be deferred until presentation of the respondent's case.

- (b) **Petitioner's Evidence.** The petitioner's attorney shall open the case and offer evidence in support of the petition. The petitioner may, if it so chooses, call the respondent to testify as an adverse witness. The respondent or his counsel shall have the right to question any witness called to testify by the petitioner.
- (c) **Respondent's Evidence.** The respondent or his counsel may then open their case and offer evidence in support of the denial of the petition but are under no obligation to do so. The petitioner shall have the right to question any witness, including the respondent, called to testify by the respondent.
- (d) **Rebuttal.** The petitioner may call or recall any witness for the purpose of rebutting any evidence submitted by the respondent and the respondent may similarly rebut any new evidence offered by the petitioner.
- (e) **Final Argument.** When all of the evidence is before the Court and both parties have rested their case, the petitioner's attorney, followed by the respondent or his counsel, may argue the case to the court.
- (f) **Findings and Judgment.** After hearing all of the evidence and the arguments of counsel, weighing, and considering the same, the Court may take the matter under advisement before rendering its findings and judgment in writing or it may enter it from the bench followed by a written judgment or order. If the Court finds that prosecution failed to meet its burden of proving by a mere preponderance of the evidence that the child is in need of protective services then, in such an event, the Court shall dismiss the petition and order the return of the child to the physical and legal custody of its parent(s), guardian, or custodian. However, if the Court finds that the child is in need of protective services it shall proceed to a dispositional hearing and in the interim may make shall temporary orders, including out-of-home placement, as may be necessary to protect the safety and welfare of the child

736. Dispositional Hearing. A dispositional hearing shall be conducted to determine measures to be taken by the Court with respect to the safety and welfare of the child properly within its jurisdiction and, when applicable, against any adult, once the Court has determined following trial, plea of admission, or no contest that the child comes within its jurisdiction as a child in need of protective services.

- (a) **Time for Hearing.** The dispositional hearing may be held immediately after the adjudicatory hearing. The interval if any, between the adjudicatory hearing and the dispositional hearing is within the discretion of the Court. When the child is in temporary out-of-home placement, the interval may not be more than 60 days except for good cause. If the dispositional hearing is not held immediately after the adjudication, notice of hearing may be given by scheduling it on the record in the

presence of the parties but written notice shall also be served in accordance with Section 731, above.

(b) **Pre-disposition Investigation and Evaluations.** The Court may order the Band's child protective services agency or any other agency over which it may have jurisdiction to conduct a home study and an investigation of the child's and the family's circumstances and to render a written report and recommendations. The Court may also order the child, the child's parent, guardian, and custodian, and any other adult who is a party to the proceeding to submit to an evaluation to determine the need, if any, for counseling, treatment, or education pertaining to chemical dependency, anger management, mental health, or similar issues. The Court's order shall also include a requirement that the child, child's parent, guardian, or custodian, or any other adult so ordered to be evaluated execute a waiver and release of information so that copies of the evaluation will be timely received by the Court and can be provided to the petitioner and the minor and/or his counsel

(c) **Evidence.** All relevant and material evidence, including oral and written reports, may be received and may be relied on to the extent of its probative value, even though such evidence may not be otherwise admissible at an adjudicatory hearing or trial.

(1) The parties shall be given an opportunity to examine and controvert written reports so received and may cross-examine individuals making reports when such individuals are reasonably available.

(2) No assertion of an evidentiary privilege, other than the privilege between attorney and client, shall prevent the receipt and use, at the dispositional phase, of materials prepared pursuant to a court ordered examination, interview, or course of treatment.

(d) **Dispositional Order.** The Court shall enter an order of disposition after considering the pre-disposition investigation report(s), evaluations and recommendations, if any, and any other evidence offered bearing on disposition. The Court may order compliance with all or part of any recommended treatment plans and may enter such orders as it considers necessary in the interest of the minor and of the Band.

(e) **Dispositional Alternatives.** If a child has been found to be a child in need of protective services, the Court may order any of the following dispositional alternatives:

(1) Permit the child to remain with his parent(s), guardian, or custodian, subject to such conditions as the Court may prescribe, including transferring legal custody to the Band's Child Protection Services agency individually or jointly with the financially responsible county agency;

- (2) Place the child with a relative, a licensed or unlicensed foster home, licensed group home, or in a residential treatment program, subject to such conditions as the Court may prescribe, including transferring legal custody to the Band's Child Protection Services agency individually or jointly with the financially responsible county agency;
- (3) Order the child, the child's parent(s), guardian, or custodian or any other adult who is a party to the proceedings to undergo evaluations to determine the necessity, if any, for chemical dependency or mental health treatment, anger management programs, parenting programs, or anything similar and to further order compliance with the recommendations arising from such evaluation; or
- (4) Order the child's parent to contribute a reasonable amount toward the support and maintenance of the child if the child does not remain in the parental home. Said amount shall be based upon the parent's ability to pay.

737. Dispositional Review Hearings.

- (a) **Frequency.** The dispositional order is to be reviewed at the discretion of the Court at least once every six (6) months. The petitioner, the child, the child's parent(s), custodian, or guardian may also request a review of the dispositional order at any time upon a showing of changed circumstances.
- (b) **Notice of Review.** Notice of review hearing shall be provided on the record or as provided in Section 731.
- (c) **Written Report by Protective Services Agency.** Except where waived by the Court, the protective services agency shall submit written reports to the Court, the Band's attorney, the parents, the parents' attorneys, and any other parties, summarizing the current welfare and needs of the children, the progress of the parents towards reunification or closure of the case, and making recommendations for services or benefits that will help the parents and child(ren) reunify or a recommendation that permanency be established for the children. Written reports shall be submitted seven (7) calendar days before the review hearing.
- (d) **Purpose and Content of Review.** At every review hearing the Court shall review on the record the compliance, if any, with the previous orders of the Court including:
 - (1) Services provided or offered to the child and his parent, guardian, or custodian and whether the child, parent, guardian, or custodian has complied with and/or benefited from those services.
 - (2) The extent of progress, if any, made toward alleviating or mitigating the conditions that caused the child to become a child in need of protection. The child protection services agency may submit a modified case plan, taking in to account circumstances that arose or became known since the time of the

original case plan development. The Court may modify any part of the case plan including, but not limited to, the following:

- (A) Prescribing additional services that are necessary to rectify the conditions that caused the child to become or to remain a child offender or child in need of care.
- (B) Prescribing additional actions to be taken by the parent, guardian, or custodian to rectify the conditions that caused the child to become or remain a child offender or a child in need of care.
- (C) The continuing necessity and appropriateness of the child's present placement and, after reviewing all of the relevant material and recommendations, shall either order the return of the child to the custody of the parent, guardian, or prior custodian, or continue the existing dispositional order, modify the existing dispositional order, or enter a new dispositional order.

738. Permanency Planning Hearings.

- (a) **Purpose.** A permanency planning hearing shall be conducted to review the status of the child adjudicated as in need of care and the progress being made toward the child's return to his natural parents or to some other permanent home.
- (b) **Frequency of Hearings.** Unless modified by the Court for cause, the Court shall conduct a permanency planning hearing not more than 24 months after entry of the order of disposition and every 12 months thereafter, so long as the child remains a child in need of care. A permanency planning hearing may be combined with a disposition review hearing under Section 737 of this Chapter.
- (c) **Summons and Notice.** Notice of a permanency planning hearing shall be provided on the record or pursuant to the provisions of Section 731.
- (d) **Child Returned.** If the Court determines at a permanency planning hearing that the return of the child would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the Court shall order the child returned to his or her parent. In determining whether the return of the child would cause a substantial risk of harm to the child, the Court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan and dispositional orders of the court as evidence that return of the child to his parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being. If a child is returned to the care of the parent(s) or custodian(s), the Court may order services and safety measures designed support safe and successful return to the care of the parent(s) or custodian(s).

(e) **Child Not Returned.** If the Court determines at a permanency planning hearing that the child should not be returned to his parent, it shall order one of the following alternative permanent placement plans:

- (1) The child remain in its current placement and a petition for permanent custody or guardianship be jointly filed by the child's current caretaker and the Band's Child Protective Services Agency;
- (2) The child be placed permanently with a relative or other suitable adult caretaker and a petition for permanent custody or guardianship be jointly filed by that relative or proposed caretaker and the Band's Child Protective Services Agency;
- (3) The child be placed with a proposed adoptee while a petition for suspension of parental rights and for a decree of customary adoption is prepared, filed, and heard; or
- (4) Continue the child in placement for a limited period so that further attempts can be made under the direction of the Court to either reunite the child with his parent(s), guardian, or custodian or to find a suitable permanent caretaker

PART D – SUSPENSION OF PARENTAL RIGHTS

739. Commencement of Proceedings. A Suspension of Parental Rights proceeding shall be commenced by the filing of a petition as provided herein.

740. Suspension of Parental Rights Petition.

- (a) **Authorization to File.** The Band's Child Protective Services Supervisor or ICWA Supervisor or their designee is authorized to file on behalf of the Band, a petition seeking to permanently suspend the parental rights of the parent(s) of a child who has been adjudicated a child in need of protective services, pursuant to the provisions of Part C of this Chapter.
- (b) **Contents of Petition.** The petition shall set forth the following with specificity:
 - (1) The name, birth date, age, sex, residence, and tribal affiliation of the child;
 - (2) The name, address, and phone number of the child's parent(s), guardian(s), or legal custodian(s);
 - (3) The name, address, and phone number of any other relatives who may have an interest in the care, custody, and control of the child;

- (4) A concise statement as to the child's present placement, including the location of placement and the facts upon which the determination to place was based, including the time and date of placement;
- (5) The basis for the Court's jurisdiction;
- (6) A statement as to why an order for the suspension of parental rights of the parent is in the best interests of the child and the child's tribe;
- (7) A statement as to basis for the request for the suspension of parental rights, supported by medical, psychiatric, child protection worker, family member, and/or psychological reports or testimony;
- (8) A statement that no similar action is pending in a state or other tribal court having jurisdiction over the child;
- (9) A description of alternatives considered and reasons the alternatives were rejected;
- (10) A description of the active efforts provided to the family to correct the conditions that lead to out of home placement of the children; and
- (11) A statement as to whether there are any additional services or efforts that are reasonably available and likely to assist the family in reunifying.

(c) **Verification.** The petitioner shall sign the petition in the presence of the Clerk or a notary public and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

741. Summons and Notice. After a petition seeking suspension of parental rights has been filed, the Court shall timely schedule a hearing thereon and shall direct the issuance of a Summons and Notice of Hearing to be served, together with a copy of the petition and all attachments, upon the child's parent(s), guardian, or custodian requiring them to appear before the Court at the time fixed to answer the allegations of the petition. Service may be made personally, including leaving the same with a responsible adult at the respondent's usual place of abode, or by certified mail, return receipt requested, addressed to the respondent with sufficient postage attached thereto or, in the event the respondent cannot be found or his address is unknown, by publication. The person making service shall file an affidavit of service with the Court.

742. Conduct of Hearing. A suspension of parental rights hearing shall be conducted in the same manner as provided in Part C of this Chapter for hearings on a CHIPS petition. The burden of proof shall be on the petitioner and the standard of proof shall be clear and convincing evidence.

743. Findings. In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order. The Court may make findings that it is in the best interests of the child and the child's tribe and that a final order suspending the parental rights be entered. In such an event, the Court shall specify the basis of those findings.

744. Final Order for Suspension of Parental Rights. If the Court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a suspension of parental rights. Such an order for the suspension of parental rights may include, but is not limited, to the following:

- (a) **Allowing Adoption, Permanent Legal Custody, or Guardianship.** A permanent suspension of the parental rights of the parent including the suspension of the right to the care, custody, and control of the minor child and allowing the child to be adopted or be placed in the permanent legal custody or under the guardianship of a responsible adult caretaker;
- (b) **Contact Agreement.** A permanent suspension of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone, or through third parties, or the order may allow for a contact agreement agreed upon by the parties to be ordered by the Court;
- (c) **Restraining Contact.** Restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent, and/or the social services agency or agencies possessing information regarding the minor child;
- (d) **Terminating Child Support Obligation.** Ordering that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated;
- (e) **Terminating Prior Court Orders.** Ordering that any prior court order for custody, visitation, or contact with the minor child be hereby terminated;
- (f) **No Further Legal Standing.** The parent shall have no legal standing to appear at any future legal proceedings involving the child, provided, however, upon the death of the adoptive parents or failure of the adoption, the original parents will be notified and may upon motion and permission of the Court be granted legal standing to intervene in future legal proceedings;
- (g) **Tribal Relationship and Rights of Inheritance.** The suspension of parental rights does not sever or affect in any way a child's relationship to his/her tribe or any rights of inheritance from the biological parent(s); and
- (h) **Best Interests Statement.** Shall contain a statement regarding why it is in the best interests of the child and the child's tribe to enter this order.

745. Service of Final Order. Copies of any order for suspension of parental rights shall be served upon the parent and the agency or agencies having legal custody of the child and any other parties as directed by the Court.

746. Review. Final orders for the suspension of parental rights may be reviewed by the Court at the request of the biological parent or the agency or agencies possessing custody of the child if, after a period of one year or more following entry of the final order suspending parental rights, the adoption of the child fails or the adoptive parent is deceased or there is no permanent legal custodian or guardian of the person of the minor child, or if, when requested by the biological parent, the biological parent documents in the request completion of substantial progress towards remedying the conditions that lead to suspension of parental rights. Notice of this review shall be provided to all parties to the hearing at which the final suspension of parental rights order was issued.

PART E – CUSTOMARY ADOPTION

747. Commencement of Proceedings. A customary adoption proceeding shall be commenced by the filing of a petition as provided herein.

748. Customary Adoption Petition.

- (a) **Authorization to File.** Any adult may file a petition with the Court seeking an order or decree authorizing the customary adoption of a minor child who is subject to the jurisdiction of the Bois Forte Children's Court.
- (b) **Contents of Petition.** The petition shall set contain the following information:
 - (1) The name, address, and telephone number of the child's tribe;
 - (2) The name, address, telephone number and age of the child to be adopted;
 - (3) The name, address, and telephone number of the petitioner and the petitioner's relationship, if any; to the child;
 - (4) The name, address, and telephone number of any other relatives who may have an interest in the care, custody, and control of the minor child;
 - (5) The proposed name of the adoptee after the entry of the final order of customary adoption;
 - (6) A statement or a copy of the final order suspending the parental rights of the biological parent(s), or, if the parent(s) are deceased, a certified copy of the death certificate(s);
 - (7) A statement as to why a final order for customary adoption is in the best interests of the child and the best interests of the child's tribe supported by a

home study, medical, psychiatric, child protection worker, family member, and/or psychological reports or testimony; and

- (8) A statement that no similar action is pending in a state or other tribal court having jurisdiction over the child.

- (c) **Verification.** The petitioner shall sign the petition in the presence of the Clerk or a notary public and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

749. Notice of Hearing. Upon the filing of a petition seeking an order or decree for a customary adoption of a minor child, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; appropriate family members, if any; caretaker, if any; and appropriate agencies of the Band and the county of financial responsibility, if any, which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in Section 731, herein.

750. Hearing on Petition for Customary Adoption.

(a) **Attendance at Hearing.**

- (1) The child who is the subject of a petition for customary adoption; the petitioner; the child's tribe; appropriate family members including siblings, if any; caretaker, if any; and appropriate agencies of the Band and the county of financial responsibility, if any, which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter may be present at the hearing in person or by telephone.
- (2) Petitioner's failure to appear shall be grounds for dismissal of the petition.

(b) **Conduct of Hearing.**

- (1) The Court shall conduct the hearing in a manner consistent with Section 705 of this Chapter, the proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be a mere preponderance of the evidence.
- (2) The Court shall inform the parties of their rights which shall include the right to be represented by counsel of their own choice and at their own expense, the right to testify and introduce evidence, to utilize the subpoena power of the Court to compel the attendance of witnesses, the right to cross-examine any witness presented by other parties, the right to timely obtain copies of any documentary evidence presented by other parties to the Court for introduction

into the record and to timely object to such evidence, and further to be informed of the nature and consequences of the proceedings.

- (3) The Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this Chapter.

(c) Findings.

- (1) At the conclusion of the hearing, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.
- (2) The Court may make findings that it is in the child's best interests that a final order for a customary adoption be entered and the court shall specify the basis of those findings or it may find that it is not in the child's best interest to be adopted by the petitioner.

751. Final Order for Customary Adoption. If the Court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a customary adoption. Such an order may include, but is not limited, to the following:

- (a) **Statement of Adoption.** A statement that the child has been adopted by the petitioner(s) and that the parent-child bond is hereby established and that all of the rights and responsibilities of that relationship shall exist upon the entry of such a final order.
- (b) **Child's New Name.** A notice regarding the new name of the child, if any.
- (c) **Statement Confirming Suspension of Parental Rights.** A statement that the child is available for adoption because the parental rights to his/her original parents were suspended.
- (d) **Statement Regarding Relationship with Extended Family and Parents.** When applicable, a statement adoptive parents shall ensure that the child continue his/her relationship with extended family and parents and shall abide by any and all contact agreements which are incorporated therein.
- (e) **Statement Regarding Continuing Rights of Parents.** A statement informing the original parents that because their parental rights were suspended, they retain a right to notice in the event this adoption fails, the adoptive parents die, or the adoptive parents are no longer able to provide care for the children.

752. Certification of a Customary Adoption.

- (a) **Nature of a Customary Adoption.** A customary adoption, conducted in a manner that is a long-established, continued, reasonable process, and considered by the people of the Bois Forte Band to be binding and authentic, based upon the testimony of an expert witness, may be certified by the Children's Court as having the same effect as an adoption order issued by this Court so long as it is in the best interests of the child and the child's tribe.
- (b) **Effect.** A decree certifying a customary adoption has the same effect as a decree or final order of customary adoption issued by this court.

PART F – PERMANENT CHILD CUSTODY AND GUARDIANSHIP

753. Commencement of Proceedings. A permanent child custody or a guardianship of a minor proceeding shall be commenced by the filing of a petition as provided herein.

754. Petition Seeking Permanent Custody or Guardianship.

- (a) **Authorization to File.** Any adult may file a petition with the Court seeking an order awarding permanent legal custody of or appointing a guardian for a minor child who is subject to the jurisdiction of the Bois Forte Children's Court.
- (b) **Contents of Petition.** The petition shall contain the following information:
 - (1) The name, address and telephone number of the child's tribe;
 - (2) The name, address, telephone number, and age of the child whose permanent legal custody or guardianship is sought;
 - (3) The name, address, and telephone number of the petitioner and the petitioner's relationship, if any; to the child;
 - (4) The name, address, and telephone number of any other relatives who may have an interest in the care, custody, and control of the minor child;
 - (5) A statement or a copy of the final order suspending the parental rights of the biological parent(s), or, if the parent(s) are deceased, a certified copy of the death certificate(s);
 - (6) A statement as to why an order awarding permanent legal custody or appointing a guardian is in the best interests of the child and the best interests of the child's tribe supported by a home study, medical, psychiatric, child protection worker, family member, and/or psychological reports or testimony; and
 - (7) A statement that no similar action is pending in a state or other tribal court having jurisdiction over the child.

- (c) **Verification.** The petitioner shall sign the petition in the presence of the Clerk or a notary public and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

755. Notice of Hearing. Upon the filing of a petition seeking an order awarding permanent legal custody of or appointing a guardian for a minor child, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; appropriate family members including siblings, if any; caretaker, if any; and appropriate agencies of the Band and the county of financial responsibility, if any, which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in Section 731, herein.

756. Hearing on Petition.

(a) **Attendance at Hearing.**

- (1) The child who is the subject of a petition for an award of permanent legal custody or for the appointment of a guardian; the petitioner; the child's tribe; appropriate family members including siblings, if any; caretaker, if any; and appropriate agencies of the Band and the county of financial responsibility, if any, which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter, may be present at the hearing in person or by telephone.
- (2) The petitioner's failure to appear shall be grounds for dismissal of the petition.

(b) **Conduct of Hearing.**

- (1) The Court shall conduct the hearing in a manner consistent with Section 705 of this Chapter. The burden of proving the allegations of the petition shall be upon the petitioner and the burden of proof shall be a mere preponderance of the evidence.
- (2) The Court shall inform the parties of their rights which shall include the right to be represented by counsel of their own choice and at their own expense, the right to testify and introduce evidence, to utilize the subpoena power of the Court to compel the attendance of witnesses, the right to cross-examine any witness presented by other parties, the right to timely obtain copies of any documentary evidence presented by other parties to the Court for introduction into the record and to timely object to such evidence, and further to be informed of the nature and consequences of the proceedings.
- (3) The Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any,

as may be deemed just and reasonable to carry out the purposes of this Chapter.

(c) Findings.

- (1) At the conclusion of the hearing, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.
- (2) The Court may make findings that it is in the child's best interests that a final order awarding permanent legal custody of or appointing a guardian for the minor child be entered and the court shall specify the basis of those findings or it may find that it is not in the child's best interest for such an order to be entered.

757. Final Order. If the Court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order awarding permanent legal custody of or appointing a guardian for the minor child. Such an order may include conferring the authority upon the legal custodian or guardian to make all decisions regarding the minor child's care and control that the natural or adoptive parent(s) could legally make if parental rights had not been suspended.

PART G - VOLUNTARY TRANSFER OF CHILD CUSTODY

758. Commencement of Proceedings. A proceeding for the voluntary transfer of child custody shall be commenced by the filing of a petition as provided herein.

759. Petition for Voluntary Transfer of Child Custody.

- (a) **Authorization to File.** Any adult parent or court-appointed legal custodian of a child may file a petition with the Court seeking an order transferring legal custody of a minor child who is subject to the jurisdiction of the Bois Forte Children's Court.
- (b) **Contents of Petition.** The petition shall set contain the following information:
 - (1) The name, address, and telephone number of the child's tribe;
 - (2) The name, address, telephone number, and age of the child whose transfer of legal custody is sought;
 - (3) The name, address, and telephone number of the child's parent(s) if parental rights have not been terminated;
 - (4) The name, address, and telephone number of the petitioner, the petitioner's relationship to the child and, if the petitioner has legal custody pursuant to a court order, a short statement setting forth the circumstances that gave rise to the court order including a certified copy of the court order;

- (5) The name, address, and telephone number of the person to whom legal custody is sought to be transferred;
- (6) The name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child;
- (7) A statement as to why an order allowing for a transfer of legal custody is in the best interests of the child and the best interests of the child's tribe supported by a home study, medical, psychiatric, child protection worker, family member, and/or psychological reports or testimony; and
- (8) A statement that no similar action is pending in a state or other tribal court having jurisdiction over the child.

(c) **Verification.** The petitioner shall sign the petition in the presence of the Clerk or a notary public and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

760. Notice of Hearing. Upon the filing of a petition seeking an order allowing a voluntary transfer of legal custody of a minor child, the Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; the child's parent's if other than the petitioner, they are not deceased or their parental rights have not been suspended; appropriate family members including siblings, if any; caretaker, if any; and appropriate agencies of the Band and the county of financial responsibility, if any, which may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in Section 731, herein.

761. Hearing on Petition.

(a) **Attendance at Hearing.**

- (1) The child who is the subject of a petition for an order allowing a transfer of legal custody, the petitioner, and all of the persons and representatives of agencies entitled to notice as provided above, may be present at the hearing in person or by telephone.
- (2) The petitioner's failure to appear shall be grounds for dismissal of the petition.

(b) **Conduct of Hearing.**

- (1) The Court shall conduct the hearing in a manner consistent with Section 705 of this Chapter. The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be a mere preponderance of the evidence.

- (2) The Court shall inform the parties of their rights which shall include the right to be represented by counsel of their own choice and at their own expense, the right to testify and introduce evidence, to utilize the subpoena power of the Court to compel the attendance of witnesses, the right to cross-examine any witness presented by other parties, the right to timely obtain copies of any documentary evidence presented by other parties to the Court for introduction into the record and to timely object to such evidence, and further to be informed of the nature and consequences of the proceedings.
- (3) The Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this Chapter.
- (c) **Findings.** At the conclusion of the hearing, the court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order that it is in the child's and the child's tribe's best interests that legal custody of the minor child be transferred or that legal custody should not be transferred.
- (d) **Final Order.** A final order incorporating the Court's findings and conclusions shall be entered and the Clerk of Court shall cause a certified copy to be served upon each of the parties.

PART H – TRANSFERS OF JURISDICTION TO/FROM STATE COURTS AND OTHER TRIBAL COURTS

762. Transfer to State Court or other Tribal Court. In any CHIPS proceeding commenced pursuant to this Chapter, the Court may, after a hearing upon its own motion or upon the motion of any party to the proceeding, transfer the proceedings to an appropriate state court or to another tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interest of the child.

763. Summons and Notice of Hearing. Summons and Notice of Hearing upon the proposed motion seeking such transfer of jurisdiction shall be served upon all interested parties, including a county agency having financial responsibility, in the same manner as provided in Section 731.

764. Conduct of the Hearing. The hearing shall be conducted in the same manner as any dispositional hearing on a CHIPS proceeding commenced pursuant to this Chapter.

765. Findings. At the conclusion of the hearing the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order that it is in the child's and the child's tribe's best interests that jurisdiction over the proceedings shall be transferred or not transferred to the state or other tribal court.

766. Final Order. A final order incorporating the Court's findings and conclusions shall be entered and the Clerk of Court shall cause a certified copy to be served upon each of the parties and upon the Clerk of Court of the state or other tribal court to which jurisdiction was sought to be transferred.

767. Transmittal of Court File. In the event the court orders a transfer of jurisdiction then the Clerk of Court shall transmit a certified copy of the record in the Bois Forte Children's Court to the Clerk of Court of the state or tribal court to which jurisdiction was transferred.

768. Transfer from other Courts. The Court may, after a hearing upon a written motion or petition filed by the Band or by a parent, guardian, or custodian of a minor child who is either a Band member, eligible for membership, or the child of a Band member, accept a transfer of jurisdiction of a child protection case from any federal, state or other tribal court, including child custody proceedings arising under the Indian Child Welfare Act, as well as the dispositional phase of juvenile offender cases, when it is in the best interest of the Band and of the child to accept such a transfer of jurisdiction.

769. Contents of Motion or Petition. The motion or petition shall contain the following information:

- (a) The name, address, and telephone number of the petitioner and the relationship, if any, between the petitioner and the minor child;
- (b) The name, address, telephone number, and tribal status of the child's parents, custodian, and/or guardian;
- (c) The name, address, telephone number, age, and tribal status of the child who is the subject of the transfer of jurisdiction proceedings;
- (d) The name, address, and telephone number of the state or tribal court presently having jurisdiction over the minor child;
- (e) The nature of the state or other tribal court proceedings giving rise to the request for a transfer of jurisdiction, the date of any state or tribal court order ordering such a transfer. A certified copy of that order should be attached;
- (f) The name, address, and telephone number of relatives, any, who may have an interest in the care, custody, and control of the minor child;
- (g) A statement as to why an order allowing for a transfer of jurisdiction from the state or other tribal court is in the child's best interests and the best interests of the Bois Forte Band.

770. Summons and Notice of Hearing. In any proceeding seeking to accept a transfer of jurisdiction pursuant to this Chapter, a summons and notice of hearing shall be given to all

interested parties, including a county having financial responsibility, in a manner consistent with the provisions of Section 731 of this Chapter.

771. Conduct of Hearing. An acceptance of jurisdictional transfer hearing shall be conducted informally and in the same manner as a dispositional hearing in a CHIPS proceeding commenced pursuant to the provisions of this Chapter. The burden of proof to accept a transfer shall be upon the petitioner and the standard of proof shall be a mere preponderance of evidence.

772. Findings. Upon the conclusion of the hearing, the Court shall enter its order accepting or rejecting the transfer of jurisdiction. If the Court rejects the transfer of jurisdiction, it shall make written findings and conclusions as to why the proposed transfer of jurisdiction is not in the best interests of the minor child or of the Band or of both.

773. Service of Order. A certified copy of the Court's order shall be served upon the petitioner, each of the parties, and upon the Clerk of Court of the state or tribal court from which transfer of jurisdiction was sought.

774. Acceptance of Transfer. In the event the Court accepts a transfer of jurisdiction then the matter shall proceed either for a Juvenile Offender dispositional hearing or for a CHIPS adjudicatory, dispositional or dispositional review hearing, as the case may be, in accordance with the provisions of this Chapter.

775. Denial of Transfer. In the event the Court declines to accept a transfer of jurisdiction, the parties shall be so notified and the papers and records, if any, received from the initiating court shall be returned to it.

776. Financial Responsibility. Notwithstanding any financial support or services provided and available to children within the Band's jurisdiction and regardless of the jurisdiction that a child protection case falls in, it is the financial responsibility of the county the children reside in to ensure the safety and welfare of all its children. As such, the transferring state court retains financial responsibility and related reunification costs for the affected family.

Enacted by Resolution No. 93-40, of the Bois Forte Tribal Council on the 20th day of November 1992.

Amended by Resolution No. 160-96, May 8, 1996.

Amended by Resolution No. 95-2000, January 20, 2000.

CHAPTER VIII – BOIS FORTE TRAFFIC CODE

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CHAPTER VIII – BOIS FORTE TRAFFIC CODE

801. Title. Chapter VIII, Bois Forte Tribal Code, shall be entitled Bois Forte Traffic Code.

802. Definitions. For the purposes of this chapter, the terms defined in this section shall have the meanings ascribed to them.

- (a) “Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a road, street or highway. The term includes bicycles.
- (b) “Motor vehicle” means every vehicle that is self-propelled. Motor vehicle does not include a vehicle moved solely by human power. Motor vehicle includes automobiles, vans, pickup trucks, trucks, motorcycles, motorized bicycles, all-terrain vehicles, snowmobiles, and any and all similar vehicles but does not include motorized wheelchairs.
- (c) “Person” means every natural person, firm, partnership, association, or corporation.
- (d) “Pedestrian” means any person afoot or in a wheelchair.
- (e) “Driver” means every person who drives or is in actual physical control of a vehicle.
- (f) “Owner” means a person who holds the legal title of a vehicle or who is entitled to immediate possession of a vehicle in the event the vehicle is the subject of a conditional sale or lease agreement or of a mortgage.
- (g) “Public street, road, or highway” means the entire width between the boundary lines of every way when any part thereof is open to the use of the public for purposes of vehicular traffic and includes any area designated or used for the public parking of motor vehicles within the Bois Forte Reservation.
- (h) “Drive(s)” or “operate(s)” in addition to their usual and customary meaning, means being in actual physical control of a vehicle regardless of whether or not such vehicle is moving or stationary and, if such vehicle is self-propelled, regardless of whether or not the engine of such vehicle is then operating as long as the vehicle is operable.
- (i) “Driver’s or operator’s license or driver’s permit” means the required authorization to drive or operate a motor vehicle within the State of Minnesota pursuant to the provisions of Minnesota Statutes (1992), Chapter 171, and any subsequent amendments thereto. The term also includes the authorization to operate a motor vehicle only within the Bois Forte Reservation as such authorization may be conferred by resolution of the Bois Forte Reservation Tribal Council or by an Order of the Bois Forte Tribal Court.
- (j) “Registration” means the required registering of ownership of a motor vehicle within the State of Minnesota pursuant to the provisions of Minnesota Statutes (1992),

Chapter 168, and any subsequent amendments thereto, or the Bois Forte Motor Vehicle Licensing Ordinance, adopted by Resolution No. 68-99, December 14, 1998, and any subsequent amendments thereto.

- (k) “Insurance” means the motor vehicle insurance required of every driver, operator, or owner of a motor vehicle within the State of Minnesota pursuant to the provisions of Minnesota Statutes (1992), Chapter 65B.41, et seq., and any subsequent amendments thereto.
- (l) “Duties of driver or operator involved in an accident” means those duties imposed upon drivers and operators of motor vehicles involved in motor vehicle accidents within the State of Minnesota pursuant to the provisions of Minnesota Statutes (1992), Chapter 169, and any subsequent amendments thereto.
- (m) “Intoxicating liquor or drug” means any lawful or unlawful substance, whether prescribed by a physician or not, which substance can substantially impair any person’s ability to operate a vehicle.
- (n) “Private property” means any area within the Bois Forte Reservation not open to the general public, the use and enjoyment of which is restricted by custom, law, ordinance, resolution, or agreement to one or more persons. Private property includes any private driveway or roadway contained within said area.
- (o) “Police officer” means any law enforcement officer having the power to make an arrest within the Bois Forte Reservation.
- (p) “Minnesota traffic regulations” means those provisions of existing Minnesota statutes in effect as of September 30, 1992, and thereafter, relating to the registration, ownership, driving, operation, insuring and use of vehicles within the State of Minnesota, which statutes are generally found in Chapter 65B, et seq., and in Chapters 168, 168A, 169, 170 and 171 of Minnesota Statutes (1992), and which have been enacted and incorporated by reference into the Bois Forte Traffic Code by resolution of the Bois Forte Reservation Tribal Council and which have not otherwise been altered, amended, modified, or superseded by specific provisions of the Bois Forte Traffic Code.
- (q) Other definitions. Whenever any term, word, or phrase is used in the Bois Forte Traffic Code and the definition of such term, word, or phrase has not been otherwise defined above, or is not otherwise clearly discernible from the context in which it is used, but such term, word or phrase has been defined in Minnesota traffic regulations then, in such an event, the definition given to such term, word, or phrase in Minnesota traffic regulations shall apply.

803. Currently Valid Driver’s or Operator’s License or Permit.

Subd. 1. It shall be unlawful for any person to drive, operate, or be in physical control of a motor vehicle anywhere within the Bois Forte Reservation open to the general public, including areas designated or used for the public parking of motor vehicles, if said person has not been issued a currently valid driver's or operator's license or driver's permit.

Subd. 2. Any person convicted of having violated the provisions of Section 803, subd. 1, may be sentenced to payment of a fine not exceeding One Hundred Dollars (\$100.00) provided that said person has not been previously convicted in the Bois Forte Tribal Court for a similar offense within the year immediately preceding the commission of the latest offense.

Subd. 3. Any person convicted of having violated the provisions of Section 803, subd. 1, who has been previously convicted in the Bois Forte Tribal Court for a similar offense within the year immediately preceding the commission of the latest offense, may be sentenced to be incarcerated for a period not to exceed thirty (30) days or payment of a fine not exceeding Three Hundred Dollars (\$300.00), or both.

804. Refusal to Display Driver's or Operator's License to a Police Officer.

Subd. 1. It shall be unlawful for any person driving, operating, or in actual physical control of a motor vehicle anywhere within the Bois Forte Reservation open to the general public, including areas designated or used for the public parking of motor vehicles, to refuse or fail, without lawful excuse, to display his/her driver's or operator's license or driver's permit to any police officer who has requested of such person that the same be displayed.

Subd. 2. Any person convicted of having violated the provisions of Section 804, subd. 1, may be sentenced to payment of a fine not exceeding One Hundred Dollars (\$100.00).

805. Driving or Operating a Motor Vehicle After Revocation or Suspension of License or Permit.

Subd. 1. It shall be unlawful for any person whose driving privileges, or whose driver's or operator's license or driver's permit is revoked or suspended, to drive or operate a motor vehicle anywhere within the Bois Forte Reservation open to the general public, including areas designated or used for the parking of motor vehicles.

Subd. 2. Any person charged with a violation of Section 805, subd. 1, who asserts as an affirmative defense to said charge that he/she had been authorized to drive or operate a motor vehicle within the Bois Forte Reservation at the time of the commission of the alleged offense by either a duly enacted resolution of the Bois Forte Reservation Tribal Council or by an order of Bois Forte Tribal Court shall have the burden of establishing the same through a fair preponderance of the evidence.

Subd. 3. Any person convicted of having violated the provisions of Section 805, subd. 1, may be sentenced to be incarcerated for a period not exceeding thirty (30) days or payment of a fine not exceeding Three Hundred Dollars (\$300.00), or both, providing that said person has not

been previously convicted in the Bois Forte Tribal Court for a similar violation during the two (2) years immediately preceding the date of commission of the present offense.

Subd. 4. Any person convicted of having violated the provisions of Section 805, subd. 1, who has been previously convicted in the Bois Forte Tribal Court for a similar violation during the two (2) years immediately preceding the date of commission of the present offense may be sentenced in accordance with the provisions of Section 508.01, subd. 4, of the Bois Forte Tribal Code.

806. Owner Allowing Another Person to Drive or Operate Owner's Motor Vehicle.

Subd. 1. It shall be unlawful for any owner of a motor vehicle to allow another person to drive or operate the owner's motor vehicle anywhere within the Bois Forte Reservation open to the general public, including areas designated or used for the public parking of motor vehicles, if such owner knows or reasonably should know that the driver or operator has not been issued a currently valid driver's or operator's license or driver's permit, or if such owner knows or reasonably should know that the driver's or operator's driving privileges, driver's or operator's license, or driver's permit has been revoked or suspended.

Subd. 2. Any person convicted of having violated the provisions of Section 806, subd. 1, may be sentenced to be incarcerated for a period not exceeding thirty (30) days or payment of a fine not exceeding Three Hundred Dollars (\$300.00), or both.

807. Driving or Operating a Motor Vehicle Contrary to any Current Conditions or Restrictions of Driving Privileges.

Subd. 1. It shall be unlawful for any person, whose current driving privileges are in any manner conditioned or restricted, to drive or operate a motor vehicle contrary to the terms of such conditions or restrictions anywhere within the Bois Forte Reservation open to the general public, including those areas designated or used for the public parking of motor vehicles.

Subd. 2. Any person convicted of having violated the provisions of Section 807, subd. 1, may be sentenced to payment of a fine not exceeding One Hundred Dollars (\$100.00).

808. Allowing Another Person to Drive or Operate a Motor Vehicle Contrary to Current Conditions or Restrictions of the Other Person's Driving Privileges.

Subd. 1. It shall be unlawful for any person to knowingly allow any other person, whose current driving privileges are in any manner conditioned or restricted, to drive or operate a motor vehicle contrary to the terms of such conditions or restrictions anywhere within the Bois Forte Reservation open to the general public, including those areas designated or used for the public parking of motor vehicles.

Subd. 2. Any person convicted of having violated the provisions of Section 808, subd. 1, may be sentenced to payment of a fine not exceeding One Hundred Dollars (\$100.00).

809. Driving or Operating Motor Vehicle while Under the Influence of Alcohol or Controlled Substance.

Subd. 1. It shall be unlawful for any person to drive, operate, or be in physical control of any motor vehicle within the Bois Forte Reservation:

- (a) When the person is under the influence of alcohol;
- (b) Whose ability to drive or operate such motor vehicle in a reasonable, prudent, and safe manner has been substantially impaired as a result of the induction into the bodily system of the defendant of any intoxicating liquor or drug;
- (c) When the person is under the influence of a controlled substance, as defined in Minnesota Statutes (1992), Section 152.01, subd. 4;
- (d) When the person is under the influence of a combination of any two or more of the elements named in clauses (a), (b), (c) and (g);
- (e) When the person's blood alcohol concentration is 0.08 or more;
- (f) When the person's blood alcohol concentration as measured within two hours of the time of driving, operation, or physical control of the motor vehicle is 0.08 or more; or
- (g) When the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted by agencies or departments of the State of Minnesota under Minnesota Statutes (1992), Section 182.655 and that substantially affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to drive or operate a motor vehicle.

(Resolution 26-2006; August 8, 2006)

Subd. 2. Any person convicted of having violated the provisions of Section 809, subd. 1, may be sentenced to be incarcerated for a period not to exceed ninety (90) days or payment of a fine not exceeding Five Hundred Dollars (\$500.00), or both, providing that at the time of the commission of the violation for which conviction is entered the provisions contained in either Subdivision 3 or 4 below, did not apply.

Subd. 3. Any person convicted of having violated the provisions of Section 809, subd. 1, who has been previously convicted of a similar offense in the Bois Forte Tribal Court during the two years immediately preceding the date of commission of the present offense or who has been convicted in any court(s) of competent jurisdiction of a similar offense two (2) or more times during the five (5) years immediately preceding the date of the present offense, may be sentenced in accordance with the provisions of Section 508.01, subd. 4, of the Bois Forte Tribal Code.

Subd. 4. Any person convicted of having violated the provisions of Section 809, subd. 1, and who, at the time of the commission of the violation, was involved in a motor vehicle accident resulting in either serious bodily injury or death to another person which motor vehicle accident was due in whole, or in part, to the negligence of the person so convicted may be sentenced in accordance with the provisions of Section 508.01, subd. 4, of the Bois Forte Tribal Code.

810. Refusal and/or Failure to Allow Breath or Blood Alcohol Test to be Administered.

Subd. 1. It shall be unlawful for any person who drives or operates a motor vehicle within the Bois Forte Reservation to refuse without lawful excuse, or fail without lawful excuse, to take, undergo, or have administered any breath or blood alcohol test reasonably and lawfully requested of said person by any law enforcement officer empowered to act within the Bois Forte Reservation.

(Resolution 95-2000; January 20, 2000)

Subd. 2. Any person convicted of having violated Section 810, subd. 1, shall be sentenced in accordance with the provisions of Section 508.01, subd. 4, of the Bois Forte Tribal Code.

Subd. 3. The expense of administering any blood alcohol test at a site other than within the Bois Forte Reservation, including the cost of analyzing and interpreting the results thereof, shall be borne by the person tested. The Tribal Court is authorized to issue such orders and/or judgments as may be necessary to enforce this provision.

811. Owner Allowing Another to Drive or Operate a Motor Vehicle While Intoxicated or Impaired.

Subd. 1. It shall be unlawful for any person who is the owner of a motor vehicle to allow another person to drive, operate, or be in physical control of the owner's motor vehicle within the Bois Forte Reservation when said owner knows, or reasonably should know that the other person is intoxicated or that such person's ability to drive and/or operate such motor vehicle in a reasonably prudent and safe manner has been impaired as a result of the induction into the bodily system of such person of any intoxicating liquor or drug.

Subd. 2. Any person convicted of having violated Section 811, subd. 1, shall be sentenced to incarceration for a period not to exceed ninety (90) days or to pay a fine not exceeding Five Hundred Dollars (\$500.00), or both.

812. Reckless Driving.

Subd. 1. It shall be unlawful for any person to drive or operate a motor vehicle anywhere within the Bois Forte Reservation in a reckless and/or grossly negligent manner, or with willful or wanton disregard for the safety of persons or property.

Subd. 2. Any person convicted of having violated the provisions of Section 812, subd. 1, may be sentenced to be incarcerated for a period not to exceed one hundred eighty (180) days or to payment of a fine not exceeding One Thousand Dollars (\$1,000.00), or both, provided that at the time of the commission of the violation for which conviction is entered the provisions contained in Subdivision 3 below did not apply.

Subd. 3. Any person convicted of having violated the provisions of Section 812, subd. 1, and who, at the time of the commission of the violation, was involved in a motor vehicle accident resulting in either serious bodily injury or death to another person which motor vehicle accident was due in whole, or in part, to the defendant's recklessness, gross negligence, or willful or wanton disregard for the safety of persons or property, may be sentenced in accordance with the provisions of Section 508.01, subd. 4, of the Bois Forte Tribal Code.

813. Careless or Negligent Driving.

Subd. 1. It shall be unlawful for any person to drive or operate a motor vehicle anywhere within the Bois Forte Reservation in a careless or negligent manner likely to endanger persons or property but which is not in a manner exhibiting gross negligence or recklessness or exhibiting a willful or wanton disregard for the safety of persons or property.

Subd. 2. Any person convicted of having violated the provisions of Section 813, subd. 1, may be sentenced to be incarcerated for a period not to exceed thirty (30) days or payment of a fine not exceeding Five Hundred Dollars (\$500.00), or both, provided that at the time of the commission of the violation for which conviction is entered the provisions contained in Subdivision 3 below did not apply.

Subd. 3. Any person convicted of having violated the provisions of Section 813, subd. 1, and who, at the time of the commission of the violation, was involved in a motor vehicle accident resulting in either serious bodily injury or death to another person which motor vehicle accident was due in whole, or in part, to the defendant's careless or negligent driving or operation of his/her motor vehicle may be sentenced to be incarcerated for a period not to exceed one hundred eighty (180) days or payment of a fine not exceeding One Thousand Dollars (\$1,000.00), or both.

814. Speeding.

Subd. 1. It shall be unlawful for any person to drive or operate a motor vehicle upon any public street, road, or highway, or upon a frozen lake, stream, or pond, or in any other place open to the general public within the Bois Forte Reservation, including any area designated for the parking of motor vehicles:

- (a) At other than a careful and prudent speed, not greater or less than is reasonable or proper, having due regard to existing road, traffic, and other conditions;
- (b) At a speed greater than that which will permit the vehicle to be stopped within a clear, assured distance ahead; or

- (c) At a speed greater than fifty-five (55) miles per hour or that which is posted, whichever is the lesser.

Subd. 2. Any person convicted of having violated the provisions of Section 814, subd. 1, may be sentenced to payment of a fine not exceeding One Hundred Dollars (\$100.00), provided that at the time of the commission of the violation for which conviction is entered the provisions contained in either Subdivision 3 and 4 below did not apply.

Subd. 3. Any person convicted of having violated the provisions of Section 814, subd. 1, who has been previously convicted in the Bois Forte Tribal Court for any violation of the Bois Forte Traffic Code during the two (2) years immediately preceding the date of commission of the present offense may be sentenced to be incarcerated for a period not to exceed fifteen (15) days or a payment of a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or both, provided that at the time of the commission of the violation for which conviction is entered the provisions contained in Subdivision 4 below did not apply.

Subd. 4. Any person convicted of having violated the provisions of Section 814, subd. 1, and who, at the time of the commission of the violation, was involved in a motor vehicle accident resulting in either serious bodily injury or death to another person which motor vehicle accident was due in whole, or in part, to the excessive speed at which the defendant was driving or operating his/her automobile may be sentenced to be incarcerated for a period not to exceed one hundred eighty (180) days or payment of a fine not exceeding One Thousand Dollars (\$1,000.00), or both.

815. Duties of Driver Involved in an Accident.

Subd. 1. It shall be unlawful for any person driving or operating a motor vehicle within the Bois Forte Reservation who is involved in an accident resulting in damage to property or resulting in injury or death to any person, or both, to fail to report said accident to the Bois Forte Police Department in a manner consistent with the duties imposed by Minnesota traffic regulations upon a driver or operator of a motor vehicle involved in an accident anywhere within the State of Minnesota.

Subd. 2. Any person convicted of having violated the provisions of Section 815, subd. 1, may be sentenced as follows:

- (a) To payment of a fine not exceeding One Hundred Dollars (\$100.00) if the accident resulted in property damage only and said property damage does not exceed Five Hundred Dollars (\$500.00);
- (b) To be incarcerated for a period not to exceed ninety days (90) days or payment of a fine not exceeding Five Hundred Dollars (\$500.00), or both, if the person leaves the scene of an accident other than for the express purpose of reporting said accident or obtaining medical assistance for any person injured as a result of said accident, or if the property damage resulting from said accident exceeds Five Hundred Dollars, or if

any person or persons were injured as a result of said accident, or any combination of the above.

Subd. 3. If the person leaves the scene of an accident, other than for the express purpose of reporting said accident or obtaining medical assistance for any person injured as a result of said accident, and if such accident results in the death of any person, then the person may be sentenced in accordance with the provisions of Section 508.01, subd. 4, of the Bois Forte Tribal Code. Any person who raises as an affirmative defense to an alleged violation of this section that he/she left the scene of the accident for the express purpose of reporting said accident or for the express purpose of obtaining medical assistance for any person injured as a result of such accident, or both, shall have the burden of establishing such defense by a fair preponderance of the evidence.

816. Motor Vehicle Insurance.

Subd. 1. It shall be unlawful for any person:

- (a) To drive or operate a motor vehicle within the Bois Forte Reservation, including any areas designated for the public parking of motor vehicles, if either the person or the motor vehicle is not currently insured pursuant to Minnesota traffic regulations; or
- (b) Who is the owner of a motor vehicle to allow said motor vehicle to be driven or operated within the Bois Forte Reservation, including any areas designated for the public parking of vehicles, if said vehicle is not currently insured pursuant to Minnesota traffic regulations.

Subd. 2. Any person convicted of having violated the provisions of Section 816, subd. 1, may be sentenced to payment of a fine not exceeding One Hundred Dollars (\$100.00), provided that said person has not been previously convicted in the Bois Forte Tribal Court for any similar violations of the Bois Forte Traffic Code during the two (2) years immediately preceding the date of commission of the present offense.

Subd. 3. Any person convicted of having violated the provisions of Section 816, subd. 1, who has been previously convicted in the Bois Forte Tribal Court for any similar violation of the Bois Forte Traffic Code during the two (2) years immediately preceding the date of commission of the present offense may be sentenced to be incarcerated for a period not to exceed fifteen (15) days or a payment of a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or both.

817. Motor Vehicle Registration.

Subd. 1. It shall be unlawful for any person:

- (a) To drive or operate a motor vehicle within any area of the Bois Fort Reservation open to the public, including any areas designated for the public parking of motor vehicles, if either the person or the motor vehicle is not currently registered pursuant to Minnesota Traffic regulations or the laws of the Bois Forte Band; or

- (b) Who is the owner of a motor vehicle to allow said motor vehicle to be driven or operated within any area of the Bois Forte Reservation open to the public, including any areas designed for the public parking of vehicles, if said vehicle is not currently registered pursuant to Minnesota traffic regulations or the laws of the Bois Forte Band.

(Resolution 95-2000; January 20, 2000)

Subd. 2. Any person convicted of having violated the provisions of Section 817, subd. 1, may be sentenced to payment of a fine not exceeding One Hundred Dollars (\$100.00), provided that said person has not been previously convicted in the Bois Forte Tribal Court for any similar violations of the Bois Forte Traffic Code during the two (2) years immediately preceding the date of commission of the present offense.

Subd. 3. Any person convicted of having violated the provisions of Section 817, subd. 1, who has been previously convicted in the Bois Forte Tribal Court for any similar violation of the Bois Forte Traffic Code during the two (2) years immediately preceding the date of commission of the present offense may be sentenced to be incarcerated for a period not to exceed fifteen (15) days or a payment of a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or both.

818. Required Equipment.

Subd. 1. It shall be unlawful for any person to operate a motor vehicle in any area of the Bois Forte Reservation open to the public, including any areas designated for the public parking of vehicles, if said vehicle is not currently equipped pursuant to Minnesota traffic regulations.

Subd. 2. Any person convicted of having violated the provisions of Section 818, subd. 1, may be sentenced to payment of a fine not exceeding One Hundred Dollars (\$100.00), provided that said person has not been previously convicted in the Bois Forte Tribal Court for any similar violations of the Bois Forte Traffic Code during the two (2) years immediately preceding the date of commission of the present offense.

Subd. 3. Any person convicted of having violated the provisions of Section 818, subd. 1, who has been previously convicted in the Bois Forte Tribal Court for any similar violation of the Bois Forte Traffic Code during the two (2) years immediately preceding the date of commission of the present offense may be sentenced to be incarcerated for a period not to exceed fifteen (15) days or a payment of a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or both.

819. Prohibited Parking.

Subd. 1. It shall be unlawful for any person to park a vehicle, except when necessary to avoid conflict with other traffic or when in compliance with any law, ordinance, or directions of a tribal police officer, in any of the following places:

- (a) On a sidewalk;

- (b) In front of a public or private driveway;
- (c) Within an intersection;
- (d) Within fifteen (15) feet of a fire hydrant;
- (e) On a crosswalk;
- (f) On any public street, road, or highway and alongside of any other vehicle stopped or parked on said street, road, or highway (*e.g.*, “double-parking”);
- (g) In any manner likely to impede or obstruct traffic or to endanger the safety of persons or property;
- (h) In any area posted “No Parking” or posted so as to restrict parking to certain persons or vehicles, including areas restricted to vehicles of disabled persons only, unless the posted restriction does not apply to the person operating the vehicle or to the vehicle;
- (i) On any public street, road, or highway within the boundary limits of Nett Lake Village after 1800 hours, November 15 of each calendar year and prior to 0600 hours, May 15 of each following calendar year except as otherwise authorized by any calendar, or other parking, plan approved by the Bois Forte Reservation Tribal Council and then in effect; or
- (j) On any public street, road, or highway within the territory of the Bois Forte Band in a manner not authorized by a parking plan approved by the Bois Forte Reservation Tribal Council and then in effect.

(Resolution 74-2003; November 21, 2002)

Subd. 2. Any person convicted of a violation of Section 819, subd. 1 (a) through (f) or (i) through (j), may be sentenced to payment of a fine not exceeding Ten Dollars (\$10.00).

Subd. 3. Any person convicted of a violation of Section 819, subd. 1 (g) or (h), may be sentenced to payment of a fine not exceeding Fifty Dollars (\$50.00).

820. Mandatory Use of Seat Belts, Child Passenger Restraints, and Approved Helmets.

Subd. 1. Except as otherwise provided herein, it shall be unlawful for any person to occupy the front seat(s) or, if the person is under the age of thirteen (13) years to occupy any seat, of a passenger vehicle being driven or operated upon any public street, road, or highway, or upon a frozen lake, stream, or pond, or in any other place open to the general public within the Bois Forte Reservation, including any area designated for the parking of motor vehicles, unless said person is securely fastened with an operable seat belt.

Subd. 2. It shall be unlawful for any parent, guardian, or custodian of an infant or child four (4) years of age or younger, when transporting the child in a non-commercial motor vehicle being driven or operated upon any public street, road, or highway, or upon a frozen lake, stream, or pond, or in any other place open to the general public within the Bois Forte Reservation, including any area designated for the parking of motor vehicles, to fail to secure said infant or child in a child passenger restraint system. The child passenger restraint system shall meet Federal Motor Vehicle Safety Standards.

(Resolution 74-2003; November 21, 2002)

Subd. 3. Except as otherwise provided herein, it shall be unlawful for any person to drive or operate a motor vehicle upon any public street, road, or highway, or upon a frozen lake, stream, or pond, or in any other place open to the general public within the Bois Forte Reservation, including any area designated for the parking of motor vehicles, if any other occupant of said passenger vehicle is in violation of Subdivision 1 and/or 2 above.

Subd. 4. It shall be unlawful for any person to operate or occupy a motorcycle, ATV, or snowmobile upon any public street, road, or highway, or upon a frozen lake, stream, or pond, or in any other place open to the general public within the Bois Forte Reservation, including any area designated for the parking of motor vehicles, unless said person is then wearing a helmet approved for such use in accordance with standards set by the Bois Forte Reservation Tribal Council or, if no such standards exist, in accordance with standards set by the State of Minnesota.

Subd. 5. This section does not apply:

- (a) To any vehicle that is parked;
- (b) To any police or other emergency vehicle; or
- (c) So as to require the use of a seat belt by the operator of any vehicle being used for a purpose necessitating repeated stops at frequent intervals (*i.e.*, garbage, mail, milk, or similar delivery or pickup).

Subd. 6. No motor vehicle shall be stopped by any law enforcement officer solely because of an alleged violation of Subdivision 1 or 2 above, nor shall any person be charged with violating Subdivision 1 or 2 above, unless a motor vehicle accident has taken place or there has also been a concurrent moving violation of another section of this Chapter.

Subd. 7. Any person convicted of a violation of Section 820, subdivisions 1 through 4, may be sentenced to pay a fine not exceeding Fifty Dollars (\$50.00).

821. Underage Operation of ATV's, Snowmobiles, and Other Recreational Vehicles.

Subd. 1. It shall be unlawful for any minor under the age of fourteen (14) years to operate an ATV, snowmobile, or other similar recreational vehicle anywhere within the

boundaries of the Bois Forte Reservation unless accompanied on said vehicle or on a companion vehicle by said minor's parent, guardian, or custodian or by another adult.

Subd. 2. It shall be unlawful for any person to permit any minor under the age of fourteen (14) years to operate an ATV, snowmobile, or other similar recreational vehicle unless accompanied on said vehicle or on a companion vehicle by said minor's parent, guardian, or custodian or by another adult.

Subd. 3. It shall be unlawful for any person to allow any other person under the age of twelve (12) years to drive or operate an ATV, snowmobile, or other recreational vehicle anywhere within the boundaries of the Bois Forte Reservation.

Subd. 4. Any person convicted of a violation of Section 821, subdivision 2 or 3, shall be sentenced to pay a fine not exceeding One Hundred Dollars (\$100.00).

822. Other Violations.

Subd. 1. It shall be unlawful for the driver or operator of any motor vehicle within the boundaries of the Bois Forte Reservation to:

- (a) Fail to stop for a "Stop Sign;"
- (b) Fail to yield to any motor vehicle approaching from the right at any intersection or for any vehicle or pedestrian already within said intersection;
- (c) Fail to give way and stop for any approaching emergency vehicle whose emergency lights are flashing or whose siren is being sounded;
- (d) Fail to stop at least fifty (50) feet distant from any marked school bus whose lights are flashing and whose stop sign is extended;
- (e) Pass another vehicle in a zone marked "No Passing," in an intersection, in the path of an on-coming vehicle or, in any manner in which the pass cannot safely be completed without reasonable risk of causing damage to another vehicle or injuries to other persons;
- (f) Fail, without lawful excuse, to obey the order(s) of any law enforcement officer directing traffic;
- (g) Return to the scene of an arrest, traffic stop, and/or accident without lawful excuse after having been directed by a law enforcement officer to leave the scene of such arrest, traffic stop, and/or accident;
- (h) Cross over the center line of any street, road, or highway except for the purpose of lawfully passing another vehicle or to avert an obstruction and, in such an event, only

when the vehicle can be brought safely back into the proper lane without reasonable risk of causing damage to another vehicle or injuries to another person.

- (i) Fail to keep and maintain a reasonable distance between the vehicle being operated and any vehicle immediately ahead;
- (j) Operate a motor vehicle without both headlights and both taillights on and in working condition during any period of fog, rain, snow, sleet, freezing rain, drizzle, or during the period from sunset to sunrise;
- (k) Fail to signal any turn or stop using appropriate turn signal lights or brake lights as the case may be; or
- (l) Possess, have or allow another person to have, within the passenger compartment of a motor vehicle being operated upon any public street, road, or highway, or upon a frozen lake, stream, or pond, or in any other place open to the general public within the Bois Forte Reservation, including any area designated for the parking of motor vehicles, an open bottle, can, or other container containing any quantity of alcohol or intoxicating liquor. It shall also be unlawful for any other person who is an occupant of a motor vehicle being so operated to possess or have an open bottle, can, or other container containing any quantity of alcohol or intoxicating liquor.

Subd. 2. It shall be unlawful for any driver or operator of a motor vehicle to purposefully flee in a motor vehicle from a law enforcement officer who is either pursuing said driver or operator or who has stopped, or assisted another law enforcement officer, in stopping said driver or operator.

Subd. 3. Any person convicted of a violation of Section 822, subd. 1, shall be sentenced to pay a fine not exceeding One Hundred Dollars (\$100.00).

Subd. 4. Any person convicted of a violation of Section 822, subd. 2, may be sentenced in accordance with the provisions of Section 508.01, subd. 4, of the Bois Forte Tribal Code.

823. Miscellaneous Violations of Minnesota Traffic Regulations.

Subd. 1. Except as otherwise provided herein, it shall be unlawful for any person to drive or operate a motor vehicle upon any public street, road, or highway, or upon a frozen lake, stream, or pond, or in any other place open to the general public within the Bois Forte Reservation, including any area designated for the parking of motor vehicles, in violation of Minnesota traffic regulations.

Subd. 2. Any person convicted of a violation of Section 823, subd. 1, may be sentenced to payment of a fine not exceeding One Hundred Dollars (\$100.00), provided said violation did not cause or result in damage to property or did not cause or result in the serious bodily injury or death of any person.

Subd. 3. Any person convicted of a violation of Section 823, subd. 1, may be sentenced to be incarcerated for a period not to exceed ten (10) days or payment of a fine not exceeding Two Hundred Dollars (\$200.00), or both, providing that said violation caused or resulted in damage to property but did not cause or result in the serious bodily injury or death of any person.

Subd. 4. Any person convicted of a violation of Section 823, subd. 1, may be sentenced in accordance with the provisions of Section 508.01, subd. 4, of the Bois Forte Tribal Code provided that said violation caused or resulted in the serious bodily injury or death of any person.

Subd. 5. In the event that the commission of an act in violation of this section also constitutes a violation of any other section of the Bois Forte Traffic Code governing the commission of such an act, such other section shall apply and, upon conviction for a violation thereof, the sentence imposed shall be that set forth in such other section of the Bois Forte Traffic Code.

Subd. 6. Violation of any provision of Minnesota traffic regulations hereinafter enacted, altered, amended, or modified pursuant to the laws of the State of Minnesota (except as the same applies to the registration of motor vehicles, licensing of drivers and operators, reporting of accidents, and insuring of drivers, operators and owners of motor vehicles) shall not be a violation of this section unless said provision has been incorporated by reference into the Bois Forte Traffic Code through the subsequent enactment by the Bois Forte Reservation Tribal Council of a resolution, ordinance, or regulation to that effect.

824. Jurisdiction of the Bois Forte Tribal Court.

Subd. 1. The Bois Forte Tribal Court shall have sole and exclusive jurisdiction over any Indian person alleged to have committed a violation of the Bois Forte Traffic Code.

Subd. 2. In addition to any other powers and authority which it may possess, the Bois Forte Tribal Court, upon entering a conviction of any person for having violated a provision of the Bois Forte Traffic Code:

- (a) Shall have the authority to revoke, suspend, modify, extend, condition, limit, or restrict the driving privileges of said person within the Bois Forte Reservation for a period of time not to exceed one (1) year from the date of the conviction;
- (b) May direct the Clerk of the Bois Forte Tribal Court or the Nett Lake Police Department to notify any governmental agency, whether Indian, federal, state, or otherwise, having authority to issue licenses and permits to drive or operate motor vehicles and/or having authority to register, the ownership of motor vehicles, of the name, address, driver's or operator's license or permit number, motor vehicle registration identification, date and nature of offense, and date of conviction thereof, of any person so convicted; and

- (c) May direct the person convicted to attend a counseling, educational, treatment, or similar program designed to address and/or correct the condition or circumstances which gave rise to the offense for which conviction was entered.

Subd. 3. The Bois Forte Tribal Court shall have the authority to establish and publish a Uniform Bail and Forfeiture Schedule applying to all offenses enumerated within this Chapter.

Subd. 4. The Bois Forte Tribal Court shall have the authority to establish and publish a uniform procedure wherein persons charged with alleged violations of this Chapter may enter a plea of guilty to the alleged offense simply by both endorsing the back of the traffic citation issued to such person and by paying to the Clerk of the Bois Tribal Court such fine as has been previously set by the court for the violation.

Subd. 5. The powers and authority conferred upon the Bois Forte Tribal Court under this section shall be exercised at the sole discretion of the court.

825. Violations by Minors.

Subd. 1. The Bois Forte Tribal Court, Juvenile Division, shall have sole and exclusive jurisdiction over any person under the age of eighteen (18) years who is alleged to have committed a violation of the Bois Forte Traffic Code. Proceedings may be commenced in the Juvenile Division of the Bois Forte Tribal Court by either the issuance and filing of a traffic citation or of a juvenile delinquency petition pursuant to Chapter VII, Section 714 and 715, setting forth the alleged violation(s).

Subd. 2. Upon entering a finding that the minor has committed the violation(s) alleged, the Bois Forte Tribal Court, Juvenile Division, shall, in addition to all other authority it may have, be empowered to impose upon said minor a fine similar to that which would be imposed if the minor were an adult having been convicted of the same violation and the Court shall also have the authority to impose any of the procedures authorized in Section 824, subd. 2(a)-(c), above.

826. Applicability of Minnesota Traffic Regulations.

Subd. 1. Except as otherwise provided herein, all provisions of Minnesota traffic regulations in effect as of September 30, 1992 are hereby adopted and incorporated by reference into the Bois Forte Traffic Code.

Subd. 2. No provision of Minnesota traffic regulations, including violations and/or sentences to be imposed upon conviction for violations, shall have any applicability herein if the subject matter of said provision is specifically addressed by, or within, other sections of the Bois Forte Traffic Code, the Bois Forte Tribal Code, or by other resolutions, ordinances, or regulations enacted by the Bois Forte Reservation Tribal Council.

Subd. 3. No past, present, or future decision of any district or appellate court of the State of Minnesota, or of any federal court, with regard to Minnesota traffic regulations shall, of itself,

have any lawful or binding effect of any matter within the jurisdiction of the Bois Forte Tribal Court except insofar as any such decision shall apply generally to all Indian tribal courts or shall have been directed to apply to the Bois Forte Tribal Court by order of a court having competent jurisdiction.

827. Repeal of Prior Provisions and Ordinances.

Subd. 1. Upon the effective date of this ordinance all prior provisions of Chapter VIII, Sections 801-818 (Motor Vehicle Code), of the Bois Forte Tribal Code, together with all previously enacted resolutions, ordinances, and regulations pertaining to the driving and operation of motor vehicles within the Bois Forte Reservation shall be, and are, repealed.

828. Copies; Duties of the Clerk of Bois Tribal Court.

Subd. 1. The Clerk of the Bois Forte Tribal Court shall maintain and keep open for inspection by the general public copies of the Bois Forte Traffic Code.

Subd. 2. The Clerk of the Bois Forte Tribal Court shall distribute copies of the Bois Forte Traffic Code to the Secretary of the United States Department of Interior, the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, the Judge of the Bois Forte Tribal Court, the Nett Lake Police Department, the Bois Forte Judicial Services Coordinator, the Bois Forte Tribal Court Prosecutor, the Indian Legal Assistance Program, Duluth, MN, and to such other persons or agencies as the Clerk may deem necessary.

Subd. 3. The Clerk of the Bois Forte Tribal Court shall cause copies of the Bois Forte Traffic Code to be publicly posted at several and various locations throughout both the Nett Lake and Vermillion sectors of the Bois Forte Reservation and copies shall also be made available, at cost, to any member of the Bois Forte Band of Chippewa or resident of the Bois Forte Reservation, or other interested person, requesting the same.

829. Effective Date.

Subd. 1. The effective date of this, the revised Bois Forte Traffic Code, shall be December 10, 1992.

Enacted by Resolution No. 93-40, of the Bois Forte Reservation Tribal Council on the 20th day of November 1992.

Amended by Resolution No. 160-96, May 8, 1996.

Amended by Resolution No. 95-2000, January 20, 2000.

Enacted by Resolution No. 109-98, February 1, 1998.

CHAPTER XII – DOMESTIC VIOLENCE CODE

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CHAPTER XII – DOMESTIC VIOLENCE CODE

PART A – GENERAL PROVISIONS

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. § 2265¹ and 25 U.S.C. § 1304,² 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. Special Domestic Violence Jurisdiction.

Subd. 1. Special Domestic Violence jurisdiction. The Band hereby exercises “Special Domestic Violence criminal jurisdiction” as a “participating tribe,” as defined in 25 U.S.C. § 1304,³ in the Tribal Court.

Subd. 2. Defendants. The Band hereby declares its Special Domestic Violence jurisdiction over any person only if he or she:

- (a) Resides within the Band’s Reservation;
- (b) Is employed within the Band’s Reservation;

¹ 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.

² VAWA is codified at 25 U.S.C. § 1304 (recognizing tribes’ “inherent power...to exercise special Domestic Violence jurisdiction over all persons”—including non-Indians).

³ The term “Special Domestic Violence criminal jurisdiction” is defined as “the criminal jurisdiction that a participating tribe may exercise under [VAWA] but cannot otherwise exercise.” 25 U.S.C. § 1305(a)(6). The term “participating tribe” is defined as “an Indian tribe that elects to exercise special Domestic Violence criminal jurisdiction over the Indian country of that Indian tribe.” 25 U.S.C. § 1304(a)(4).

(c) Regardless of the defendant's residence or place of employment, is a spouse, intimate partner, or dating partner or either:

(1) A member of the Band; or

(2) An Indian person who resides within the Band's Reservation.

Subd. 3 Applicable Criminal Conduct. The Band's exercise of Special Domestic Violence jurisdiction is limited to crimes of Domestic Violence committed by a person who is a current or former spouse or intimate partner of the victim, or by a person who is or has been in a social relationship of a romantic or intimate nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationships; or violations of no contact orders or domestic violence protection orders as authorized in Section 1203, subd. 2.

Subd. 4. The Tribal Court may not exercise Special Domestic Violence criminal jurisdiction over an alleged offense if both the offender and the victim are non-Indians; however, no provision of this Chapter shall be interpreted to restrict a law enforcement officer's duty to keep the peace or prohibit a law enforcement officer from detaining non-Indian offenders and turning them over to the proper authorities for prosecution.

1203. Criminal Conduct Applicable.

The Band shall exercise its jurisdiction under this Chapter for criminal conducts that falls into one or more of the following categories:

Subd. 1. Domestic violence. An act of Domestic Violence that occurs within the Band's Reservation.

Subd. 2. Violation of a No Contact Order or Domestic Violence Protection Order.
An act that:

(a) Occurs within the Band's Reservation; and

(b) Violates the portion of a no contact order, Domestic Violence protection order or ex parte order that:

(1) prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;

(2) was issued against the defendant; and

(3) is consistent with 18 U.S.C. § 2265(b).⁴

1204. Rights and Procedural Requirements.

- (a) All defendants prosecuted under this Chapter shall:
- (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; and
 - (2) at the defendant’s arraignment, be advised of the rights enumerated therein.
- (b) Any defendant subject to the Band’s jurisdiction pursuant to Section 1202, subd. 2, and accused of committing an act of Domestic Violence, violation of a no contact order, and/or violation of a Domestic Violence protection order, irrespective of the term of imprisonment imposed, shall:
- (1) be entitled to the rights prescribed in Section 1204(a);
 - (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).⁵

⁴ 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.”).

⁵ “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.

- (c) All defendants have the right to petition for a writ of habeas corpus in federal court pursuant to 25 U.S.C. §§ 1303 and 1304(e) to test the legality of his or her detention by order of the Tribal Court and may petition the Tribal Court to stay further detention pending the habeas proceeding.
- (d) 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.

1205. 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.

1206. 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.

1207. Savings. This Chapter takes effect on the date approved by the Band's Reservation Tribal Council 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.

1208. Definitions. For the purposes of this Chapter, the following definitions shall apply:

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
- (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) The act of inflicting physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury, through the commission or attempted commission of Sections: 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), under Chapter VI of the Bois Forte Tribal Code, Crimes and Offenses, 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. § 1151.⁶

⁶ “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.

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.

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

1209. 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.

1210. 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.

1211. 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

1212. 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.

1213. 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.

1214. 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.

PART D – TRIBAL COURT PROCEDURES, POWERS, AND DUTIES

1221. 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 a crime established 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 defendant resides within the Band's Reservation;
- (b) The defendant is employed within the Band's Reservation;
- (c) The defendant is a current or former spouse or intimate dating partner of a member of the Band;
- (d) The defendant is a current or former spouse or intimate dating partner of an Indian person who resides within the Reservation; or
- (e) Both the defendant and the victim are non-Indian.

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 Domestic Violence pursuant to Section 1202, Subd. 2. 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 1204.

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 Subd. 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.

1222. 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.

1225. 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

1226. 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 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

1227. 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 an 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 not 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.

1228. 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.

1229. 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. § 2265.⁷

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

⁷ See note 4.

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 restraint 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

1230. 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.

CHAPTER XV – TRIBAL ELDER AND VULNERABLE ADULT PROTECTION CODE

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CHAPTER XV – TRIBAL ELDER AND VULNERABLE ADULT PROTECTION CODE

1501. Title. This Chapter shall be known and cited as the Bois Forte Elder and Vulnerable Adult Protection Code.

1502. Policy. It is the policy of the Bois Forte Band of Chippewa Indians to hold our elders in high esteem. The elders of our community are the custodians of Tribal history, culture and traditions which are vital to Native Culture. It is also the policy of the Bois Forte Band of Chippewa Indians to protect those vulnerable adults who exceed the age of 18 and cannot protect themselves because of mental or physical impairments. This Chapter shall be liberally construed to affect its policies and purposes.

1503. Purpose. The purpose of this Chapter is to protect the elders and vulnerable adults within the jurisdiction of the Bois Forte Band of Chippewa Indians from abuse, neglect, or financial exploitation as defined by this Code. This Chapter shall be construed achieve this purpose. This Chapter provides for:

- (a) Reporting abuse, neglect or financial exploitation of elders and vulnerable adults to the proper agency;
- (b) Receiving and investigating such reports of abuse, neglect or financial exploitation; and
- (c) Providing protective services for elders or vulnerable adults.

1504. Civil Nature of this Chapter. This Chapter is generally civil in nature and does not affect any applicable provisions of the Bois Forte criminal codes unless specifically addressed and modified by this Chapter. However, a person alleged to have physically or sexually abused or financially exploited an elder or vulnerable adult may be prosecuted pursuant to tribal and/or federal criminal laws.

1505. Definitions. The following definitions shall apply:

- (a) “Abuse” includes:
 - (1) Physical abuse which means the intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, emotional abuse, or cruel punishment of an elder or vulnerable adult that results in physical pain or mental anguish. Physical abuse may be inflicted by relatives, acquaintances, caretakers, or anyone else who comes into contact with an elder or vulnerable adult; and
 - (2) Sexual abuse which means physical contact without consent of an elder or vulnerable adult with the intent to derive sexual gratification by the person making contact and includes all offenses enumerated in Sections 610 of the Bois Forte Tribal Code. Consent may not be obtained by threat, coercion,

imitation, or fraud.

- (b) “Neglect” means a failure to provide for the basic needs of an elder or vulnerable adult by not supplying resources, care, or supervision required to provide for these basic needs. Neglect also includes:
 - (1) Interfering with delivery of necessary resources and services;
 - (2) Failing to report abuse of an elder or vulnerable person; or
 - (3) Failing to provide an elder with services or resources to aid in the elder’s practice of religion, tradition, or custom.
- (c) “Elder” means a member of the Bois Forte Band of Chippewa Indians or an Indian person who is physically present on the Bois Forte Indian Reservation and is fifty-five (55) years of age or older.
- (d) “Financial Exploitation” means the improper or unauthorized use of an elder’s or vulnerable adult’s funds, property, or other resources. A failure, without lawful excuse, to use an elder’s or vulnerable adult’s funds, property, or resources as the elder or adult desires or for their benefit shall be deemed exploitation.
- (e) “Vulnerable Adult” means an adult who exceeds the age of eighteen (18) years old and is unable to protect themselves from abuse, neglect, or exploitation. This includes the inability of the person to make responsible decisions for himself or herself because of mental illness or deficiency, physical disability or illness, age, or chronic use of alcohol or drugs.
- (f) “Caretaker” means:
 - (1) A person who is required by tribal or state law or tribal custom to provide services or resources to an elder or vulnerable adult;
 - (2) A person who volunteers to provide services or resources to an elder or vulnerable adult; or
 - (3) An institution or agency and its employees who are required by tribal, state, or federal law, tribal custom, or through any other agreement to provide services or resources to an elder or vulnerable adult.
- (g) “Emergency” means a situation in which an elder or vulnerable adult is immediately at risk of death or injury and is unable to consent to services to remove the risk.
- (h) “Family” is determined by tribal law, custom, or traditions.
- (i) “Good faith” means an honest and reasonable belief or purpose and the lack to

defraud.

- (j) “Least Restrictive Alternative” means whenever it is necessary to protect an elder or vulnerable adult, the least restrictive method of intervention shall be used to protect the freedom and independence of the elder or vulnerable adult. The least restrictive alternative is that environment which is the most like the elder or vulnerable adult’s home setting and which is most capable of supporting the protected person’s physical and mental health and emotional being.
- (k) “Protective Placement” means the placement of an elder or vulnerable adult in a hospital, nursing home, residential care facility, other suitable placement, or transfer from one facility to another with consent of that person or with appropriate legal authority.
- (l) “Protective Services” means the services provided to an elder or vulnerable adult with consent or by order of an appropriate legal authority which includes, but is not limited to, social services, mental and physical health examinations, home and day care, legal assistance, guardianship, case management, and any other services consistent with this Chapter.
- (m) “Retaliation” means intimidating, threatening to cause bodily harm, or causing bodily harm, or causing bodily harm to a reporter or family or a person reporting elder abuse; causing the reporter or reporter’s family to be terminated, suspended, or reprimanded by an employer; causing property damage to real or personal property belonging to reporter’s family.
- (n) “Substantiated Report” means when there is probable cause of abuse after an investigation is conducted by tribal law enforcement and/or Bois Forte Human Services worker. The report is sent to the Band Prosecutor for further steps to be taken. BF Human Services shall keep substantiated reports on file for five (5) years.
- (o) “Unsubstantiated Report” means when no probable cause exists after an investigation. BF Human Services will keep such reports on file for two (2) years following the completion of the report.

1506. Duty to Report Abuse, Neglect, or Financial Exploitation of an Elder or Vulnerable Adult.

- (a) Suspected abuse, neglect, or financial exploitation shall be reported to the Bois Forte Police Department and/or the Bois Forte Human Services Division by:
 - (1) The elder or vulnerable adult’s family or caretaker;
 - (2) Elected official of the Tribe;
 - (3) All tribal social workers, medical and dental staff, religious practitioners, or

any other tribal employees who provide services to tribal elders or vulnerable adults;

(4) Any person or agency, including employees, with fiduciary duties to elders or vulnerable adults such as attorneys, accountants, property managers, or financial institutions;

(5) The elder or vulnerable adult abused; or

(6) Any other person(s) who have reason to suspect that an elder or vulnerable adult is abused, neglected, or being financially exploited.

(b) Reports of suspected elder or vulnerable adult abuse, neglect, or financial exploitation are presumed to be made in good faith.

(c) Upon receipt of such a report by the Bois Forte Police Department or the Bois Forte Human Services Division, that agency shall immediately notify the other agency so that a coordinated response and investigation may be promptly initiated.

1507. Immunity for Reporting. A person who in good faith reports suspected abuse, neglect, or financial exploitation as defined by this Chapter is immune from any civil or criminal statute based upon that person's report if the report results in an unsubstantiated report.

1508. Failure to Report; Civil Penalty; Damages; Criminal Liability. Any person required to report who fails to report suspected or actual abuse or neglect as required by this Chapter may be subject to a civil money penalty of up to \$5,000. All persons required to report who fail to report are entitled to petition, notice, and an opportunity for hearing in Tribal Court. Fines shall be assessed only after determination of a duty to report is found at the hearing. A person failing to report suspected abuse, neglect, or financial exploitation may be subject to suit by or on behalf of abused persons for damages resulting from such failure. A willful failure to report as required by this Chapter may also subject the mandated reporter to criminal penalties as provided by the Bois Forte Tribal Code.

1509. Bad Faith Report; Civil Liability; Damages, Criminal Liability. Any person who makes a report of suspected abuse or neglect as defined by this Chapter knowing it to be false shall be subject to a civil money penalty of up to \$5,000. Those accused of making bad faith reports are entitled to petition, notice, and an opportunity for a hearing in a civil suit for damages filed by persons unjustly charged. Criminal penalties may also be brought against a bad faith reporter as provided for in the Bois Forte Tribal Code.

1510. Investigation.

(a) The Bois Forte Police Department and the Bois Forte Human Service Division protective/social services worker shall initiate an investigation, as required in Subsection (b) below, upon receiving a report of elder or vulnerable adult abuse or neglect. This may be done together or separately but shall be conducted in a

cooperative manner.

(b) The investigation shall be commenced as soon as is reasonably possible after receipt of the report but in no event more than forty-eight (48) hours after receipt and the investigators shall prepare a written report within ten (10) days based upon:

- (1) Personal interviews of the abused, the immediate family and caretaker, suspected abuser, employees of agencies (if involved), and any other person who may have pertinent information;
- (2) Medical records and other evidence of abuse;
- (3) Assessments of elder or vulnerable adult's living conditions using tribal standards for housing; and
- (4) Any other observations, assessments, or documents that may aid in completing an accurate report.

(c) The written report shall contain:

- (1) Elder or vulnerable person's name, address or location, telephone number;
- (2) Name, address or location, and telephone number(s) of the person(s) or agency who is suspected of abuse, neglect, or financial exploitation under this Chapter;
- (3) The condition of the abused;
- (4) Names of witnesses and sufficient information to effect the subpoena power of the Court over them;
- (5) Name, address or location, and telephone number of caretaker(s);
- (6) A description of the act(s) which are suspected of being abusive, neglectful, or resulting in financial exploitation; and
- (7) Any other information helpful in establishing abuse, neglect, or financial exploitation.

1511. Privileged Communication. No evidentiary privilege may be raised as a defense, except attorney-client privilege, for to report suspected abuse, neglect, or financial exploitation or testifying as a witness under this Chapter.

1512. Criminal Investigation. The investigation and other procedures allowed in this Chapter may run concurrently with criminal investigations.

1513. Emergency.

- (a) The Tribal Court may issue an ex parte emergency protection order authorizing emergency services or protective placement upon clear and convincing evidence that an elder or vulnerable adult:
 - (1) Is at risk of immediate physical harm;
 - (2) No one is authorized by law or court order to give consent; and
 - (3) The elder or vulnerable adult or authorized caretaker is incapacitated and cannot consent to services.

- (b) The emergency protection order shall:
 - (1) Set out the specific emergency services to be provided to remove the emergency;
 - (2) Allow protective placement only if the evidence indicates that it is absolutely necessary;
 - (3) Designate the person or agency required to implement the order; and
 - (4) Be issued for seventy-two (72) hours excluding weekends and holidays, and may only be renewed for a maximum of an additional seventy-two (72) hours if evidence of a continuing emergency.

- (c) Tribal court may issue a warrant for forcible entry by Tribal Law Enforcement if attempts to gain voluntary access have failed. However, nothing in this section shall restrict the existing authority of a Bois Forte Police Officer from conducting a search without a warrant pursuant to the provisions of Section 405.01 of the Bois Forte Tribal Code, or when the officer has probable cause to believe that a person is in imminent danger of death or serious bodily harm and that the delay involved in obtaining a warrant could reasonably be expected to result in death or serious bodily harm.

- (d) The petition for an emergency protection order shall include the name and interest of the petitioner. Also, the name, address or location, proposed protective services, attempts to secure consent, and any other facts that will assist the Court.

- (e) Emergency protection orders may be set aside by the Tribal Court upon written petition of any party showing good cause.

- (f) The Tribal Court shall hold a preliminary hearing on a petition to provide protective services within 72 hours, excluding weekends and holidays, after an emergency protection order is issued unless good cause exists to grant a delay. The Court shall

state on the record any cause for such delay.

- (1) All parties, including attorneys, are permitted to attend the preliminary hearing for a protection order. The hearing may be done ex parte if the need arises. The sufficiency of the petition will be determined on a totality of circumstances test and goes into effect upon immediate granting of the order by the Tribal Court.
- (g) If there is good cause to believe that an emergency exists and an elder or vulnerable adult is at risk of immediate or irreparable harm upon personal observation, the investigator or law enforcement officer may immediately protect the abused, including transporting him or her to adequate facilities. Immediately after the abused is protected, standard procedures for an emergency protection order must be followed.
- (h) Anyone who acts in reasonable good faith pursuant to this section shall be immune from criminal or civil suit if the suspected abuse or neglect results in an unsubstantiated report.

1514. Rights of Elders, Adults, Their Families and Caretakers.

- (a) An elder, vulnerable adult, family, or caretaker shall be informed of an abuse investigation before it begins unless an emergency exists and if a family member and/or caretaker need not be given prior notice if it is alleged that they are the perpetrator of the alleged abuse, neglect, or financial exploitation being investigated. If an emergency exists, notice must be given using a means reasonably calculated to give actual notice as soon as possible but no later than 72 hours.
- (b) Elders or vulnerable adults may refuse to accept protective services provided there is good cause to believe that the abused can take care of himself or herself and the elder or vulnerable adult knows of the services offered.
- (c) Families or caretakers may refuse services for themselves but cannot refuse services for the elder or vulnerable adult.
- (d) Elders, vulnerable adults, family, or caretakers may refuse to allow investigators into their home and must be told of the right of investigator to seek a warrant for entry.
- (e) If criminal charges may be brought against any party under the Bois Forte Criminal Code, the accused party shall be dealt with in accordance with the procedures set forth in Chapters IV and V of Bois Forte Tribal Code.
 - (1) Criminal charges may include, but are not limited to: assault, sexual assault, domestic violence, theft, or any other criminal offense that may warrant a charge.

- (f) Personal service of notice to the elder, vulnerable adult, family or caretaker is required when a petition is filed pursuant to this Chapter.
- (g) The elder, vulnerable adult, family, or caretaker has the right to attend all proceedings pertaining to the capacity of the abused unless the Tribal Court determines the elder or adult's health is at risk in attending such proceedings.
- (h) The elder, vulnerable adult, family, or caretaker has the right to independent medical, psychological or psychiatric evaluations at their own expense.

1515. Procedures for Determining Capacity, Abuse, Neglect or Financial Exploitation.

The Tribal Court shall determine an elder or vulnerable adult's capacity, degree of incapacity, or whether abuse, neglect, or financial exploitation has occurred based on clear and convincing evidence at a hearing requested in a voluntary proceeding or required at an involuntary proceeding. All parties are entitled to petition, notice and an opportunity to be heard.

1516. Elder and Vulnerable Adult Protection Order; Term.

- (a) If the Tribal Court determines that there is incapacity or evidence of abuse, neglect or financial exploitation of an elder or vulnerable adult, a protection order will be issued which may contain, but is not limited to the following:
 - (1) Removal from the place where abuse or neglect occurs, including the elder or vulnerable adult's home;
 - (2) Enjoining the abuser from committing further abusive acts;
 - (3) Requiring any party having a fiduciary duty to the elder or vulnerable adult to account for the elder or vulnerable adult's funds and or property;
 - (4) Requiring compensatory damages to be paid by an abuser or neglectful person to the elder or vulnerable adult for injuries resulting from abuser's or neglectful person's wrongful act(s);
 - (5) Appointing a representative, guardian ad litem, or recommending a representative payee for the elder or vulnerable adult; and
 - (6) Ordering Bois Forte Human Services to prepare a plan to deliver protective services which provides the least restrictive alternative to satisfy the elder or vulnerable adult's needs.
- (b) An elder or adult protective order may not exceed 12 months. Extensions for the 12 months following may be obtained in Tribal Court by petition, notice, and an opportunity for hearing. Extensions may be obtained as many times as necessary if cause is shown by clear and convincing evidence. Review of the need for continued

protective orders shall occur every 6 months or upon motion of an interested party as accepted by the Court.

1517. Confidentiality of Reporter, Records, Hearings, Penalties for Noncompliance.

- (a) The identity of the reporter of abuse or neglect under this Chapter is confidential and shall not be released unless the reporter consents or the Tribal Court determines that the need of the elder or vulnerable adult exceeds the reporter's right to privacy and mandates disclosure. The reporter has the opportunity to petition and be heard at a closed evidentiary hearing with regard to any such disclosure. Any disclosure may be released only to the extent necessary to protect the elder or vulnerable adult.
- (b) Records of investigations concerning abuse or neglect or financial exploitation under this Chapter are confidential. Bois Forte Human Services, Law Enforcement, court officials, attorneys, medical staff, and any other person whom the Court determines has reasonable cause to have access may view the record(s).
- (c) Anyone who violates this section of the Chapter shall be subject to a money penalty of up to \$5,000 per occurrence. Petition, notice and an opportunity for hearing in Tribal Court will determine if a violation has occurred.

1518. Criminal Prosecutions.

- (a) Any person(s) who commits abuse or neglect against an elder or vulnerable adult or financially exploits an elder of vulnerable adult may be criminally prosecuted under applicable provisions of the Bois Forte Criminal Code.
- (b) Criminal prosecutions may run concurrently with civil proceedings under this Chapter. Dismissal or deferral of a criminal proceeding in no way affects the applicability of this Chapter. Factors for the Court to consider when dismissing or deferring criminal proceedings are:
 - (1) The elder, adult, family, or caretaker and suspected abuser agree to resolve conflicts through any dispute process recognized by Bois Forte Human Services;
 - (2) All parties concerned agree to accept services as determined by Bois Forte Human Services; and
 - (3) The crime is not of a serious nature involving intentional bodily harm or intentional property damage and the accused does not have a prior record of elder, adult, child, or sexual abuse.

1519. Court Proceeding on Petition.

- (a) **Petition.** The tribal prosecutor shall initiate proceedings on behalf of the Tribe, by

filing a petition which contains the following information:

- (1) The name, birth date, age, residence and gender of the elder.
 - (2) The basis for the Court's jurisdiction under this Chapter.
 - (3) A plain and concise statement of facts upon which the claim is made that the elder is in need of protection, including date(s) time(s) and location(s) at which the alleged facts occurred.
 - (4) The names, residences, and tribal affiliation, if any, of the person(s) alleged to have neglected and/or abused the elder.
- (b) **Notice of Petition Filing; Hearing.** Any person who has an interest in the welfare of the elder or vulnerable adult shall be provided notice of the filing of the petition and the date of the hearing in any manner authorized by the provisions of the Bois Forte Civil Code.
- (c) **Hearings.** The Court shall conduct a hearing on the petition to determine whether the facts support a finding that the elder is in need of protection. All material and relevant evidence which is reliable and trustworthy may be admitted and relied upon by the Court to the extent of its probative value, including hearsay contained in a written investigative report, provided that the preparer of the report is present and available to provide testimony. The parties, including the elder, shall be afforded an opportunity to examine and controvert written reports, and cross-examine individuals whose testimony is presented. The Court may rely on conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.
- (d) **Judgments.** The Court shall make a written decision at the conclusion of the hearing. If the allegations of the petition are not sustained by a preponderance of the evidence, the Court shall dismiss the matter. If the allegations of the petition are sustained, the Court shall find that the elder is in need of protection, and may enter further orders for evaluation, assessment, or other orders to protect the elder. At the Court's discretion, a Dispositional Order ensuring the protection of the elder may be held immediately or at an interval following the initial hearing.

1520. Severity and Effect. This Chapter shall be of immediate effect upon enactment by the Reservation Tribal Council. However, if any provision, clause, or section shall subsequently be deemed invalid, the remainder of the Chapter shall remain in full force and effect.