



**BOIS FORTE BAND OF CHIPPEWA
TRIBAL CODE**

**TITLE 5
CRIMES AND OFFENSES – GENERAL PROVISIONS**

CODE HISTORY:

- Adopted by Resolution No. 145-99 (May 19, 1999).
- Amended by RTC Resolution No. 39-2018 (November 1, 2017).
- Amended by RTC Motion (January 20, 2021).
- Amended by RTC Resolution No. 58-2025 (January 2, 2025).
- Recodified and Amended by RTC Resolution No. 78-2026 (April 15, 2026).



**BOIS FORTE BAND OF CHIPPEWA
TRIBAL CODE**

**TITLE 5
CRIMES AND OFFENSES – GENERAL PROVISIONS**

TABLE OF CONTENTS

Title-Chapter-Section.	Page
CHAPTER 1	1
5.1.1. Purpose.	1
5.1.2. Jurisdiction of Band over Persons Alleged to have Committed Crimes and Offenses.	1
5.1.3. Burden of Proof.	1
5.1.4. Definitions.	2
5.1.5. Crimes or Offenses Punishable under Different Provisions.	4
5.1.6. Conviction of Lesser Offense.	5
5.1.7. Foreign Conviction or Acquittal.	5
5.1.8. Liability for Crimes or Offenses of Another.	5
5.1.9. Sentences.	6
5.1.10. Enhanced Sentencing.	7
5.1.11. Presentence Investigation.	8
5.1.12. Stay of Imposition or Execution of Sentence.	8
5.1.13. Limits of Sentences.	10
5.1.14. Sentence of Incarceration.	10
5.1.15. Multiple Sentences.	10
5.1.16. Liability of Children and Minors.	10
5.1.17. Authorized Use of Force.	10
5.1.18. Intoxication as Defense.	11
5.1.19. Mental Disease or Defect.	11
5.1.20. Duress.	13
5.1.21. Entrapment.	13
5.1.22. Sending Written Communication.	13
5.1.23. Proof of Prior Convictions.	13
5.1.24. Limitation of Actions.	13
5.1.25. Waiver of Appearance and Plea of Guilty.	14

CHAPTER 2 – SPECIAL TRIBAL CRIMINAL JURISDICTION	15
5.2.1. Special Tribal Criminal Jurisdiction.	15
5.2.2. Covered Crimes.	15
5.2.3. Rights and Procedural Requirements.	18
5.2.4. Determination of Jurisdiction.	19
5.2.5. Severability.	20
5.2.6. Nonwaiver of Sovereign Immunity.	20
5.2.7. Savings.	20
5.2.8. Definitions.	20
5.2.9.-5.2.99. Reserved for future use.	21



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.

Accordingly, the Bois Forte Tribal Court's focus in all decisions shall be on the impact it will have seven generations in the future. 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.

**TITLE 5
CRIMES AND OFFENSES - GENERAL PROVISIONS**

CHAPTER 1

5.1.1. Purpose.

The provisions of this Title and of Title 6 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.

5.1.2. Jurisdiction of Band over Persons Alleged to have Committed Crimes and Offenses.

- (a) 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:
 - (1) Commits a crime or an offense in whole or in part within the territorial jurisdiction of the Bois Forte Band of Chippewa; or
 - (2) 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.
- (b) 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.

5.1.3. 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)

5.1.4. Definitions.

- (a) **Actor.** “Actor” means the person alleged in a citation, complaint, petition, motion, or other pleading to have committed an act constituting an offense.
- (b) **Assault.** “Assault” is:
 - (1) An act done with intent to cause fear in another of immediate bodily harm or death;
or
 - (2) The intentional infliction of or attempt to inflict bodily harm upon another.
- (c) **Bodily harm.** “Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.
- (d) **Conviction.** “Conviction” means any of the following accepted and recorded by the Court:
 - (1) A plea of guilty;
 - (2) A plea of no-contest; or
 - (3) A verdict of guilty by a jury or a finding of guilty by the Court after trial.
- (e) **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.
- (f) **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.
- (g) **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.

(h) **Mental state.**

- (1) When criminal intent is an element of a crime in this Title, 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.”
 - (2) “Know” requires only that the actor believes that the specified fact exists.
 - (3) “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 subsection (6) 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.”
 - (4) “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.
 - (5) 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.
 - (6) 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.
- (i) **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.
- (j) **Minor.** “Minor” means a person under the age of eighteen (18) years.
- (k) **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 five thousand dollars (\$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 5.1.9, below.

(Resolution 39-2018; November 1, 2017)

- (l) **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.
- (m) **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.
- (n) **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.
- (o) **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.
- (p) **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.
- (q) **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.
- (r) **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.
- (s) **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)

5.1.5. Crimes or Offenses Punishable under Different Provisions.

- (a) 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.

- (b) In determining whether two or more crimes or offenses fall within the provisions of subsection (a), 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.

5.1.6. Conviction of Lesser Offense.

- (a) 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:
 - (1) A lesser degree of the same crime or offense;
 - (2) An attempt to commit the crime or offense charged;
 - (3) An attempt to commit a lesser degree of the crime or offense charged;
 - (4) A crime or offense necessarily proved if the crime or offense charged were proved;
or
 - (5) A petty misdemeanor necessarily proved if the misdemeanor were proved.
- (b) 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.

5.1.7. 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 (a) the elements of both law and fact are identical and (b) such prosecution is otherwise specifically prohibited by Federal law.

5.1.8. Liability for Crimes or Offenses of Another.

- (a) 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.
- (b) A person liable under subsection (a) 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.

- (c) 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.
- (d) 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.
- (e) 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.

5.1.9. Sentences.

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

(Resolution 39-2018; November 1, 2017)

- (c) The maximum penalty which may be imposed for the commission of a “Petty Misdemeanor” is a fine not exceeding two-hundred and fifty dollars (\$250.00).

(Resolution 39-2018; November 1, 2017)

- (d) The maximum sentence which may be imposed for the commission of traffic violations under Title 8, 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 5.1.9, now amended, is one year incarceration or a fine not exceeding five thousand dollars (\$5,000.00), or both.

- (e) 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.
- (f) 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.

5.1.10. 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)

5.1.11. Presentence Investigation.

- (a) 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.
- (b) 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
 - (1) 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;
 - (2) 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;
 - (3) To inform the victim(s) of the victim's right to seek restitution for any such harm, damage, expense, loss, or injury; and
 - (4) 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.
- (c) Any report made pursuant to subsection (a) 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.

5.1.12. Stay of Imposition or Execution of Sentence.

- (a) The Court may stay either the imposition or the execution of sentence, or any part thereof, and;

- (1) May order noninstitutional sanctions without placing the defendant on probation;
or
 - (2) May place the defendant on probation with or without supervision and on the terms the Court prescribes, including noninstitutional sanctions.
- (b) 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.
 - (c) 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 the hourly minimum wage prescribed under the laws of the State of Minnesota.
 - (d) 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.
 - (e) 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)

- (f) 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.
- (g) 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.

5.1.13. 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 Title, Title 8, and Title 12, subsequently-enacted Band ordinances, or other applicable law.

5.1.14. Sentence of Incarceration.

- (a) 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.
- (b) 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.

5.1.15. Multiple Sentences.

- (a) When separate sentences of incarceration are imposed upon a defendant for conviction of two (2) 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.
- (b) If the Court specifies that the sentence shall run consecutively, the total of all sentences shall not exceed three (3) years.

5.1.16. Liability of Children and Minors.

Children under the age of seven (7) years are incapable of committing crime. Unlawful acts committed by persons under the age of eighteen (18) years who are seven (7) years of age, or older, shall be dealt with in accordance with the provisions of Title 7 of the Bois Forte Tribal Code.

5.1.17. 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 attest;
 - (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.

5.1.18. 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 5.1.19.

(Resolution 39-2018; November 1, 2017)

5.1.19. Mental Disease or Defect.

- (a) 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.
- (b) 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)

- (c) 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 subsections (a) and (b), above, apply.
- (d) A written report of any such examination conducted in accordance with subsection (c), 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.
- (e) If the results of said examination establish the defense set forth in subsection (a), 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.
- (f) If the results of said examination establish the defense set forth in subsection (b), above, the Court may order the trial continued until the defendant's condition no longer exists. If, after a period of three (3) 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.
- (g) 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.
- (h) A defendant who otherwise raises either of the defenses set forth in subsection (a) or subsection (b) 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)

5.1.20. 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)

5.1.21. 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.

5.1.22. 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.

5.1.23. 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.

5.1.24. Limitation of Actions.

- (a) **Statute of Limitations, Generally.** Subject to Section 5.1.24, subsections (b) and (c), 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.
- (b) **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.
- (c) **Statute of Limitation for Sex Crimes, Homicide, and Abduction.** Notwithstanding the limitations in Section 5.1.24, subsection (a), the following statute of limitations shall apply to situations described below:

- (1) Prosecution for violation of Section 6.3.2 (Criminal Sexual Conduct), Section 6.3.3 (Sexual Assault), Section 6.3.6 (Solicitation of Children to Engage in Sexual Conduct), Section 6.3.9 (Prostitution and Sex Trafficking), Section 6.4.2 (Pornography Involving Juveniles), or Section 6.4.3 (Computer-Aided Solicitation of a Minor), if the victim was under the age of eighteen (18) years at the time the offense was committed, shall be commenced within the later of nine (9) years after the commission of the offense or three (3) years after the offense was reported to law enforcement authorities.
- (2) Notwithstanding Section 5.1.24(c)(1), prosecution for violation of Section 6.3.2 (Criminal Sexual Conduct), Section 6.3.3 (Sexual Assault), Section 6.3.6 (Solicitation of Children to Engage in Sexual Conduct), Section 6.3.9 (Prostitution and Sex Trafficking), Section 6.4.2 (Pornography Involving Juveniles), or Section 6.4.3 (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 eighteen (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.
- (3) Prosecution for violation of Section 6.2.10 (Criminal Homicide) or Section 6.2.12 (Abduction) may be commenced at any time after commission of the offense.

5.1.25. Waiver of Appearance and Plea of Guilty.

- (a) 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.
- (b) 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.
- (c) 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.

CHAPTER 2 – SPECIAL TRIBAL CRIMINAL JURISDICTION

5.2.1. Special Tribal Criminal Jurisdiction.

Pursuant to 25 U.S.C. § 1304¹, the Band is a participating tribe in the expansions of tribal criminal jurisdiction authorized by the Indian Civil Rights Act, as amended by the Violence Against Women Act Reauthorization Act of 2022, and exercises its “Special Tribal Criminal Jurisdiction” as follows:

- (a) The Band’s Special Tribal Criminal Jurisdiction applies to any person in the Band’s Indian country;
- (b) The Band’s exercise of Special Tribal Criminal Jurisdiction applies to offenses that are Covered Crimes, as defined in Section 5.2.2, subsections (a)-(j);
- (c) In exercising its Special Tribal Criminal Jurisdiction, the Band (including its agents and officers) has all authority required to carry out the grant of jurisdiction under 25 U.S.C. § 1304, including, without limitation, the powers of investigation, arrest, detention, prosecution, adjudication, and execution of sentences;
- (d) The Band may exercise Special Tribal Criminal Jurisdiction over an alleged offense if the offender is non-Indian and the victim is Indian, provided the Band may exercise Special Tribal Criminal Jurisdiction over an alleged offense if both the offender and victim are non-Indians only in cases of obstruction of justice or assault of Tribal justice personnel; and,
- (e) No provision of this Title shall be interpreted to restrict a law enforcement officer’s duty to keep the peace, or to prohibit a law enforcement officer from detaining non-Indian offenders and turning them over to the proper authorities for prosecution.

5.2.2. Covered Crimes.

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

- (a) **Assault of Tribal Justice Personnel** is any violation of the Band’s criminal law that involves the use, attempted use, or threatened use of physical force against an

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

individual authorized to act for, or on behalf of, the Band or serving the Band, or because of, the performance or duties of that individual in

- (1) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;
 - (2) adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime; or
 - (3) detaining, providing supervision for, or providing services for persons charged with a covered crime; or
 - (4) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime. Assault of Tribal Justice Personnel includes, without limitation, a violation of Section 6.2.8 (Assault of Tribal Justice Personnel) under the circumstances described in this subsection.
- (b) **Child Violence** is the use, threatened use, or attempted use of violence against a child proscribed by the Band's criminal law. Child Violence includes, without limitation, the following offenses identified in Title 6, in which a victim is a Child: Chapter 2, Sections 6.2.1 through 6.2.6 (Assault), 6.2.10 (Homicide), 6.2.11 (Robbery), 6.2.12 (Abduction) and 6.2.14 (Domestic Violence); Chapter 3, Sections 6.3.2– 6.3.4 (Criminal Sexual Conduct), 6.3.6 (Solicitation of Children to Engage in Sexual Conduct), 6.3.9 (Sex Trafficking); Chapter 5, Sections 6.5.1 (Incest) and 6.5.3(b)(6), (Unreasonable Force or Cruel Discipline); or Chapter 11, Sections 6.11.3, 6.11.5 (Reckless Use or Discharge of a Firearm, Dangerous Weapon, or Explosive), and 6.11.30 (Terroristic Threats) in which a victim is a Child.
- (c) **Dating Violence** is any violation of the Band's criminal law where the violation is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence includes, without limitation, the following offenses identified in Title 6, when committed under the circumstances provided in this subsection: 6.2.12 (Abduction); 6.3.2 (Criminal Sexual Conduct); 6.3.3 (Sexual Assault); 6.3.9 (Prostitution and Sex Trafficking); 6.2.1 (Simple Assault); 6.2.2 (Aggravated Assault–Substantial Bodily Harm); 6.2.3 (Aggravated Assault – Dangerous Weapon); 6.2.4 (Aggravated Assault–Dangerous Weapon, Substantial Bodily Harm); 6.2.5 (Assault–Strangulation); 6.2.6 (Assault – Great Bodily Harm); 6.2.9 (Stalking); 6.2.15 (Harassment); 6.2.16 (Abuse of an Elder or Vulnerable Adult); 6.9.2 (Arson); or 6.2.11 (Robbery), or any other crimes of violence as defined by 18 U.S.C. § 16.
- (d) **Domestic Violence** is any violation of the Band's criminal law that is committed by:

- (1) a current or former spouse or intimate partner of the victim;
- (2) a person with whom the victim shares a child in common;
- (3) a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner.

Domestic Violence includes, without limitation, the following offenses identified in Title 6, when committed under the circumstances provided in this subsection: 6.2.12 (Abduction); 6.3.2 (Criminal Sexual Conduct); 6.3.3 (Sexual Assault); 6.3.9 (Prostitution and Sex Trafficking); 6.2.1 (Simple Assault); 6.2.2 (Aggravated Assault–Substantial Bodily Harm); 6.2.3 (Aggravated Assault – Dangerous Weapon); 6.2.4 (Aggravated Assault–Dangerous Weapon, Substantial Bodily Harm); 6.2.5 (Assault–Strangulation); Section 6.2.6 (Assault – Great Bodily Harm); Section 6.2.9 (Stalking); Section 6.2.15 (Harassment); Section 6.2.16 (Abuse of an Elder or Vulnerable Adult); Section 6.9.2 (Arson); or Section 6.2.11 (Robbery), or any other crimes of violence as defined by 18 U.S.C. § 16.

- (e) **Obstruction of Justice** is any violation of the Band’s criminal law that involves interfering with the administration or due process of the laws of the Band, including any Tribal criminal proceeding or investigation of a crime. Obstruction of Justice includes, without limitation, the offenses identified in Title 6, Chapter 7 (Crimes Against the Administration of Justice) and Section 6.2.8 (Assault of Tribal Justice Personnel) when committed under the circumstances provided in this subsection.
- (f) **Sexual Violence** is any nonconsensual sexual act or contact proscribed by the Band’s criminal law, including in any case in which the victim lacks the capacity to consent to the act. Sexual Violence includes, without limitation, the offenses identified in Title 6, Chapters 3 (Sex Crimes) and 4 (Computer-Aided Sexual Offenses Involving Minors) when committed under the circumstances provided in this subsection.
- (g) **Sex Trafficking** is conduct within the meaning of 18 U.S.C. § 1591(a), including the offense of Aggravated Sex Trafficking as defined under Section 6.3.9, subsection (a)(11) and 6.3.9(f).
- (h) **Stalking** is engaging in a course of conduct directed at a specific person, in violation of the Band’s criminal law, that would cause a reasonable person
 - (1) to fear for the person’s safety or the safety of others; or
 - (2) to suffer substantial emotional distress. Stalking includes, without limitation, the offense identified in Section 6.2.9 when committed under the circumstances provided in this subsection.
- (i) **Violation of a Protection Order** is an act that

- (1) occurs in the Band’s Indian country; and
- (2) violates a provision of a protection order that
 - (A) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
 - (B) was issued against the defendant;
 - (C) is enforceable by the Band; and
 - (D) is consistent with 18 U.S.C. § 2265(b).²
- (j) **Offenses Not Enumerated.** Any person who engages in conduct that constitutes an offense under the Band’s criminal law, where such offense is committed under circumstances that constitute the elements of any Covered Crime, shall be subject to the Band’s Special Tribal Criminal Jurisdiction, whether or not the particular offense is identified in subsections (a)-(i) as an example of a Covered Crime.

5.2.3. Rights and Procedural Requirements.

- (a) Any defendant subject to the Band’s Special Tribal Criminal Jurisdiction and accused of committing a Covered Crime, irrespective of the term of imprisonment that may be imposed, shall:
 - (1) be afforded the rights provided under Title 4 of the of the Bois Forte Tribal Rules for Criminal Proceedings, including those enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302;
 - (2) be entitled to a jury trial drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, as provided for by Title 4, Section 4.5.2 of the Bois Forte Tribal Rules for Criminal Proceedings;

² 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.”).

- (3) be entitled to each of the enhanced sentencing requirements enumerated in Title 5, Section 5.1.10 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).³
- (b) A defendant convicted and sentenced in the Tribal Court for a Covered Crime may file a petition for a writ of habeas corpus in a court of the United States under 25 U.S.C. § 1303, and shall be advised of such right, in writing, at the time of sentencing. The defendant's application for a writ of habeas corpus in federal court must show that all remedies available in Bois Forte Tribal Court have been exhausted.
- (c) Should there be any inconsistency between Title 4 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.

5.2.4. Determination of Jurisdiction.

- (a) In addition to the procedures set forth in Title 4 of the Code, at the arraignment for a defendant arrested for or charged with a Covered Crime as defined under this Title, 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:
- (1) The charged offense was allegedly committed within the Band's Reservation;
 - (2) Whether the defendant or a victim are Indian, unless the defendant is charged with an offense that constitutes Assault of Tribal Justice Personnel or Obstruction of Justice, as defined in Section 5.2.2, subsections (a) or (e).
- (b) In order to make the determination required under subsection (a), 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.
- (c) If the judge's findings establish the Tribal Court's jurisdiction, the determination shall identify whether the Tribal Court is exercising its general jurisdiction or Special Tribal Criminal Jurisdiction pursuant to Section 5.2.1. The Tribal Court shall then proceed with the 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 5.2.3.

³ "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.

- (d) 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.
- (e) 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 subsection (a), 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.

5.2.5. Severability.

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

5.2.6. Nonwaiver of Sovereign Immunity.

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

5.2.7. Savings.

This Chapter takes effect on October 1, 2022 and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this Title 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.

5.2.8. Definitions.

For the purposes of this Title, the following definitions shall apply:

- (a) Child means a person who has not attained the age of 18.
- (b) Coercion has the meaning given in 18 U.S.C. § 1591(e)(2).
- (c) Commercial Sex Act has the meaning given in 18 U.S.C. § 1591(e)(3).
- (d) Indian Country shall mean the definition given in 18 U.S.C. § 1151.⁴

⁴“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

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

(f) Spouse or Intimate Partner has the meaning given in 18 U.S.C. § 2266.

(Resolution 58-2025; January 2, 2025)

5.2.9.-5.2.99. Reserved for future use.

Source: Title 5 was adopted by Resolution No. 145-99, May 19, 1999.

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. . . 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.