

THE POKAGON BAND OF POTAWATOMI INDIANS CODE OF OFFENSES

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# THE POKAGON BAND OF POTAWATOMI INDIANS CODE OF OFFENSES

## CRIMINAL OFFENSES

(Cite as: PBCrimO)

### SECTION 1. GENERAL PRELIMINARY PROVISIONS

#### **A. Purpose and Construction.**

1. To forbid and prevent the commission of Offenses and give fair warning of Conduct that this Code declares to be an Offense;
2. To define the Conduct and mental state that constitutes an Offense and to safeguard permitted conduct;
3. To prescribe penalties that are proportionate to the seriousness of the Offense and that permit recognition of differing rehabilitative needs of individual Offenders while at the same time recognizing the need of the entire Tribal community to protect itself from Offenders;
4. To prevent arbitrary and oppressive treatment of persons accused or Convicted of Offenses and to promote the correction and rehabilitation of such persons; and
5. To protect any Tribal member or other person residing on the Reservation whose health or welfare may be adversely affected or Threatened due to Abuse, neglect or exploitation by family, Household Members, or other person in a legal or contractual position of providing physical, mental, or medical assistance and support to the affected person.

#### **B. Civil Actions Not Barred.**

The Code of Tribal Offenses does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law. Civil injury is not merged into the criminal Offense. The filing of a civil action against a non-Indian by the Band does not preclude any Indian from bringing a civil action.

#### **C. Exclusiveness of Offenses.**

No Conduct constitutes an Offense unless so declared by this Code of Tribal Offenses, by any other Tribal law, or by the specific law of any other jurisdiction incorporated by reference into this Code of Tribal Offenses. The elements of any Offense as contained in this Code are the sole elements required for Conviction in Tribal Court. Extraneous elements required by other jurisdictions shall not be considered by the Judge or jury in reaching a verdict of guilt or innocence. However, this provision does not affect the power of the Tribal Court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil Judgment, or decree.

#### **D. Prosecution for Multiple Offenses.**

When the Conduct of an Offender establishes the commission of more than one Offense, the Offender may be prosecuted separately for each Offense. The Offender, however, may not be Convicted of more than one Offense if:

1. One Offense is a necessary Lesser Included Offense in the other;

2. One Offense consists only of attempt or some other form of preparation for committing the Offense;
3. Inconsistent findings of fact are required to establish the commission of the Offenses;
4. The Offenses differ only in that one is defined to prohibit a designated kind of Conduct generally and the other to prohibit a specific instance of such conduct; or
5. The Offense is defined to prohibit a continuing course of Conduct and the Offender's course of Conduct was interrupted, unless the law provides that the specific periods of such Conduct constitute separate Offenses.

**E. Lesser Included Offenses.**

1. An Offender may be Convicted of a Lesser Included Offense included in an Offense charged without having been specifically charged with the Lesser Included Offense. An Offense is included when:
  - a. it is established by proof of the same or less than all the facts required to establish the commission of the Offense charged;
  - b. it consists of attempt or Solicitation to commit the Offense charged or to commit an Offense otherwise included therein; or
  - c. it differs from the Offense charged only in that it is a less serious injury or risk of injury to the same person, Property, or Tribal interest, or a lesser kind of culpability suffices to establish its commission.
2. The Tribal Court need not charge the jury with respect to an Included Offense unless there is a rational basis for a verdict acquitting the Defendant of the Offense charged and convicting the Defendant of the Lesser Included Offense and a request to charge the jury on any lesser included Offense is made by a party to the action.

**F. Burden of Proof.**

The Defendant in a criminal proceeding is presumed to be innocent until each element of the Offense with which the Defendant is charged is proved beyond a reasonable doubt. In the absence of such proof, the Defendant shall be acquitted.

**G. Classification of Offenses.**

Offenses shall be designated as Class A, Class B, Class C, Class D, or Class E Offenses.

**H. Time Limitations.**

1. Unless otherwise specified by Statute:
  - a. prosecution for any Class A or Class B Offense must be commenced within one year after the alleged Offense is discovered by the Band's law enforcement department;
  - b. prosecution for any Class C or Class D Offense must be commenced within two years after the alleged Offense is discovered by the Band's law enforcement department;
  - c. prosecution for any Class E Offense must be commenced within three years after the alleged Offense is discovered by the Band's law enforcement department; or

- d. if the victim is a Minor or has a Mental Disorder at the time the Offense occurred, the limitations contained in (a), (b), and (c) are tolled and any prosecution must be commenced within one year after the legal disability terminates; but in no event a time less than that prescribed in (a), (b), or (c).
2. The period of limitation does not run under the following conditions:
  - a. during any period in which the Offender is not domiciled within the Reservation or is beyond the jurisdiction of the Tribal Court.
  - b. during any period in which the Offender is a public officer and the Offense charged is theft of public funds while in public office; or
  - c. during a prosecution pending against the Offender for the same Conduct even if the prosecution is dismissed.
3. An Offense is committed either when every element occurs or, if the Offense is based upon a continuing course of conduct, when the course of Conduct is terminated. The time starts to run on the day after the Offense is committed.
4. A prosecution is commenced when a complaint is filed with the Tribal Court Clerk.

## **I. Sentencing.**

1. A person Convicted of an Offense may be Sentenced as follows:
  - a. for a Conviction of a Class A Offense, the Offender may only be Sentenced to pay a fine or some other Sentence not involving imprisonment. For Class A Offenses where no fine amount is specifically provided, the maximum fine shall be one hundred dollars (\$100);
  - b. for a Conviction of a Class B Offense, the Offender may be Sentenced to imprisonment for a period not to exceed 10 days, or a fine not to exceed two hundred fifty dollars (\$250), or both, unless another Sentence is specified by Statute;
  - c. for a Conviction of a Class C Offense, the Offender may be Sentenced to imprisonment for a period not to exceed 30 days, or a fine not to exceed one thousand dollars (\$1,000), or both, unless another Sentence is specified by Statute;
  - d. for a Conviction of a Class D Offense, the Offender may be Sentenced to imprisonment for a period not to exceed 180 days, or a fine not to exceed two thousand five hundred dollars (\$2,500), or both, unless another Sentence is specified by Statute; or
  - e. for Conviction of a Class E Offense, the Offender may be Sentenced to imprisonment for a period not to exceed one year, or a fine not to exceed five thousand dollars (\$5,000), or both, unless another Sentence is specified by Statute;
2. Unless otherwise specifically provided herein, any Conviction for a subsequent Class Offense will subject the Offender to the penalty applicable to the next highest Class Offense, if any;
3. Notwithstanding the fine and/or imprisonment penalties for any Class Offense, the Tribal Court in its discretion may impose as terms of Sentence, either in

conjunction with those penalties or in lieu thereof, Probationary terms, which may include, but are not limited to, community service, court costs, fees, DNA testing, Offender registration, and Restitution. Any Probationary term imposed shall be limited to not more than 5 years.

4. Any person found guilty of an Offense under this Code shall be Sentenced in accordance with the Sentencing and Judgment Section, unless otherwise specified.

#### **J. Mental State.**

A person is not guilty of an Offense unless the person acts Purposely, Knowingly, or Negligently, as the Code may provide, with respect to each element of the Offense, or unless the person's acts constitute an Offense involving strict liability.

#### **K. Strict Liability.**

A person may be guilty of an Offense without having the requisite mental state only if the Code provision defining the Offense clearly indicates that the provision's purpose is to impose strict liability for the Conduct described.

#### **L. Definitions.**

Unless otherwise specified in a particular section, the following general definitions shall apply in this Section:

**Abuse** - means, but is not limited to:

1. the infliction of physical or mental injury; or
2. the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of a person.

**Act** - means its usual and ordinary meaning and includes any voluntary bodily movement, any form of communication, and when relevant, a failure or omission to take action.

**Administrative Proceeding** – means any Tribal proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

**Another** – means a person or persons, as defined in this Code, other than the Offender.

**Arrest or Arresting** – means formally taking a person into custody in accordance with the manner authorized by law.

**Bodily Harm or Bodily Injury** – means physical pain, illness or any impairment of physical condition.

**Bond** – means the security given, in the form of cash, surety, or other form approved by the Court, for the primary purpose of ensuring the presence of the Defendant in a pending court proceeding.

**Citation** – means a written direction that is issued by a Law Enforcement Officer and that requests a person to appear before the Court by a stated time and place to answer a charge for the alleged commission of an Offense.

**Civil Offense** – means an Offense, as that term is defined in this Code, for which only civil fines or other civil penalties provided by law may be imposed.

**Cohabit** – means to live together in an arrangement whereby the parties voluntarily assume the rights, duties and obligations which are normally manifested by typically associated with married persons.

**Common Scheme** – means a series of acts or omissions motivated by a purpose to accomplish a criminal objective or by a common purpose or plan which results in the repeated commission of the same Offense or affects the same person or persons, or the same Property.

**Concealed Weapon** – means:

1. a dirk, dagger, stiletto, or switchblade having a blade of one and one half inches or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle, pistol, revolver, slingshot, sword cane, billy-club, knuckles made of any metal or other hard substance, knife having a blade at least 4 inches long, non-safety type razor, or any other deadly Weapon, except a hunting knife adapted and carried as such; and
2. that is wholly or partially covered by the clothing or wearing apparel of the person carrying the Weapon, or is carried any place within the Occupant Compartment of a Motor Vehicle.

**Conditional Release** – means releasing a Defendant from lawful custody, without the necessity of bail, pending a criminal proceeding, after placing specific restrictions or regulations on the activities and associations of the Defendant.

**Conduct** – means an Act or series of Acts and the accompanying mental state.

**Contents** – means when used with respect to oral, wire, radio, television, satellite, or computer communications, means not only the actual words or substances of the communication, but any information concerning the implied or intended meaning of the communication, the existence of the communication, and the identities of the parties to the communication as well.

**Contraband** – means any Property which is unlawful in itself, used for any unlawful purpose, or used in connection with or derived from any unlawful Property or transaction.

**Conviction or Convicted** - means a Judgment or Sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a Defendant's guilt was rendered by a legally constituted jury or by a Court of competent jurisdiction authorized to try the case without a jury. Once a Conviction has been expunged, it is no longer considered a Conviction under Tribal law and may not be used for subsequent enhancement penalties. An expunged Conviction, nevertheless, may

be considered for licensing, and/or employment decisions.

**Counsel** – means licensed attorney under state or Tribal law.

**Credit Card** – means a writing or other tangible evidence of an undertaking to pay for Property or services delivered or rendered to or upon the order of a designated person or bearer.

**Defendant** – means a person who has been charged by the Band with allegedly violating a Tribal law and is appearing before the Tribal Court as a result of the charge or charges.

**Destructive Device** – means:

1. an Explosive, incendiary, or overpressure device that is configured as a bomb, grenade, rocket, missile having an Explosive or incendiary charge of more than one quarter ounce, mine, Molotov cocktail, or substantially similar devices.
2. a type of Weapon that may be readily converted to expel a projective by the action of an Explosive or other propellant through a barrel that has a bore diameter of more than one-half inch.

It does not include: a pistol, rifle, shotgun, or Weapon suitable for sporting or personal safety purposes or ammunition; a device that is not designed for use as a Weapon; a device for use as a signaling, pyrotechnic, line throwing, safety, or similar device; Fireworks that are not prohibited by this Code.

**Elder** - means a Tribal member or other individual residing on the Reservation who is fifty-five (55) years of age or older.

**Exploiting** – means the unjust use of an individual's money or Property for Another's advantage by means of duress, menace, Fraud, or undue influence.

**Explosive** – means any chemical compound that is commonly used or intended for the purpose of producing a destructive effect and which contains compounds or ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion, or a detonator of any part of the compound or mixture may cause a destructive effect on surrounding objects or persons.

**Felony** – means a Class E Offense.

**Firearm** - means a Weapon from which a dangerous projectile may be propelled by an Explosive, or by gas or air. Firearm does not include a smooth bore rifle or handgun designed and manufactured exclusively for propelling by a spring, or by gas or air, BB's not exceeding 177 caliber.

**Fireworks** – means any device containing any combustible or Explosive substance for the purpose of producing a visible or audible display of combustion, explosion, deflagration or detonation, but not including any Firearms.

**Force** – means the infliction, attempted infliction, or Threatened infliction of Bodily Harm by a

person, or the commission or Threat of any other crime by a person against the complainant or Another which causes the complainant to reasonably believe that the person has the present ability to execute the Threat, thereby causing the complainant to submit.

**Force or Coercion** – means, but is not limited to, any of the following circumstances:

1. when the Offender overcomes the victim through physical Force or violence;
2. when the Offender coerces the victim to submit by Threatening to retaliate in the future against the victim, or any other person, and the victim believes that the Offender has the ability to execute this Threat. As used in this subsection, “retaliate” includes Threats of physical punishment, kidnapping, or extortion.
3. when the Offender engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.
4. when the Offender, through concealment or by the element of surprise, is able to overcome the victim.

**Fraud** – means any of the following:

1. creating or confirming in Another an impression which is false and which the Offender knew or should have known with reasonable inquiry was false;
2. failing to correct a false impression which the Offender previously had created or confirmed;
3. preventing Another from acquiring information pertinent to the disposition of the Property involved;
4. selling or otherwise transferring or encumbering Property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the Property whether such impediment is of Value or is not a matter of official record; or
5. promising performance which the Offender does not intend to perform or knows will not be performed. Mere failure to perform, without additional evidence, is not conclusive proof that the Offender did not intend to perform. Taking, accepting, or receiving tangible or intangible Property from Another and failing to perform without return of said Property, gives rise to the presumption the Offender intended not to perform.

**Harm** – means the loss, disadvantage, or injury or anything so regarded by the individual affected, including loss, disadvantage, or injury to any person or entity in which the individual has a recognized interest.

**Household Member** – means a spouse, former spouse, person related by blood or marriage, person residing with the Offender due to adoption or foster placement, any person currently Cohabiting with the Offender at any time during the year immediately preceding the commission of any alleged Abuse.

**Indian** - means a person who is enrolled in a federally recognized Indian tribe or who is recognized as a Canadian Indian.

**Intellectually Disabled** – means a person who, before becoming twenty-two (22) years of age, manifests:

1. Significantly subaverage intellectual functioning; and
2. Substantial impairment of adaptive behavior;

that is documented in a Tribal Court ordered evaluative report.

**Intoxicating Substance** – means any illegal drug or any alcoholic beverage, including but not limited to any beverage containing one half of 1% or more of alcohol by volume, which, when used in sufficient quantities, ordinarily or commonly produces intoxication.

**Judgment** - means an adjudication by the Tribal Court that the Defendant is guilty or not guilty of the crime charged, and if the adjudication is that the Defendant is guilty, the Judgment includes the Sentence pronounced by the Court.

**Knowingly** – means a person acts Knowingly with respect to Conduct or to a circumstance described by a Statute defining an Offense when the person is aware of the person's own Conduct or that the circumstance exists. A person acts Knowingly with respect to the result of Conduct described by a Statute defining an Offense when the person knew or should have known that it is probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an Offense, knowledge is established if a person is aware of a probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

**Law Enforcement Officer** - means any person who by virtue of his or her office of public or Tribal employment is vested by law with a duty to maintain public order or to make Arrests for Offenses while acting within the scope of his or her authority.

**Lawful Purpose** – means:

1. while en route to or from a hunting or target shooting area;
2. while en route to or from his or her abode or place of business and a gun show or places of purchase or sale;
3. while en route to or from his or her abode to a public shooting facility or public land where discharge of Firearm is permitted; or
4. while en route to or from his or her abode to a private or trust Property where the Firearm is to be used as is permitted by law.

**Legend Drug** – means any substance as defined under Section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 353.

**Lesser Included Offense** – means an Offense that:

1. is established by proof of the same or less than all the facts required to establish the commission of the Offense charged;
2. consists of an attempt to commit the Offense charged or to commit an Offense otherwise included in the Offense charged; or
3. differs from the Offense charged only in the respect that a less serious injury or risk to the same person, Property, or Tribal interest or a lesser kind of culpability suffices to establish its commission.

**Michigan’s Medical Marihuana Act** – means Michigan’s Medical Marihuana Act found at Michigan Compiled Laws §333.26421 *et seq.*, as amended.

**Mental Disorder** – means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

**Mentally Disabled** – means that a person has a mental illness, is Intellectually Disabled, or has a developmental disability.

**Mentally Incapacitated** – means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

**Minor** – means a person under the age of eighteen (18) years.

**Negligent or Negligently**– means that a person acts Negligently with respect to an element of an Offense when the person knew or reasonably should have known of a substantial and unjustifiable risk that the element presently exists or will result from his or her conduct. The risk must be of such a nature and degree that the person's failure to perceive it involves a deviation from the ordinary standard of care that a reasonable person would observe in the same situation, considering the nature and purpose of the person's Conduct and the circumstances known to her or him.

**Obscene** – means applying contemporary Tribal community standards to a representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and taken as a whole, the material;

1. appeals to the prurient interest in sex;
2. portrays Sexual Conduct in a patently offensive way; and
3. lacks serious literary, artistic, political, or scientific Value, within Tribal norms.

**Occupant Compartment of a Motor Vehicle** – means any place within a motor Vehicle that is accessible from the driver or passenger seats, including any glove or utility compartment, or other container, whether affixed or not, but does not include a trunk that is not accessible to the occupant compartment.

**Occupied Structure** – means any building, Vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business regardless of whether a person is actually present. Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate Occupied Structure. Any attached structure to an Occupied Structure (i.e., garage, breezeway, etc.), if it has access to the Occupied Structure is considered part and parcel of an Occupied Structure.

**Offender** – means a person who has: committed an Offense, been or is liable to be Arrested,

charged, Convicted, or punished for an Offense.

**Offense** – means a violation of a statutory standard of conduct contained in or adopted by reference in this Code for which a Sentence of labor, time in jail, a fine, Restitution, or other penalty provided by law may be imposed.

**Official Detention** – means an Arrest, detention in any facility for custody of persons under charge or Conviction of a crime, or any other detention for law enforcement purposes.

**Official Proceeding** – means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person giving testimony or deposition in connection with the proceeding.

**Owner or Ownership** – means the Person having the right to possess, use, and convey Property and includes a Person, other than the Offender, who has Possession of or any other interest in the Property involved, even though such interest or Possession is unlawful, and without whose consent the Offender has no authority to exert control over the Property.

**Partner** - means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship.

**Pecuniary Benefit** – means a benefit in the form of money, Property, commercial interests, or anything else the primary significance of which is economic gain.

**Person** – means a natural person, association, corporation, partnership, or other legal entity. The term “**person**”, without an initial capital, means only a natural person.

**Personal Recognizance** – means the release from lawful custody of a Defendant upon his or her promise to appear in court at all appropriate times.

**Petition** – means:

1. an application for a court order or for some judicial action; or
2. a list of signatures submitted to any Tribal government official, program or office pursuant to any ordinance, resolution or constitutional provision providing for the submission of such signatures for the purpose of initiating or requesting governmental action.

**Physically Helpless** – means the person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.

**Police** means the Pokagon Band Tribal Police or any other governmental law enforcement agency that is duly authorized under applicable law to exercise criminal jurisdiction powers within the Reservation.

**Possession** – means the knowing control of anything for a sufficient time to be able to terminate

control.

**Primary Caregiver** – means a person who is a Primary Caregiver under Subsection 333.26423(k) of Michigan’s Medical Marihuana Act.

**Probation** – means the release:

1. by the Tribal Court without imprisonment, of an Offender found guilty of a crime upon verdict or plea, subject to conditions imposed by the Tribal Court, including supervision by the Tribal Probation Officer or his or her designee; or
2. from jail of a prisoner by the Court prior to the expiration of the prisoner's term, subject to any conditions imposed by the Court.

**Property** – means anything of Value to the Owner, which includes all tangible and intangible real and personal Property, but is not limited to:

1. real estate, money and commercial instruments;
2. written instruments representing or embodying rights concerning anything of Value, including labor or services, or that are otherwise of Value to the Owner;
3. things growing on, or affixed to, or found on land, or part of or affixed to any building;
4. dogs, cats, birds, fish, livestock and other animals ordinarily kept in a state of confinement; and
5. electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine-or-human-readable form, computer services, any other tangible or intangible item of Value relating to a computer, computer system, or computer network, and any copies thereof.

**Property of Another** – means real or personal Property in which a Person other than the Offender or a government has an interest that the Offender has no authority to defeat or impair, even though the Offender may have an interest in the Property.

**Protective Order** – means a court order restraining a Person from engaging in the commission or continuance of some Act which may result in irreparable Harm to Another.

**Public Official** – means any member of the Tribal Council, any member of the Elders Council, any person holding an appointed office of any government position of the Band, including boards, commissions, authorities, committees, and agencies of the Band, and such other positions as designated by the Tribal Council by resolution as positions to whom this Code shall apply.

**Public Place** – means any place where Tribal licensees or invitees are provided lawful access, including:

1. Tribal government buildings;
2. such portion of the Reservation and other Tribal lands that are open to Tribal licensees or invitees; and

3. any other place specifically designated by Tribal Council by resolution.

**Purposely** – means a voluntary act, as defined under Section 2(B), with respect to a result or to Conduct described by a Statute defining an Offense when:

1. the element of the Offense involves the nature of his or her Conduct or a result thereof and it is his or her conscious object to engage in Conduct of that nature or to cause such a result; and
2. the element of the Offense involves the attendant circumstances, he or she is aware of or reasonably should be aware of the existence of such circumstances or he or she believes or hopes that they exist.

**Qualifying Patient** – means a person who is a Qualifying Patient under Subsection 333.26423(1) of Michigan’s Medical Marihuana Act.

**Reasonable Apprehension** - means any situation where a person Knowingly points a Firearm or other deadly Weapon or uses other Property in a menacing or personally Threatening manner at or in the direction of another person, whether or not the Offender believes the Firearm to be loaded. In all other circumstances, "Reasonable Apprehension" is a question of fact to be determined by the trier of fact.

**Reasonable Cause** - means, but is not limited to, being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is eighteen (18) years of age. Verbal inquiry is not enough to satisfy Reasonable Cause.

**Reservation** – means, under 25 U.S.C. § 1300j-5 or other applicable federal law, (i) all lands, the title to which is held in trust by the United States for the benefit of the Pokagon Band of Potawatomi Indians; and (ii) all lands proclaimed by the Secretary of the Interior to be part of the Band’s Reservation. The term Reservation includes any rights-of-way running through the Reservation.

**Restitution** – means a requirement, as a condition of a Sentence, that an Offender repay the victim or the Band in money or services.

**Security Interest** – means an interest in personal Property or fixtures that secures payment or performance of an obligation.

**Sentence** – means the punishment imposed on an Offender by the Court, which may include incarceration, labor on Tribally-owned Property while incarcerated, Restitution, or any combination thereof, together with participation in any rehabilitative programs ordered by the Court, and Probation.

**Serious Bodily Harm or Serious Bodily Injury** - means an injury which creates a risk of death, causes serious, permanent, or prolonged loss or impairment of the function or process of any bodily member or organ, causes permanent disfigurement, or causes a serious mental

impairment.

**Service Area** – the territory referred to in 25 U.S.C. § 1300j-7, including Allegan, Berrien, Van Buren and Cass counties in Michigan and LaPorte, St. Joseph, Elkhart, Starke, Marshall and Kosciusko counties in Indiana.

**Sexual Conduct** - means actual or Simulated:

1. Sexual Intercourse, whether between persons of the same or opposite sex;
2. penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;
3. bestiality;
4. masturbation;
5. sadomasochistic Abuse;
6. Obscene exhibition of the genitals, breasts, pubic or rectal area of any person;
7. defecation or urination for the purpose of the sexual stimulation of the viewer; or
8. persuades, entices, counsels, or procures a child to engage in actual or Simulated Sexual Conduct;

**Sexual Contact** – means any touching of the sexual or other intimate parts of the person of Another for the purpose of arousing or gratifying the sexual desire of either party or for the purpose of satisfying the Defendant's aggressive impulses.

**Sexual Intercourse** - means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party or for the purpose of satisfying the Defendant's aggressive impulses. Any penetration, however slight, is sufficient.

**Silencer** – means any device to muffle or otherwise silence or lessen the sound attributed to the discharge of a Firearm.

**Simulated** - means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual Conduct or incipient sexual Conduct.

**Solicit or Solicitation** – means to command, authorize, urge, incite, request or advise Another to commit an Offense.

**Statement** - means:

1. a writing signed or otherwise adopted or approved by a person;
2. a mechanical, electronic, or other recording of a person's oral communications or a transcript thereof; or
3. a writing containing a verbatim record as a summary of a person's oral communication(s).

**Statute** – means any enacted law of the Band.

**Subpoena** – means a court order commanding a Person to:

1. appear at a certain time and place to give testimony upon a certain matter; and/or
2. produce specific books, records, papers, documents, or other objects as may be necessary and proper.

**Summons** – means a written order issued by the Court that commands a Person to appear before the Court at a stated time and place to answer a charge for the Offense set forth in the order.

**Tamper** – means to interfere with something improperly, make unwarranted alterations in its existing condition, or deposit refuse upon it.

**Threat, Threaten, or Threatening** – means a menace, however communicated, to:

1. inflict physical Harm on any person, or on the Property of Another;
2. subject any person to physical confinement or restraint;
3. commit any criminal Offense;
4. falsely accuse any person of a criminal Offense;
5. expose any person to hatred, contempt, or ridicule;
6. Harm the credit or business reputation of any person;
7. reveal any information which may legally be concealed by the person Threatened;
8. take an unauthorized action as an official against anyone or anything, withhold an official action, or cause the withholding of an official action; or
9. testify falsely or provide false information or withhold testimony or information with respect to Another's legal claim or defense.

**Tribal or Band** – means the Pokagon Band of Potawatomi Indians and includes all enterprises, instrumentalities, and subordinate entities established by the Band.

**Tribal Court** – means the Tribal Court of the Pokagon Band of Potawatomi Indians, which is a court of general jurisdiction over all causes of action within the territorial jurisdiction of the Pokagon Band except as may be limited by Tribal or Federal law.

**Tribal Judge or Judge** – means a judge appointed to the Pokagon Band of Potawatomi Indians Tribal Court.

**Unconsented Contact** – means but is not limited to:

1. following or appearing within the sight of that individual;
2. approaching or confronting that individual in a Public Place or on private Property;
3. appearing at the individual's workplace or residence;
4. entering onto or remaining on Property owned, leased, or occupied by that individual;
5. contacting that individual by telephone;
6. sending mail or electronic communications to that individual; or
7. placing an object on, or delivering an object to, Property owned, leased, or occupied by that individual.

**Value** – means the market Value of the Property at the time and place of the crime or, if the

market Value cannot be satisfactorily ascertained, the cost of the replacement of the Property within a reasonable time after the crime. If the Offender appropriates a portion of the Value of the Property, the Value must be determined as follows:

1. The Value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.
2. The Value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the Owner of the instrument might reasonably suffer by virtue of the loss of the instrument.
3. The Value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the Owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the Value of the Owner's right to exclusive use or disposition of the item.
4. When it cannot be determined with reasonable certainty if the Value of the Property is more or less than \$1,000 by the standards set forth in subsection (a), its Value is considered to be an amount less than \$1,000.
5. Amounts involved in thefts committed pursuant to a Common Scheme or the same transaction, whether from the same Person or several Persons, may be aggregated in determining the Value of the Property.

**Vehicle** – means any device for transportation by land, water, or air or mobile equipment with provisions for transport of an operator.

**Visual Medium** – means:

1. any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or
2. any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite, transmission, or other method.

**Vulnerable Adult** – means a Tribal member or other person residing on the Reservation who is:

1. an individual age eighteen (18) or over who, because of age, developmental disability, mental illness, or physical disability is unable to protect him or herself from Abuse, neglect, or exploitation; or
2. an Elder.

**Weapon** – means any instrument, Firearm, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious Bodily Harm.

**Witness** – means any person whose testimony is relevant in any Official Proceeding or in any

investigation.

**Writing** – means a printing or any other method of recording information, money, coins, tokens, stamps, seals, Credit Cards, charge cards, debit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

## **SECTION 2. LIABILITY PRINCIPLES**

### **A. Conduct and Result.**

1. Conduct is the cause of a result if:
  - a. without the Conduct the result would not have occurred; and
  - b. any additional causal requirements imposed by the specific Code provision are satisfied.
2. If Knowingly or Purposely causing a result is an element of an Offense and the result is not within the contemplation or purpose of the Offender, either element can nevertheless be established if:
  - a. the final result differs from the contemplated result only in the respect that a different Person or different Property is affected or that the injury or Harm caused is less than originally contemplated; or
  - b. the result involves the same kind of Harm or injury as contemplated but the precise Harm or injury is different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the Offender's liability or on the gravity of the Offense.
3. If Negligently causing a particular result is an element of an Offense and the Offender is not aware or should not have been aware of the probable result, negligence can nevertheless be established if:
  - a. the actual result differs from the probable result only in the respect that a different Person or different Property is affected or that the actual injury or Harm is less; or
  - b. the actual result involves the same kind of injury or Harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the Offender's liability or the gravity of the Offense.

### **B. Voluntary Act.**

1. An Act or omission to perform a legal duty which the person is mentally, capable of performing.
2. A “voluntary act” does not include:
  - a. a reflex or convulsion;
  - b. a bodily movement during unconsciousness or sleep;
  - c. conduct during hypnosis or resulting from hypnotic suggestion; or
  - d. a bodily movement that otherwise is not consciously or habitually a product of the effort or determination of the actor.

### **C. Responsibility.**

A person who is in an intoxicated or drugged condition is criminally responsible for her or his Conduct unless it can be shown by reliable evidence that such Conduct is involuntarily produced

and deprives the person of the capacity to either appreciate the criminality of the Conduct or to conform her or his Conduct to the requirements of the law. Such showing constitutes an affirmative defense to criminal responsibility.

**D. Accountability.**

1. A person is legally accountable for the Conduct of Another when:
  - a. having a mental state described by the Code provision defining the Offense, the person causes Another to perform the conduct, regardless of the legal capacity or mental state of the other person;
  - b. the Code provision defining the Offense makes the person accountable; or
  - c. either before or during the commission of an Offense with the purpose to promote or facilitate such commission, the person Solicits, aids, abets, agrees, acts as an accessory, or otherwise attempts to aid Another in the planning or commission of the Offense.
2. However, a person is not accountable if:
  - a. the Person is a victim of the Offense committed; or
  - b. before the commission of the crime the person terminates her or his efforts to promote or facilitate the commission of the crime and takes steps to negate the effect or otherwise prevent the commission of the Offense.
3. A person may not be found guilty of an Offense solely on the testimony of a Witness that is culpable of the same Offense.

**SECTION 3. AFFIRMATIVE DEFENSES AND JUSTIFIABLE USE OF FORCE**

**A. Consent.**

1. The complainant's or victim's consent to the performance of the Conduct constituting an Offense or to the result is an affirmative defense which must be proved by the Defendant by a preponderance of the evidence.
2. Consent is ineffective if:
  - a. it is given by a Person who is not legally authorized to approve of the Conduct constituting an Offense;
  - b. it is given by a person who by reason of youth, mental impairment, or mental incapacitation is unable to make a reasonable judgment as to the nature or harmfulness of the Conduct charged;
  - c. it is induced by Force, duress, or deception; or
  - d. it is against public policy to permit the Conduct or the resulting Harm, even though consent was given.

**B. Duress.**

A person is not guilty of an Offense by reason of Conduct which he or she performs under the Threat of the imminent infliction of death or Serious Bodily Harm if he or she reasonably believes that death or Serious Bodily Harm will be inflicted upon him or her if he or she does not perform such conduct. Duress is an affirmative defense which must be proved by the Defendant by a preponderance of the evidence. Duress is not a defense to the killing of another human being.

### **C. Entrapment.**

A person is not guilty of an Offense if his or her Conduct is incited or induced by a Public Official or his or her agent for the purpose of obtaining evidence for the prosecution of such person. However, this Section is inapplicable if a Public Official or his or her agent merely affords to such person the opportunity or facility for committing an Offense in furtherance of criminal purpose which such person has originated. Entrapment is an affirmative defense which must be proved by the Defendant by a preponderance of the evidence.

### **D. Self-Defense.**

1. A person is justified in the use of Force or Threat to use Force against Another when and to the extent the person reasonably believes that such Conduct is necessary to:
  - a. defend herself or himself or Another against such other's imminent use of unlawful Force;
  - b. prevent or terminate such other's unlawful entry into or attack upon an Occupied Structure; or
  - c. prevent or terminate the Offender's trespass on, or other tortious or criminal interference with, either real or personal Property lawfully in the person's Possession, or which the person has a legal duty to protect, or in the Possession of Another who is a family or Household Member, provided such trespass or tortious or criminal interference is within the curtilage of an Occupied Structure and/or in the presence of the person being protected.
2. A person is justified in the use of Force likely to cause death or Serious Bodily Harm only if the person reasonably believes such Force is necessary to prevent imminent death or Serious Bodily Harm to herself or himself or another person.
3. Self-defense is an affirmative defense which must be proved by a Defendant by a preponderance of evidence.

### **E. Use of Force by Aggressor.**

1. Self-defense is not available to a person who:
  - a. is attempting to commit, committing, or escaping after the commission of an Offense; or
  - b. Knowingly or Purposely provokes the use of Force against herself or himself, unless:
    1. such Force is so great that the person reasonably believes there is imminent danger of death or Serious Bodily Harm and the person has exhausted every reasonable means to escape such danger other than the use of Force which is likely to cause death or Serious Bodily Harm to the assailant; or
    2. in good faith, the person withdraws from physical contact with the assailant and clearly indicates to the assailant the desire to withdraw and terminate the use of Force but the assailant continues or resumes the use of Force.

### **F. Use of Deadly Force.**

A Law Enforcement Officer, or any person acting under the officer's command to aid and assist, is justified in using deadly Force when the officer is performing a legal duty or the execution of legal process and reasonably believes the use of Force is necessary to protect herself or himself or others from Conduct which could reasonably be believed to cause death, Serious Bodily Harm, or imminent danger to life.

#### **G. Resisting Arrest.**

A person is not authorized to use Force to resist Arrest which the person knows is being made by a Law Enforcement Officer or by a private person summoned and directed by a Law Enforcement Officer to make the Arrest, even if the person believes the Arrest is unlawful and the Arrest is in fact unlawful. This provision is not a defense to a civil action for damages arising from an unlawful Arrest. The dismissal of or an acquittal of a Defendant of an Offense does not give rise to a presumption that an Arrest was unlawful.

### **SECTION 4. INCHOATE OFFENSES**

#### **A. Conspiracy.**

1. A person commits the Offense of Conspiracy when, with the purpose that an Offense be committed, the person agrees with Another to the commission of the Offense. No person may be Convicted of Conspiracy to commit an Offense unless an Act in furtherance of such agreement has been committed by the person or by a co-conspirator.
  - a. An "act in furtherance" is any course of Conduct which makes it more probable than not that an Act towards the commission of an Offense will occur and the person's present Conduct is not terminated.
  - b. Proof of an "act in furtherance" may be drawn from the circumstances surrounding the involved parties' actions and does not require direct proof of an agreement.
2. It shall not be a defense to Conspiracy that the person or persons with whom the accused has conspired:
  - a. has not been prosecuted or Convicted;
  - b. has been Convicted of a different Offense;
  - c. is not amenable to justice;
  - d. has been acquitted; or
  - e. lacked the capacity to commit the Offense.
3. A person Convicted of Conspiracy shall be punished not to exceed the maximum Sentence provided for the Offense which is the object of the Conspiracy.

#### **B. Aiding and Abetting/Accessory.**

A person commits the Offense of Aiding and Abetting/Accessory when, , the person Solicits, aids, abets, agrees, or attempts to aid Another in the planning or commission of an Offense with the purpose to promote or facilitate such commission.

#### **C. Solicitation.**

1. A person commits the Offense of Solicitation when, with the purpose that an Offense be committed, he commands, encourages, or facilitates the commission

- of that Offense.
2. A person Convicted of Solicitation shall be punished not to exceed the maximum provided for the Offense solicited.

**D. Attempt.**

1. A person commits the Offense of Attempt when, with the purpose to commit a specific Offense, the person does any Act towards the commission of such Offense.
2. It shall not be a defense to a charge of Attempt that the underlying circumstances would have made it impossible for the accused to commit the Offense attempted.
3. A person Convicted of Attempt shall be punished not to exceed the maximum Sentence provided for the Offense attempted.
4. A person shall not be liable under this Section if, under circumstances manifesting a voluntary and complete renunciation of the criminal purpose, the person avoided the commission of the Offense attempted by abandoning the criminal effort.

**SECTION 5. OFFENSES INVOLVING DAMAGE TO THE PERSON**

**A. Homicide.**

1. A person commits the Offense of Homicide by Purposely, Knowingly, or Negligently causing the death of another human being.
2. Homicide is a Class E Offense.

**B. Aiding or Soliciting Suicide.**

1. A person commits the Offense of Aiding or Soliciting Suicide by Purposely aiding or assisting Another in taking his or her own life.
2. The fact suicide was not successfully carried out is not a defense.
3. Aiding or Soliciting Suicide is a Class E Offense.

**C. Assault.**

1. A person, not otherwise authorized by law, commits the Offense of Assault by:
  - a. attempting to commit a battery; or
  - b. Knowingly or Purposely causing Reasonable Apprehension of Bodily Harm in Another.
2. Assault is a Class D Offense.
3. If the victim is less than fourteen (14) years old and the Offender is an adult, the Assault is a Class E Offense.

**D. Battery.**

1. A person, not otherwise authorized by law, commits the Offense of Battery by Knowingly or Purposely:
  - a. causing Bodily Harm to Another;
  - b. making physical contact of an impermissible nature with an individual.
2. Battery is a Class D Offense.
3. If the victim is less than fourteen (14) years old and the Offender is an adult, the Battery is a Class E Offense.

## **E. Domestic Abuse.**

1. A person commits the Offense of Domestic Abuse if the person:
  - a. Knowingly or Purposely commits or attempts to commit a Battery on a Household Member or Partner;
  - b. Knowingly or Purposely Assaults or attempts to Assault a Household Member, or Partner;
  - c. Negligently causes Bodily Injury with a Weapon to a Household Member or Partner; or
  - d. Knowingly violates a Protective Order issued by the Tribal Court regarding a Household Member or Partner.
2. Whether or not the Tribal Prosecutor files a complaint charging the Offense, a person may apply to the Tribal Court for an order of protection if the Prosecutor has reason to believe that a person is a victim of one of the following Offenses committed by a Partner or Household Member or at their direction: Assault, Aggravated Assault, intimidation, Domestic Abuse, Criminal Endangerment, Negligent Endangerment, Unlawful Restraint or Interference, Kidnapping, Aggravated Kidnapping, Arson, Harassment, Incest, or Criminal Sexual Conduct. Prohibited Conduct may be restrained regardless of the location at which it takes place or by whatever means communicated.
3. The Petition for a Protective Order against a suspected Household Member or Partner Offender shall be accompanied by an affidavit of the alleged victim setting out facts constituting sufficient reason to believe that a Partner or Household Member has committed one of the Offenses listed in subsection (2).
4. The Petition may request an order of protection containing any or all of the following provisions for relief of the alleged or suspected victim:
  - a. prohibiting the alleged Offender from injuring or Threatening to injure the suspected victim;
  - b. directing the alleged Offender to leave the residence of the suspected victim and prohibiting the alleged Offender from having any contact with the suspected victim;
  - c. preventing the alleged Offender from transferring any Property except in the ordinary course of business;
  - d. giving the suspected victim Possession of necessary personal Property;
  - e. prohibiting the alleged Offender from removing one or more children from the jurisdiction of the Tribal Court or granting temporary custody of children to the alleged victim;
  - f. interfering with or stalking the victim at their place of employment, schooling, or other social or professional gathering; or
  - g. prohibiting contact of the victim personally or through the direction of Another or through the use of telephone, email, computer, mail, or other form of electronic communication.
5. Upon a finding that the suspected victim is in danger of Harm if the Tribal Court does not act immediately, the Tribal Court shall issue a temporary order of protection granting some or all of the relief requested and such other relief as may be appropriate in the circumstances. The Protective Order shall not apply to

- contacts initiated by the Petitioner.
6. Within fourteen (14) days from the date the Tribal Court issues a temporary protection order, a hearing must be conducted. At the hearing, the Tribal Court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent.
  7. For a first Conviction for Domestic Abuse, the Offense is classified as a Class D Offense over which the Band has exclusive jurisdiction.
  8. For a second Conviction for Domestic Abuse, the Offense is classified as a Class D Offense over which the Band has exclusive jurisdiction.
  9. For a third or subsequent Conviction for Domestic Abuse, the Offense is classified as a Class E Offense.
  10. Nothing herein shall prevent a parent, guardian, or legal custodian from the right of exercising reasonable discipline over a child, including the use of reasonable corporal punishment.

**F. Aggravated Assault.**

1. A person commits the Offense of Aggravated Assault by:
  - a. attempting to commit a Battery with a deadly Weapon;
  - b. Knowingly or Purposely causing Reasonable Apprehension of Serious Bodily Harm in Another by use of a Weapon; or
  - c. Knowingly or Purposely causing Bodily Harm to a Law Enforcement Officer or a person who is responsible for the care or custody of a prisoner.
2. Aggravated Assault is a Class E Offense.

**G. Aggravated Battery.**

1. A person, not otherwise authorized by law, commits the Offense of Aggravated Battery by Knowingly or Purposely:
  - a. causing Serious Bodily Harm to Another; or
  - b. making physical contact of an impermissible nature with an individual by use of a Weapon.
2. Aggravated Battery is a Class D Offense.
3. If the victim is less than fourteen (14) years old and the Offender is an adult, the Battery is a Class E Offense.

**H. Intimidation.**

1. A person commits the Offense of Intimidation by Purposely attempting to have another person perform or refrain from performing a specific Act by Threatening, under circumstances producing a fear that the Threat will be carried out, to:
  - a. inflict Bodily Harm on the person Threatened or any other person;
  - b. subject any person to physical confinement or restraint; or
  - c. commit any Class E Offense.
2. Intimidation is a Class E Offense.

**I. Mistreating Prisoners.**

1. A person commits the Offense of Mistreating Prisoners, if, being responsible for

- the care or custody of a prisoner, he Purposely or Knowingly:
- a. assaults or otherwise intentionally injures a prisoner;
  - b. intimidates, Threatens, endangers, or withholds reasonable necessities from the prisoner; or
  - c. violates any civil right of a prisoner.
2. Mistreating Prisoners is a Class D Offense.

**J. Negligent Vehicular Assault.**

1. A person commits the Offense of Negligent Vehicular Assault if he or she Negligently operates a motor Vehicle while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, and who causes Bodily Injury to Another.
2. Negligent Vehicular Assault is a Class D Offense.

**K. Negligent Endangerment.**

1. A person commits the Offense of Negligent Endangerment if he or she Negligently engages in Conduct that creates a substantial risk of death or Serious Bodily Injury to Another.
2. Negligent Endangerment is a Class D Offense.

**L. Criminal Endangerment.**

1. A person commits the Offense of Criminal Endangerment if he or she Knowingly or Purposely engages in Conduct that creates a substantial risk of death or Serious Bodily Injury to Another.
2. For the purposes of this subsection, "Knowingly" means that the person knew or should have known that the Conduct in which he or she is engaging, whatever that Conduct may be, will cause a substantial risk of death or Serious Bodily Injury to Another.
3. Criminal Endangerment is a Class E Offense.

**M. Abuse of a Vulnerable Adult.**

1. A person commits the Offense of Abuse of a Vulnerable Adult by Knowingly or Purposely, physically or mentally, abusing or Exploiting a Vulnerable Adult.
2. Abuse of a Vulnerable Adult is a Class D Offense.

**N. Robbery.**

1. A person commits the Offense of Robbery if, in the course of committing a theft, the person:
  - a. inflicts Bodily Harm upon Another;
  - b. Threatens to inflict Bodily Harm upon any person;
  - c. Purposely or Knowingly puts any person in fear of immediate Bodily Harm; or
  - d. commits or Threatens to commit any Class E Offense other than theft.
2. "In the course of committing a theft" includes acts which occur in an attempt to commit theft, in the commission of a theft, or in flight after the attempt or commission of a theft.

3. Robbery is a Class E Offense.

**O. Unlawful Restraint.**

1. A person commits the Offense of Unlawful Restraint by Knowingly or Purposely, and without lawful authority, restraining Another so as to interfere substantially with Another's liberty.
2. Unlawful Restraint is a Class C Offense.

**P. Kidnapping.**

1. A person commits the Offense of Kidnapping by Knowingly or Purposely, and without lawful authority, restraining another person by:
  - a. concealing or holding the person in a place of isolation; or
  - b. using or Threatening to use physical Force against the other person.
2. Kidnapping is a Class E Offense.

**Q. Aggravated Kidnapping.**

1. A person commits the Offense of Aggravated Kidnapping if he or she Knowingly or Purposely and without lawful authority restrains another person by either concealing or holding him or her in a place of isolation or by using or Threatening to use physical Force, with any of the following purposes:
  - a. Knowingly Force to facilitate commission of any Felony or flight thereafter;
  - b. to inflict Bodily Injury on or to terrorize the victim or Another; or
  - c. to interfere with the performance of any governmental or political function.
2. Aggravated Kidnapping is a Class E Offense.

**R. Terrorism.**

1. A person commits the Offense of Terrorism if he or she Knowingly or Purposely:
  - a. Threatens to destroy or damage any structure, conveyance, or other real or personal Property within the Reservation boundaries;
  - b. attempts or conspires to destroy or damage any structure, conveyance, or other real or personal Property within the Reservation boundaries; or
  - c. creates a substantial risk of Serious Bodily Injury to any other person by destroying or damaging any structure, conveyance, or other real or personal Property within the Reservation boundaries.
2. Terrorism is a Class E Offense.

**S. Harassment.**

1. A person commits the Offense of Harassment by Knowingly or Purposely repeating or continuing the Act of Unconsented Contact with another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, Threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, Threatened, harassed, or molested.
2. Harassment is a Class D Offense.
3. If the victim was less than 18 years of age at any time during the individual's

course of Conduct and the individual is five (5) or more years older than the victim, then the individual is guilty of a Class E Offense.

## **SECTION 6. SEX CRIMES**

### **A. Criminal Sexual Conduct—1<sup>st</sup> Degree**

1. A person commits the Offense of 1<sup>st</sup> Degree Criminal Sexual Conduct by Knowingly engaging in Sexual Intercourse with a person sixteen (16) years or older, and if any one or more of the following circumstances exist:
  - a. The victim is incapable of consent, because he or she is –
    1. Physically Helpless;
    2. Mentally Disabled; or
    3. Mentally Incapacitated.
  - b. The Offense occurs under circumstances involving the commission of a Felony.
  - c. The Offender uses Force or Coercion to accomplish the Offense.
  - d. The Offender is in a position of authority, influence, or control over the victim and used this authority to Force or Coerce the victim to submit.
2. 1<sup>st</sup> Degree Criminal Sexual Conduct is a Class E Offense.

### **B. Criminal Sexual Conduct—2<sup>nd</sup> Degree**

1. A person commits the Offense of 2<sup>nd</sup> Degree Criminal Sexual Conduct by Knowingly making Sexual Contact with a person sixteen (16) years or older, and if any of the following circumstances listed under Section 6(A)(1)(a)-(d) exists.
2. 2<sup>nd</sup> Degree Criminal Sexual Conduct is a Class E Offense.

### **C. Sexual Abuse of Children—1<sup>st</sup> Degree**

1. A person commits the Offense of 1<sup>st</sup> Degree Sexual Abuse of Children if he or she:
  - a. engages in Sexual Intercourse with a child and the Offender is 20 years or older;
  - b. engages in Sexual Contact with a child; or
  - c. employs, uses, or permits the employment or use of a child in an exhibition of Sexual Conduct, actual or Simulated.
2. For purposes of this Section, "child" means any person less than sixteen (16) years old.
3. 1<sup>st</sup> Degree Sexual Abuse of Children is a Class E Offense.

### **D. Sexual Abuse of Children—2<sup>nd</sup> Degree**

1. A person commits the Offense of 2<sup>nd</sup> Degree Sexual Abuse of Children if he or she engages in Sexual Intercourse with a child and the Offender is less than twenty (20) years old.
2. 2<sup>nd</sup> Degree Sexual Abuse of Children is a Class E Offense.

### **E. Indecent Exposure.**

1. A person commits the Offense of Indecent Exposure if he or she Purposely or

Knowingly, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person, exposes the person's genitals under circumstances in which the person knows the Conduct is likely to cause affront or alarm.

2. Indecent Exposure is a Class C Offense.

**F. Incest.**

1. A person commits the Offense of Incest if he or she Purposely or Knowingly has Sexual Contact or Sexual Intercourse with an ancestor, a descendant, a brother or sister of the whole or half blood, niece or nephew or any stepson or stepdaughter.
2. Consent is a defense under this Section to Incest with or upon a stepson or stepdaughter or stepparent, but consent is ineffective if the victim is less than eighteen (18) years old.
3. Incest is a Class E Offense.

**G. Provisions Generally Applicable to Sex Crimes.**

1. No evidence concerning the sexual Conduct of the victim is admissible in prosecutions under this part except evidence of the victim's past sexual Conduct with the Offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.
2. If the Defendant proposes for any purpose to offer evidence described in subsection 1, the trial Judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection 1.
3. Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.
4. Resistance by the victim is not required to show lack of consent. Force, fear, or Threat is sufficient alone to show lack of consent.
5. All persons Convicted of a sex crime shall be required to register as a sex offender with the Band and shall thereafter notify Tribal authorities of any change of address. Failure to register or provide notice of any change of address shall constitute a Class D Offense.

**SECTION 7. OFFENSES AGAINST THE FAMILY**

**A. Prostitution.**

1. A person commits the Offense of Prostitution if he or she Knowingly engages in or agrees or offers to engage in Sexual Intercourse with another person, not his or her spouse, for compensation, whether such compensation is paid or to be paid.
2. Prostitution is a Class B Offense.

**B. Aggravated Promotion of Prostitution.**

1. A person commits the Offense of Aggravated Promotion of Prostitution if he or she Purposely or Knowingly commits any of the following acts:
  - a. compels or promotes Another to engage in or promote prostitution;
  - b. promotes prostitution of a child under the age of eighteen (18) years,

- whether or not he or she is aware of the child's age; or
  - c. promotes the prostitution of one's child, ward, or any person for whose care, protection, or support he or she is responsible.
2. Aggravated Promotion of Prostitution is a Class E Offense.

**C. Bigamy.**

1. A person commits the Offense of Bigamy if, while married, the person Knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:
- a. the person believes on reasonable grounds that the prior spouse is dead;
  - b. the person and the prior spouse have been living apart for five (5) consecutive years throughout which the prior spouse was not known by the person to be alive;
  - c. a court has entered a Judgment purporting to terminate or annul a prior marriage and the person does not know the Judgment to be invalid; or
  - d. the person reasonably believes she or he is legally eligible to marry.
2. Bigamy is a Class B Offense.

**D. Failure to Support or Care for Dependent Person.**

1. A person commits the Offense of Failure to Support or Care for a Dependent Person by Knowingly:
- a. refusing or neglecting to furnish food, shelter, or proper care, which the person is physically and financially able to provide to any person recognized as legally dependent upon the person;
  - b. endangering the health, welfare or emotional wellbeing of any child under the person's care; or
  - c. failing to provide financial support, which the person is legally obligated to provide and the person is financially able to provide.
2. It is not a defense to a charge of failure to support that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.
3. Failure to Support or Care for a Dependent Person is a Class D Offense.
4. A person commits the Offense of Aggravated Failure to Support if:
- a. the person has left the Reservation to avoid the duty of support; or
  - b. the person has been previously Convicted of the Offense of failure to support.
- c. Aggravated failure to support is a Class E Offense.

**E. Contributing to the Delinquency of an Underage Person.**

1. A person commits the Offense of Contributing to the Delinquency of an Underage Person by Knowingly:
- a. selling, giving, supplying or encouraging the use of any Intoxicating Substances by a person under the age of twenty-one (21);
  - b. selling, giving, supplying or encouraging the use of Explosives to a person under the age of eighteen (18); or

- c. assisting, promoting, or encouraging a person under the age of eighteen (18) to –
  1. abandon her or his place of residence without the consent of the Minor's parents or legal guardian;
  2. enter a place of prostitution;
  3. engage in Sexual Conduct; or
  4. commit, participate, or engage in a criminal Offense.
2. The term “Underage Person” as used here denotes a person who is below the age designated in this subsection.
3. For a first Conviction for Contributing to the Delinquency of an Underage Person, the Offense is classified as a Class C Offense.
4. For a second Conviction for Contributing to the Delinquency of an Underage Person, the Offense is classified as a Class D Offense.
5. For a third or subsequent Conviction for Contributing to the Delinquency of an Underage Person, the Offense is classified as a Class E Offense.

**F. Failure to Send Children to School.**

1. A Person commits the Offense of Failure to Send Children to School by repeatedly neglecting or refusing, without good cause to send any child of school age under the person's care to school.
2. For a first Conviction of Failure to Send Children to School, the Offense is a Class B Offense.
3. For a second or subsequent Conviction of Failure to Send Children to School, the Offense is a Class C Offense.
4. For a third or subsequent Conviction of Failure to Send Children to School, the Offense is a Class D Offense.

**G. Custodial Interference.**

1. A Person commits the Offense of Custodial Interference when, with the intent to deprive another Person of any custodial rights, for a period of more than twenty-four (24) hours, the Person maliciously takes, detains, entices, or conceals, either within or outside the exterior boundaries of the Reservation, any person under the age of eighteen (18), any incompetent person or any person entrusted by authority of law to the custody of another Person.
2. Expenses incurred in locating and regaining physical custody of the person taken, enticed or kept in violation of this Section are "pecuniary damages" for purposes of Restitution.
3. Custodial Interference is a Class E Offense.

**H. Visitation Interference.**

1. A Person who has legal custody of a Minor child commits the Offense of Visitation Interference if he or she Knowingly or Purposely denies or otherwise interferes with or frustrates the visitation rights of a person entitled to visitation under an existing court order.
2. Visitation Interference is a Class C Offense.

## **I. Curfew Violation.**

1. Any child who Knowingly fails to obey curfew regulations as well as any parent, guardian or custodian who Knowingly allows their children to fail to obey curfew regulations commits the Offense of Curfew Violation.
2. Every person under the age of eighteen (18) years is subject to curfew times as follows:
  - a. 11:00 p.m. to 6:00 a.m. Sunday through Thursday; and
  - b. 12:00 midnight to 6:00 a.m. on Friday and Saturday.
3. Parents or guardians of children under the age of eighteen (18) are responsible for curfew compliance. Exceptions are permitted if the child is under the immediate supervision of a parent, guardian, or other adult approved by the parent or guardian. A child may attend authorized school functions without such supervision.
4. A first Conviction of Curfew Violation is a Class A Offense with a maximum fine of fifty dollars (\$50).
5. A second or subsequent Conviction of Curfew Violation is a Class B Offense.

## **SECTION 8. OFFENSES AGAINST PROPERTY**

### **A. Arson.**

1. A person commits the Offense of Arson by Knowingly or Purposely using fire or Explosives:
  - a. to damage or destroy a building or Occupied Structure of Another without consent; or
  - b. in a manner which places another person in danger of death or Bodily Harm, including a firefighter responding to or at the scene of the fire or explosion.
2. Arson is a Class E Offense.

### **B. Negligent Arson.**

1. A person commits the Offense of Negligent Arson if he or she Purposely or Knowingly starts a fire or causes an explosion, whether on his own Property or Property of Another, and thereby Negligently:
  - a. places another person in danger of serious Bodily Injury, including a firefighter responding to or at the scene; or
  - b. places Property of Another in danger of damage or destruction.
2. Negligent Arson as defined above in (1)(b) is a Class C Offense.
3. Negligent Arson as defined above in (1)(a) is a Class E Offense.

### **C. Criminal Mischief.**

1. A Person commits the Offense of Criminal Mischief by Knowingly or Purposely:
  - a. injuring, damaging, or destroying any Property of Another without his or her consent; or
  - b. Tampering with the Property of Another or Tribal Property without consent, so as to endanger or interfere with the use of the Property.
2. If the verified damage amount does not exceed one thousand dollars (\$1,000),

Criminal Mischief is a Class C Offense.

3. If the verified damage amount is greater than one thousand dollars (\$1,000), Criminal Mischief is a Class E Offense.

**D. Trespass.**

1. A Person commits the Offense of Trespass if he or she Knowingly or Purposely and without express, implied, or legal consent or privilege:
  - a. enters or remains in an unoccupied structure;
  - b. enters or remains in or upon the premises of Another;
  - c. enters any Vehicle or any part thereof;
  - d. allows livestock to occupy or graze on the cultivated or enclosed land of Another; or
  - e. enters onto the Reservation after having been excluded from the Reservation by Tribal authority.
2. A privilege to enter may be extended by:
  - a. explicit invitation, license, or permission from the landowner or any other authorized person;
  - b. if the land is large and open and a landowner's failure to give notice that the lands are restricted, or
  - c. by law.
3. Access to Reservation lands, waters, and natural resources by persons who are not Tribal members is restricted as provided by Tribal and federal law. Tribal members crossing Reservation lands in order to exercise hunting and fishing rights retained by treaty do so with privilege.
4. Trespass is a Class C Offense.

**E. Burglary.**

1. A person commits the Offense of Burglary by Knowingly breaking and entering a residence, tent, hotel, office, Tribal building, store, shop, warehouse, barn, granary, factory, or other building, structure or boat with intent to commit an Offense therein.
2. Burglary is a Class E Offense.

**F. Theft.**

1. A person commits the Offense of Theft by Knowingly and Purposely obtaining or exerting unauthorized control, including by Threat or deception, over the Property of the Owner or by obtaining control over stolen Property knowing the Property to have been stolen by Another, and the person:
  - a. has the purpose of depriving the Owner of the Property;
  - b. uses, conceals, or abandons the Property in such a manner as to deprive the Owner of the Property; or
  - c. uses, conceals, or abandons the Property knowing such use, concealment, or abandonment probably will deprive the Owner of the Property.
2. If the verified Value of the Property does not exceed one thousand dollars (\$1,000), Theft is a Class C Offense.
3. If the verified Value of the Property exceeds one thousand dollars (\$1,000), Theft

is a Class E Offense.

**G. Theft of Lost or Mislaid Property.**

1. A Person commits the Offense of Theft by obtaining control over lost or mislaid Property when the person:
  - a. knows or learns the identity of the Owner or knows, is aware of, or learns of a reasonable method of identifying the Owner, including contacting the Police;
  - b. fails to take reasonable measures to restore the Property to the Owner; and
  - c. has the purpose of depriving the Owner permanently of the use or benefit of the Property.
2. Theft of Lost or Mislaid Property under one thousand dollars (\$1,000), is a Class B Offense.
3. Theft of Lost or Mislaid Property over one thousand dollars (\$1,000), is a Class D Offense.

**H. Theft of Labor or Services or Use of Property.**

1. A Person commits the Offense of Theft of Labor or Services or Use of Property when he or she obtains use of Property, labor or services of Another which are available only for hire, by means of Threat or deception or knowing that such use is without the consent of the person providing the Property, labor, or services.
2. If the verified Value of the labor or services or use of Property does not exceed one thousand dollars (\$1,000), its theft under this Section is a Class C Offense.
3. If the verified Value of the labor or services or use of Property is greater than one thousand dollars (\$1,000), its theft is a Class E Offense.

**I. Failure to Return Rented or Leased Property.**

1. A person commits the Offense of Failure to Return Rented or Leased Property if, without notice to and permission of the lessor, the person Knowingly and Purposely fails to return such Property after the time provided for such return in the rental agreement, provided that the date and time when return of the Property is required and the penalty prescribed in this Section is clearly stated, in bold print, in the written agreement.
2. Obtaining rental or leased Property through the use of false identification constitutes prima facie evidence of the commission of this Offense.
3. Failure to return the rental Property within seventy-two (72) hours after written demand by the lessor, sent by either certified mail to the renter or lessee at the address given at the time the rental agreement was entered into or by personal service on the renter or lessee, constitutes prima facie evidence of the commission of this Offense.
4. If the verified Value of the rented or leased Property does not exceed one thousand dollars (\$1,000), Failure to Return Rented or Leased Property is a Class C Offense.
5. If the verified Value of the rented or leased Property is greater than one thousand dollars (\$1,000), Failure to Return Rented or Leased Property is a Class E Offense.

**J. Waste, Sale or Trade of Food Distribution Program Foods.**

1. A person commits the Offense of Waste, Sale or Trade of Food Distribution Program Foods (commodities) if he or she Knowingly:
  - a. wastes the foods by discarding them;
  - b. sells the foods to Another for money; or
  - c. trades the foods for other items or services.
2. Waste, Sale or Trade of Food Distribution Program Foods is a Class B Offense.

**K. Unauthorized Use of Motor Vehicle.**

1. A person commits the Offense of Unauthorized Use of a Motor Vehicle by Knowingly operating the Vehicle of Another without his or her consent.
2. It is a defense that the Offender reasonably believed that the Owner would have consented to the Offender's operation of the motor Vehicle if asked.
3. Unauthorized Use of a Motor Vehicle is a Class C Offense.

**L. Unlawful Use of a Computer.**

1. A person commits the Offense of Unlawful Use of a Computer by Knowingly or Purposely.
  - a. obtaining the use of a computer, computer system, or computer network without consent of the Owner;
  - b. altering or destroying or causing Another to alter or destroy a computer program or computer software without consent of the Owner; or
  - c. obtaining the use of, or altering or destroying a computer, computer system, computer network, or any part thereof, for the purpose of obtaining money, Property, or computer services from the Owner of the computer, computer system, computer network, or from any other person.
2. If the verified Value of the Property used, altered, destroyed, or obtained does not exceed one thousand dollars (\$1,000), Unlawful Use of a Computer is a Class C Offense.
3. If the verified Value of the Property used, altered, destroyed, or obtained is greater than one thousand dollars (\$1,000), Unlawful Use of a Computer is a Class E Offense.

**M. Issuing a Bad Check.**

1. A Person commits the Offense of Issuing a Bad Check if he or she Knowingly or Purposely with the intent to defraud drafts, issues or passes a check or credit instrument to obtain:
  - a. money;
  - b. delivery of other valuable Property;
  - c. services;
  - d. the use of Property; or
  - e. credit extended by any licensed gaming establishment, drawn upon any real or fictitious person, bank, firm, partnership, corporation, or depository, when the Person has insufficient money, Property or credit with the drawee of the instrument to pay it in full upon presentation.
2. If the Person issuing the check or credit instrument has an account with the

depository, failure to make good the check or other credit instrument within fifteen (15) days after written notice of nonpayment has been received by the issuer is prima facie evidence that the Person knew it would not be paid by the depository.

3. Issuing a Bad Check not exceeding one thousand dollars (\$1,000) is a Class C Offense.
4. Issuing a Bad Check exceeding one thousand dollars (\$1,000) is a Class E Offense.

**N. Defrauding Creditors.**

1. A Person commits the Offense of Defrauding Creditors if he or she Knowingly destroys, conceals, encumbers, transfers, removes from the Reservation, or otherwise deals with Property subject to a Security Interest with the purpose to hinder enforcement of that interest.
2. Defrauding Creditors is a Class C Offense.

**O. Deceptive Practices.**

1. A Person commits the Offense of Deceptive Practices by Knowingly or Purposely:
  - a. causing Another, by deception or Threat, to execute a document disposing of Property or a document by which a pecuniary obligation is incurred;
  - b. making, directing Another to make, or accepting a false or deceptive Statement regarding the person's financial condition for the purpose of procuring a loan or credit;
  - c. making or directing Another to make a false or deceptive Statement addressed to the public or any Person for the purpose of promoting or procuring the sale of Property; or
  - d. obtaining or attempting to obtain Property, labor, or services through the use of an invalid Credit Card, charge card, or debit card.
2. Deceptive Practices is a Class C Offense.

**P. Deceptive Business Practices.**

1. A Person commits the Offense of Deceptive Business Practices if, while in the course of engaging in a business, occupation, or profession, the Person Knowingly or Purposely:
  - a. uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quantity or quality;
  - b. sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service;
  - c. takes or attempts to take more than the represented quantity of any commodity or service when furnishing the weight or measure;
  - d. sells, offers, or exposes for sale adulterated commodities;
  - e. sells, offers, or exposes for sale mislabeled commodities; or
  - f. makes a deceptive Statement regarding the quantity or price of goods in any advertisement addressed to the public.
2. Deceptive Business Practice is a Class C Offense.

**Q. Forgery.**

1. A person commits the Offense of Forgery if, with the purpose to defraud or injure anyone, or with knowledge that he or she is facilitating a Fraud or injury to be perpetrated by anyone, the Offender:
  - a. alters any Writing of Another without his authority;
  - b. makes, completes, executes, issues, or transfers any Writing so that it purports to be the acts of Another who did not authorize the act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
  - c. utters any Writing which he or she knows to be forged in a manner specified in subsection a or b.
2. Except as provided in subsection 3, Forgery is a Class C Offense.
3. If the Forgery is part of a Common Scheme, or if the Value of the Property, labor, or services obtained or attempted to be obtained exceeds one thousand dollars (\$1,000), the Offense is a Class E Offense.

**R. Obscuring the Identity of a Machine.**

1. A person commits the Offense of Obscuring the Identity of a Machine if he or she:
  - a. removes, defaces, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, Vehicle, electrical device, or Firearm with the purpose to conceal, misrepresent, or transfer any such machine, Vehicle, electrical device, or Firearm; or
  - b. possesses with the purpose to conceal, misrepresent, or transfer any machine, Vehicle, device, or Firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.
2. The fact of Possession or transfer of any such machine, Vehicle, electrical device, or Firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.
3. Obscuring the Identity of a Machine is a Class C Offense.

**S. Unauthorized Use of Credit Cards.**

1. A person commits the Offense of Unauthorized Use of a Credit Card if he or she uses the Credit Card for the purpose of obtaining Property or services with the knowledge that:
  - a. the Credit Card is stolen or forged;
  - b. the Credit Card has been revoked or canceled; or
  - c. for any other reason his or her use is unauthorized.
2. Unauthorized Use of a Credit Card in an amount less than one thousand dollars (\$1,000), is a Class C Offense.
3. Unauthorized Use of a Credit Card in an amount of one thousand dollars (\$1,000) or greater is a Class E Offense.

**T. Possessing Stolen Property.**

1. A person commits the Offense of Possessing Stolen Property if he or she Knowingly possesses Property obtained through theft.
2. If the verified Value of the stolen Property does not exceed one thousand dollars (\$1,000), Possessing Stolen Property is a Class C Offense.
3. If the verified Value of the stolen Property is greater than one thousand dollars (\$1,000), or if the stolen Property is a Firearm of any Value, Possessing Stolen Property is a Class E Offense.

**U. Embezzlement.**

1. A person commits the Offense of Embezzlement if he or she having lawful custody of Property not his or her own, appropriate the same to his or her own use, with intent to deprive the Owner thereof, commits the Offense of Embezzlement.
2. If the verified Value of the Property does not exceed one thousand dollars (\$1,000), Embezzlement is a Class C Offense.
3. If the verified Value of the Property is greater than one thousand dollars (\$1,000), Embezzlement is a Class E Offense.

**V. Defrauding a Hospitality Business.**

1. A person commits the Offense of Defrauding a Hospitality Business, if he or she, with the intent to defraud:
  - a. procures, as a guest, any food, entertainment, or accommodation at any gaming establishment, hotel, motel, inn, restaurant or café without paying therefor, except when credit is given therefor by express agreement, or
  - b. obtains credit at any gaming establishment, hotel, motel, inn, restaurant, or café for such food, entertainment or accommodation, by any false pretense.
2. Obtaining food, lodging, or accommodation by false pretense, or by false or fictitious show of baggage or other property, or refusal or neglect to pay therefor on demand, or payment thereof with check, draft or order upon a bank or other depository on which payment was refused, or absconding without paying or offering to pay therefore, or surreptitiously removing or attempting to remove baggage, shall be prima facie evidence of such intent to defraud under this Offense.
3. If the Value of the Property, labor, or services obtained or attempted to be obtained does not exceed one thousand dollars (\$1,000), the Offense of Defrauding a Hospitality Business is a Class C Offense.
4. If the Value of the Property, labor, or services obtained or attempted to be obtained exceeds one thousand dollars (\$1,000), the Offense of Defrauding a Hospitality Business is a Class E Offense.

**SECTION 9. OFFENSES AGAINST PUBLIC ADMINISTRATION**

**A. Bribery.**

1. A Person commits the Offense of Bribery by Knowingly or Purposely offering, conferring, agreeing to confer upon Another, Soliciting, accepting, or agreeing to accept from Another, any benefit, including Pecuniary Benefit, for the purpose of unduly influencing:
  - a. the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a Tribal Public Official or voter;
  - b. the recipient's decision, vote, recommendation, or other exercise of official discretion in a Tribal judicial proceeding or Administrative Proceeding; or
  - c. a known duty as a Tribal Public Official.
2. It is not a defense that a person whom the Offender sought to bribe was not qualified to act in the desired way.
3. A Person Convicted of the Offense of Bribery shall forever be disqualified from holding any position as a Public Official, notwithstanding a subsequent expungement of the Conviction, except to the extent that the Pokagon Band Constitution prohibits the establishment of different or additional qualifications for office for Tribal Council and the Election Board.
4. Bribery is a Class D Offense.

**B. Improper Influence in Official Matters.**

1. A person commits the Offense of Improper Influence in Official Matters by Purposely or Knowingly:
  - a. Threatening Harm to any person, the person's spouse, child, parent, or sibling, or the person's Property with the purpose to influence the person's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal Public Official or voter;
  - b. Threatening Harm to any Tribal Public Official, to the Tribal Public Official's spouse, child, parent, or sibling, or to the Public Official's Property with the purpose to influence the Tribal Public Official's decision, opinion, recommendation, vote or other exercise of discretion in a judicial proceeding or Administrative Proceeding;
  - c. Threatening Harm to any Tribal Public Official, the Public Official's spouse, child, parent, or sibling, or the person's Property with the purpose to influence the person to violate her or his duty; or
  - d. privately communicating about the circumstances of a pending or potential controversy with any Tribal Public Official who has or will have official discretion in a judicial proceeding or Administrative Proceeding if such communication is designed to influence or with the potential to influence the outcome of such proceedings on the basis of considerations other than those authorized by Tribal law.
2. It is not a defense that a person whom the Offender sought to influence was not qualified to act in the desired way.
3. A person Convicted of Improper Influence in Official Matters shall forever be disqualified from holding any position as a Tribal Public Official, notwithstanding a subsequent expungement of the Conviction.
4. Improper Influence in Official Matters is a Class D Offense.

**C. Compensation for Past Official Behavior.**

1. A person commits the Offense of Compensation for Past Official Behavior if he or she Knowingly Solicits, accepts, or agrees to accept any Pecuniary Benefit as compensation for having, as a Tribal Public Official, given a decision, opinion, recommendation, or vote favorable to Another, for having exercised discretion in Another's favor, or for having violated his or her duty. A person commits an Offense under this Section if he or she Knowingly offers, confers, or agrees to confer compensation which is prohibited by this Section.
2. Compensation for Past Official Behavior is a Class C Offense.

**D. Perjury.**

1. A person commits the Offense of Perjury by Knowingly making in any Tribal judicial proceeding or Administrative Proceeding a false Statement under oath or equivalent affirmation, or by swearing or affirming the truth of a false Statement previously made when the Statement is material to the proceedings.
2. Perjury is a Class D Offense.

**E. False Swearing.**

1. A person commits the Offense of False Swearing by Knowingly making a false Statement under oath or equivalent affirmation, or swearing or affirming the truth of such a Statement previously made when the person does not believe the Statement to be true and:
  - a. the falsification occurs in an Official Proceeding;
  - b. the falsification is Purposely made to mislead a Tribal Public Official in performing his or her official function; or
  - c. the Statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.
2. False Swearing is a Class C Offense.

**F. Unsworn Falsification to Authorities.**

1. A Person commits the Offense of Unsworn Falsification to Authorities if, with purpose to mislead a Tribal Public Official in performing his or her official function, he or she:
  - a. makes any written false Statement which he or she does not believe to be true;
  - b. Purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent Statements therein from being misleading;
  - c. submits or invites reliance on any Writing which he or she knows to be forged, altered, or otherwise lacking in authenticity; or
  - d. submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.
2. Unsworn Falsification to Authorities is a Class B Offense.

**G. Petition Misconduct.**

1. A person commits the Offense of Petition Misconduct if he or she:
  - a. signs a Petition with a name of another person or fictitious person, or any name other than his or her true name;
  - b. signs a Petition knowing that he or she is not eligible to sign under applicable Tribal Statute, Resolution or Constitutional provision;
  - c. in signing a Petition, makes a false Statement as to his or her residence, age, Tribal membership or other qualifications necessary to sign the Petition;
  - d. knowing that a Petition contains false signatures or Statements, files the Petition, or puts the Petition off with intent that it should be filed, as a true and genuine Petition;
  - e. for any consideration or gratuity or promise thereof, signs or declines to sign any Petition;
  - f. provides or receives consideration for Soliciting or procuring signatures on a Petition if any part of the consideration is based on the number of signatures Solicited or procured, or offers to provide or agrees to receive such consideration any of which is based on the number of signatures Solicited or procured;
  - g. gives or offers any consideration or gratuity to any person to induce him or her to sign or not to sign any Petition; or
  - h. interferes with or attempts to interfere with the right of any voter to sign or not to sign a Petition by Threats, intimidation, or any corrupt means or practice.
2. Petition Misconduct is a Class C Offense.

#### **H. False Alarms to Agencies of Public Safety.**

1. A person commits the Offense of False Alarms to Agencies of Public Safety if he or she Knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, Tribal or otherwise, official or volunteer, which deals with emergencies involving danger to life or Property.
2. False Alarms to Agencies of Public Safety is a Class C Offense.

#### **I. Filing False Reports to Law Enforcement Officers.**

1. A person commits the Offense of Filing False Reports to Law Enforcement Officers by Knowingly:
  - a. giving false information to any Law Enforcement Officer with the purpose to implicate Another;
  - b. reporting to a Law Enforcement Officer an Offense or other incident within their concern, knowing that the alleged Offense or incident did not occur; or
  - c. pretending to furnish such officers with information relating to an Offense or incident when the person does not have information relating to such Offense or incident.
2. Filing False Reports to Law Enforcement Officers is a Class C Offense.

#### **J. Tampering with Witnesses, Informants, or Physical Evidence.**

1. A person commits the Offense of Tampering with Witnesses, Informants, or Physical Evidence if, believing that an Official Proceeding or investigation is pending or about to be instituted, the person Knowingly or Purposely attempts to:
  - a. induce or otherwise cause a Witness or informant to testify or inform falsely;
  - b. withhold any testimony, information, document or other material evidence;
  - c. cause a Witness to elude legal process summoning the Witness to testify or supply evidence; or
  - d. alter, destroy, conceal, or remove any record, document, or other physical object in order to impair its availability or reliability in such proceeding or investigation.
2. Tampering with Witnesses, Informants, or Physical Evidence is a Class E Offense.

**K. Impersonating a Tribal Public Official.**

1. A person commits the Offense of Impersonating a Tribal Public Official by Knowingly and Purposely pretending to hold a position as a Public Official of the Band as a means of inducing Another to submit to the person's authority or otherwise Act in reliance upon such representation.
2. Impersonating a Tribal Public Official is a Class C Offense.

**L. False Claims to Tribal Agencies.**

1. A Person commits the Offense of False Claims to Tribal Agencies if he or she Purposely and Knowingly presents for allowance or for payment a claim already paid by Another or a false or fraudulent claim, bill, account, voucher, or Writing to a Tribal agency, Tribal Public Official, or to a contractor authorized to allow or pay claims presented to a Tribal agency, if genuine. False claims to Tribal Agencies shall include Purposely and Knowingly presenting a false or fraudulent request to purchase tax exempt fuel or tax exempt tobacco distributed by the Band or by a contractor authorized to distribute such fuel or tobacco for the Band.
2. False Claims to Tribal Agencies is a Class D Offense.

**M. Resisting Arrest.**

1. A person commits the Offense of Resisting Arrest by Knowingly preventing or attempting to prevent a Law Enforcement Officer from making an Arrest by:
  - a. using or Threatening to use physical Force or violence against the Law Enforcement Officer or Another; or
  - b. using any other means which creates a risk of causing physical injury to a law enforcement or Another.
2. It is no defense to a charge of resisting Arrest that the Arrest was unlawful, provided the Law Enforcement Officer was acting under the color of his or her official authority.
3. Resisting Arrest is a Class D Offense.

**N. Obstructing a Law Enforcement Officer or Other Tribal Public Official.**

1. A person commits the Offense of Obstructing a Law Enforcement Officer or other

Tribal Public Official if he or she Knowingly obstructs, impairs, or hinders the enforcement of criminal law, the preservation of the peace, or the performance of a Tribal governmental function.

2. It is no defense to a charge under this Section that the Law Enforcement Officer or other Tribal Public Official was acting in an illegal manner, provided he was acting under the color of his or her official authority.
3. Obstructing a Law Enforcement Officer or Other Tribal Public Official is a Class D Offense.

**O. Obstructing Justice.**

1. A Person commits the Offense of Obstructing Justice if, knowing another person is an Offender, he or she Knowingly and Purposely:
  - a. harbors or conceals an Offender;
  - b. warns an Offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an Offender into compliance with the law;
  - c. provides an Offender with money, transportation, a Weapon, disguise, or other means of avoiding discovery or apprehension;
  - d. prevents or obstructs, by means of Force, deception, or intimidation, anyone from performing an Act that might aid in the discovery or apprehension of an Offender;
  - e. supports, by Act of concealment, alteration, or destruction, any physical evidence that might aid in the discovery or apprehension of an Offender; or
  - f. aids an Offender who is subject to detention to escape from such detention.
2. Obstructing Justice is a Class C Offense.

**P. Violation of a Protective Order.**

1. A Person to whom a Protective Order is directed commits the Offense of Violating a Protective Order by, with knowledge of the order, Knowingly or Purposely engaging in any Conduct proscribed by the Protective Order or by failing to meet any requirement of the order.
2. The person requesting the Protective Order or for whose protection it was issued may not be charged with violation of this Section.
3. The Person against whom the Protective Order is directed may not be Convicted of a violation of the order if the person who requested the Protective Order initiates the contact.
4. Violation of a Protective Order is a Class D Offense.

**Q. Escape.**

1. A person commits the Offense of Escape by:
  - a. unlawfully removing herself or himself from Official Detention or failing to return to detention following temporary leave granted for a specific purpose or limited time period;
  - b. aiding another person to escape from Official Detention; or

- c. Knowingly procuring, making, possessing or providing a person in Official Detention with anything which may facilitate escape.
2. Escape is a Class D Offense.

**R. Providing Contraband to Detainees.**

1. A person commits the Offense of Providing Contraband to Detainees by Knowingly providing or aiding Another to provide a person in official Tribal detention with Intoxicating Substances, implements of escape or any other items or substances which the person knows are unlawful or improper for the detainee to possess.
2. Providing Contraband to Detainees is a Class D Offense.

**S. Bond-Jumping.**

1. A person commits the Offense of Bond-jumping if, having been released on Bond, or on the person's own recognizance, by Tribal Court order or other lawful Tribal authority upon condition that the person subsequently appear on a charge of an Offense, the person fails, without just cause, to appear in person or by Counsel at the time and place lawfully designated for the person's appearance.
2. Bond-jumping constitutes a Class D Offense.

**T. Criminal Contempt.**

1. A Person commits the Offense of Criminal Contempt by Knowingly engaging in any of the following conduct:
  - a. disorderly, contemptuous, or insolent behavior committed during the sitting of the Tribal Court, in the immediate view and presence of the Tribal Court, and directly tending to interrupt its proceedings or to impair the respect due its authority;
  - b. breaching the peace by causing a disturbance directly tending to interrupt the proceedings of the Tribal Court;
  - c. Purposely disobeying or refusing any lawful process or other mandate of Tribal Court;
  - d. unlawfully refusing to be sworn as a Witness in any Tribal Court proceeding or, after being sworn, refusing to answer any legal and proper questions;
  - e. Purposely publishing a false or grossly inaccurate report of a Tribal Court proceeding; or
  - f. Purposely failing to obey any mandate, process, or notice relative to serving as a juror.
2. Criminal Contempt is a Class C Offense.

**U. Official Misconduct.**

1. A Tribal Public Official commits the Offense of Official Misconduct when in his or her official capacity he or she commits any of the following acts:
  - a. Purposely fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;
  - b. Knowingly performs an Act in his or her official capacity which he or she

- knows is forbidden by law;
  - c. with the purpose to obtain advantage for himself or herself or Another, performs an Act in excess of his or her lawful authority; or
  - d. Solicits or Knowingly accepts for the performance of any Act a fee or reward which he or she knows is not authorized by law.
2. Upon Conviction under this Section, a Public Official, other than elected Public Officials, shall be terminated from his or her office and shall be forever barred from serving as a Public Official, notwithstanding a subsequent expungement of the Conviction.
  3. Official Misconduct is a Class D Offense.

**V. Misuse of Tribal Funds.**

1. A Person commits the Offense of Misuse of Tribal Funds if he or she being a Tribal employee, Public Official or other Person charged with receipt, safekeeping, transfer or disbursement of Tribal funds, without lawful authority, appropriates funds to his or her own use or the use of Another, or who shall otherwise handle Tribal funds in a manner not authorized by law, shall commit the Offense of Misuse of Public Funds.
2. Any person, other than elected Public Officials, named in subsection 1 who is charged as provided in this Section may be suspended from his or her office without pay pending final Judgment.
3. Upon Conviction under this Section any Person named in subsection 1, other than elected Public Officials, shall be forever barred from any Tribal position under subsection 1, notwithstanding a subsequent expungement of the Conviction.
4. If the amount of the Tribal funds misused does not exceed one thousand dollars (\$1,000), Misuse of Tribal Funds is a Class C Offense.
5. If the amount of the Tribal funds misused is greater than one thousand dollars (\$1,000), Misuse of Tribal Funds is a Class E Offense.

**SECTION 10. OFFENSES AGAINST PUBLIC ORDER**

**A. Disorderly Conduct.**

1. A person commits the Offense of Disorderly Conduct by Knowingly disturbing the peace of Another by:
  - (i) Purposely uttering fighting words to incite violence and/or fighting;
  - (ii) making or inducing Another to make loud or unusual noises;
  - (iii) using physically Threatening, profane, or abusive language;
  - (iv) discharging Firearms, except at a shooting range during established hours of operation;
  - (v) obstructing vehicular or pedestrian traffic on a public way without good cause;
  - (vi) rendering the free entrance or exit to public or private places impassable without good cause;
  - (vii) disturbing or disrupting any lawful assembly or public meeting after having been asked to cease such disturbance or disruption or leave the premises by one in authority at the assembly or meeting; or

- (viii) being publicly intoxicated.
- 2. Disorderly Conduct is a Class B Offense.

**B. Public Nuisance.**

- 1. A Person commits the Offense of Public Nuisance by Knowingly creating, conducting, or maintaining a public nuisance.
- 2. "Public nuisance" includes, but is not limited to:
  - a. a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of Property so as to interfere with the comfortable enjoyment of life or Property;
  - b. persons gathering on any premise for the purpose of engaging in unlawful conduct;
  - c. a condition making passage of any public right-of-way, or waters used by the public, dangerous; or
  - d. a person urinating or defecating in a Public Place, or any other place visible to the public, other than a public restroom.
  - e. a person appearing in a Public Place in an intoxicated condition such that the person is acting in a manner that causes a public disturbance.
- 3. Uses of Reservation lands and waters by Tribal members or the Band, whether agricultural operations or otherwise, existing prior to nearby residential or commercial development or population increase, will not be considered a Public Nuisance.
- 4. Public Nuisance is a Class A Offense with a maximum fine of one hundred dollars (\$100). In addition, the Person creating the public nuisance may be ordered to abate the nuisance and pay all costs of abatement.

**C. Riot.**

- 1. A person commits the Offense of Riot if he or she Purposely disturbs the peace by engaging in an Act of violence as part of an assemblage of five or more persons, which Act or Threat presents a clear and present danger of or results in damage to Property or injury to persons.
- 2. Riot is a Class C Offense.

**D. Creating a Hazard.**

- 1. A Person commits the Offense of Creating a Hazard by Knowingly:
  - a. discarding in any place where it might attract children, a container having a compartment with a capacity of more than 1.5 cubic feet and an attached door or lid that automatically locks or otherwise securely fastens when closed and cannot be easily opened from the inside;
  - b. maintaining any Property under her or his control in a manner which could attract children and which constitutes a potential health or safety hazard to the children, without taking proper steps to restrict access to the area;
  - c. failing to cover or fence with suitable protective materials a well, cistern, cesspool, mine shaft, or other hole of a depth of four (4) or more feet and a width of twelve (12) or more inches located upon Property in the Person's Possession; or

- d. being the Owner or otherwise having Possession of any Property upon which industrial, construction, or farming equipment is located and allowing the equipment to be maintained or operated in an unsafe manner or condition.
2. Creating a Hazard is a Class C Offense.

**E. Harming a Police Dog.**

1. A person commits the Offense of Harming a Police Dog if he or she Purposely or Knowingly shoots, kills, or otherwise injures a police dog being used by a Tribal Law Enforcement Officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.
2. Harming a Police Dog is a Class E Offense.

**F. Causing Animals to Fight.**

1. A person commits the Offense of Causing Animals to Fight by:
  - a. owning, possessing, keeping, or training any animal with the intent that such animal fight or engage in an exhibition of fighting with another animal;
  - b. allowing or causing any animal to fight with another animal or causing any animal to menace or injure another animal for the purpose of sport, amusement, or gain;
  - c. Knowingly permitting any Act in violation of subsection (1)(a) or (1) (b) to take place on any premises under the person's charge or control, or aids or abets any such act; or
  - d. participating in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.
2. Causing Animals to Fight is a Class D Offense.

**G. Animal Abuse.**

1. A person commits the Offense of Animal Abuse by committing willful and malicious infliction of injury to animals without just cause or excuse.
  - a. "injury" for purposes of this subsection, includes:
    1. killing, torturing, mutilating, maiming, disfiguring, or poisoning;
    2. starving or Negligently withholding food or water; or
    3. failing to provide necessary medical intention to prevent serious Harm or death.
  - b. "animal" means vertebrates other than human beings.
2. Animal Abuse is a Class D Offense.

**H. Allowing a Dog to Run at Large.**

1. It shall be unlawful for any dog to run at large. It is presumptive evidence that the Owner of a dog found running at large is in violation of this Section.
2. For purposes of this Section "at large" means beyond the Owner's or possessor's Property and not within the Owner or possessor's supervision and control.
3. Allowing a Dog to Run at Large is a Class C Offense.

### **I. Unlawful Camping.**

1. It shall be unlawful for any person to camp, occupy camp facilities or use camp paraphernalia in the following areas, except as otherwise provided by ordinance:
  - a. Any park, unless park or park area is specifically designated for camping;
  - b. Any public or Tribal street; or
  - c. Any publicly or Tribally owned parking lot or publicly owned area, improved or unimproved, unless the area is specifically designated for camping.
2. For purpose of this subsection, “camp” means occupying a place, with or without a Vehicle, for the purpose of sleeping overnight or temporarily residing.
3. Unlawful camping is a Class A Offense with a maximum fine of seventy-five dollars (\$75.00).

### **J. Littering.**

1. It shall be unlawful for any person to Negligently, Purposely, or Knowingly place, throw, or leave refuse on the real property of another, except with the consent of the Owner, or in a container or area specifically designated for refuse.
2. For purposes of this subsection 10(J), “refuse” includes, but is not limited to rubbish, waste material, garbage, trash, and debris.
3. Violation of this subsection 10(J) shall be a Class A Offense, provided that if the litter is placed, thrown, or left on or in a body of water, the violation shall be a Class B Offense, punishable by a fine not to exceed \$500.

## **SECTION 11. COMMUNICATIONS OFFENSES**

### **A. Promoting Obscene Acts or Materials.**

1. A Person commits the Offense of Promoting Obscene Acts or Materials when, with knowledge of the Obscene nature thereof, he or she Purposely or Knowingly:
  - a. uses a Visual Medium to record a Minor engaging in Sexual Conduct or Obscene acts, actual or Simulated;
  - b. processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises a Visual Medium recording representing a Minor engaging in Sexual Conduct or Obscene acts, actual or Simulated;
  - c. finances any of the activities described in (a) or (b) of this subsection;
  - d. publishes, exhibits, or otherwise makes available anything Obscene to a Minor;
  - e. performs an Obscene Act or otherwise presents an Obscene exhibition of his body to a Minor;
  - f. creates, buys, procures, or possesses Obscene matter or material with the purpose to disseminate it to a Minor; or
  - g. advertises or otherwise promotes the sale of Obscene material or materials represented or held out by him to be Obscene.
2. Promoting Obscene Acts or Materials is a Class D Offense.

## **B. Public Display or Dissemination of Obscene Material to Minors.**

1. A Person commits the Offense of Public Display or Dissemination of Obscene Materials to Minors if he or she Knowingly or Purposely:
  - a. display Obscene material to Minors in such a way that Minors, as a part of the invited public, will be able to view the material; provided, however, that a Person is considered not to have displayed Obscene material to Minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a Minor;
  - b. sell, furnish, present, distribute, or otherwise disseminate to a Minor or allow a Minor to view, with or without consideration, any Obscene material; or
  - c. present to a Minor or participate in presenting to a Minor, with or without consideration, any performance that is Obscene to Minors.
2. A Person does not violate this Section if:
  - a. he or she had Reasonable Cause to believe the Minor was 18 years of age;
  - b. the person is, or is acting as, an employee of a public school, college, or university or a retail outlet affiliated with the serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;
  - c. the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;
  - d. an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or
  - e. the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.
3. Public Display or Dissemination of Obscene Material to Minors is a Class D Offense.

## **C. Violation of Privacy in Communications.**

1. A person commits the Offense of Violation of Privacy in Communication if he or she Knowingly or Purposely:
  - a. communicates with any person by telephone, computer, cell-phone, or other communication device or service and uses any Obscene, lewd or profane language, suggests any lewd or lascivious act, or Threatens to inflict injury or physical Harm to the person or Property of any person, intending that the communication terrify, intimidate, Threaten, harass, annoy, or offend the person;
  - b. uses a telephone, computer, cell-phone, or other communication device or service to extort anything of Value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person

- at the place where the telephone call or calls are received;
  - c. records or causes to be recorded any communication in which the person recording is not a party unless –
    - 1. the recording is of a person speaking at a public meeting;
    - 2. the person making the recording has given warning to all parties that the conversation is being recorded; or
    - 3. the recording is specifically authorized in advance by a Tribal Court or federal court order using the standards set forth for search warrants.
  - or
  - d. reads or discloses any communications addressed to another person without the permission of such person, unless authorized by Tribal Court or federal court order.
2. A person also commits the Offense of violating this subsection if he or she Knowingly interferes, interrupts, destroys, or otherwise disrupts the communications of Another.
  3. Violating Privacy in Communications is a Class C Offense.
  4. If a person Knowingly interferes, interrupts, destroys, or otherwise disrupts the communications of Another during any communication to law enforcement authorities, such violation is a Class E Offense.

**D. Bribery in Contests.**

1. A person commits the Offense of Bribery in Contests if he or she Purposely or Knowingly offers, confers, or agrees to confer upon Another or Solicits, accepts, or agrees to accept from Another:
  - a. any Pecuniary Benefit as a consideration for the recipient's failure to use his or her best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or
  - b. any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.
2. Bribery in Contests is a Class C Offense.

**SECTION 12. WEAPONS OFFENSES**

**A. Carrying Concealed Weapon.**

1. A person commits the Offense of Carrying a Concealed Weapon by Knowingly carrying or bearing a Concealed Weapon.
2. Subsection 1 shall not apply to:
  - a. any Law Enforcement Officer;
  - b. a person holding a valid license to carry one or more types of Concealed Weapon that was issued by his or her state of residence, except where the person is not carrying the Concealed Weapon within his or her state of residence, the license does not authorize such person to carry the Concealed Weapon in his or her Possession, or the Concealed Weapon is being carried in nonconformance with a restriction appearing on the license

- c. the carrying of Firearms in his or her residence, place of business, or on other land possessed by the person;
  - d. a bona fide collector registered under Section 923 of the federal Firearms Code, 18 U.S.C. § 44;
  - e. a person while transporting the Firearm for a Lawful Purpose that is licensed by the Owner or occupant of the motor Vehicle in compliance with the law of his or her residence and the Firearm is unloaded in a closed case designed for the storage of Firearms in the trunk of the Vehicle; or
  - f. a person while transporting the Firearm for a Lawful Purpose that is licensed by the Owner or occupant of the motor Vehicle and the Firearm is unloaded in a closed case designed for storage of Firearms in a Vehicle that does not have a trunk and is not readily accessible to the occupants of the Vehicle
3. Carrying a Concealed Weapon is a Class D Offense.

**B. Possession of Deadly Weapon by Persons in Custody of Law Enforcement Officer.**

A Person, while in the custody of a Law Enforcement Officer, that Purposely or Knowingly possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy-club, knuckles made of metal or hard substance, knife, razor not including a safety razor, or other deadly Weapon is guilty of a Class E Offense.

**C. Carrying a Concealed Weapon While Under the Influence.**

- 1. A person commits the Offense of Carrying a Concealed Weapon While Under the Influence if he or she Purposely or Knowingly carries a Concealed Weapon while under the influence of an Intoxicating Substance.
- 2. For the purpose of this subsection, "under the influence" means that as a result of taking into the body Intoxicating Substances, a person's ability to safely operate a Weapon is impaired. It is not a defense that the person had permission under subsection 12(A)(2)(b).
- 3. Carrying a Concealed Weapon While Under the Influence is a Class D Offense.

**D. Carrying Concealed Weapon in a Prohibited Place.**

- 1. A person commits the Offense of Carrying a Concealed Weapon in a prohibited place if he or she Purposely or Knowingly carries a Concealed Weapon in:
  - a. a building owned or leased by the federal, state, local government, or Band or any other governmental entity;
  - b. a bank, credit union, savings and loan institution, or commercial financial institution;
  - c. a commercial establishment in which Intoxicating Substances are sold, dispensed, and consumed;
  - d. a school, day-care, or any institution of higher education; or
  - e. a hospital, clinic, sports arena, or sporting facility.
- 2. It is not a defense that the person had permission under subsection 12(A)(2)(b).
- 3. Carrying a Concealed Weapon in a prohibited place is a Class D Offense.

**E. Openly Carrying a Firearm in a Prohibited Place.**

1. A person commits the Offense of Openly Carrying a Firearm in a prohibited place if he or she Purposely or Knowingly openly carries a Firearm in:
  - a. a building owned or leased by the federal, state, local government, or Band or any other governmental entity;
  - b. a bank, credit union, savings and loan institution, or commercial financial institution;
  - c. a commercial establishment in which Intoxicating Substances are sold, dispensed, and consumed;
  - d. a school, day-care, or any institution of higher education;
  - e. Any Public Place within a residential area;
  - f. a playground, campground, park, or pow-wow grounds; or
  - g. a hospital, clinic, sports arena, or sporting facility.
2. Openly Carrying a Firearm in a prohibited place is a Class D Offense.
3. This Subsection 12(E) shall not apply to any Law Enforcement Officer.

**F. Openly Carrying a Firearm While Under the Influence.**

1. A person commits the Offense of Openly Carrying a Firearm While Under the Influence if he or she Purposely or Knowingly openly carries a Firearm while under the influence of an Intoxicating Substance.
2. For the purpose of this subsection, "under the influence" means that as a result of taking into the body Intoxicating Substances, a person's ability to safely operate a Firearm is impaired.
3. Openly Carrying a Firearm While Under the Influence is a Class D Offense.

**G. Reckless or Malicious Use of Explosives.**

1. A Person commits the Offense of Reckless or Malicious Use of Explosives if he or she recklessly or maliciously use, handle, or have in his or her Possession any Explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a Class C Offense.
2. Reckless or Malicious Use of Explosives is a Class C Offense.

**H. Possession of a Destructive Device.**

1. It shall be unlawful to Possess a Destructive Device on a public street or highway, in or near a theater, hall, school, college, church, hotel, Tribally-owned building, or any other public building, in, on or near any aircraft, railway passenger train, vessel engaged in carrying passengers for hire, or other Public Place ordinarily passed by human beings.
2. It is not a violation of this Offense for a Law Enforcement Officer to possess Destructive Devices as authorized by state, Tribal, or federal law.
3. Possession of a Destructive Device is a Class E Offense.

**I. Possession of Explosives.**

1. A Person commits the Offense of Possession of Explosives if he or she Knowingly and Purposely possesses, manufactures, transports, buys, or sells an Explosive compound, flammable material, or timing, detonating, or similar device for use

with an Explosive compound or incendiary device and:

- a. has the purpose to use such Explosive material or device to commit an Offense; or
  - b. knows that Another has the purpose to use such Explosive material or device to commit an Offense.
2. For purposes of this Section, the term “Explosives” does not include Fireworks that are not prohibited by this Code.
  3. Possession of Explosives is a Class E Offense.

**J. Possession, Transportation, Sale, or Discharge of Prohibited Fireworks.**

1. A Person commits the Offense of Possession, Transportation, Sale, or Discharge of Prohibited Fireworks if he or she Knowingly or Purposely possesses, transports, discharges, sells, or offers for sale any Fireworks prohibited by the law of the state where the Offense is committed.
2. Possession, Transportation, Sale, or Discharge of Prohibited Fireworks is a Class C Offense.

**K. Possession of a Silencer.**

1. A person commits the Offense of Possession of a Silencer if he or she Knowingly or Purposely possesses, manufactures, transports, buys, loans, gives, or sells a Silencer to be used to commit an Offense, whether or not the Offense is committed.
2. Possession of a Silencer is a Class E Offense.

**L. Possession of a Sawed-off Firearm.**

1. A person commits the Offense of Possession of a Sawed-off Firearm if he or she Knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:
  - a. 16 inches or more and an overall length of twenty-six (26) inches or more in the case of a rifle; or
  - b. 18 inches or more and an overall length of twenty-six (26) inches or more in the case of a shotgun; and
  - c. the Firearm has been modified in a manner so that the barrel length, overall length, or both are less than specified in subsections 1.a or 1.b.
2. The barrel length is the distance from the muzzle to the rear-most point of the chamber.
3. This Section does not apply to Firearms possessed:
  - a. for educational or scientific purposes in which the Firearms are incapable of being fired;
  - b. by a person who has a valid federal tax stamp for the Firearm, issued by the Bureau of Alcohol, Tobacco, and Firearms; or
  - c. by a bona fide collector of Firearms if the Firearm is a muzzle loading, sawed-off Firearm manufactured before 1900.
4. Possession of a Sawed-off Firearm is a Class D Offense.

**M. Firing Firearms.**

1. A person commits the Offense of Firing Firearms when he or she Knowingly or Purposely, except as provided in subsections (2) and (3), shoots or fires a gun, pistol, or any other Firearm within the limits of any town, city, Tribal housing or community area, or any residence, has committed the Offense of Firing Firearms.
2. Firearms may be discharged at an indoor or outdoor rifle, pistol, shotgun shooting range, or other place located within the limits of a town, city, Tribal housing or community area provided that such activity at that specific location is expressly permitted under Tribal law.
3. Subsection (1) does not apply if the discharge of a Firearm is justifiable under Section 3 “Affirmative Defenses and Justifiable Use of Force.”
4. The Offense of Firing Firearms is a Class B Offense.

**N. Use of Firearms by Minor Under 14 Years of Age.**

1. Unless a Minor under fourteen (14) years of age is accompanied by a person having charge or custody of the Minor or is under the supervision of a qualified Firearms safety instructor who has been authorized by the parent or guardian of the Minor, it is unlawful for any person to permit the Minor under fourteen (14) years of age to carry or use any Firearms in a Public Place.
2. Any parent, guardian, or other person having charge or custody of a Minor under the age of fourteen (14) years violating the provisions of this Section is guilty of a Class A Offense.

**SECTION 13. INTOXICATING SUBSTANCES**

**A. Possession of an Intoxicating Substance by a Person Under 21.**

1. A person commits the Offense of Possession of an Intoxicating Substance by a Person Under 21 if he or she being under the age of twenty-one (21) years old, possess, purchase, consume, obtain, or sell any beer, wine, ale, whiskey or other alcoholic beverage or misrepresent his age for the purpose of buying or otherwise obtaining an Intoxicating Substance.
2. Possession of an Intoxicating Substance by a Person Under 21 is a Class C Offense.

**B. Use or Possession of Intoxicating Substances Prohibited in a Public Place.**

1. A Person commits the Offense of Use or Possession of Intoxicating Substances Prohibited in a Public Place if he or she Knowingly or Purposely uses or possesses Intoxicating Substances in a Public Place. This provision shall not apply to the otherwise lawful use or Possession of alcoholic beverages within or on the grounds of a Tribal gaming operation or other Tribal commercial operation licensed to serve such beverages to the public.
2. Use or Possession of Intoxicating Substances Prohibited in a Public Place is a Class C Offense.

**C. Public Consumption of Intoxicating Substances.**

1. A person commits the Offense of Public Consumption of Intoxicating Substances if he or she Knowingly or Purposely opens a container containing an Intoxicating

Substance or consumes an Intoxicating Substance in a Public Place, unless consumption of Intoxicating Substances in such Public Place is specifically permitted or licensed by the Band.

2. Public Consumption of Intoxicating Substances in a Public Place is a Class A Offense, punishable by a fine not to exceed one hundred dollars (\$100.00).

**D. Controlled Substances--Possession, Use, Sale, Manufacture Distribution, or Intend to Distribute.**

1. It shall be unlawful for any Person to possess, use, sell, manufacture, distribute, or intend to distribute any controlled substance defined and/or described in the Uniform Controlled Substances Act, 21 U.S.C. § 812, as updated, without valid authorization.
2. Except as provided in Subsections 10(D)(3) - (6), violation of this Subsection 10(D)(1) shall constitute a Class E Offense.
3. Use or possession of marijuana in an amount less than 5 grams shall constitute a Class A Offense.
4. Use or possession of marijuana in an amount of at least 5 grams but less than 30 grams shall constitute a Class C Offense.
5. Use or possession of marijuana in an amount of 30 grams or greater shall constitute a Class E Offense.
6. Use or possession of marijuana within the territorial jurisdictional area of the Pokagon Band of Potawatomi Indians that is within the exterior boundaries of the State of Michigan by a person who is either a Qualifying Patient or Primary Caregiver whose use or possession is in accordance with Michigan's Medical Marijuana Act, shall be a Civil Offense, regardless of whether the person is an Indian or Non-Indian. The classification of the Civil Offense for purposes of the fine schedule at subsection 2(D) of PBCivO shall be in accordance with Subsections 10(D)(3) - (5).

**E. Legend Drugs.**

1. It shall be unlawful for any Person to sell, deliver, or possess any Legend Drug except upon the order or prescription of a licensed physician, dentist, veterinarian or other health care professional legally authorized to prescribe such Legend Drug.
2. Subsection 1 shall not apply to the sale, delivery or Possession by drug wholesalers or drug manufacturers or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose Possession of any Legend Drug is in the usual course of business or employment.

3. Nothing in this Section shall prohibit a family planning clinic from selling, delivering, possessing, and dispensing oral contraceptives prescribed by authorized, licensed health care practitioners.
4. Any Person who violates this subsection is guilty of a Class E Offense.

**F. Exception for Good Samaritan Reporting or Seeking Medical Treatment.**

1. Subsections 13(A) through 13(E) notwithstanding, the following shall not be a violation of this Section 13:
  - a. A person who seeks medical assistance for himself or herself, or who requires medical assistance and is presented for medical assistance by another person, if he or she is incapacitated because of an actual or perceived overdose, or other perceived medical emergency arising from the use of an Intoxicating Substance or Legend Drug that he or she possesses or possessed in an amount sufficient only for personal use and the evidence of his or her violation of this Section 13 is obtained as a result of the person's seeking or being presented for medical assistance.
  - b. A person who attempts to procure medical assistance for another person, or who accompanies another person who requires medical assistance for an actual or perceived overdose, or other perceived medical emergency arising from the use of an Intoxicating Substance or Legend Drug that he or she possesses or possessed in an amount sufficient only for personal use and the evidence of his or her violation of this Section 13 is obtained as a result of the person's attempting to procure medical assistance for another person or as a result of the person's accompanying another person who requires medical assistance in the procurement of such medical assistance.
2. The exceptions provided under Subsection 13(F)(1):
  - a. Do not prevent the investigation, arrest, charging, or prosecution of a person for any other violation of this Code or other applicable law; and
  - b. Shall not be grounds for suppression of evidence in the prosecution of any other charges or prosecution for any other violation of this Code or other applicable law.
3. As used in this Subsection 13(F):
  - a. "medical assistance" means reporting, or assisting a person in reporting, an actual or perceived overdose, or other medical emergency to a Law Enforcement Officer, to any 9-1-1 system, poison control center, or medical provider.

- b. “overdose” means a condition including, but not limited to, physical illness, decreased level of consciousness, preparatory depression, coma, mania, or death, and such condition is actually or perceived to be the result of consumption or use of an Intoxicating Substance or Legend Drug.

## **SECTION 14. CRIMES AND LIABILITIES CONCERNING GAMING**

### **A. Definitions.**

As used in this Section:

1. “Cheat” means to alter the elements of chance, method of selection or criteria which determine the:
  - a. result of a Game;
  - b. amount or frequency of payment in a Game;
  - c. Value of a wagering instrument; or
  - d. Value of a wagering credit.
2. The words and terms defined in this Section have the meanings ascribed to them in this Code. Any words or terms that are not defined in this Code, particularly terms related to Gaming, shall have the meanings ascribed to them in the Pokagon Band Gaming Regulatory Act, as amended.

### **B. Fraudulent acts.**

It is unlawful for any Person:

1. To alter or misrepresent the outcome of a Game after the outcome of such Game has been determined but before the outcome is revealed to the players;
2. To place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the Game or any event that affects the outcome of the Game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome;
3. To claim, collect or take, or attempt to claim, collect or take, money or anything of Value in or from a Game, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount actually won in such Game;
4. Knowingly to entice or induce Another to go to any place where a Game is being conducted or operated in violation of the provisions of this Section, with the intent that the other person play or participate in that Game;
5. To place or increase a bet after acquiring knowledge of the outcome of the Game or other event which is the subject of the bet, including past-posting and pressing bets;
6. To reduce the amount wagered or cancel the bet after acquiring knowledge of the outcome of the Game or other event which is the subject of the bet, including pinching bets;
7. To aid anyone in acquiring such knowledge referred to in subsections 5 or 6 of this Section for the purposes of increasing or decreasing any wager, or for the purpose of altering or determining the course of play;
8. To manipulate, with the intent to cheat or defraud, any component or part of a

- Game or a Gaming Device in a manner contrary to the designed and normal operational purpose for the component or part, with knowledge or expectation that such manipulation will likely affect the outcome of the Game or with knowledge of any event would likely affect the outcome of the Game;
9. To offer, promise or give anything of Value to anyone for the purpose of influencing the outcome of Game upon which a wager may be made, or to place, increase or decrease a wager after acquiring knowledge, not available to the general public, that anyone has been offered, promised or given anything of Value for the purpose of influencing the outcome of the Game upon which the wager is placed, increased or decreased;
  10. To change or alter the normal outcome of any Game played on an interactive gaming system or a mobile gaming system or the way in which the outcome is reported to any participant in the Game; or
  11. Who is under twenty-one (21) years of age to participate as a player in any Game conducted at a Licensed Gaming Establishment.

**C. Use of device for calculating probabilities.**

It is unlawful for any person at a licensed gaming establishment to use, or possess with the intent to use, except as permitted by the Gaming Commission, any device to assist:

1. In projecting the outcome of the Game;
2. In keeping track of the cards played;
3. In analyzing the probability of the occurrence of an event relating to the Game; or
4. In analyzing the strategy for playing or betting to be used in the Game.

**D. Use of counterfeit, unapproved or unlawful wagering instruments; Possession of certain unlawful devices, equipment, products or materials.**

1. It is unlawful for any licensee, employee or other person to use counterfeit chips, counterfeit debit instruments or other counterfeit wagering instruments in a Game, associated equipment or a cashless wagering system.
2. It is unlawful for any Person, in playing or using any Game, associated equipment or cashless wagering system designed to be played with, receive or be operated by chips, tokens, wagering credits or other wagering instruments approved by the Pokagon Band Gaming Commission or by lawful coin of the United States of America:
  - a. Knowingly to use other than chips, tokens, wagering credits or other wagering instruments approved by the Pokagon Band Gaming Commission or lawful coin, legal tender of the United States of America, or to use coin or tokens not of the same denomination as the coin or tokens intended to be used in that Game, associated equipment or cashless wagering system; or
  - b. To use any device or means to violate the provisions of this Section.
3. It is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his employment within an establishment, to have on his person or in his Possession on or off the premises of any licensed gaming establishment any device intended to be used to violate the provisions of this Section.

4. It is unlawful for any person, not a duly authorized employee of a Licensee acting in furtherance of his employment within a Gaming Operation, to have on his person or in his Possession on or off the premises of any licensed Gaming Establishment any key or device known to have been designed for the purpose of and suitable for opening, entering or affecting the operation of any Game, cashless wagering system or drop box, or any electronic or mechanical device connected thereto, or for removing money or other Contents therefrom.
5. Possession of more than one of the devices, equipment, products or materials described in this Section permits a rebuttable inference that the possessor intended to use them for cheating.

**E. Cheating.**

It is unlawful for any person, whether he is an employee of a Gaming Operation or a player in a Gaming Establishment, to cheat at any Game.

**F. Unlawful marking, altering or modification of equipment and devices associated with gaming; unlawful instruction.**

1. It is unlawful to mark, alter or otherwise modify any Gaming Device in a manner that:
  - a. Affects the result of a wager by determining win or loss; or
  - b. Alters the normal criteria of random selection, which affects the operation of a Game or which determines the outcome of a Game.
2. It is unlawful for any Person to instruct Another in cheating or in the use of any device for that purpose, with the knowledge or intent that the information or use so conveyed may be employed to violate any provision of this Section.

**G. “Medium of communication” defined.**

As used in Sections H and I of this Section, unless the context otherwise requires, “medium of communication” includes, but is not limited to, mail, telephone, television, telegraph, facsimile, cable, wire, the Internet or any other similar medium.

**H. Accepting, receiving or allowing Another to accept or receive wager from person physically present within the Reservation prohibited under certain circumstances.**

A Person, alone or with others, shall not Knowingly, within or outside of the Reservation:

1. Accept or receive, directly or indirectly, through any medium of communication a wager from another Person who is physically present within the Reservation; or
2. Allow a lessee, agent or employee to accept or receive, directly or indirectly, through any medium of communication a wager from another Person who is physically present within the Reservation.

**I. Placing, sending, transmitting or relaying wagers to another person prohibited under certain circumstances; penalty.**

A Person, alone or with others, shall not Knowingly:

1. From within the Reservation, place, send, transmit or relay through a medium of communication a wager to another Person or an establishment that is located within or outside of the Reservation; or

2. From outside of this place, send, transmit or relay through a medium of communication a wager to another Person or an establishment that is located within the Reservation.

**J. Detention and questioning of person suspected of violating Section; limitations on liability; posting of notice.**

1. Any officer, employee, or agent of a licensed Gaming Operation and any employee of the Pokagon Band Gaming Commission may question any person in a Gaming Establishment suspected of violating any of the provisions of this Section. No such officer, employee, or agent is criminally or civilly liable:
  - a. On account of any such questioning; or
  - b. For reporting to the Pokagon Band Gaming Commission or law enforcement authorities the person suspected of the violation.
2. Any officer, employee, or agent of a Gaming Operation or employee of the Pokagon Band Gaming Commission who has probable cause for believing that there has been a violation of this Section by any person may take that person into custody and detain him in the Gaming Establishment or the Gaming Commission Offices in a reasonable manner and for a reasonable length of time. Such a taking into custody and detention does not render the officer, employee, or agent criminally or civilly liable unless it is established by clear and convincing evidence that the taking into custody and detention are unreasonable under all the circumstances.

**K. Disposition of evidence seized by agent of Pokagon Band Gaming Commission.**

1. After the final adjudication of a complaint involving a violation of this Section or the Pokagon Band Gaming Regulatory Act or of any other complaint involving the seizure of evidence by an agent of the Commission, the court may enter an appropriate order disposing of all physical evidence pertaining to the complaint, whether or not the evidence was introduced as an exhibit.
2. Except as otherwise provided in subsection 3, evidence seized by an agent of the Commission which does not result in a complaint charging a violation of the law and evidence for which an order of disposition is not entered pursuant to subsection 1, must be disposed of as follows:
  - a. The Commission shall notify by certified mail each potential claimant of the evidence that he has thirty (30) days after receipt of the notice within which to file a written claim with the Commission for return of the evidence.
  - b. If more than one Person files a claim for the evidence:
    1. The claimants may agree among themselves as to how they wish to divide the evidence, subject to the approval of the Commission;
    2. The claimants may agree to submit the matter to binding arbitration or any claimant may institute legal proceedings to determine the proper disposition of the evidence; or
    3. The Commission may file an action as an interpleader to determine the rightful claimant.

- The Commission shall transfer the Property to the claimants in accordance with any agreement approved by the Commission, final Judgment or award made pursuant to the provisions of this Section.
- c. A Person who receives Property from the Commission pursuant to this Section shall execute such documents as are required by the Commission to defend, hold harmless, indemnify and release the Commission from any liability arising from the delivery of the Property to the claimant.
  - d. If no claim is submitted, the Commission shall deposit all money in the Pokagon Band treasury for credit to the Pokagon Band general fund and may use all other Property for any lawful purpose. The Commission may dispose of any Property which cannot be used for any lawful purpose in the manner.
3. Evidence which constitutes a device for cheating may not be returned to a claimant and must be retained by the Commission. The Commission shall periodically destroy such devices in the manner provided by regulations adopted by the Commission.

**L. Penalties for violation of this Section.**

1. A Person who violates any provision of this Section, is guilty of a Class D Offense.
2. A Person who attempts, or two or more persons who conspire, to violate any provision of this Section, each is guilty of a Class D Offense, whether or not he personally played any Game or used any prohibited device.
3. The Tribal Court shall not suspend a Sentence of imprisonment imposed pursuant to this subsection or grant Probation to the person Convicted.

**SECTION 15. ADOPTION OF STATE LAWS FOR CRIMES NOT LISTED IN TRIBAL CODE**

For Offenses occurring within the territorial jurisdictional area of the Pokagon Band of Potawatomi Indians, and within the exterior boundaries of the State of Michigan, the Pokagon Band of Potawatomi Indians adopts, as Tribal law, the substantive criminal laws of the State of Michigan to the extent such laws do not conflict with federal law, the Tribal Constitution, or Tribally enacted laws in force now or enacted in the future.

For Offenses occurring within the criminal jurisdictional area of the Pokagon Band of Potawatomi Indians and within the exterior boundaries of the State of Indiana, the Pokagon Band of Potawatomi Indians adopts, as Tribal law, the substantive criminal laws of the State of Indiana to the extent such laws do not conflict with federal law, the Tribal Constitution, or Tribally enacted laws in force now or enacted in the future.

**CRIMINAL PROCEDURE**  
(Cite as: PBCP)

**SECTION 1. GENERAL PRELIMINARY PROVISIONS**

**A. Criminal Jurisdiction.**

An Indian Defendant is subject to prosecution in Tribal Court for any Offense enumerated in this Code, which is committed totally or partially within the Reservation, except where such exercise of criminal jurisdiction is limited by federal or Tribal law.

**B. Rights of Defendant.**

In all criminal proceedings, the Defendant shall have the following rights:

1. To be released from custody pending trial upon payment of reasonable Bond, unless otherwise determined by the Tribal Court;
2. To be informed of the charges pending against him or her and to have a copy of those charges;
3. To confront and cross examine all prosecution or hostile Witnesses;
4. To compel by Subpoena:
  - a. the attendance of any Witnesses necessary to defend against the charges; and
  - b. the production of any books, records, documents, or other things necessary to defend against the charges;
5. To have reasonable notice and an opportunity to review the evidence to be presented against him or her and all exculpatory evidence prior to trial;
6. To have a speedy public trial by a judge or jury, unless the right to speedy trial is waived;
7. To appeal any final decision of the Tribal Court to the Tribal Court of Appeals;
8. Not to be twice put in jeopardy by the Tribal Court for the same Offense;
9. Upon inquiry, not be required to answer any questions or be Convicted for contempt upon refusal to do so if the answers might tend to incriminate him or her and there is no grant of immunity. No inference may be drawn from a Defendant's exercise of the right not to testify; and
10. The right to appointed Counsel if it appears upon sworn affidavit that the Defendant is financially unable to afford Counsel and the imposition of incarceration is a possible consequence of the Offense charged, pursuant to applicable rules adopted by the Tribal Court of Appeals to determine the Defendant's right to be represented by appointed Counsel.

**C. Subsequent Prosecutions.**

1. A subsequent prosecution will not constitute double jeopardy when the previous prosecution was properly terminated under any of the following circumstances:
  - a. the Defendant consented to the termination of the proceeding or waived, explicitly or implicitly by the filing of a motion an appeal upon the Judgment of Conviction, or otherwise, legally waived the right to object to the termination of the prosecution;
  - b. the Tribal Court finds that a termination, other than by acquittal, is

necessary because:

1. it is impossible to proceed with the trial in conformity with the law;
  2. there is a legal defect in the proceeding that would make any Judgment entered upon a verdict reversible, as a matter of law, and said defect is not attributable to the prosecution;
  3. prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the Defendant or the Band;
  4. the jury cannot agree upon a verdict; or
  5. a false Statement of a juror on *voir dire* prevents a fair trial;
  - c. the former prosecution occurred in a court which lacked jurisdiction over the Defendant or the Offense;
  - d. the subsequent prosecution was for an Offense which was not completed when the former prosecution began; or
  - e. there was a transfer of jurisdiction to another authority.
2. The following actions will not constitute an acquittal of the same Offense if the complaint was:
    - a. dismissed for insufficiency in form or substance;
    - b. dismissed without prejudice upon a pretrial motion; or
    - c. discharged for want of prosecution without a Judgment of acquittal.

## **SECTION 2. INVESTIGATIVE PROCEDURES**

### **A. Investigative Subpoenas.**

1. Whenever the Tribal Prosecutor has a duty to investigate alleged unlawful activity involving a Class C – E Offense under this Code, a Tribal Judge may, upon a Petition from the Prosecutor that meets the requirements of subsection 2, cause a Subpoena to be issued commanding a specified person to appear before the Prosecutor or a designated agent of the Prosecutor and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation.
2. An investigative Subpoena may only be issued by a Tribal Judge for Class C – E Offenses when supported by a Petition from the Tribal Prosecutor that contains all of the following:
  - a. a brief description of each Offense being investigated;
  - b. the name of each Person who will be questioned or who will be required to produce material described under subsection c;
  - c. a general description of any records, documents, or physical evidence to be examined; and
  - d. A brief statement of the facts establishing the basis for the Tribal Prosecutor's belief that the testimony of the person or examination of the records, documents, or physical evidence is relevant to the investigation of a Offense described in the Petition.

### **B. Relief from Improper Subpoena.**

A Person aggrieved by a Subpoena issued pursuant to this part may, within a reasonable time,

file a motion to quash the Subpoena and, in the case of a *subpoena duces tecum*, to limit its scope. The motion must be granted if the Subpoena was issued in violation to Tribal law or, in the case of a *subpoena duces tecum*, if it is overly broad in its scope.

**C. Conduct of Investigative Hearing.**

1. Before a Tribal Judge, the Tribal Prosecutor may examine under oath all Witnesses Subpoenaed pursuant to this part. Testimony must be recorded. The Witness has the right to have Counsel present at all times at the Witness' expense. Failure to obey, without just cause, a Subpoena served under this part is punishable for contempt of court.
2. Proceedings conducted under this part are secret except to the extent that they supply probable cause for Arresting or charging a Defendant in a subsequent criminal action or are admissible in a later criminal trial. A person who divulges the Contents of the Prosecutor's affidavit or the proceedings without legal privilege to do so is punishable for contempt of court.
3. All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

**D. Self-Incrimination - Immunity.**

1. No person subpoenaed to give testimony pursuant to this part may be required to make a Statement or to produce evidence that may be personally incriminating.
2. The Tribal Prosecutor may, with the approval of the Tribal Judge who authorized the issuance of the Subpoena, grant a person Subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution.
3. Nothing in this part prohibits the Tribal Prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a Witness is compelled to testify if the Prosecutor determines, in the Prosecutor's sole discretion, that the best interest of justice would be served by granting immunity.
4. After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false Statements given pursuant to the Subpoena.
5. No testimony or other information compelled under a Subpoena order granting immunity or, any information derived directly or indirectly from that testimony, shall be used against the Witness in a criminal case, except for impeachment purposes or in a prosecution for perjury or otherwise failing to comply with the order.
6. Nothing in this part requires a Witness to divulge the Contents of a privileged communication unless the privilege is waived as provided by law.

**E. Search and Seizure.**

All persons have the right to be secure in their persons, houses, papers, and effects against unreasonable search and seizures. A search of a person, object, or place may be made and evidence, Contraband, and persons may be seized when a search is made:

1. by the authority of a search warrant; or
2. without a warrant due to an emergency or exigent circumstances in accordance with exceptions to the warrant requirement recognized under Pokagon Band statutory and common law.

#### **F. Scope of Search After Arrest.**

When a lawful Arrest is made, a Law Enforcement Officer may, contemporaneous with the Arrest, make a reasonable search of the person Arrested and the area within the person's immediate reach, including the passenger compartment of a vehicle, without a search warrant, for the purpose of:

1. protecting a Law Enforcement Officer from attack;
2. discovering and seizing the fruits of the crime, instruments and articles or other Property which may constitute evidence of the Offense in order to prevent its destruction; or
3. preventing the person from escaping.

#### **G. Requirements of a Search Warrant.**

1. A search warrant is a written order, signed by the Tribal Judge, and directed to a Law Enforcement Officer ordering him to Conduct a search and seize items or Property specified in the warrant. A warrant shall reasonably describe the Property or place to be searched and shall describe the items to be seized.
2. Warrants of search and seizure shall only be executed by Tribal Law Enforcement Officers. The executing Law Enforcement Officer shall return the warrant together with an itemized list of the items seized to the Tribal Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance, absent justifiable delay as determined by the Tribal Court. Warrants not returned within such time limits shall be void.

#### **H. Grounds for a Search Warrant.**

1. Authority. Every Tribal Judge shall have the power to issue warrants for the search and seizure of Property and premises of any Person under the jurisdiction of the Tribal Court.
2. Probable Cause. No warrant of search and seizure shall be issued except upon probable cause that a search will discover:
  - a. evidence of a crime;
  - b. Contraband, fruits of a crime, or other items illegally possessed;
  - c. items intended for use in a crime or which have been used in furtherance of a crime; or
  - d. person for whom an Arrest warrant has been issued or will be issued contemporaneous with the issuance of the search warrant.
3. Affidavit. Such probable cause shall be supported by a written and sworn affidavit for a search warrant based upon reliable factual information. The affidavit shall contain the following statement immediately above the date and signature of the

Law Enforcement Officer:

“I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.”

4. Search Warrant by Telephone or Electronic Means. An affidavit for a search warrant shall be signed by requesting Law Enforcement Officer and submitted (along with any other Witness affidavits relied upon by the Law Enforcement Officer) to the Tribal Judge orally by telephone or by other electronic means. The Judge shall:
  - a. place the requesting Law Enforcement Officer under oath;
  - b. ask the Law Enforcement Officer to swear that the information contained in the affidavit is true to the best of the Law Enforcement Officer’s belief;
  - c. upon finding probable cause the Tribal Judge may enter an original warrant on the grounds indicating the probable cause that exists to issue a warrant and describing the scope of the search warrant;
  - d. sign the original warrant and enter the exact time when the warrant was ordered to be issued; and
  - e. transmit the signed search warrant by any electronic means, including by facsimile or by computer.

**I. Scope of Search Under Warrant.**

1. The scope of any search shall only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the Persons or Property specified in the warrant.
2. Upon discovery of the Person or Property named in the warrant, the Law Enforcement Officer shall take Possession or custody of such persons or Property and search no further under the authority of the warrant.
3. If, in the course of an authorized search, the Law Enforcement Officer discovers Property not specified in the warrant and the Law Enforcement Officer reasonably believes the discovered Property constitutes evidence of a crime, the Law Enforcement Officer may also take Possession of that Property.

**J. Execution of Search Warrant.**

1. Knock and Announce. Prior to entering a residence to execute a search warrant, Law Enforcement Officers shall knock on the door, announce their identity and purpose, and provide a reasonable opportunity under the particular circumstances to comply.
2. Compliance with subsection 1 is not required if the Police have reasonable suspicion that knocking and announcing under the particular circumstances would be:
  - a. dangerous or futile; or
  - b. would allow the destruction of evidence or otherwise inhibit the effective investigation of the crime.
3. Officers that are refused entry after complying with subsection 1 have authority to break into the place to be searched.

4. Delivery of Copy of Warrant. A copy of the search warrant must be given to the person occupying the residence or other location to be searched as soon as practicable. A copy of the affidavit on which the warrant is based is not required to be included with the warrant left at the residence or other location.

**K. Harmless Mistake on a Search Warrant.**

A seizure of Property and other items pursuant to a warrant shall not be dismissed due to harmless mistakes in the warrant that do not substantially affect any rights of any Person.

**L. Disposition of Seized Property.**

1. The Police shall make an itemized inventory of all Property seized by warrant or otherwise, and a copy of such inventory shall be left with the Person in whose Possession the Property was in when it was taken.
2. A hearing, if determined by the Tribal Judge to be necessary, shall be held by the Tribal Court to determine the disposition of all Property seized by the Police upon resolution of any legal proceeding. 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. Property taken as evidence shall be returned to the Owner after final Judgment. Property confiscated as Contraband shall become the Property of the Band and may be either destroyed, sold at a public auction, retained for the benefit of the Band or otherwise lawfully disposed of as ordered by the Tribal Court.

**SECTION 3. ARREST AND RELATED PROCEDURES**

**A. Method of Arrest.**

1. An Arrest is made by restraining the person to be Arrested or by that person voluntarily submitting to the custody of the person making the Arrest.
2. All necessary and reasonable Force may be used in making an Arrest, but the person Arrested shall not be subject to any greater restraint than is necessary to detain the person.
3. All necessary and reasonable Force may be used to effect an entry into a building or Property or part thereof to make an authorized Arrest.

**B. Time of Arrest.**

An Arrest may be made at any time, subject to the following requirements:

1. A person cannot be Arrested in his residence without an Arrest warrant, except:
  - a. For an Offense involving injury to a person; or
  - b. For any Offense, wherein the Offender is attempting to flee and elude a Law Enforcement Officer who is actively seeking to Arrest or otherwise lawfully detain the Offender; at which point a Law Enforcement Officer is justified in pursuing a fleeing Offender into his or her residence.
2. A person cannot be Arrested in his residence with a warrant at night without good cause shown.

**C. Arrest by Law Enforcement Officer.**

1. A Law Enforcement Officer may Arrest a person within the Reservation under the following circumstances:
  - a. the Officer has:
    1. an Arrest warrant issued by the Tribal Court commanding that the person be Arrested;
    2. the Law Enforcement Officer believes on reasonable grounds that a warrant for the person's Arrest has been issued by the Tribal Court; or
    3. the Law enforcement Officer believes on reasonable grounds that a warrant for the person's Arrest has been issued by a court in another jurisdiction and that the warrant is valid and enforceable within the Reservation under applicable law.
  - b. the person has committed an Offense in the Law Enforcement Officer's presence; or
  - c. the Officer has probable cause to believe the person to be Arrested has committed a Class D or Class E Offense, and exigent circumstances require an immediate, warrantless Arrest to prevent the person from:
    1. fleeing or concealing himself to avoid Arrest;
    2. destroying or concealing evidence of a crime;
    3. injuring another person; or
    4. damaging Property belonging to Another.
2. When an Arrest is made without an Arrest warrant, the Arresting Law Enforcement Officer must inform the person to be Arrested, as soon as practicable, of his authority to make the Arrest and the reasons for making the Arrest.
3. A Law Enforcement Officer may Arrest a person, including at his or her residence, without an Arrest warrant if the Law Enforcement Officer has probable cause to believe the person is in the process of committing, or there is an immediate Threat of the person committing, Abuse against a Vulnerable Adult, Household Member, or child, regardless of whether or not the Offense took place in the Law Enforcement Officer's presence.
4. Arrest is the preferred response in situations:
  - a. involving Bodily Harm to a Vulnerable Adult, Household Member, or child;
  - b. involving use or Threatened use of a Weapon against a Vulnerable Adult, Household Member, or child; or
  - c. where there appears to be imminent danger of Bodily Harm to Another.
5. If an Arrest is made without a warrant, the Tribal Court shall make a determination of the existence of probable cause for the Arrest within forty-eight (48) hours from the Arrest.
6. For any class of Offense, in lieu of making a custodial Arrest, a Law Enforcement Officer may issue a Citation requiring the Defendant to appear in Tribal Court at a designated time and date.

#### **D. Arrest Warrants.**

1. Authority. Every Tribal Judge shall have the power to issue warrants for the Arrest of any person under the jurisdiction of the Tribal Court.

2. Probable Cause. An Arrest warrant may be issued by a Judge, based on a sworn affidavit for an Arrest warrant showing that there is probable cause to believe an Offense has been committed and that the person named has committed the Offense. The warrant shall:
  - a. be in writing in the name of the Band;
  - b. set forth the nature of the Offense;
  - c. command the person against whom the sworn complaint or affidavit was made be Arrested, and shall include a description of the person as well as any alias used by the person; and
  - d. be signed by a Tribal Judge.
3. Affidavit. Such probable cause shall be supported by a written and sworn affidavit for an Arrest warrant based upon reliable factual information. The affidavit shall contain the following statement immediately above the date and signature of the Law Enforcement Officer:

“I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.”

4. Arrest Warrant by Telephone or Electronic Means. An affidavit for an Arrest warrant shall be signed by the requesting Law Enforcement Officer and submitted (along with any other Witness affidavits relied upon by the Law Enforcement) to a Tribal Judge by telephone or other electronic means, including facsimile or by computer. The Judge shall:
  - a. orally place the requesting Law Enforcement Officer under oath;
  - b. ask the Law Enforcement Officer to swear that the information contained in the affidavit is true to best of the Law Enforcement Officer’s belief;
  - c. upon finding probable cause, enter an original warrant on the grounds indicating probable cause exists to issue an Arrest warrant;
  - d. sign the original warrant and enter the exact time when the warrant was ordered to be issued; and
  - e. transmit the written Arrest warrant by any electronic means, including by facsimile or over a computer network, or direct the requesting Law Enforcement Officer to:
    1. prepare a document identical to the original warrant to be known as a duplicate original warrant;
    2. sign the duplicate original warrant on behalf of the Tribal Judge; and
    3. enter the exact time of execution on the duplicate.

**E. Execution of Arrest Warrant.**

1. Knock and Announce. Prior to entering a residence to execute an Arrest warrant, Law Enforcement Officers shall knock on the door, announce their identity and purpose, and provide a reasonable opportunity under the particular circumstances to comply.
2. Compliance with subsection 1 is not required if the Police have reasonable suspicion that knocking and announcing under the particular circumstances would

- be :
- a. dangerous or futile; or
  - b. would allow the person to be Arrested to escape.
3. Law Enforcement Officers that are refused entry after complying with subsection 1 have authority to break into the place where the person to be Arrested is located.
  4. A Law Enforcement Officer shall, as soon as practicable, inform the person to be Arrested of:
    - c. the existence of the Arrest warrant;
    - d. the grounds for the Arrest;
    - e. the Law Enforcement Officer's intention to make the Arrest; and
    - f. the amount of bail, if specified, in the warrant.
  5. A copy of the Arrest warrant must be shown to the person being Arrested as soon as practicable. A copy of the affidavit on which the warrant is based is not required to be included with the warrant shown to the person being Arrested.

**F. Harmless Mistake on an Arrest Warrant.**

An Arrest made pursuant to a warrant shall not be dismissed due to harmless mistakes in the warrant that do not substantially affect any rights of the person Arrested.

**G. Notice of Rights.**

Prior to questioning any person in custody, a Law Enforcement Officer must inform the person in clear terms of the following rights:

1. the person has the right to remain silent;
2. anything said can be used against the person in any subsequent Court proceedings;
3. the person has the right to legal Counsel or representation, as provided under this Code, prior to answering any questions; and
4. if, at any point during questioning, the person indicates that he wishes to remain silent the questioning will cease.

**H. Mandatory Holding Period Prior to Release.**

A Defendant Arrested for the Offense of Domestic Abuse shall not be released on Bond until after a mandatory twenty-four (24) hour holding period.

**I. Summons.**

1. The Tribal Court may or, upon request of the Tribal Prosecutor, shall issue a Summons instead of an Arrest warrant.
2. The Summons may be served personally or by first-class mail.
3. A Summons shall:
  - a. be in writing in the name of the Band;
  - b. state the name of the person summoned, along with that person's address, if known;
  - c. set forth the nature of the Offense charged;
  - d. set forth the date issued;
  - e. command the person to appear in Tribal Court at a specified date and time; and
  - f. be signed by a Judge.

## **SECTION 4. PRESENCE OF DEFENDANT AND RIGHT TO COUNSEL**

### **A. Presence of Defendant.**

Unless otherwise set forth in this Section, a Defendant shall be present at all stages of the proceedings. The Tribal Court in its discretion may allow the Defendant to appear through Counsel.

### **B. Right to Counsel.**

1. During the arraignment before the Tribal Court, every Defendant must be informed of the right to have Counsel at his or her own expense.
2. If the Defendant wishes to obtain Counsel, the Tribal Court shall grant a reasonable time prior to arraignment for Defendant's attorney to enter an appearance in the cause.
3. If the Defendant claims that he or she cannot afford Counsel, the Tribal Court shall follow applicable rules adopted by the Tribal Court of Appeals to determine the Defendant's right to be represented by appointed Counsel.

## **SECTION 5. BOND.**

### **A. Right to Bond.**

1. A person charged with any Offense is eligible for Bond, before Conviction, unless otherwise determined by a Tribal Court upon a consideration of factors as outlined herein, and shall be released from custody by the Tribal Court upon reasonable conditions that ensure the appearance of the Defendant and protect the safety of the community or of any person.
2. The release or detention of the Defendant must be determined during the arraignment.
3. Any person in custody, if otherwise eligible for Bond, may be released on his Personal Recognizance subject to such conditions as the Tribal Court may reasonably prescribe to ensure his appearance when required.
4. The Court may impose any condition that will reasonably ensure the appearance of the Defendant as required or that will ensure the safety of all persons and Property.

### **B. Factors for Bond.**

In deciding whether to release a Defendant on Bond, the Tribal Court shall consider all relevant information, including Defendant's:

1. prior criminal and juvenile record;
2. prior record of appearance or nonappearance;
3. history of substance abuse or addiction;
4. mental condition;
5. the nature, seriousness, and circumstances of the Offense charged, including the presence of Threats;
6. employment status and financial history;
7. family ties to the community; including length of residence and family members or responsible community members able to vouch for and monitor the Defendant

- if released; and
8. any other factor the Tribal Court determines appropriate concerning the risk of nonappearance or danger to the public or Property if released.

**C. Bond Challenges.**

The Defendant may challenge the Bond amount for release, any conditions of the Bond, or the factors used under subsection 5(B) to determine Bond as set forth at the arraignment proceedings. The Defendant has the burden to show by a preponderance of the evidence that the amount of the Bond or any conditions of the Bond is unwarranted based on the factors used in determining the Bond.

**D. Conditions of Bond.**

1. If Bond is denied for a Defendant, the Tribal Court must state on the record the reason(s) for such denial, though the Tribal Court need not make specific findings on each enumerated factor in reaching a decision.
2. If Conditional Release or release on Personal Recognizance is granted, the Tribal Court may impose reasonable conditions to ensure appearance, including, but not limited to:
  - a. reporting to the Tribal Court or other agency as specified by the Tribal Court;
  - b. refrain from all use of alcohol and non-prescribed controlled substances, including the submission to random drug screens;
  - c. enrollment in or participation in specified treatment programs or counseling;
  - d. refrain from contact with specified individuals;
  - e. refrain from travel outside the jurisdictional confines of the Tribal Court;
  - f. surrender of a driver's license or passport;
  - g. surrender of or restrict the Possession of Firearms;
  - h. house Arrest or tether;
  - i. enrollment in or continuation in an educational program; or
  - j. maintaining or seeking gainful employment.

**E. Violation of Bond.**

If a Defendant violates a condition of release, including failure to appear, the Tribal Prosecutor may make a motion to the Tribal Court for revocation of the order of release. The Tribal Court may, *sua sponte* or on the request of the Prosecutor, revoke the Bond of any person who fails to appear at a properly scheduled Court hearing. The Tribal Court may issue a warrant for the Arrest of a Defendant charged with violating a condition of release and declare the Bond to be revoked. Upon Arrest, the Defendant must be brought before the Tribal Court without unnecessary delay and the Court shall Conduct a hearing and re-determine Bond. On finding probable cause that the Defendant has violated a Tribal, state, or federal law, or on finding a violation of any other release condition by clear and convincing evidence, the Tribal Court may:

1. reinstate the original release order on the same conditions and amount of Bond;
2. order forfeiture of the Bond;
3. revoke the original Bond;
4. increase the amount of the Bond; or

5. modify the conditions of release.

## **SECTION 6. ARRAIGNMENT OF THE DEFENDANT**

### **A. Joint Defendants.**

Defendants who are jointly charged may be arraigned separately or together in the discretion of the Tribal Court.

### **B. Schedule.**

1. A Defendant who is Arrested and detained without a warrant, shall have a judicial determination of probable cause within forty-eight (48) hours of being taken into custody. If probable cause is not found, the person shall be released immediately without conditions.
2. A Defendant who is Arrested and detained shall be arraigned within two (2) business days of being taken into custody. If a Defendant is not arraigned within such time limits, the Defendant shall be released from custody without conditions.
3. If the Defendant is not detained in jail or subject to conditions of release, the Defendant shall be arraigned not later than twenty-one (21) days after the complaint is filed in Tribal Court, unless such arraignment is waived in writing by the Defendant and/or Counsel.

### **C. Arraignment Procedure.**

1. A Defendant shall be arraigned in open court whenever a complaint has been filed by a Tribal Prosecutor.
2. Arraignment consists of:
  - a. determining probable cause, if it was a warrantless Arrest;
  - b. determining Bond requirements;
  - c. reading the charge(s), unless the Defendant waives the reading, advising the Defendant of his or her rights;
  - d. supplying a copy of the charges to the Defendant; and
  - e. calling on the Defendant to plead to the charge.
3. If a Defendant waives his or her right to Counsel in writing or expressly on the record, the Tribal Court may accept the Defendant's plea at the arraignment.
4. Prior to accepting any plea at the time of arraignment, the presiding Tribal Judge must:
  - a. verify that the Person appearing before the Tribal Court is the Defendant named in the complaint, and that the Defendant's true name appears on the complaint and if different from the name used on the complaint, order the complaint amended to reflect the true name; and
  - b. determine whether the Defendant understands the charges, the penalties, and the effects of a plea, and, if the Defendant does so, the Tribal Court may accept the Defendant's plea. If the Tribal Court determines the Defendant does not understand the charges, the penalties, or the effects of the plea, the arraignment may be continued until the Defendant is able to proceed or Counsel is secured.

#### **D. Plea Alternatives.**

1. A Defendant shall enter a plea of guilty, not guilty, or, if the Judge agrees, no contest, to each charge contained in the complaint. No response from the Defendant shall be deemed to be a plea of not guilty. A plea of no contest may be accepted by a Judge only after due consideration of the views of the parties and in the interest of the Band in the effective administration of justice.
2. The Tribal Court may not accept a plea of guilty or no contest without first determining that:
  - a. the plea is voluntary and not the result of Force or Threats or of promises apart from a plea agreement;
  - b. the Defendant understands the following:
    1. the nature of the charge for which the plea is offered, any mandatory minimum penalty, the maximum penalty, mandatory treatment, or any such additional requirements the Court deems proper including requiring the Defendant to make Restitution to the victim; and
    2. the Defendant will be giving up his or her right to a trial; including the right: (i) to be presumed innocent until proven guilty; (ii) to appear at a trial and require the prosecution prove their guilt beyond a reasonable doubt; (iii) to confront and cross examine Witness; (iv) the right to Subpoena Witnesses for his or her own defense; and (v) the right to testify at a trial on his or her own behalf or to remain silent and not have their silence used against them.
  - c. if the Defendant pleads guilty in fulfillment of a plea agreement, the Tribal Court is not required to accept the terms of the agreement and that the Defendant may not be entitled to withdraw the plea if the agreement is not accepted; and
  - d. if imprisonment is a possible penalty, there is a factual basis for the plea.
3. A Defendant pleading not guilty to an Offense that may be tried before a jury must inform the Judge at the time of arraignment if a jury trial is requested, or such request must be filed with the first written appearance of Counsel.
4. If a Defendant voluntarily enters a plea of guilty the Judge may impose a Sentence at that time or, on the Tribal Court may, *sua sponte* or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for determining a just Sentence.

#### **E. Plea Agreement Procedure.**

1. The Tribal Prosecutor and Counsel for the Defendant, or the Defendant when acting *pro se*, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged Offense or to a lesser or related Offense, the Prosecutor will do one of the following:
  - a. move for dismissal of other charges; or

- b. make a recommendation, or agree not to oppose the Defendant's request, for a particular Sentence, with the understanding that the recommendation or request will not be binding on the Tribal Court.
2. A plea bargain agreement may be entered into anytime prior to a verdict or finding of guilt by Judge or jury.
3. Final plea bargain offers from the Tribal Prosecutor should be given to the Defendant no later than eight (8) business days prior to trial. Plea bargains entered into up to five (5) days prior to trial will be reviewed by the Tribal Court and may be approved if not unconscionable. After that time, plea bargains will receive heightened scrutiny from the Tribal Court.
4. If the Tribal Prosecutor indicates that a plea agreement has been reached by the parties, the Tribal Court shall, on the record, require the Prosecutor to disclose the agreement in open court at the time the plea is offered.

## **SECTION 7. PRETRIAL MOTIONS AND DISCOVERY**

### **A. Pretrial Defenses and Objections.**

1. Except for the defense of lack of jurisdiction, unless good cause is shown, any affirmative defense, objection, or other assertion or request made by the Defendant, which is capable of determination without trial on the underlying facts must be raised before trial by motion to dismiss or other appropriate procedure. All motions must be in writing and must be supported by a Statement of all relevant facts upon which the motion is based unless otherwise directed by the Tribal Judge.
2. Failure of a party to raise defenses or objections or to make other assertions or requests that must be made prior to trial constitutes a waiver of the defense, objection, or request. The Tribal Court, for good cause shown, may grant relief from any waiver provided in this Section.
3. Lack of jurisdiction or the failure of a complaint to state an Offense must be noticed by the Tribal Court at any time during the pendency of a proceeding.

### **B. Suppression of Evidence.**

1. A Defendant aggrieved by an unlawful search and seizure may move to suppress as evidence anything obtained solely as a result of the unlawful search and seizure.
2. The motion must specify the specific evidence sought to be suppressed and the grounds upon which the motion is based.
3. When the motion to suppress challenges the admissibility of evidence obtained without a warrant, the prosecution has the burden of proving, by a preponderance of the evidence, that the search and seizure was valid.

### **C. Motion to Suppress Confession or Admission.**

1. A Defendant may move to suppress as evidence any confession or admission given by her or him on the ground that it was not voluntary or that was otherwise obtained in violation of his or her rights.
2. If the allegations of the motion state facts which, if true, show that the confession

or admission was not voluntarily made or was otherwise obtained in violation of the Defendant's rights, the Tribal Court shall Conduct a hearing on the merits of the motion. The Defendant must prove by a preponderance of the evidence that the confession or admission was not voluntarily made or was otherwise obtained in violation of the Defendant's rights.

**D. Motion Practice Generally.**

The party seeking redress through motion in the Tribal Court, shall secure a hearing date and time and provide written notice thereof to the other party no later than seven (7) days prior to the date and time set for hearing. All motions shall be heard no later than the final pretrial conference date set by the Tribal Court, except that the Tribal Court may in the interest of justice and fairness to a Defendant permit motions up to and including the first day of trial.

**E. Pretrial Conference.**

1. Any party may move the Tribal Court for one or more conferences to consider such matters as will promote a fair and expedient trial.
2. In the interest of justice, the Tribal Court may, *sua sponte*, order a pretrial conference.
3. At the conclusion of any pretrial conference, the presiding Judge shall prepare or cause to be prepared and filed an order reflecting the matters agreed upon. No admissions made by the Defendant or Defendant's Counsel at the conference shall be used against the Defendant unless the admissions are reduced to writing and signed by the Defendant and the Defendant's Counsel.

**F. Discovery Generally.**

All relevant and non privileged information, including all exculpatory information, must be disclosed by the parties upon the request of opposing Counsel.

**G. Disclosure by Tribal Prosecutor.**

1. At the arraignment or as soon thereafter as practicable the Defendant may request notice of all evidence the Tribal Prosecutor intends to use in the prosecution's case-in-chief at trial.
2. Upon Defendant's request, any of the following information or evidence within the Possession, custody, or control of the Tribal Prosecutor is subject to disclosure and production and may be copied or photographed, as appropriate for the item, by the Defendant:
  - a. any relevant written or recorded Statement made by the Defendant and any co-Defendant;
  - b. the names, addresses, and Statements of all persons the Prosecutor may call as Witnesses in the case in chief;
  - c. the Defendant's prior criminal record, if any;
  - d. any books, papers, documents, photographs, tangible objects, drawings of buildings or places, or other physical or demonstrative evidence which is intended for use by the prosecution at trial; and
  - e. all material or information that tends to mitigate or negate the Defendant's guilt as to the Offense charged or that would tend to reduce the

Defendant's potential Sentence.

3. The Tribal Prosecutor shall inform the Defendant of, and make available to the Defendant for examination and reproduction, any written or recorded material or information within the Prosecutor's control regarding whether:
  - a. there has been any electronic surveillance of any conversation to which the Defendant was a party;
  - b. an investigative Subpoena has been executed in connection with the case; and
  - c. the case has involved an informant and, if so, the informant's identity, unless revealing the identity of the informant would compromise any current investigations.
4. Attorney work product of the Tribal Prosecutor's office is not subject to disclosure and production.

#### **H. Disclosure by Defendant.**

1. At any time after the filing of a complaint, the Defendant, in connection with the particular Offense charged, shall upon written request of the Tribal Prosecutor and approval of the Tribal Court:
  - a. appear in a lineup;
  - b. speak for identification by Witnesses;
  - c. be fingerprinted, palm printed, footprinted, and/or voiceprinted;
  - d. pose for photographs not involving reenactment of an event;
  - e. try on clothing;
  - f. provide handwriting samples;
  - g. permit the taking of samples of the Defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions; and
  - h. submit to reasonable physical or medical examination where the examination does not involve psychological or psychiatric evaluation; unless the Defendant intends to use his or her mental condition as a defense which would entitle the prosecution to an independent psychological or psychiatric evaluation of the Defendant.
2. Except as provided in subsection 3, not later than the close of discovery upon request of the prosecution or at another time as the Tribal Court for good cause may permit, the Defendant or Defendant's Counsel shall make available to the Tribal Prosecutor for testing, examination, or reproduction:
  - a. the names, addresses, and Statements of all persons, other than the Defendant, whom the Defendant may call as Witnesses in the defense case in chief;
  - b. the names and addresses of experts whom the Defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and Statements made by these experts in connection with the particular case; and
  - c. all papers, documents, photographs, and other tangible objects that the Defendant may use at trial.

3. At the close of discovery as set forth in the pre-trial order, or at a later time as the Tribal Court shall so permit, the Defendant shall provide the Tribal Prosecutor with a written notice of the Defendant's intention to introduce evidence at trial of good character or of any affirmative defenses. The notice must specify for each defense:
  - a. the names and addresses of the persons, other than the Defendant, whom the Defendant may call as character Witnesses in support of the defense; and
  - b. all written reports or Statements made by them, including all reports and Statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the Defendant need not include a privileged report or Statement unless the Defendant intends to use the privileged report or Statement, or the Witness who made it, at trial.
4. Attorney work-product of defense Counsel is not subject to disclosure or production.

#### **I. Subpoenas.**

A Tribal Judge has the power to issue Subpoenas to compel the attendance of Witnesses and the production of documents either on the Tribal Court's own motion or on the request of any party to a case, which shall bear the signature of the Judge issuing the Subpoena. The Subpoenas may direct the attendance of Witnesses or the production of documents or evidence at a specified date, time, and location. Subpoenas under this Section may be issued for purposes of discovery, for pretrial hearing, or for a trial or post trial proceeding. In the absence of a justification satisfactory to the Tribal Court, a Person who fails to obey a Subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his or her Arrest.

#### **J. Motion for Continuance.**

The Defendant or the Band may file a written motion for continuance, or the Court may continue the proceedings on its own motion. If a party moves less than ten (10) days before a scheduled hearing or trial, the Tribal Court may require that the motion be supported by an affidavit, whether or not the motion is opposed by the adverse party. This Section, however, shall be applied in a manner which insures criminal cases are tried with due diligence consistent with the rights of the Defendant to a speedy trial. All Defendants denied Bond shall be entitled to trial within ninety (90) days.

#### **K. Mental Disorder.**

Prior to accepting a plea at the time of arraignment, if the Court becomes aware that a Defendant has a mental impairment or disorder, or upon request by either party, the presiding Judge shall determine whether the Defendant may have a mental impairment or disorder that would likely prevent the Defendant from understanding the charges, the penalties, the nature of a plea, or from meaningful participation in defending such charges. If the Court determines that a Defendant has a mental impairment or disorder, the proceeding may be continued until such time as the mental impairment or disorder is fully evaluated, understood, and documented to the Court so that appropriate action may be taken.

### **SECTION 8. TRIAL.**

**A. Right to a Jury Trial.**

1. A Defendant charged with a Class D or Class E Offense has a right to trial by jury of six (6) fair and impartial jurors, unless the Tribal Prosecutor, prior to trial, informs the Defendant that there shall be no jail time imposed in the event of a successful prosecution, in which case the trial shall be held before the Court as the trier of fact.
2. A Defendant may waive the right to a jury trial in a written and signed voluntary Statement to the Court.

**B. Questions of Law and Fact.**

1. Issues of fact shall be submitted to the jury, unless a Defendant has waived the right to a jury trial. Where there is no jury, issues of fact shall be submitted to the Judge.
2. All questions of law must be decided by the Judge.

**C. Rules of Evidence in Criminal Cases.**

Unless otherwise required by applicable law, the Michigan Rules of Evidence shall apply in criminal actions until such time that the Pokagon Band Court of Appeals adopts criminal rules of evidence. Privileges will be those recognized under Tribal enacted law or common law.

**D. Burden of Proof.**

A plea of not guilty requires that the prosecution prove beyond a reasonable doubt that the crime alleged was committed and that the Defendant committed every necessary element of it.

**E. Order of Trial.**

1. In a jury trial, after selecting and empaneling the jurors, the Tribal Court shall explain to the jury state the nature of the charges and shall generally instruct the jurors as to their duties.
2. Unless waived, the prosecution and the defense shall be afforded an opportunity to make an opening Statement, prior to the presentation of any evidence or testimony. The defense may reserve the right to make an opening Statement until after the prosecution has presented its case in chief.
3. After presenting the opening Statement(s), the prosecution must present admissible evidence supporting the allegations contained in the complaint, which must, at a minimum, establish all elements of the Offense charged. The defense shall be given an opportunity to challenge all evidence and cross-examine any Witness called by the prosecution.
4. After the prosecution has rested its case, the defense may give any reserved opening Statement and may present any defenses or evidence relating to the allegations contained in the complaint. The prosecution shall be given an opportunity to challenge all evidence presented by the defense and cross-examine any Witness called by the defense.
5. Rebuttal evidence may be presented by the prosecution after the conclusion of the defense case when appropriate, and, if necessary, surrebuttal evidence may be offered by the defense.

6. No new evidence may be presented after the prosecution and the defense have rested their cases, unless allowed by the Judge in the interest of justice.
7. In a trial by jury, after the close of evidence and before the closing Statements are given, the Court shall instruct the jurors on the law of the case.
8. All instructions shall be made a part of the record.
9. After the prosecution and defense make their closing argument , the Judge shall read the instructions to the jury and, at the Court's discretion, give the jury a copy of the same. The prosecution shall precede the defense in making the closing argument and the prosecution, at the discretion of the Court, may also make a rebuttal closing argument after Defendant has made a closing argument.
10. The jury, or the Judge if the case is tried without a jury, shall render a verdict upon the conclusion of the case. If the case is tried to a Judge, the verdict shall set forth the Court's findings of fact, conclusions of law and a Judgment of guilty or not guilty. If the case is tried to a jury, the verdict shall be guilty or not guilty in accordance with the facts and the jury instructions.

#### **F. Insufficient Evidence.**

If the Tribal Court determines at the close of the prosecution's case in chief or at the conclusion of the case at trial, or on appeal, that the evidence presented is insufficient to support by a reasonable trier of fact a verdict of guilt beyond a reasonable doubt, the Tribal Court shall, *sua sponte* or on the motion of the Defendant, dismiss the action and discharge the Defendant. No new trial may be granted unless the Judgment of acquittal is vacated or reversed.

### **SECTION 9. JURIES**

#### **A. Jurors.**

1. Eligibility. Any enrolled member of the Pokagon Band of Potawatomi Indians, between the ages of eighteen (18) and seventy-five (75), who has not been Convicted of a Felony or a crime that would be a Felony if prosecuted in Michigan or Indiana and who resides within the ten (10) county Service Area, shall be eligible to be a juror. The list of enrolled member of the Pokagon Band of Potawatomi Indians between the ages of eighteen (18) and seventy-five (75) shall be prepared, upon request of the Tribal Court, by the Enrollment Coordinator.
2. Non-Member Jurors. The Court may adopt standards and procedures that establish a process for persons between the ages of eighteen (18) and seventy-five (75), who have not been Convicted of a Felony or a crime that would be a Felony if prosecuted in Michigan or Indiana and who are not enrolled members of the Band (“non-members”) to be summoned for jury duty in cases in which one or more non-member parties are involved. The Court may derive a Non-Member juror list from current Band employees and spouses of Band members. The list of non-member jurors shall be prepared, upon request of the Tribal Court, by the Human Resources Coordinator from current Band employees and by the Enrollment Coordinator from spouses of Band members.
3. List of Jurors – Preparation. The Tribal Court shall use a computer aided program or other process free from human bias to select a random jury pool. The Clerk

shall notify the chosen jurors, of the date, time, and place that the jury trials will be held.

4. Exemption. The following individuals shall be exempt from jury duty:
  - a. Law Enforcement Officers;
  - b. Tribal Council officers and members;
  - c. Tribal Judges and Tribal Court staff; and
  - d. members in active service in the Armed Forces of the United States.

#### **B. Examination of Prospective Jurors.**

1. After summoning jurors and before trial, the Clerk of the Court shall notify the Court, the Tribal Prosecutor, and defense Counsel of the names of the members of the jury pool appearing for selection.
2. In selecting a jury from among the panel members, the initial questioning of the jurors shall be conducted by the Prosecutor and defense Counsel in order to determine whether each prospective juror is capable of being fair and impartial. The Judge may intervene at any time and assert a question of its own when it deems it appropriate. Either party may question the panel members concerning the nature of the burden of proof in criminal cases and the presumption of innocence. The Judge may limit the Prosecutor's and Counsel for Defendant's examination of a panel member when the Judge believes such examination to be improper or when the Judge determines that the examination is or has become irrelevant, redundant, or otherwise unnecessary.
3. After questioning by the Tribal Prosecutor and defense Counsel, the Judge may question the jury panel members to determine impartiality. Questions to be asked by the Court include, but are not limited to, whether a panel member:
  - a. is directly related to any person involved in the action, including, but not limited to, the Defendant, defense Counsel, Arresting Law Enforcement Officer, alleged victim, or any prospective Witness;
  - b. is or has been involved in any business, financial, professional, or personal relationship with the Defendant or alleged victim;
  - c. has had any previous involvement in a civil or criminal lawsuit or dispute with the Defendant or alleged victim;
  - d. has a financial or personal interest in the outcome of the action before the Court;
  - e. has formed an opinion as to the Defendant's guilt; or
  - f. has a belief that the punishment fixed by law is too severe for the Offense charged.
4. Any panel member whom the Tribal Court determines is incapable of acting with impartiality and without prejudice to the rights of the Defendant or alleged victim shall be excused.
5. After the questioning, the Defendant or defense Counsel shall strike one name and then the Band shall strike one name and so on alternately until six names remain. If either party fails to participate, the Judge shall strike a name on such party's behalf.

#### **C. Challenges.**

1. The prosecution and defense shall have unlimited challenges for cause. Each challenge shall be determined by the Court at the time the challenge is made.
2. The prosecution and defense shall each have two peremptory challenges. When Defendants are tried together each additional Defendant shall entitle the prosecution and defense to one additional peremptory challenge each.
3. All challenges shall be made to the Tribal Court before the jury is selected and sworn in. When a potential challenge for cause is not discovered until after the jury is sworn in but before the presentation of any evidence, the Tribal Court may allow the challenge for cause to be made.

#### **D. Conduct of Jury During Trial.**

1. Once empanelled, jurors shall be instructed by the Judge that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon, until the case has been finally submitted to them for a verdict.
2. At each adjournment or recess prior to the final submission of the case to the jury, the Judge shall instruct the jurors as to whether they may separate or must remain in the care of the bailiff or other proper officer of the Court.

#### **E. Jury Instructions.**

1. General jury instructions shall be furnished to the jury by the Tribal Court. When either the Defendant or the Tribal Prosecutor desires a special instruction to be given to the jury, such proposed instruction shall be reduced to writing, signed by the party offering the instruction and delivered to the Judge and the other party after the close of evidence unless a different time is established by the Court. For good cause shown, the parties may supplement or withdraw instructions at the close of evidence.
2. In providing the jury instructions, the Tribal Court shall adequately inform the jurors of:
  - a. which decisions are made by the jury and which by the presiding Judge;
  - b. the issues of fact in the case;
  - c. the rules of law to be applied to the issues of fact;
  - d. the burden of proof with respect to each issue of fact; and
  - e. the proof needed to discharge that burden.
3. The party not offering a proposed special instruction shall be allowed reasonable opportunity to examine the proposed special instruction and object to it. The objection must specifically state on what grounds the special instruction is not an accurate Statement of the law or is not an appropriate instruction for this particular case and, therefore, should not be given.
4. A dispute regarding a proposed jury instruction must be settled outside of the jury's presence by the Court, which may hold a hearing regarding the matter.
5. Any hearing to settle disputes involving jury instructions shall be conducted on the record.
6. A party may not appeal for error any portion of the instructions or omission from the instructions unless an objection was made that specifically identifies the matter objected to and the grounds for the objection. Such objection must be

made promptly upon settlement of any issues regarding special instructions or in writing prior to a settlement hearing.

7. The presence of the Defendant is not required during the settlement of disputes involving jury instructions.
8. After all evidence has been presented, and after closing arguments, the Court shall give both general and specific instructions to the jurors.
9. For the record, but not for the jury, the Court shall mark or endorse each instruction in such a manner that it shall distinctly appear what proposed instructions were rejected, what were given in whole and what were modified, together with the Court's reasons for giving as requested, as modified, or refusing a proposed instruction.
10. All proposed instructions are part of the Court record. All objections to jury instructions must be noted on the Court record, as well as the Tribal Court's reasons for either allowing as requested or as modified, or the refusal to allow a proposed instruction.

#### **F. Jury Deliberations.**

1. After closing arguments and instructions to the jury, the Court shall commit the jury to the care of a bailiff or other officer of the Court who shall keep the jurors together and prevent communication between the jurors and others.
2. Upon retiring to deliberate, the jurors shall select a juror as foreperson. If the jurors fail after a reasonable effort to select a foreperson, the Court shall appoint the foreperson.
3. After the jury has retired for deliberation, if there is any disagreement among the jurors as to testimony or other evidence or if the jurors desire to be informed on any point of law arising in the cause, they shall notify the bailiff or the officer appointed to keep them together, who shall then notify the Court. The information requested may be given, in the discretion of the Court, after consultation with the parties.

#### **G. Discharging Jurors.**

When the jury has reached a verdict or has determined after making every reasonable effort, that it is unable to reach a verdict, even with additional time for deliberation as determined necessary by the Court, the Court shall discharge the jurors from service.

#### **H. Motion for a New Trial.**

1. Within twenty (20) days of a guilty verdict, the Defendant may file with the Court, and serve upon the prosecution, a written motion for a new trial. The motion must fully describe the grounds for a new trial.
2. After hearing the motion for a new trial, the Court may, in the interest of justice:
  - a. deny the motion;
  - b. grant a new trial; or
  - c. modify or change the verdict or finding by finding the Defendant guilty of a Lesser Included Offense or by finding the Defendant not guilty.
3. The granting of a new trial places the parties in the same position as if there had been no trial.

## **SECTION 10. SENTENCE AND JUDGMENT.**

### **A. Rendering Judgment and Pronouncing Sentence.**

1. The Judgment shall be rendered in open court.
2. If the verdict or finding is not guilty, Judgment shall be rendered immediately and the Defendant shall be discharged from custody or from the obligation of his or her Bond.
3. If the verdict or finding is guilty, the Sentence shall be issued within a reasonable time. When the Sentence is pronounced, the Judge shall clearly state for the record the reasons for the Sentence imposed.

### **B. Imposition of Sentence.**

1. No Sentence shall be imposed until:
  - a. the Defendant and the Defendant's Counsel have had an opportunity to examine any pre-Sentence report;
  - b. the prosecution and defense have had an opportunity to present evidence, Witnesses, and an argument regarding the appropriateness of a sentencing option;
  - c. the victim or victim's advocate, if any, has had an opportunity to present information relevant to the sentencing determination; and
  - d. the Defendant has had the opportunity to speak on his or her own behalf and to present any information likely to mitigate the pending Sentence.
2. Sentencing shall be imposed on all Offenses pursuant to Tribal law. To the extent that any state statute incorporated into Tribal law provides a penalty that is in conflict with Tribal sentencing law, Tribal sentencing law shall control.
3. If the Court imposes a Sentence of Probation, the Court shall inform the Defendant that a violation of the imposed conditions of Probation may result in the Court imposing a sentence of incarceration consistent with Subsection 10(E).

### **C. Execution of Sentence.**

1. If the Defendant is Sentenced to imprisonment, the Court shall deliver a Detention Order or Judgment outlining the specific requirements of detention, Probation, treatment, or such additional requirements as determined by the Court, to the Police or others serving as jailers. The Defendant shall be discharged from custody after satisfactorily fulfilling the conditions of the imposed Sentence or upon prior order of the Court.
2. If Judgment is rendered imposing a fine only, the Defendant must be discharged after paying the fine or making acceptable arrangements to pay the fine within the period of time specified by the Court. The Tribal Court may also allow the Defendant to perform community service to offset any fine or may order the Defendant to be imprisoned until the fine is satisfied. If no such permission is included in the Sentence, the fine shall be paid prior to formal release.
3. If Judgment is rendered imposing both imprisonment and a fine, the Defendant shall be discharged after fulfilling the requirements of subsections 1 and 2 of this subsection.

4. When Restitution is ordered, the Court shall specify the amount, method of payment, payment schedule, and any other requirements imposed upon the Offender. Before Restitution may be ordered, the Defendant shall receive notice of the amount and terms requested. If the Defendant or the Tribal Prosecutor disputes the amount or type of restitution ordered by the Court, any such dispute shall be resolved by the Court upon timely request of a restitution hearing. Any such objection must be made at the time the Court orders restitution.

**D. Payment of Fines and Restitution.**

All monies collected as the result of a fine imposed by the Tribal Court shall be paid to the Clerk of Court. Upon receiving the monies, the Clerk shall:

1. Issue a receipt to the person paying the fine;
2. Credit the account of the Defendant, noting whether the fine is paid in full or what balance, if any, remains due; and
3. Transfer the monies collected to the general fund of the Band, unless expressly provided otherwise by Tribal law.

**E. Violation of Probation or Deferred or Suspended Sentence.**

1. A hearing for the revocation of Probation, or any revocation of a suspended or deferred Sentence, may be held upon request of the Tribal Probation Officer, the Tribal Prosecutor, or the Court may *sua sponte* conduct such hearing.
2. Notice of such hearing shall be provided to the Defendant and such notice shall also inform the Defendant that:
  - i. If Probation, or any deferred or suspended Sentence, is revoked, the Court may impose a sentence of incarceration, and
  - ii. The Defendant has the right to appointed Counsel if it appears upon sworn affidavit that the Defendant is financially unable to afford Counsel, pursuant to applicable rules adopted by the Tribal Court of Appeals to determine the Defendant's right to be represented by appointed Counsel.
3. A hearing for the revocation of Probation, or any deferred or suspended Sentence, shall be summary and informal and not subject to the rules of evidence or pleadings applicable in criminal trials, except those pertaining to legal privileges.
4. If, following a hearing, the Court finds by a preponderance of evidence, that the imposed conditions of Probation, or suspended or deferred Sentence, have been violated, requires revocation of Probation, or suspended or deferred Sentence, or if the Defendant pleads guilty to the violation, then the Court may continue Probation, or the suspended or deferred Sentence, modify the conditions of Probation, or the suspended or deferred Sentence, extend the Probation, or the suspended or deferred Sentence, or revoke the Probation, or suspended or deferred Sentence, and impose a sentence of incarceration.

**F. Dismissal and Expungement after Deferred Sentence.**

Whenever the Court has deferred the imposition of Sentence, after the expiration of the period of deferral and provided that the Defendants successfully completed any conditions of deferral, the Court, *sua sponte* or upon motion by the Defendant or the Defendant's Counsel, may allow the

Defendant to withdraw his or her plea of guilty or strike the verdict or Judgment expunging the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file. The Pokagon Band Gaming Commission shall have access to an expunged record and the sealed file for the limited purpose of determining the suitability of the Defendant for an Employee License.

**G. Failure to Pay a Fine or Restitution.**

If a Defendant who is Sentenced to pay a fine or Restitution fails to make payment as ordered, the Court, *sua sponte* or on the motion of the Tribal Prosecutor, may require that the Offender show cause why the Offender's nonpayment should not be treated as contempt of court. Notice of a show cause hearing on the contempt charge shall be served on the Offender by Police at least five (5) days prior to the date set for hearing. Notice shall also be served on the victim if the show cause was issued for failure to pay Restitution.

**H. Credit for Time Served.**

If a Defendant has served any of the Defendant's Sentence under a commitment based upon a Judgment that is subsequently declared invalid or that is modified during the term of imprisonment, the time served must be credited against any subsequent Sentence received upon a new commitment for the same criminal Act or Acts.

**I. Credit for Incarceration Prior to Conviction.**

1. Any person incarcerated on a Bondable Offense and against whom a Judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after Conviction, except that the time allowed as a credit may not exceed the term of the prison Sentence rendered.
2. Any person incarcerated on a Bondable Offense who does not supply Bond and against whom a fine is levied on Conviction of the Offense must be allowed a credit for each day of incarceration prior to Conviction, except that the amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration shall be set by the Tribal Council.

**CIVIL OFFENSES**  
**(Cite as: PBCivO)**

**SECTION 1. ADOPTION OF STATE VEHICLE CODES**

The Pokagon Band of Potawatomi Indians hereby adopts the Michigan Vehicle Code and the Indiana Vehicle Code as Pokagon Band law. The Michigan Vehicle Code shall apply to Offenses occurring within the portion of the Reservation that lies within the exterior boundaries of the State of Michigan. The Indiana Vehicle Code shall apply to Offenses occurring within the portion of the Reservation that lies within the exterior boundaries of the State of Indiana.

**SECTION 2. CIVIL PROSECUTION OF NON-INDIANS.**

**A. Generally.**

Any non-Indian alleged to have committed any Offense enumerated in this Code may be civilly prosecuted by the Band and such Offense shall be considered for all purposes under Pokagon Band law as a Civil Offense. In no event shall such civil prosecution permit incarceration of a non-Indian or permit the imposition of a criminal fine against a non-Indian. Civil prosecutions under this Section shall be conducted in accordance with the applicable rules of civil procedure.

**B. Jury Trials.**

A non-Indian Person charged with a Civil Offense as provided in this Section shall have the right to a trial by jury provided that the right to a trial by jury would apply to a Person prosecuted in a criminal proceeding for the same Offense under this Code. Section 9, Juries, under Criminal Procedure in this Code shall apply to the extent not inconsistent with Section 1, Section 2, or Section 3 under Civil Offenses in this Code or with other applicable law or Tribal Court rules.

**C. Burden of Proof.**

The non-Indian civil Defendant is presumed innocent until each element of the Civil Offense with which the non-Indian Defendant is charged is proved by a preponderance of evidence.

**D. Fine Schedule.**

Upon a finding that a non-Indian has committed any of the following Civil Offenses enumerated in this Code, the Tribal Court shall impose a civil fine in accordance with the following schedule:

1. For a Class A Offense the fine shall not exceed one hundred dollars (\$100).
2. For a Class B Offense the fine shall not exceed two hundred fifty dollars (\$250).
3. For a Class C Offense the fine shall not exceed one thousand dollars (\$1,000).
4. For a Class D Offense the fine shall not exceed two thousand five hundred dollars (\$2,500).
5. For a Class E Offense the fine shall not exceed five thousand dollars (\$5,000).

**E. Extreme Conduct and Increased Civil Fine.**

If the Defendant's Conduct was unusually heinous, cruel, brutal, or degrading to the victim, or the Defendant shows no remorse for his or her actions, the Tribal Court may exceed the fine schedule to reflect the nature of the conduct. Examples of extreme Conduct include torture of a

victim, gratuitous infliction of injury, or prolonging of pain or humiliation.

**F. Additional Penalties Reserved by the Tribal Court.**

In addition to a civil fine, the Tribal Court reserves the right to impose any one or more of the penalties provided below:

1. The civil forfeiture of Contraband as provided in the penalty Sections of this Code;
2. Restitution for all damages, including costs for any future damage that is subject to reasonable calculation; and
3. Exclusion from the Reservation and all other Pokagon Band lands.

**G. Contempt.**

The Court may find a non-Indian Defendant who fails to attend a Tribal Court hearing or who fails to comply with a Tribal Court order to be guilty of civil contempt.

**SECTION 3. ENFORCEMENT OF CIVIL OFFENSES ON NON-TRIBAL MEMBERS.**

**A. Appearance Bond.**

When a person who is not an enrolled member of the Pokagon Band of Potawatomi Indians is cited for a Civil Offense under this Code, the Law Enforcement Officer issuing the Citation shall take Bond as security for the non-Tribal member's appearance in Tribal Court. The Person cited shall either post Bond or pay the civil fine prior to release.

**B. Court Appearance.**

If a Tribal Judge is available for an immediate appearance, upon demand of the Person being charged with a Civil Offense, the detaining Law Enforcement Officer shall immediately take the non-Tribal member before the Judge to answer to the civil charges.

**C. Failure to Post Bond or Pay Fine.**

If the Person charged with a Civil Offense fails to post Bond, he or she shall be detained until he or she can post Bond or appear before a Tribal Judge, but in no event shall such person be detained for more than seventy two (72) hours without appearing before a Judge.

**D. Appearance Bond Amount.**

The Bond amount shall be a reasonable amount as determined by the Law Enforcement Officer issuing the Citation or the Tribal Court in order to guarantee the appearance of the non-Tribal member, but in no event shall the Bond exceed the amount of the scheduled fine for the Civil Offense with good cause.

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**LEGISLATIVE HISTORY**

Code of Offenses, enacted June 14, 2008 by Res. No. 08-06-14-11; On December 12, 2017, by Res. No. 17-12-12-04, amendments throughout the Code were enacted; provided that as provided in the enacting resolution such amendments shall become effective 11:59 pm, December 15, 2017.