

*STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended through Resolution No. 14-018 (March 24, 2014)*

# CRIMINAL CODE

CONFEDERATED TRIBES  
OF THE  
UMATILLA INDIAN RESERVATION

**CRIMINAL CODE AND PROCEDURES**

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APPENDIX A:           LEGISLATIVE HISTORY

**CRIMINAL CODE**

**CHAPTER 1. DEFINITIONS, TRIBAL COURTS, JUDGES, COURT PERSONNEL AND ATTORNEYS**

**SECTION 1.01. DEFINITIONS**

- A. Court. The Umatilla Tribal Court.
- B. Complaint. A written statement of the essential facts constituting the offense charges.
- C. Summons. A notice to appear before the Court.
- D. Summons and Complaint. A single document containing all the requisites of both a summons and complaint.
- E. Warrant, Arrest/Search. Document issued by the Court expressly authorizing and directing an officer to execute an arrest or conduct a search specifically delineated premises.
- F. Officer. Officer of the Umatilla Tribal Police Department authorized by the Board of Trustees to enforce the Umatilla Tribal Criminal Code and other Codes.
- G. Motions. Requests, either written or oral, made to the Court for an order.
- H. Individual Rights. Those rights set forth in 25 U.S.C. § 1302 as construed by Federal Courts of controlling jurisdiction.
- I. Probable Cause. Such a state of facts and circumstances known to the prosecutor or to the officer personally or by information from others as would, in the judgment of the Court, lead a man of ordinary caution acting conscientiously in light of such facts and circumstances, to believe that appropriate judicial proceedings are warranted.
- J. Code. The Criminal Code and Procedures of the Confederated Tribes of the Umatilla Indian Reservation.
- K. Complainant. Any person signing a complaint alleging a violation of the Code.
- L. Arraignment. Proceeding in which the accused is brought before the Court to plead guilty or not guilty to the violation charged against him.
- M. Bail. An amount of money set by the Judge which must be posted by a defendant in order to gain his release until trial, or appellate proceedings; the amount of bail is set at such amount as to reasonably insure that the defendant comes to Court when he is required.
- N. Bail Bond. Cash, some type of surety arrangement, or other type of security posted by a defendant to meet the bail set by the Judge as a prerequisite to defendant's release from custody until a trial or appellate proceedings.
- O. Personal Recognizance. A promise by a defendant to appear at trial or appellate proceeding upon which promise the Judge order his release from custody.
- P. Offense. A violation of criminal law.
- Q. Crime. An act or omission for which a sentence of incarceration is authorized.
- R. Civil Infraction. An act or omission for which a sentence of incarceration is not authorized.



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- S. In Lieu Fishing Sites. Those certain federal lands along the Columbia River designated by the federal government via Public Law 79-14 for Indian treaty fishing activities in lieu of usual and accustomed fishing places inundated by construction of Bonneville Dam.
- T. Treaty Fishing Access Sites. Those certain federal lands along the Columbia River designated or acquired by the federal government via Public Law No. 100-581 to provide access for Indian treaty fishing activities.
- U. Public Servant. A public servant is a person who is serving the tribal government, State of Oregon, or federal government, or any of their political subdivisions as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.
- V. Serious Physical Injury. A physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- W. Dating Violence. For purposes of the exercise of criminal jurisdiction over non-Indians, the term ‘dating violence’ means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- X. Domestic Violence. For the purposes of exercising criminal jurisdiction over non-Indians, the term ‘domestic violence’ means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family- violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.
- Y. Spouse or Intimate Partner. For purposes of exercising criminal jurisdiction over non-Indians, the term ‘spouse or intimate partner’ has the meaning given the term in section 2266 of title 18, United States Code.

**SECTION 1.02. JURISDICTION**

- A. Generally. The Umatilla Tribal Court is vested with jurisdiction to enforce all provisions of this Code, as amended from time to time, against any person violating the same within the boundaries of the Confederated Tribes’ Indian country, including any person at any In Lieu Fishing Site or Treaty Fishing Access Site, and against any tribal member exercising treaty hunting and fishing rights beyond the boundaries of the Umatilla Indian Reservation. In the cases where the person in violation of this Code is not an Indian and is not covered by subsection 1.02(B) or (C), the Court’s exercise of power shall be civil rather than criminal and punishment subject only to the applicable fine. The Court is also vested with the power to impose protection orders against non-Indians in accordance with the provisions of this Code.
- B. Criminal Jurisdiction Over Non-Indian Domestic or Dating Violence. The Umatilla Tribal Court is vested with jurisdiction to enforce all provisions of this Code against a non-Indian who has committed an act of Dating Violence or Domestic Violence against an Indian victim within the Confederated Tribes’ Indian country provided the non-Indian has sufficient ties to the Confederated Tribes.
  - 1. A non-Indian has sufficient ties to the Confederated Tribes for purposes of jurisdiction if they:
    - a. reside in the Confederated Tribes’ Indian country;

- b. are employed in the Confederated Tribes' Indian country; or
  - c. are a spouse, intimate partner, or dating partner of either:
    - i. a member of the Confederated Tribes, or
    - ii. a non-member Indian who resides in the Confederated Tribes' Indian country.
- C. Criminal Jurisdiction Over Non-Indian Protection Order Violations. The Umatilla Tribal Court is vested with criminal jurisdiction to enforce all provisions of this Code related to violations of protection orders against a non-Indian that has sufficient ties to the Confederated Tribes as identified in Section 1.02(B)(1), and who has violated a protection order within the Confederated Tribes' Indian country provided the protected person is an Indian, and following conditions are met:
- 1. The protection order was issued against the non-Indian,
  - 2. The protection order is consistent with 18 U.S.C. 2265(b), and
  - 3. The violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

**CHAPTER 2. UMATILLA TRIBAL POLICE, QUALIFICATIONS, EQUIPMENT, DUTIES AND LEGAL ADVISOR**

**SECTION 2.01. ESTABLISHMENT**

There is hereby established the Umatilla Tribal Police Department. This Department shall consist of office personnel and commissioned officers.

**SECTION 2.02. DUTIES**

- A. The Umatilla Tribal Police shall enforce the provisions of the Umatilla Criminal Code fully and fairly and in accordance with the procedures set forth in Chapter III of this code, including:
- 1. Prevent Crime;
  - 2. Pursue and apprehend offenders and obtain legal evidence necessary to insure the conviction in Tribal Court of such offenders;
  - 3. Institute criminal proceedings in Tribal Court;
  - 4. Execute any lawful warrant or order of arrest issued by the Tribal Court against any person within the reservation boundaries for any violation of Tribal law;
  - 5. Make arrests without warrant for violations of Tribal law committed in their presence or when there is probable cause to believe a person has committed a crime;
  - 6. Give first aid to the injured;
  - 7. Aid the helpless;
  - 8. Cooperate with all other law enforcement agencies.

**SECTION 2.03. SUPERVISION**

The Umatilla Tribal Police Department shall be under the general supervision of the Board of Trustees.

**SECTION 2.04. POSITIONS**

There shall be appointed one Chief of Police and such number of officers and office personnel at such ranks as are deemed necessary and proper. The number of officers and office personnel may be reviewed and modified by the Board of Trustees as it deems appropriate.

**SECTION 2.05. QUALIFICATIONS**

- A. All personnel of the Umatilla Tribal Police Department must:
  - 1. Be in sound physical condition and of sufficient size and strength to perform the duties required;
  - 2. Be possessed of courage, self reliance, intelligence and a high sense of loyalty and duty;
  - 3. Never have been convicted of a felony nor have been convicted of either any misdemeanor for a period of one year prior to his appointment or any misdemeanor involving moral turpitude.
- B. All commissioned officers shall meet the minimum training requirements established by the Oregon State Board of Police Standards for police officers in the State within one year from the date of their employment as members of the Umatilla Tribal Police Department.

**SECTION 2.06. EQUIPMENT**

- A. The Tribe, in conjunction with the Bureau of Indian Affairs, shall furnish the department with the supplies and equipment necessary to carry out the objects of the department. All such property shall remain the property of either the Tribe or the Bureau of Indian Affairs.
- B. When any such property becomes obsolete, surplus or worn beyond use, it shall be disposed of or replaced as necessary by the owner of that property.
- C. Each individual is responsible for the property issued to him and shall be liable if that property is damaged, lost or destroyed through his carelessness or neglect.

**SECTION 2.07. TRIBAL PROSECUTOR – FUNCTION**

The tribal prosecutor shall represent the Confederated Tribes of the Umatilla Indian Reservations' interest in all matters pertaining to the operation of the criminal justice system. The prosecutor shall be the chief enforcement officer and as such, shall prosecute those cases necessary for the protection of Tribal interests; appear as necessary in all proceedings relating directly or indirectly to Tribal interests in the criminal justice system; advise and assist in Tribal enforcement personnel which shall include periodic training on the Tribal Criminal Code and new legal developments; consult with the Law and Order Committee and undertake such other duties as may be assigned by the Board of Trustees. This does not preclude the prosecutor from carrying out civil enforcement actions on behalf of the Confederated Tribes.

**SECTION 2.08. DISPOSITION OF SEIZED, RECOVERED AND FOUND PROPERTY**

- A. Application. The provisions of this section shall apply to the disposition of property that has been recovered or taken into custody by the Umatilla Tribal Police Department as a result of a search, investigation or other police action in accordance with tribal laws.

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- B. Reporting Lost, Stolen Property. All persons who have property stolen or who have lost property have an obligation to report such losses to the Umatilla Tribal Police Department. If reports of lost or stolen property are not made any actions taken to dispose of that property in accordance with tribal laws shall convey full, legal title thereto.
- C. Restoration of Property to Owner, Finder.
1. Property that is not needed for evidentiary purposes may be summarily returned to their rightful possessor if that person establishes his identity and right to possession beyond a reasonable doubt to the satisfaction of the Chief of Police. If the property is perishable and it is not possible to return it to its rightful possessor, the seizing officer or the Chief of Police may dispose of the items as justice and the necessity of the case require.
  2. Any person who finds property shall deliver it to the Umatilla Tribal Police Department and may request, in writing, that if the property is not claimed by the lawful owner within six (6) months, that the property be returned to him. If, after six (6) months the lawful owner of the found property has not been identified and has not claimed the property and if the property is not needed for evidentiary purposes, the finder may request the Umatilla Tribal Court to order that the found property be delivered and transferred to him.
- D. Disputed Rights of Possession.
1. Any person claiming a right to possession of property in the custody of the Umatilla Tribal Police may move the Court to restore possession to them.
  2. In the event rights to possession are disputed, the Court may hold an informal hearing after all persons with a possible possessory interest have received due notice and an opportunity to be heard, determine the right to possession and dispose of the property accordingly.
- E. Contraband.
1. Any contraband which has been seized and which is no longer needed for evidentiary purposes may be ordered destroyed or otherwise disposed of by the Umatilla Tribal Court upon motion of the Umatilla Tribal Police Department. The Court may order that contraband be retained by the Umatilla Tribal Police Department or delivered to another law enforcement agency when a lawful use of that contraband may be made by said department or agency.
  2. For purposes of this section, contraband is defined as property which is or was possessed unlawfully and which was not lawfully owned by another person.
- F. Evidence, Recovered and Found Property.
1. If property has been in the possession of the Umatilla Tribal Police Department in excess of six (6) months, the owner thereof is unknown, and cannot be identified and the property is no longer needed for evidentiary purposes, the Umatilla Tribal Court shall order that the property be sold, destroyed or otherwise disposed of upon motion by the Umatilla Tribal Police Department.
  2. The Tribal Police may request by motion, and the Court may authorize, that any property may be retained by the Department for its use.
  3. Any motion for disposition shall include a listing of all property to be disposed of pursuant to court order.

G. Sale of Property.

1. Any property to be disposed of by sale shall be sold at auction to the highest bidder for case. The date, time, place, terms and list of property to be sold shall be advertised as deemed appropriate by the Chief of Police for a two week period preceding the sale.
2. The proceeds from the sale of such property shall be deposited in the Umatilla Tribal Police Department Special Deposit account.

SECTION 2.09. CRITFE AUTHORIZATION

To the same extent as Tribal Police, any officer of the Columbia River Inter-Tribal Fisheries Enforcement (CRITFE) department shall be authorized to enforce the provisions of this Code for any and all violations of the Code committed at any In Lieu Fishing Site or any Treaty Fishing Access Site.

**CHAPTER 3. CRIMINAL PROCEDURE**

**PART I. SCOPE, PURPOSE AND CONSTRUCTION**

SECTION 3.01. SCOPE

These rules are intended to provide for the just determination of every proceeding in the Umatilla Tribal Court. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

SECTION 3.02. PURPOSES AND CONSTRUCTION

These rules are intended to provide for the just determination of every proceeding in the Umatilla Tribal Court. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

**PART II. PRELIMINARY PROCEEDINGS**

SECTION 3.03. THE COMPLAINT

- A. All prosecutions for violations of the Code shall be commenced by a complaint. A complaint signed by a complainant, other than an officer or Tribal Prosecutor, shall be witnessed by a Judge of the Court. A complaint signed by an officer or Tribal Prosecutor need not be witnessed, but shall immediately after service will be filed with the Court.
- B. The complaint shall:
  1. Be in writing and in the name of the Confederated Tribes of the Umatilla Indian Reservation;
  2. State the name of the accused, if known, and if not known, designate the accused by description by which he can identified with reasonable certainty;
  3. Bear the signature of the complainant or arresting officer or Tribal Prosecutor;
  4. State the name and section number of the offense charged;
  5. State the facts constituting the offense in ordinary and precise language, and in such manner as to enable a person of common understanding to know what conduct is alleged to constitute the offense; and
  6. State the time and place of offense as definitely as can be done.

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7. For purposes of crimes involving non-Indian Domestic or Dating Violence the complaint shall also allege, and the prosecution must prove beyond a reasonable doubt:
  - a. That the defendant is a non-Indian,
  - b. That the victim is an Indian,
  - c. That the offense occurred within the Confederated Tribes' Indian country,
  - d. That the defendant has sufficient ties to the Confederated Tribes, such that:
    - i. The defendant resided in the Confederated Tribes' Indian county at the time of the offense,
    - ii. The defendant was employed in the Confederated Tribes' Indian country at the time of the offense, or
    - iii. At the time of the offense, the defendant was a spouse, intimate partner, or dating partner of either
      - a). A member of the Confederated Tribes, or
      - b). A non-member Indian who resides in the Confederated Tribes' Indian country.
8. For purposes of crimes involving non-Indian protection order violations, the complaint shall also allege, and the prosecution must prove beyond a reasonable doubt:
  - a. That the defendant is a non-Indian,
  - b. That the protection order was issued against the defendant,
  - c. That the protected person is an Indian,
  - d. That the violation occurred within the Confederated Tribes' Indian country,
  - e. That the protection order is consistent with 18 U.S.C. 2265(b),
  - f. That the violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person, and
  - g. That the defendant has sufficient ties to the Confederated Tribes as outlined in Section 3.03(B)(7).

**SECTION 3.04. SUMMONS – BY WHOM ISSUED, CONTENTS**

A summons may be issued by the Judge following the filing of a complaint when the complaint alleges that an offense has been committed by the accused. The summons shall contain the name of the accused and shall direct the accused to appear before the Court at a stated date, time and place.

**SECTION 3.05. SUMMONS AND COMPLAINT – BY WHOM ISSUED, FILING**

A summons and complaint may be issued by an officer for an offense or civil infraction which was committed in his presence, or if not committed in his presence, when he has probable cause for believing that the offense or civil infraction was committed in fact by the accused. A copy of the

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summons and complaint so issued shall be filed immediately with the Court before which appearance is required. A second copy shall be supplied to the prosecutor.

**SECTION 3.06. SERVICE OF SUMMONS OR SUMMONS AND COMPLAINT – MANNER, TERRITORIAL LIMITS AND RETURN**

A summons and/or complaint issued pursuant to these rules shall be served upon the accused personally or by registered mail with return receipt requested by an officer. Service and proof of service shall be documented and provided to the appropriate court.

**SECTION 3.07. ARREST BY WARRANT UPON COMPLAINT**

- A. In lieu of a summons, an arrest warrant may be issued by the Judge at his discretion following the filing of a complaint by a complainant, officer, or the Tribal Prosecutor.
- B. When an accused is arrested under a warrant, he shall be taken without unnecessary delay before the Judge who issued the warrant and at such time a copy of the complaint and warrant shall be given to him. Also, at such time, the Judge shall either:
  - 1. Admit the accused to bail or release him upon personal recognizance and give a summons to him; or
  - 2. Order the accused held in custody and proceed without unnecessary delay with arraignment according to section 3.12.

**SECTION 3.08. ARREST WITHOUT WARRANT**

- A. A law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that the person has committed a crime, or for any other offense committed in the officer's presence, or if there is probable cause to believe the person has violated a protective order.
- B. A law enforcement officer may arrest a person without a warrant when he is notified by telegraph, telephone, radio or other mode of communication by another law enforcement officer of any other jurisdiction that there exists a duly issued warrant for the arrest of a person charged with a crime committed within his jurisdiction.
- C. Arrest By A Private Person
  - 1. A private person may arrest another person for any crime committed in his presence if he has probable cause to believe the arrested person committed the crime. A private person making such an arrest shall, without unnecessary delay, take the arrested person before a magistrate or deliver him to a peace officer.
  - 2. In order to make the arrest a private person may use physical force as is justifiable under section 4.26.

**SECTION 3.09. ARREST BY WARRANT UPON FAILURE TO APPEAR**

If an accused, upon which a summons has been served pursuant to these rules, fails to appear in person or by counsel at the place and time specified therein, a bench warrant may be issued by the Judge for the arrest of the accused.

**SECTION 3.10. EXECUTION OF WARRANT – BY WHOM AND TERRITORIAL LIMITS**

A warrant issued according to these rules shall be executed by an officer within the boundaries of the Umatilla Indian Reservation.

**PART III.           ARRAIGNMENT**

**SECTION 3.11.   ARRAIGNMENT**

- A.    An arraignment shall be conducted in open Court upon the defendant's first appearance in Court unless defendant is granted a continuance to seek assistance of counsel, to determine which plea to enter, or for other good or sufficient reason. The Judge shall advise each defendant of his right to have the arraignment continued upon his request for good cause which may be made at any time prior to pleading guilty or not guilty. If no such request is made, the Judge may proceed with the arraignment in accordance with this rule.
  
- B.    Except for good cause shown, or at the request of the defendant, the Tribal Court shall hold an arraignment hearing for any defendant in custody during the first 48 hours of custody. Failure to hold an arraignment hearing within the required time shall result in the release of the defendant.
  
- C.    The defendant may appear in person or by counsel.
  
- D.    Before defendant is called upon to plead guilty or not guilty, the following proceedings shall be conducted by the Judge:
  - 1.     The complaint shall be read to the defendant or the substance of the charge contained in the complaint shall be stated to him.
  
  - 2.     The defendant shall be given a copy of the complaint or summons and complaint, if one has not been previously served.
  
  - 3.     The defendant shall be advised of the maximum penalty which the Judge may impose in event of conviction.
  
  - 4.     The judge shall inform the defendant of his rights, which shall include, but not be limited to, the following:
    - a.     The right to counsel and the right to a reasonable continuance to obtain counsel. If the defendant cannot afford counsel, one will be appointed for them at the expense of the Confederated Tribes.
  
    - b.     The right to be informed of the charges against him.
  
    - c.     The right to have the Court compel the witnesses against him to appear and testify.
  
    - d.     The right to cross-examine and question the witnesses against him.
  
    - e.     The right to call witnesses in his own behalf and to have the Court issue subpoenas within its jurisdictional limits notifying the witnesses to appear.
  
    - f.     The right to a speedy and public trial.
  
    - g.     The right to a jury trial.
  
    - h.     At trial, the right to testify or not to testify in his own behalf, because he has the privilege against self-incrimination.
  
    - i.     If found guilty, the right to appeal.
  
    - j.     The right to file a writ of habeas corpus in the United States District Court if defendant feels his rights have been violated.



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- k. The right to be released on bail or on his own recognizance pending trial.
- l. The reading of any or all of these rights may be waived by a defendant represented by legal counsel.

**SECTION 3.12. PLEAS**

- A. A defendant, personally or by counsel, may plead guilty or not guilty.
- B. Plea of Not Guilty. If defendant pleads not guilty, the Judge shall:
  1. Ask the defendant if he wants a jury trial, or if he waives his right to a jury trial. If defendant requests a jury trial, the case shall be placed on the jury trial calendar. If defendant waives his right to a jury trial, the Judge shall record the waiver in the case record. The Judge may continue the case to allow defendant time to decide.
  2. Set the date and time for trial, or for further proceedings.
  3. Advise the defendant of his right to bail if the defendant is still in custody upon arrest with or without warrant. If bail has not yet been set, the Judge shall set bail, and if bail has already been set, the amount shall be reviewed. Bail shall be set of defendant released on personal recognizance according to section 3.13.
- C. Plea of Guilty. The Court shall not accept the plea of guilty without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge, and explaining fully to the defendant his right to trial by jury, his right to engage counsel, and the maximum penalty possible for the offense charged.
  1. If a defendant refuses to plead or if the Judge refuses to accept a plea of guilty, the Judge shall enter a plea of not guilty. The Judge shall not enter a judgment upon a plea of guilty unless he is satisfied that the defendant is pleading guilty because he, in fact, committed the offense of which he is charged.
  2. A plea of guilty shall in no case be entered except by the defendant in person.
  3. A plea of guilty may be withdrawn:
    - a. At any time before judgment at the Judge's discretion and a plea of not guilty substituted.
    - b. Before sentencing, upon adequate or compelling reason given by the defendant.
  4. A defendant may be permitted to plead guilty to lesser degree of the offense charged, or to a lesser offense included within the offense charged, and if so, the reasons for the acceptance of such plea shall be set forth in the order of the Court, and any recommendations by an officer or the prosecutor, with the reasons therefore, shall be stated in writing and filed in the official files of the case.
  5. Upon acceptance of a plea of guilty, the Judge may sentence immediately or at a later date.

**SECTION 3.13. BAIL**

- A. Entitlement. Every defendant shall be entitled to bail. Bail shall be set by the Judge. Bail is allowable pending appearance before the Trial Court, or, if after conviction, during any state of execution or pending appeal. Bail shall be set at the close of arraignment, unless exceptional circumstances require it being set at an earlier proceeding.

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- B. Amount. A defendant shall be admitted to bail in an amount which in the judgment of the Judge is necessary and sufficient to insure the defendant's presence at future Court proceedings at which defendant's presence is required.
- C. Form of Bail Bond and Place of Deposit. A defendant admitted to bail shall execute a bond for his appearance in Court on a designated day, and from day to day thereafter as the Judge may deem appropriate. The bail bond may be in the form of cash, some type of surety arrangement, or other kind of security as may be acceptable in the judgment of the Judge. A personal recognizance bond may be allowed by the Judge at his discretion in lieu of cash, surety or other kind of security bond. The bond shall be made and deposited in the office of the Clerk of the Court.
- D. Disposition of Bail.
  - 1. Forfeiture. If there is a breach of condition, of a bond, the Judge shall declare a forfeiture of the bail.
    - a. Setting Aside. The Judge may direct that a forfeiture be set aside, upon such conditions as the Judge may impose, if it appears that justice does not require the enforcement of the forfeiture.
    - b. Enforcement. By entering into a bond each obligor, whether defendant or surety submits to the jurisdiction of the Court. His liability under the bond may be enforced, without the necessity of an independent action. The Judge shall order the issuance of a citation directed to the obligor to show cause why judgment should not be entered against him forthwith and execution issued thereon. Said citation shall be served personally or by registered mail upon the obligor at the address given in the bond. Hearing on the citation shall be held not less than twenty days after service. The defendant and the prosecutor shall be given notice of the hearing. At the conclusion of the hearing, a judgment and execution shall issue thereon as on other judgments. Judgment may be for Contempt of Court and bail posted may also be forfeited.
  - 2. Exoneration of the Obligor. The obligor shall be exonerated when the condition of the bond has been satisfied; or, when forfeiture has been declared, the amount of forfeiture has been paid; or upon surrender of the defendant into custody before judgment upon an order to show cause and upon payment of all costs occasioned thereby.
  - 3. Continuation of Bond. In the discretion of the Judge and with the consent of surety, the same bond may be continued until the final disposition of the case on appeal.

**SECTION 3.14. MOTIONS DURING ARRAIGNMENT**

- A. Defenses and Objections Which May be Passed by Motion. Any defense or objection which is capable of determination without the trial of the general issue may be raised during arraignment.
- B. Defenses and Objections Which Must be Raised. The following defenses and objections must be raised by motion during arraignment.
  - 1. Generally, defenses and objections based upon defects in the institution of the prosecution or in the complaint including but not limited to;
  - 2. Motions to dismiss for defective complaint (other than that it fails to show jurisdiction in the Court or to charge an offense), defective warrant, defective service, or unnecessary delay in arraignment; and

3. Motion to Disqualify Judge.
- C. Disqualification of Judge. Whenever a party to any proceeding feels that the presiding Judge has a personal bias or prejudice either against him or in favor of an adverse party, he may move to disqualify the Judge. Upon such motion, the Judge shall proceed no further and another Judge shall be assigned to hear the proceeding. The moving party must state the facts and reasons for his belief that prejudice or bias exists. A party may make only one such motion in any case and that motion must be made in good faith.
- D. Waiver of Defenses or Objections Required to be Raised. Failure to present any defense or objection required to be raised during arraignment constitutes a waiver of such defense or objection, but the Judge for cause shown may grant relief from the waiver.
- E. Notice of Lack of Jurisdiction or Defect in Complaint by Court. Lack of Jurisdiction or failure of the complaint to charge an offense or civil infraction may be noticed by the Judge at any time pending final disposition of the case.
- F. Time and Manner of Making Motion. Motions under this rule shall be made orally and before any plea is entered by the defendant, and shall be supported by reasons, therefore, also orally made. The Judge, however, may require that a motion and reasons, therefore, be put in writing.
- G. Hearing on Motion. Motions under this rule shall be determined by the Judge during arraignment proceedings, unless the Judge orders that it be deferred for determination at a later date.

#### SECTION 3.15. JOINDER OF DEFENDANTS OF OFFENSES OF TRIAL

During arraignment, the Judge may order two or more defendants to be tried together if the offenses and defendants could have been joined in a single complaint. The joinder, if ordered, must occur at least 15 days prior to trial, and notice shall be given to defendant forthwith.

### **PART IV. PRETRIAL**

#### SECTION 3.16. PRETRIAL MOTIONS

- A. Generally. Any defense or objection which is capable of determination without the trial of the general issue and which are not required to be raised during arraignment may be raised by pretrial motion.
- B. Specifically. Pretrial motions include, but are not limited to the following:
1. Motions for use of interpreter;
  2. Motion for continuance of trial date;
  3. Motion to dismiss complaint for lack of jurisdiction or for failure to charge an offense;
  4. Motion for relief from prejudicial joinder. If it appears the defendant or his case is prejudiced by a joinder of offenses or of defendants in a complaint by such joinder for trial together, the Judge may order separate trials of courts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by defendant for severance, the Judge may order the prosecutor to deliver to him for inspection privately in his chambers, any statements or confession made by defendants with the prosecutor intends to introduce in evidence at the trial.

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5. Motion for pretrial conference. At any time after the filing of the complaint, the Court, upon motion of any party or upon its own motion, may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference, the Judge shall prepare and file a memorandum of the matters agreed upon.
  6. Motion to suppress evidence. A motion to suppress evidence may be made when it is learned through discovery or other pretrial procedures that an opposing party intends to introduce evidence that is inadmissible under these rules.
- C. Time and Manner of Making and Opposing Motions. Motions made under this rule shall be written and supported by reasons therefore, and shall be filed not later than 15 days before the trial date. Such motions shall be served on the opposing party simultaneously with filing thereof. Response in opposition to such motions shall be made in writing and supported by reasons therefore, and shall be filed not later than five (5) days before the trial date. Responses in opposition shall be served simultaneously with the filing thereof. The Judge, at his discretion, may direct that any motion be made orally.
- D. Determination of Motions. The Judge may enter judgment on pretrial motions solely on papers filed, or he may set a date and time for hearing of pretrial motions.

**SECTION 3.17. DISCOVERY**

- A. Disclosure of Evidence by Prosecution, Information Subject to Disclosure.
1. Statement of Defendant. Upon request of a defendant the tribe shall permit the defendant to inspect and copy or photograph; any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the Tribe, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Tribe; the substance of any oral statement which the Tribe intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a Tribal agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon its motion, discovery or relevant recorded testimony of any witness before a grand jury who;
    - a. Was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or;
    - b. Was, at the time of offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.
  2. Defendant's Prior Record. Upon request of the defendant, the Tribe shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody or current control of the Tribe, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Tribe.
  3. Documents and Tangible Objects. Upon request of the defendant the Tribe shall permit the defendant to inspect any copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the Tribe, and which are material to the preparation of his defense are intended for use by the Tribe as evidence in chief at the trial, or were obtained from or belong to the defendant.

4. Reports and Examinations and Tests. Upon request of a defendant the Tribe shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the Tribe, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Tribe, and which are material to the preparation of the defense or are intended for use by the Tribe as evidence in chief at the trial.
5. Information Not Subject to Disclosure. Except as provided in paragraphs (1), (2) and (4) of subsection (A), this rule does not authorize the discovery or inspection of reports, memoranda or other internal Tribal documents made by the attorney for the Tribe or other Tribal agents in connection with the investigation or prosecution of the case, or of statements made by Tribal witnesses or prospective Tribal witnesses except as provided in section 3.24.

**B. Disclosure of Evidence by Defense, Information Subject to Disclosure.**

1. Documents and Tangible Objects. If the defendant requests disclosures under subsection (A)(3) or (4) of this rule, upon compliance with such request by the Tribe, the defendant, on request of the Tribe, shall permit the Tribe to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.
2. Reports of Examinations and Tests. If the defendant requests disclosure under subdivision (A)(3) or (4) of this rule, upon compliance with such request by the Tribe, the defendant, on request of the Tribe, shall permit the Tribe to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.
3. Information Not Subject to Disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by Tribal or defense witnesses, or by prospective Tribal or defense witnesses, to the defendant, his agents or attorneys.

**SECTION 3.18. SUBPOENA**

- A. Attendance of Witnesses, Form, Issuance. A subpoena shall be issued by the Judge or by the clerk under authority of the Judge. It shall state the name of the Court and the title, if any, of the proceedings, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein.
- B. Service. A subpoena may be served by any officer, or by any person, not a party, who is 18 years of age or over. Service of a subpoena shall be made by delivering a copy thereof to the person ordered to appear.
- C. Proof of Service. Proof of service of a subpoena shall be made by the person who served the subpoena in accordance with section 3.32. If the person to be served cannot be located, the person who attempted to serve the subpoena shall file a statement of attempt to serve which shall describe his efforts at service.

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- D. Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the Court from which the subpoena issued.

**SECTION 3.19. JURY**

- A. Eligibility, List, Record of Service. Any resident within the boundaries of the Umatilla Indian Reservation of the age of 18 or over is eligible to be a juror regardless of race or tribal citizenship. A list of eligible jurors shall be kept by the Clerk of the Court and a record of each juror's service as a juror shall be noted thereon.
- B. Selection of Jury Panel. In January of each year, the Judge shall select at least 50 names from the list of eligible jurors and each shall be notified of his or her selection. This selected list shall comprise the trial jury list for the ensuing year from which jury panels shall be selected from time to time. A jury panel shall consist of not less than 18 names.
- C. Time and Manner of Notification. Those persons who are selected to serve on a jury panel shall be notified at a reasonable time prior to the trial date and the notice shall state the date, time, place and title of the proceeding for which they shall serve.
- D. Exemption From Jury Service. For good cause shown, the Judge may exempt any person from jury service. The Judge shall order the exemption be either permanent or for a specified period of time. If the exemption is temporary, the name of the prospective juror shall be returned to the annually selected jury list for possible selection for another panel at the expiration of the exemption. In the Court's discretion, the name of a person with a temporary exemption may be removed for that year from the selected list of jurors. If the exemption is permanent, the name of the person shall be removed from the list of eligible jurors.

**PART V. TRIAL**

**SECTION 3.20. TRIAL BY COURT**

- A. Upon the waiver by the defendant of his right to a trial by a jury he shall have a trial by the Court in accordance with these rules. The prosecution has the burden of proving beyond a reasonable doubt that the defendant is guilty of an offense as charged. A person does not have a right to a jury trial for civil infractions.
- B. Opening Statements. Both parties shall have the right to make an opening statement to summarize for the Court the facts, evidence and arguments each will present and rely on during trial. The prosecution shall present its statement first and the defense shall have the option of making its opening statement at that time or after the prosecution has completed the presentation of its case. Either side may waive the opening statement.
- C. Presentation of the Prosecution's Case. Upon the completion of the opening statements, the prosecution shall present to the Court, all of the evidence and testimony of witnesses on the prosecution's side of the case.
- D. Presentation of the Defendant's Case. Upon the completion of the presentation of the prosecution's case and after making any appropriate motions, the defense shall present to the Court all the evidence in accordance and testimony of witnesses for the defendant's case.
- E. Reopening Case. After the presentation of both sides of the case either side may ask that the case be reopened to allow the presentation of evidence or testimony that was inadvertently omitted, unavailable or non-existent earlier in the trial. Whether such evidence or testimony will be received is in the discretion of the Court.
- F. Closing Arguments. After the presentation of both sides of the case, both parties shall have the right to make closing arguments in which they may interpret the facts and argue the law

and generally summarize the case as they interpret it. Either side may waive their right to making closing arguments.

- G. Objections. Objections may be made by either party to test the validity of any procedural, substantive, or evidentiary matter before the Court during any hearing or trial. All objections shall be made at the time the objectionable matter arises and the specific grants therefor shall be stated. The Court shall either rule immediately on the objection or take the matter under advisement for a later ruling in its discretion.

#### SECTION 3.21. TRIAL BY JURY

- A. The defendant shall have the right to a trial by a jury of his peers composed of not less than six persons and one alternate unless such right has previously been waived. The prosecution has the burden of proving beyond a reasonable doubt that the defendant is guilty as charged.
- B. Selection of the Jury.
1. Voir Dire. The prosecution and defense, in that order, shall have the opportunity to ask questions of the prospective jurors as they are individually called upon by the court to determine if there is any reason why a particular candidate should not be seated as a juror. Either party may question the propriety of any question asked by the other party of a prospective juror and it shall be within the discretion of the Court to rule on the propriety of the question.
  2. Challenges. When both sides have completed their voir dire questioning of the six prospective jurors and the one alternate, they shall confer privately with the Judge and state all challenges they have to make against any prospective juror.
    - a. Preemptory Challenges. Both parties shall have four preemptory challenges with which they may disqualify any prospective juror and need not state any reason for doing so.
    - b. Challenges for Cause. When it is established that any prospective juror is prejudiced, biased or otherwise unable to sit as a fair and impartial juror, he may be disqualified by a challenge for cause by either side. The allowance or disallowance of a challenge for cause shall be within the discretion of the Court. The number of challenges for cause by either party is unlimited.
  3. Oath to Trial Jury. After the six members and one alternate of the jury have been selected and seated, the Court shall administer an oath by which the jury swears that it will act fairly and impartially in the trial it will hear.
- C. Opening Statements. Both parties shall have the right to make an opening statement to summarize for the Court and the jury the facts, evidence and arguments each will present or rely on during trial. The prosecution shall present its statement first and the defense shall have the option of making its opening statement at that time or after the prosecution has completed the presentation of its case. Either side may waive the opening statement.
- D. Presentation of the Prosecution's Case. Upon the completion of the opening statements, the prosecution shall present to the Court and jury all of the evidence and testimony of witnesses on the prosecution's side of the case.
- E. Presentation of the Defendant's Case. Upon the completion of the presentation of the prosecution's case and after making any appropriate motions, the defense shall present to the Court and jury, all of the evidence and testimony of witnesses for the defendant's case.
- F. Reopening Case. After the presentation of both sides of the case, either side may ask that the case be reopened to allow the presentation of evidence not discovered, unavailable or non-

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existent earlier in the trial. Whether such evidence or testimony will be received is in the discretion of the Court.

- G. Closing Arguments. After the presentation of both sides of the case, both parties shall have the right to make closing arguments in which they may interpret the facts and argue the law and generally summarize the case as they interpret it. Either side may waive their right to make closing arguments.
- H. Jury Deliberations. Upon completion of the closing arguments and the reading of instructions to the jury by the Court, the jury shall retire to a place where privacy and freedom from outside interference and interruption is assured. The jury members shall first elect from among their number a foreman who shall act as spokesman for the jury. They shall then evaluate and weigh the evidence, resolve the conflicts and inconsistencies, apply the law to the facts as previously instructed by the Court and reach a verdict of guilty or not guilty by unanimous vote. The foreman shall notify the Judge when a verdict has been reached.
- I. Objections. Objections may be made by either party to test the validity of any procedural, substantive, or evidentiary matter before the Court during any hearing or trial. All objections shall be made at the time the objectionable matter arises and the specific grants therefore shall be stated. The Court shall either rule immediately on the objection or take the matter under advisement for a later ruling in its discretion.

**SECTION 3.22. MOTIONS AT TRIAL**

- A. Either party may make motions, all of which shall be oral unless otherwise directed by the Court throughout the course of the trial. Both parties shall have the opportunity to argue their respective positions on any motion made. The motions that can be made shall include but not be limited to the following:
  - B. Motion for a Directed Verdict.
    - 1. At the close of the prosecution's case, the defense may move that the Court direct a verdict of not guilty. Defendant's motion shall be granted only if the prosecution has failed to present a prima facie case.
    - 2. Either party may make a motion for a direct verdict at the close of the defendant's case. A directed verdict of not guilty can be made when the prosecution failed to present a prima facie case and a directed verdict of guilty can be made if the Court finds as a matter of law that no adequate defense was presented.
  - C. Motions for Exclusion of Witnesses. A motion to exclude all witnesses who have not yet testified may be made by either party or done by the Court on its own initiative, prior to the time any witness has testified to insure that the testimony of all witnesses is his own independent recollection of the facts and that he does not adopt the testimony of a prior witness. It shall be within the discretion of the Court to grant or deny a motion to exclude witnesses made by either party.
  - D. Motion for Mistrial. A motion for a mistrial can be made at any time during the trial and can be granted in the Court's discretion. A party may make a motion for a mistrial when any action by any person other than the moving party, has the effect of prejudicing the outcome of the trial to the point that such prejudice could only be overcome by holding a new trial.
  - E. Motion for Judicial Notice. Either party may, during the presentation of its case, move the Court to take judicial notice of matters which by their nature, are not properly the subject of testimony or which are universally regarded as established by common notoriety. Granting or denying the motion shall be within the discretion of the Court.



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- F. Motion for a New Trial. The defendant may make a motion for a new trial after a verdict of guilty has been rendered against him. The motion must specifically allege the errors made by the Court during the trial which forms the basis for the motion. The motion shall be granted or denied as justice dictates.
- G. Motion to Dismiss for Unnecessary Delay in Prosecution. A motion to dismiss for unnecessary delay in prosecution may be made by the defendant prior to the commencement of the trial proceedings and shall be granted if an unreasonable amount of time has elapsed since the defendant was arraigned and if the delay was not requested or acquiesced in by the defendant.
- H. Motion to Exclude Evidence. A motion to exclude evidence may be made during the course of a trial when an opposing party introduces evidence that is inadmissible under these rules.

**SECTION 3.23. EVIDENCE**

- A. All evidence which the Court deems proper and necessary for reaching a true and just verdict or which is in accordance with Tribal customs and traditions, provided it is otherwise admissible under the Court's rules of evidence, shall be admitted subject to rules governing the permissible scope of search and seizure. In reaching a decision on the admissibility of any evidence, the Court may avail itself of any materials, books or documents prior to ruling.
- B. Witnesses. The testimony of witnesses shall be given orally unless the witness, for good reason presented to the Court, is or will be unable to appear personally in Court, in which case arrangements shall be made by the party calling the witness, for both parties to simultaneously question the witness under oath for purposes of obtaining a written statement for presentation to the Court at trial. Before either party relies or comments on a written statement so taken at trial, it shall be presented to the Court and he shall strike out any questions, answers or statements he deems improper. Any witness testifying in Court or being questioned for purposes of a written statement shall be subject to direct examination by the party who called him as a witness, cross-examination by the opposing party, redirect examination by the party who called him and recross examination by the opposing party.
- C. The Defendant as a Witness. The defendant cannot be compelled to testify as a witness. If the defendant invokes this privilege and does not testify, the Court and jury shall not consider such action as an indication of evidence of guilt. If the defendant voluntarily testifies he shall be subject to direct, cross, redirect, and recross examination, the same as any other witness.
- D. Search and Seizure. Evidence obtained by unlawful search and seizure is inadmissible. Lawful searches and seizures may be made in accordance with the following subsections.
  - 1. Permissible Objects of Search and Seizure. The following are subject to search and seizure:
    - a. Evidence of or information concerning the commission of a criminal offense;
    - b. Contraband, the fruits of crime, or things otherwise criminally possessed;
    - c. Property that has been used, to commit or conceal the commission of an offense; and
    - d. A person for whose arrest there is probable cause or who is unlawfully held in concealment.
  - 2. Issuance of Search Warrant.
    - a. A search warrant may be issued only by a Judge.

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- b. Application for a search warrant may be made only by a tribal attorney or by any tribal police officer.
  - c. The application shall consist of a proposed warrant in conformance with paragraph (4), and shall be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that such things are in the places, or in the possession of individuals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set forth facts bearing on any unnamed informants reliability and shall disclose, as far as possible, the means by which the information was obtained.
  - d. Instead of the written affidavit described in subparagraph (c) of this paragraph, the Judge may take an oral statement under oath when circumstances exist making it impractical for a tribal attorney or police officer to obtain a warrant in person. The oral statement shall be recorded and transcribed. The transcribed statement shall be considered to be an affidavit for the purposes of this paragraph. In such cases, the recording of the sworn oral statement and the transcribed statement shall be considered to be an affidavit for the purposes of this paragraph. In such cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the Judge receiving it and shall be retained as a part of the record of proceedings for the issuance of a warrant.
3. Hearing.
- a. Before acting on the application, the Judge may examine an oath, the affiants, and the applicant and any witnesses he may produce, and may himself call such witnesses as he considers necessary to a decision. He shall make and keep a record of any testimony taken before him. The record shall be admissible as evidence on any motion to suppress.
  - b. If the Judge finds that the application meets the requirements of paragraph (1), and that, on the basis of the record made before him, there is probable cause to believe that the search will discover things specified in the application and subject to seizure under paragraph (1), he shall issue a search warrant based on his finding and in accordance with the requirements of paragraph (2) to paragraph (9). If he does not so find, the Judge shall deny the application.
  - c. The Judge may orally authorize a police officer or the tribal attorney to sign the Judge's name on a duplicate original warrant. A duplicate original warrant shall be a search warrant for the purposes of paragraph (1) to paragraph (9), and it shall be returned to the Judge as provided in paragraph (9). In such cases a Judge shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant in the manner provided by law.
  - d. Until the warrant is executed, the proceedings upon application for a search warrant shall be conducted with secrecy appropriate to the circumstances.
4. Contents of Search Warrant.
- a. A search warrant shall be dated and shall be addressed to and authorize its execution by an officer authorized by law to execute search warrants.
  - b. The warrant shall state, or describe with particularity:
    - i. The identity of the Judge issuing the warrant and the date the warrant was issued;

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- ii. The name of the person to be searched, or the location and designation of the premises or places to be searched;
    - iii. The things constituting the object of the search and authorized to be seized; and
    - iv. The period of time, not to exceed five (5) days, after execution of the warrant except as provided in subparagraph (c) of this paragraph, within which the warrant is to be returned to the issuing authority.
  - c. Except as otherwise provided herein, the search warrant shall be executed between the hours of 7:00 AM and 10:00 PM and within five days from the date of issuance. The Judge issuing the warrant may, however, by endorsement upon the face of the warrant, authorize its execution at any time of the day or night and may further authorize its execution after five days, but not more than ten days from date of issuance.
- 5. Execution of Warrant.
  - a. A search warrant may be executed only within the period and at the times authorized by the warrant and only by a police officer. A police officer charged with its execution may be accompanied by such other persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.
  - b. The executing officer shall, before entering the premises, give appropriate notice of his identity, authority and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, as the case may be.
  - c. Before undertaking any search or seizure pursuant to the warrant, the executing officer shall read and give a copy of the warrant to the person to be searched, or to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant suitably affixed to the premises.
- 6. Scope of Search. The scope of search shall be only such as is authorized by the warrant and is reasonably necessary to discover the persons or things specified therein. Upon discovery of the persons or things so specified, the officer shall take possession or custody of them and search no further under authority of the warrant. If in the course of the search the officer discovers things, not specified in the warrant, which he has probable cause to believe to be subject to seizure under paragraph (1) which he did not have probable cause to expect to find, he shall also take possession of the things discovered.
- 7. List of Things Seized. Promptly upon completion of the search, the officer shall make a list of the things seized, and shall deliver a receipt embodying the list to the person from whose possession they are taken, or the person in apparent control of the premises or vehicle from which they are taken. If the vehicle or premises are unoccupied or there is no one present in apparent control, the executing officer shall leave the receipt suitably affixed to the vehicle or premises.
- 8. Use of Force in Executing Warrants.
  - a. The executing officer and other officers accompanying and assisting him may use the degree of force, short of deadly physical force, against persons, or to effect an entry, or to open containers, as is reasonably necessary for the execution of the search warrant with all practicable safety.

- b. The use of deadly physical force in the execution of a search warrant is justifiable only:
    - i. If the officer reasonably believes that there is a substantial risk that things to be seized will be used to cause death or serious physical injury the force used creates no substantial risk of injury to persons other than those obstructing the officer; or
    - ii. If the officer reasonably believes that the use of deadly physical force is necessary to defend the officer or another person from the use or threatened imminent use of deadly physical force.
9. Return of the Warrant.
- a. If a search warrant is not executed within the time specified by the warrant, the officer shall forthwith return the warrant to the issuing Judge.
  - b. An officer who has executed a search warrant shall, as soon as is reasonably possible and in no event later than the date specified in the warrant, return the warrant to the issuing Judge together with a signed list of things seized and setting forth the date and time of the search.
  - c. Subject to the provisions of subparagraph (d) of this paragraph, the issuing Judge shall file the warrant and list returned to him, with the record of the proceedings on the application for the warrant made pursuant to paragraph (3).
  - d. If the issuing Judge does not have jurisdiction to inquire into the offense in respect to which the warrant was issued or the offense apparently disclosed by the things seized, the Judge shall transmit the warrant and the record of proceedings for its issuance, together with the documents submitted on the return, to the clerk of the appropriate court having jurisdiction to inquire into such offense.
10. Handling and Disposition of Things Seized.
- a. The provisions of subparagraphs (b), (c), and (d) of this paragraph apply to all cases of seizure except for a seizure made under a search warrant.
  - b. If an officer makes an arrest in connection with the seizure, he shall, as soon thereafter as is reasonably possible, make a written list of the things seized and furnish a copy of the list to the defendant.
  - c. If no claim to rightful possession has been established under paragraph (11) to paragraph (14), the court shall order that the things be delivered to the officials having responsibility under the applicable laws for selling, destroying or otherwise disposing of contraband, forfeited or unclaimed goods in official custody.
  - d. If things seized in connection with an arrest are not needed for evidentiary purposes, and if a person having a rightful claim establishes his identity and right to possession beyond a reasonable doubt to the satisfaction of the seizing officer the officer may summarily return the things seized to their rightful possessor. If the things seized are perishable and it is not possible to return them to their rightful possessor, the seizing officer may dispose of the items as justice and the necessities of the case require.
11. Motion for Return or Restoration of Things Seized.

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- a. Within 90 days after actual notice of any seizure, or at such later date as the court in its discretion may allow:
    - i. An individual from whose person, property or premises things have been seized may move the appropriate court to return things seized to the person or premises from which they were seized.
    - ii. Any other person a claim to rightful possession of the things seized may move the appropriate court to restore the things seized to the movant.
  - b. The appropriate court to consider such motion is:
    - i. The court having ultimate trial jurisdiction over any crime charged in connection with the seizure; or
    - ii. If no crime is charged in connection with the seizure, the court to which the warrant was returned; or
    - iii. If the seizure was not made under a warrant and no crime is charged in connection with the seizure, any court having authority to issue search warrants in the county in which the seizure was made.
12. Grounds for Motion for Return or Restoration of Things Seized. A motion for the return or restoration of things seized shall be based on the ground that the movant has a valid claim to rightful possession thereof, because:
- a. The things had been stolen or otherwise converted, and the movant is the owner or rightful possessor; or
  - b. The things seized were not in fact subject to seizure; or
  - c. The movant, by license or otherwise, is lawfully entitled to possess things otherwise subject to seizure; or
  - d. Although the things seized were subject to seizure, the movant is or will be entitled to their return or restoration upon the court's determination that they are no longer needed for evidentiary purposes; or
  - e. The parties in the case have stipulated that the things seized may be returned to the movant.
13. Postponement of Return or Restoration; Appellate Review.
- a. In granting a motion for return or restoration of things seized, the court shall postpone execution of the order until such time as the things in question need no longer remain available for evidentiary use.
  - b. An order granting a motion for return or restoration of things seized shall be reviewable on appeal in regular course. An order denying such a motion or entered under paragraph (14) shall be reviewable on appeal upon certification by the court having custody of the things in question that they are no longer needed for evidentiary purposes.
14. Disputed Possession Rights.
- a. If, upon consideration of a motion for return or restoration of things seized, it appears to the court that the things should be returned or restored, but there is a

substantial question whether they should be returned to the person from whose possession they were seized or to some other person, or a substantial question among several claimants to rightful possession, the court may:

- i. Return the things to the person from whose possession they were seized; or
  - ii. Impound the things seized and set a further hearing, assuring that all persons with a possible possessory interest in the things in question receive due notice and an opportunity to be heard; and
  - iii. Upon completion of the hearing provided for in clause (ii) of this subparagraph, enter an order for the return or restoration of the things seized.
- b. If there is no substantial question whether the things should be returned to the person from whose possession they were seized, they must be returned to the person upon the release of the defendant from custody.
  - c. Instead of conducting the hearing provided for in clause (ii) of subparagraph (a) of this paragraph and returning or restoring the property, the court in its discretion, may leave the several claimants to appropriate civil process for the determination of the claims.

#### SECTION 3.24. VERDICT

- A. Upon the completion of the closing arguments, the Court or jury, as the case may be, shall render its verdict.
- B. Verdict by Court. The Court shall render a verdict of guilty if it believes the defendant to be guilty beyond a reasonable doubt, otherwise it shall render a verdict of not guilty. The Court shall have the option of rendering a verdict immediately after closing arguments or taking the case under advisement and ruling on it at a later date.
- C. Verdict by Jury. If a unanimous jury has found beyond a reasonable doubt that the defendant is guilty, a verdict of guilty shall be rendered. Otherwise, a verdict of not guilty shall be rendered.
- D. Verdict of Not Guilty. If a verdict of not guilty is rendered by either the Court or the jury, judgment shall be rendered immediately and the defendant shall be immediately released from custody.
- E. Verdict of Guilty. If a verdict of guilty is rendered by either the Court or jury, the Court shall so advise the defendant in open Court, set a date for sentencing, and enter a judgment of guilty in the Court's records.

#### SECTION 3.25. SENTENCING PROCEDURE

- A. On the date set for sentencing the defendant shall appear before the Court and sentence shall be pronounced.
- B. Pre-sentence Investigation. The Court may, in its discretion, order that a pre-sentence investigation report shall inquire into the characteristics, attitude, circumstances, needs, and potential of the defendant, his criminal and social history, circumstances of the offense and any other information pertinent to sentencing.

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- C. Availability to Defendant. A pre-sentence investigation, if ordered, shall be available to defendant and he shall have an opportunity to rebut the contents thereof and offer information in addition thereto prior to sentencing.
- D. Clerk of the Court or Bureau of Indian Affairs to Undertake Pre-sentence Investigation. Upon an order by the Court for a pre-sentence investigation, such an investigation shall be undertaken either by the clerk of the court or the Bureau of Indian Affairs, Department of Social Services at the Umatilla Agency as directed by the Court. Said Report shall be completed and submitted to the Court within the time period established by the Court.

**PART VI. SENTENCING**

**SECTION 3.26. MISDEMEANORS**

Any offense not defined as a felony shall be subject to a term of imprisonment of not more than 1 year or a fine of \$5,000, or both.

**SECTION 3.27. FELONIES**

- A. Any offense expressly defined as a felony shall be subject to a term of imprisonment of not more than 3 years or a fine of \$15,000, or both. A total term of imprisonment for any criminal proceeding shall not exceed 9 years.
- B. A defendant shall not be subject to felony prosecution unless the defendant:
  - 1. has been previously convicted of the same or a comparable offense by any jurisdiction in the United States, including tribes; or
  - 2. is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

**SECTION 3.28. DEFENDANT'S RIGHTS**

- A. Every defendant is entitled to those rights enumerated in the Indian Civil Rights Act, 25 U.S.C. 1302.
- B. Every defendant has the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution.
- C. The Tribes shall provide any indigent defendant, at trial and on appeal, the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States, including tribes, provided that jurisdiction applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
- D. In any criminal proceeding, the presiding judge shall:
  - 1. have sufficient legal training to preside over criminal proceedings; and
  - 2. be licensed to practice law by any jurisdiction in the United States, including the tribes.
- E. In any criminal proceeding, the court shall maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.
- F. In any criminal proceeding, a defendant has right to an impartial jury drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians.

- G. Every defendant has the privilege of the writ of habeas corpus in a court of the United States to test the legality of their detention by order of the Confederated Tribes.
1. Every defendant who has been detained in jail by the Confederated Tribes shall be notified of this right and any additional rights and privileges they are entitled to under 25 U.S.C. 1304(e).

**PART VII. GENERAL PROVISIONS**

**SECTION 3.29. PRESENCE OF THE DEFENDANT**

The defendant shall be present in person at all proceedings in his case unless the Judge directs that defendant may appear by counsel for all or certain proceedings.

**SECTION 3.30. CONTEMPT OF COURT**

- A. Any person or persons found guilty of any of the following acts shall be adjudged to be in Contempt of Court and shall be punished as the Court may direct.
1. Disorderly, contemptuous, or insolent behavior toward the Judge while holding Court, tending to interrupt the due course of a trial or other judicial proceeding;
  2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the Judge, or in the immediate vicinity of the Court held by him, tending to interrupt the due course of a trial or other judicial proceeding;
  3. Disobedience or resistance to the carrying out of a lawful order or process made or issued by the Judge;
  4. Disobedience to a subpoena duly serviced, or refusing to be sworn or to answer as a witness;
  5. Rescuing or interfering with any person or property in the custody of a police officer acting under an order of the Court or process of the Court;
  6. Failure to appear for jury duty when properly notified.
- B. When a contempt is committed in the immediate view and presence of the Judge, it may be punished summarily. To that end, an order must be made reciting the facts as they occurred, and adjudging that the person proceeded against is thereby guilty of the contempt, and that he be punished as therein prescribed.
- C. When a contempt is not committed in the immediate view and presence of the Judge, a warrant of arrest may be issued by such Judge, whereupon the person who is charged may be forthwith arrested and brought before the Judge at which time the accused must be given an opportunity to be heard in his defense or excuse of his action or actions. The Judge may thereupon convict or discharge him of the charge.

**SECTION 3.31. TIME**

- A. Computation. In computing any period of time, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday. When a period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other appointed as a holiday by the President, or the Congress of the United States, or by the Umatilla Tribal Court.



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- B. Enlargement. The Judge may for cause shown at any time in its discretion, with or without motion, order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by a previous order. If a request is made after the expiration of the prescribed period, the Judge may permit the act to be done if failure to act is in the opinion of the Judge excusable.

**SECTION 3.32. SERVICE AND FILING OF PAPERS**

- A. Service, When Required. Any written document filed with the Court by a party shall be served upon the other party.
- B. Service, How Made. Service when required, shall be made upon the defendant or his counsel by delivering to the defendant or his counsel, in person or by registered mail, a copy of the document to be served.
- C. Service, By Whom Made. Service shall be made by an officer except where otherwise prescribed in these rules.
- D. Proof of Service. Proof of service shall be made by the person serving a document by filing promptly after completion of service, a sworn signed statement containing the name of the person served, the document served, and the date, time and place served.
- E. Territorial Limits. Service may be made anywhere within the boundaries of the Umatilla Indian Reservation.
- F. Notice of Orders. Immediately upon the entry of an order of the Judge made on written pretrial motion, the clerk shall mail to each party, a notice thereof and shall make a note in the docket of the mailing.
- G. Filing. Filing shall be accomplished by delivering the original and one copy of a document to the clerk who shall stamp it with the date. All papers required to be served shall be filed with the Court.

**SECTION 3.33. COURT REPORTER AND TRANSCRIPTS**

All trials shall be recorded by a Court Reporter. Any party wishing a transcript of the trial shall bear the cost therefor.

**SECTION 3.34. COURT RECORDS AND FILES**

All Court records and files shall be in the custody of the Clerk of the Court under the discretion and supervision of the Chief Judge.

**SECTION 3.35. DISMISSAL OF ACTION BY COURT OR PROSECUTION**

- A. By the Court. Whenever, in the opinion of the presiding Judge, the plaintiff has failed to state a cause of action, a non-justifiable action is presented or other such basic defect exists as renders judicial action improper, he may, on his own motion, dismiss said action with or without prejudice.
- B. By the Prosecution. The prosecution in any criminal proceeding, with the concurrence of the arresting officer, may recommend to the Court, in chambers, that a case be dismissed; provided that good cause exists for said recommendation.

**SECTION 3.36. FINDINGS OF FACT, CONCLUSIONS OF LAW**

- A. Whenever deemed necessary by a presiding Judge for purposes of effecting his judgment in a case, he shall prepare or direct the preparation of findings of fact, conclusions of law and a memorandum opinion.
- B. In every case wherein an appeal is taken, findings of fact, conclusions of law and a memorandum opinion shall be prepared.

**SECTION 3.37. CALENDARS AND DOCKETS**

The Clerk of the Court shall be responsible for controlling the calendar and dockets of the Court under such system as shall be established by the Judges of the Umatilla Tribal Court.

**SECTION 3.38. EXTRADITION**

- A. Extradition Agreements. In the event a written and duly authorized agreement exists between the Confederated Tribes of the Umatilla Indian Reservation and another governmental entity, the Confederated Tribes shall authorize extradition of individuals from the Umatilla Indian Reservation in accordance with the terms of the agreement.
- B. State Warrant for Arrest of Indian Located on the Umatilla Indian Reservation.
  - 1. Any warrant for the arrest of an individual who is located within the boundaries of the Umatilla Indian Reservation which is issued by a court of the State of Oregon or any of its political subdivisions shall be presented to the Chief of the Umatilla Tribal Police or his authorized representative prior to being executed.
  - 2. Upon presentation, the Chief of the Umatilla Tribal Police shall authorize execution of the warrant by officers of the Tribal Police alone or in the company of officers of the presenting agency.
  - 3. Upon execution of the warrant, the person arrested shall be held pending a hearing in the Umatilla Tribal Court on the validity of the warrant.
- C. Extradition Hearing.
  - 1. The Umatilla Tribal Court shall hold a hearing on the validity of a warrant for extradition within 72 hours from the time of the arrest.
  - 2. At the hearing the Court shall advise the person arrested of his rights and ask the person if he is willing to waive extradition. If extradition is waived the Court shall inform the person of his right to habeas corpus and issue an order releasing the person to the requesting jurisdiction.
  - 3. If the person being held does not waive extradition the Court shall proceed with the extradition hearing by determining whether:
    - a. A certified, exemplified copy of the warrant has been transmitted from the requesting jurisdiction;
    - b. The person named in the warrant is in fact the person being held for extradition.
  - 4. If the Court determines that the warrant is valid and that the person identified in the warrant is the person being held for extradition, the Court shall issue an order releasing the person to the requesting jurisdiction.

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5. If the Court determines that the warrant is not valid, or that the person being held is not the person identified in the warrant, the Court shall issue an order releasing the person from custody.
- D. Warrant from a Governmental Entity Other than Oregon. Any warrant for the arrest of an individual who is within the boundaries of the Umatilla Indian Reservation which is issued by a Court of a State other than Oregon, or the Court of another federally recognized tribe, shall be executed as if it were a warrant from the State of Oregon.

**SECTION 3.39. FRESH PURSUIT**

The Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon have authorized each other's law enforcement officers to conduct fresh pursuit across the boundary of the Umatilla Indian Reservation in accordance with the terms of the Tribal-State Agreement on Fresh Pursuit and Extradition and any subsequent amendments.

**SECTION 3.40. COURT COSTS**

The Court shall award court costs to the prevailing party in such cases and in such amounts as is deemed proper in the discretion of the Court.

**SECTION 3.41. FILING FEES**

Filing Fees shall be established by the Chief Judge and Clerk of the Court in an amount they deem proper. Said amount may be reviewed and revised periodically.

**PART VIII. APPEALS**

**SECTION 3.42. PROCEDURES FOR APPEAL**

- A. Grounds for Appeal. A party may appeal a final order of the Umatilla Tribal Court to the Umatilla Tribal Court of Appeals upon an allegation, made in good faith, that an error was made by the Umatilla Tribal Court that prejudiced the outcome of the proceedings before that Court or that an error was made by that Court in the interpretation of law.
- B. Notice of Appeal. The party wishing to appeal shall file a notice of appeal with both Courts within ten (10) working days after the decision being appealed is rendered.
- C. Appeal Bond. The party filing the notice of appeal shall accompany his notice of appeal to the Umatilla Tribal Court with a bond in the amount of \$50.00 which will be returned if he prevails on appeal or forfeited if he does not.

**SECTION 3.43. RECORD ON APPEAL**

- A. Record on Appeal. The record on appeal shall consist of the recording or transcript of proceedings in the Umatilla Tribal Court and all documents, exhibits, motions, briefs, and memoranda filed therein in that case along with all rulings, opinion, findings of fact, and conclusions of law issued by the Court therein.
- B. Transcript, Cost. Any party requesting a transcript of the proceedings before the Umatilla Tribal Court shall bear the cost thereof. In the event the Appellate Court requires that a written transcript be provided on appeal, it will be provided to an indigent criminal defendant free of charge.

**SECTION 3.44. BRIEFING AND ARGUMENT**

- A. Schedule. The Umatilla Tribal Court of Appeals, upon receipt of the notice of appeal, shall establish a briefing and argument schedule.

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- B. Length of Argument. The Umatilla Tribal Court of Appeals shall determine and inform the parties in each case of the amount of time in which the arguments are to be presented.

**SECTION 3.45. BRIEFS**

- A. Form. All briefs shall be neatly typed on white 8 ½" x 11" paper. The first page shall contain the name of the Court, the name of the case and the docket number, along with the names, addresses and telephone numbers of the attorneys involved, if any.
- B. Number and Sequence. The parties shall file the following briefs in the following sequence in accordance with the briefing schedule established by the Court:
1. First. Appellant's Opening Brief;
  2. Second. Appellee's Answering Brief;
  3. Third. Appellant's Responding Brief;
  4. Fourth. Appellee's Reply Brief

**SECTION 3.46. DECISIONS**

Upon the completion of the briefing schedule, receipt of the record on appeal and the hearing of arguments in the case, the Umatilla Tribal Court of Appeals shall render a written decision which such concurring and dissenting opinions as the Judge shall deem necessary and a copy of that decision shall be sent to the parties.

**SECTION 3.47. HABEAS CORPUS**

- A. Availability. Any person whose liberty has been restrained by the Confederated Tribes may prosecute a civil writ of habeas corpus in tribal court to inquire into the cause of such restraint, and if illegal, to be delivered from such restraint.
- B. Who May Not Prosecute a Writ. The following persons are not eligible to prosecute a writ of habeas corpus:
1. Any person who has been adjudged guilty of an offense in the trial court and is or was eligible to obtain post-conviction relief under Section 3.24(A);
  2. Any person seeking to attack the legality of an order revoking a suspended or deferred sentence;
  3. Any person whose claim has already been adjudged on a writ of habeas corpus except as permitted in Section 3.47(F), and
  4. Any person seeking release due to a technical defect in commitment that does not affect the person's substantive rights under Section 3.28.
- C. Petition. A person prosecuting a writ of habeas corpus shall state in substance the following, which must be declared to be true to the best of the declarant's belief subject to the penalty of perjury:
1. That the party in whose behalf the writ is petitioned is illegally imprisoned or restrained of liberty;
  2. How the person's liberty has been restrained;
  3. That the petition is not barred by Section 3.47(B);

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4. Why the restraint is illegal;
  5. Where or by whom the petitioner is restrained; and
  6. Name the Chief of Police, or any other person who the Petitioner claims has restrained their liberty, as Respondent.
- D. Granting of the Writ. The judge to whom a petition for writ of habeas corpus is presented shall without delay, unless the petition on its face is barred by Section 3.47(B) or is otherwise frivolous, issue an order directing the Respondent to show cause why the writ should not be allowed. The Tribal Prosecutor shall represent the Chief of Police in the proceedings. Such order shall be served on both the Respondent and Tribal Prosecutor. Upon issuance of a show cause order, the following shall apply:
1. The judge shall order the Respondent to appear in writing in opposition to the issuance of the writ as soon as is practicable and not more than 14 days from the date that the show cause order issues.
  2. The judge shall rule on the show cause order within 7 days after either the Respondent files a written appearance in opposition or the appearance period expires, whichever comes first. Upon making a ruling, the judge shall do one of the following, as appropriate:
    - a. If the motion and the files and records of the case conclusively show that the Petitioner is entitled to no relief, issue a judgment denying the petition without prejudice and explain the reason for the denial.
    - b. Issue a writ of habeas corpus requiring that a return be made and proceed in a summary way to hear such evidence and argument as may be produced in support of or against the petition and dispose of the matter as law and justice may require. If a writ is issued, it shall, at a specified time and place, require the Respondent to file a return that states the time and cause of the Petitioner's restraint. The writ shall not command the Respondent to produce the Petitioner before the court issuing the writ unless the court, in its discretion, so orders. If after hearing the evidence and argument there is found to be no legal cause for the restraint of liberty, the court shall discharge the Petitioner from the restraint under which the Petitioner is held.
- E. Contents of Return. The person on whom a writ has been served shall state in the return whether the person has the Petitioner in custody or otherwise under restraint, and if not, whether they had the Petitioner in custody or under restraint at any time, and at what time, prior to or subsequent to the date of the writ. If the person has the Petitioner in custody or otherwise under restraint, the return shall state the authority and cause of such restraint. If the Petitioner is restrained by written authority, a copy of that authority shall be included with the return. If the person on whom the writ was served had the Petitioner in custody or under restraint at any time before or after the date of the writ, but has transferred custody or restraint to another, the return shall state to whom, at what time, for what cause, and by what authority the transfer occurred. The return shall be signed by the person making the return, and such return shall be subject to the penalty of perjury.
- F. Conclusiveness of Judgment. Any party to a proceeding by habeas corpus may appeal any final order of the court. No question once finally determined upon a proceeding by habeas corpus may be reexamined through another habeas corpus proceeding unless the court finds that:
1. Newly discovered evidence, viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the Petitioner guilty of the offense; or

2. A new rule of tribal constitutional law, tribal law interpreting Section 3.28(A), (B), (C), (D), or (F), or binding federal law addressing rights enumerated in the Indian Civil Rights Act that are reflective of rights in the United States Constitution, made retroactive to cases on collateral review by the Tribes' Appellate Court or the United States Supreme Court, that was previously unavailable.

## **CHAPTER 4. CRIMES**

### **PART I. PRINCIPLES**

#### **SECTION 4.01. DEFINITIONS**

- A. As used in this code unless the context requires otherwise:
  1. "Dangerous weapon" means any instrument, article or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.
  2. "Deadly weapon" means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.
  3. "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.
  4. "Major crime" means criminal homicide, mayhem, kidnapping, rape, battery, criminal mistreatment, burglary, arson and robbery.
  5. "Law enforcement officer" means a tribal policeman, sheriff, constable, marshal, municipal policeman, or member of the Oregon State Police and such other persons as may be designated by law.
  6. "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.
  7. "Physical injury" means impairment of physical condition or substantial pain.
  8. "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
  9. "Possess" means to have physical possession or otherwise to exercise dominion or control over property.
  10. "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

#### **SECTION 4.02. PURPOSES; PRINCIPLES OF CONSTRUCTION**

The general purposes of this code are:

- A. To ensure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the correction and rehabilitation of those convicted, and their confinement when required in the interests of public protection.

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- B. To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.
- C. To give fair warning of the nature of the conduct declared to constitute an offense and of the sentences authorized upon conviction.
- D. To define the act or omission and the accompanying mental state that constitute each offense and limit the condemnation of conduct as criminal when it is without fault.
- E. To differentiate on reasonable grounds between serious and minor offenses.
- F. To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.
- G. To safeguard offenders against excessive, disproportionate or arbitrary punishment.

**SECTION 4.03. APPLICATION OF CRIMINAL CODE**

- A. The provisions of this criminal code shall apply to all persons committing the acts herein defined within the boundaries of the Umatilla Indian Reservation after formal adoption of this code by the Board of Trustees.
- B. When all or part of a section is amended or repealed remains in force for the purpose of authorizing the accusation, prosecution, conviction and punishment of a person who violated the section or part thereof before the effective date of the amending or repealing action.

**SECTION 4.04. DEFENSES AND DEFENSES RAISED BY DEFENDANT**

- A. When a defense, other than an affirmative defense as defined in subsection (B) of this section, is raised at a trial, the Tribe has the burden of disproving the defense beyond a reasonable doubt.
- B. When a defense, declared to be an affirmative defense is raised at a trial, the defendant has the burden of proving the defense by a preponderance of the evidence.
- C. The Tribe is not required to negate a defense as defined in subsection (A) of this section unless it is raised by the defendant. "Raised by the defendant" means either notice in writing to the Tribe before commencement of trial or affirmative evidence by a defense witness in the defendant's case in chief.

**PART II. CRIMINAL LIABILITY**

**SECTION 4.05. DEFINITIONS WITH RESPECT TO CULPABILITY**

- A. As used in this code unless the context requires otherwise:
  - 1. "Act" means a bodily movement.
  - 2. "Voluntary act" means a bodily movement performed consciously and includes the conscious possession or control or property.
  - 3. "Omission" means a failure to perform an act, the performance of which is required by law.
  - 4. "Conduct" means an act or omission and its accompanying mental state.
  - 5. "To act" means either to perform an act or to omit to perform an act.

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6. “Culpable mental state” means intentionally, knowingly, recklessly or with criminal negligence as these terms are defined in paragraphs (7), (8), (9) and (10) of this subsection.
7. “Intentionally” or “with intent”, when used with respect to a result or to conduct described by a section defining an offense, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.
8. “Knowingly” or “with knowledge” when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person acts with an awareness that his conduct is of a nature so described or that a circumstance so described exists.
9. “Recklessly”, when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
10. “Criminal negligence” or “Criminally negligent”, when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

**SECTION 4.06. REQUIREMENTS OF CULPABILITY**

- A. The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is capable of performing.
- B. A person is not guilty of an offense unless he acts with a culpable mental state with respect to each material element of the offense that necessarily requires a culpable mental state. Provided, however, that a culpable mental state is not required if the definition of an offense clearly indicates an intent to dispense with any culpable mental state requirement or for any material element thereof.

**SECTION 4.07. CONSTRUCTION OF SECTIONS WITH RESPECT TO CULPABILITY**

- A. If a statute defining an offense prescribes a culpable mental state but does not specify the element to which it applies, the prescribed culpable mental state applies to each material element of the offense that necessarily requires a culpable mental state.
- B. Except as provided in section 4.07, if statute defining an offense does not prescribe a culpable mental state, culpability is nonetheless required and is established only if a person acts intentionally, knowingly, recklessly or with criminal negligence.
- C. If the definition of an offense prescribes criminal negligence as the culpable mental state, it is also established in a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.
- D. Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning or application of the section defining an offense is not an element of an offense unless the section clearly so provides.



**SECTION 4.08. INTOXICATION; DRUG USE OR DEPENDENCE AS DEFENSE**

- A. Drug use, dependence on drugs or voluntary intoxication shall not, as such, constitute a defense to a criminal charge, but in any prosecution for an offense, evidence that the defendant used drugs, or was dependent on drugs, or was intoxicated may be offered by the defendant whenever it is relevant to negate an element of the crime charged.
- B. When recklessness establishes an element of the offense, if the defendant, due to drug use, dependence on drugs or voluntary intoxication, is unaware of a risk of which he would have been aware had he not been intoxicated, not using drugs, or not drug dependent, such unawareness is immaterial.

**PART III. PARTIES TO CRIME**

**SECTION 4.09. CRIMINAL LIABILITY DESCRIBED**

A person is guilty of a crime if it is committed by his own conduct or by the conduct of another person for which he is criminally liable, or both.

**SECTION 4.10. CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER**

A person is criminally liable for the conduct of another person constituting a crime if:

- A. He is made criminally liable by the section defining the crime; or
- B. With the intent to promote or facilitate the commission of the crime he:
  - 1. Solicits or commands such other person to commit the crime; or
  - 2. Aids or abets or agrees or attempts to aid or abet such other persons in planning or committing the crime; or
  - 3. Having a legal duty to prevent the commission of the crime, fails to make an effort he is legally required to make.

**SECTION 4.11. DEFENSE TO CRIMINAL LIABILITY FOR CONDUCT OF ANOTHER**

In any prosecution for a crime in which criminal liability is based upon the conduct of another person pursuant to section 4.11, above, it is no defense that:

- A. Such other person has not been prosecuted for or convicted of any crime based upon the conduct in question or has been convicted of a different crime; or
- B. The crime, as defined, can be committed only by a particular class or classes of persons to which the defendant does not belong, and he is for that reason legally incapable of committing the crime in an individual capacity.

**PART IV. JUSTIFICATION**

**SECTION 4.12. JUSTIFICATION AS A DEFENSE**

In any prosecution for an offense, justification as described below is a defense.

**SECTION 4.13. JUSTIFICATION DESCRIBED**

Conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of his official powers, duties or functions.

**SECTION 4.14. CHOICE OF EVILS**

- A. Unless inconsistent with other provisions of this part defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when:
  - 1. That conduct is necessary as an emergency measure to avoid an imminent public or private injury; and
  - 2. The threatened injury is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the section defining the offense in issue.
- B. The necessity and justifiability of conduct under subsection (A) of this section shall not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder.

**SECTION 4.15. USE OF PHYSICAL FORCE GENERALLY**

The use of physical force upon another person that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances.

- A. A parent, guardian or other person entrusted with care and supervision of a minor or an incompetent person may use reasonable physical force upon such minor or incompetent person when and to the extent necessary to maintain discipline or to promote the welfare of the minor or incompetent person.
- B. An authorized official of a jail or correctional facility may use physical force when and to the extent that he reasonably believes it necessary to maintain order and discipline or as is authorized by law.
- C. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical injury upon himself may use physical force to the extent that he reasonably believes it necessary to thwart the result.
- D. A person may use physical force upon another person in defending himself or a third person, in defending property, in making an arrest or in preventing an escape, as hereafter provided.

**SECTION 4.16. USE OF PHYSICAL FORCE IN DEFENSE OF A PERSON**

Except as provided in sections 4.14 and 4.15, a person is justified in using physical force upon another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force, and he may use a degree of force which he reasonably believes to be necessary for the purpose.

**SECTION 4.17. LIMITATIONS ON USE OF PHYSICAL FORCE IN DEFENSE OF A PERSON**

Notwithstanding section 4.16, a person is not justified in using physical force upon another person if:

- A. With intent to cause physical injury or death to another person, he provokes the use of unlawful physical force by that person; or
- B. He is the initial aggressor, except that his use of physical force upon another person under such circumstances is justifiable if he withdraws from the encounter and effectively

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communicates to the other person his intent to do so, but the latter nevertheless continues or threatens to continue the use of unlawful physical force; or

- C. The physical force involved is the product of a combat by agreement not specifically authorized by law.

**SECTION 4.18. LIMITATIONS ON USE OF DEADLY PHYSICAL FORCE IN DEFENSE OF A PERSON**

Notwithstanding the provisions of section 4.16, a person is not justified in using deadly physical force upon another person unless he reasonably believes that the other person is:

- A. Committing or attempting to commit a major crime involving the use or threatened imminent use of physical force against a person; or
- B. Committing or attempting to commit a burglary in a dwelling; or
- C. Using or about to use unlawful deadly physical force against a person.

**SECTION 4.19. USE OF PHYSICAL FORCE IN DEFENSE OF PREMISES**

- A. A person in lawful possession or control of premises is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of a criminal trespass by the other person in or upon the premises.
- B. A person may use deadly physical force under the circumstances set forth in subsection (A) of this section, only:
  - 1. In defense of a person as provided in section 4.18; or
  - 2. When he reasonably believes it necessary to prevent the commission of arson or major crime by force and violence by the trespasser.
- C. As used in subsection (A) and paragraph (1) of subsection (B) of this section, "Premises" includes any building, which in addition to its ordinary meaning, includes any real property, any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, including but not limited to, separate apartments, offices or rented rooms, each unit is, in addition to being a part of such building, a separate building. As used in paragraph (2) of subsection (B) of this section, "Premises" includes any building.

**SECTION 4.20. USE OF PHYSICAL FORCE IN DEFENSE OF PROPERTY**

A person is justified in using physical force, other than deadly physical force, upon another person when and to the extent that he reasonably believes it to be necessary to prevent or terminate the commission or attempted commission by the other person of theft or criminal mischief of property.

**SECTION 4.21. USE OF PHYSICAL FORCE IN MAKING AN ARREST OR IN PREVENTING AN ESCAPE**

Except as provided in section 4.22, a peace officer is justified in using physical force upon another person only when and to the extent that he reasonably believes it necessary:

- A. To make an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unlawful; or

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- B. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape.

**SECTION 4.22. USE OF DEADLY FORCE IN MAKING AN ARREST OR IN PREVENTING AN ESCAPE**

- A. Notwithstanding the provisions of section 4.21, a peace officer may use deadly physical force only when he reasonably believes that:
1. The crime committed by the person was a major crime or an attempt to commit a major crime involving the use or threatened imminent use of physical force against a person; or
  2. If the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the peace officer or other person from the use or threatened imminent use of deadly physical force; or
  3. The crime committed by the person was kidnapping, arson, escape, burglary or any attempt to commit such crime; or
  4. The crime committed by the person was a major crime or an attempt to commit a major crime and under the totality of the circumstances existing at the time and place, the use of such force is necessary; or
  5. The officer's life or personal safety is endangered in the particular circumstances involved.
- B. Nothing in subsection (A) of this section constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain in custody.

**SECTION 4.23. REASONABLE BELIEF DEFINED**

For purposes of this part, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous, though not unreasonable belief that the law is otherwise, does not render justifiable the use of force to make an arrest or to prevent an escape from custody.

**SECTION 4.24. USE OF PHYSICAL FORCE BY PRIVATE PERSON ASSISTING IN AN ARREST**

- A. Except as provided in subsection (B) of this section, a person who has been directed by a peace officer to assist him to make an arrest or to prevent an escape from custody is justified in using physical force when and to the extent that he reasonably believes that force to be necessary to carry out the peace officer's direction.
- B. A person who has been directed to assist a peace officer under circumstances specified in subsection (A) of this section may use deadly physical force to make an arrest or to prevent an escape only when:
1. He reasonably believes that force to be necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or

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2. He is directed or authorized by the peace officer to use deadly physical force unless he knows that the peace officer himself is not authorized to use deadly physical force under the circumstances.

**SECTION 4.25. USE OF PHYSICAL FORCE BY PRIVATE PERSON MAKING CITIZENS ARREST**

- A. Except as provided in subsection (B) of this section, a private person acting on his own account is justified in using physical force upon another person when and to the extent that he reasonably believes it necessary to make an arrest or to prevent the escape from custody of an arrested person whom he has arrested under section 3.08(C).
- B. A private person acting under the circumstances prescribed in subsection (A) of this section is justified in using deadly physical force only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

**SECTION 4.26. USE OF PHYSICAL FORCE IN RESISTING ARREST PROHIBITED**

A person may not use physical force to resist an arrest by a peace officer who is known or reasonably appears to be a peace officer, whether the arrest is lawful or unlawful.

**SECTION 4.27. DURESS**

- A. The commission of acts which would otherwise constitute an offense, other than murder is not criminal if the actor engaged in the proscribed conduct because he was coerced to do so by the use or threatened use of unlawful physical force upon him or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance.
- B. Duress is not a defense if a person intentionally or recklessly places himself in a situation in which it is probable that he will be subjected to duress.
- C. It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under subsection (A) of this section.

**SECTION 4.28. ENTRAPMENT**

- A. The commission of acts which would otherwise constitute an offense is not criminal if the actor engaged in the proscribed conduct because he was induced to do so by a law enforcement official, or by a person acting in cooperation with a law enforcement official, for the purpose of obtaining evidence to be used against the actor in a criminal prosecution.
- B. As used in this section, "induced" means that the actor did not contemplate and would not otherwise have engaged in the proscribed conduct. Merely affording the actor an opportunity to commit an offense does not constitute entrapment.

**PART V. RESPONSIBILITY**

**SECTION 4.29. EFFECT OF MENTAL DISEASE OR DEFECT**

- A. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capability either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.
- B. As used herein, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

- C. Mental disease or defect excluding responsibility or partial responsibility is an affirmative defense.

**SECTION 4.30. EVIDENCE OF DISEASE OR DEFECT ADMISSIBLE AS TO INTENT**

Evidence that the actor suffered from a mental disease or defect is admissible whenever it is relevant to the issue of whether he did or did not have the intent which is an element of the crime.

**SECTION 4.31. ENTRY OF ORDER OF ACQUITTAL ON GROUNDS OF DISEASE OR DEFECT**

- A. If the Court finds that the person is no longer affected by mental disease or defect, or, if so affected, that he no longer presents a substantial danger to himself or the person of others and is not in need of care, supervision or treatment, the Court shall order him discharged from custody.
- B. If the Court finds that the person is affected by mental disease or defect and that he presents a substantial danger to himself or the person of others, but he can be controlled adequately and given proper care, supervision and treatment if he is released on supervision, the Court shall order him released subject to such supervisory orders of the Court as are appropriate in the interests of justice and the welfare of the defendant. The person, persons or agency to whom the individual is released shall be responsible to the Court for the care and supervision of the individual released. The conditions of release may be modified by the Court from time to time as may be necessary.
- C. If the Court finds that the person is affected by a mental disease or defect and presents a substantial risk of danger to himself or the person of others and that he is not a proper subject for release on supervision, the Court shall order him committed to a proper institution for custody, care and treatment for such time and under such conditions as the Court, after proper consultation with psychiatric authorities, may deem proper.

**SECTION 4.32. INCAPACITY DUE TO IMMATURITY**

- A. A person who is tried as an adult in a criminal prosecution is not criminally responsible for any conduct which occurred when the person was under 18 years of age, unless remanded by the Children's Court to Tribal Court for such proceedings.
- B. Incapacity due to immaturity as herein defined is an affirmative defense.

**PART VI. DISPOSITION OF OFFENDERS**

**SECTION 4.33. PERIOD OF IMPRISONMENT, PROBATION**

- A. For any one conviction of an offense there may be imposed a period of imprisonment not to exceed one year.
- B. Once imposed, any or all of the sentence may be suspended in the discretion of the Court, or the defendant may be placed on probation for such a time and under such conditions as the Court may impose.

**SECTION 4.34. FINES**

- A. For any one conviction of an offense there may be imposed a fine not to exceed \$5,000.00 in amount.
- B. Once imposed any or all of the sentence may be suspended in the discretion of the Court.
- C. In determining whether to impose a fine and its amount the Court shall consider:

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1. The financial resources of the defendant and the burden that payment of a fine will impose, with due regard to the other obligations of the defendant; and
2. The ability of the defendant to pay a fine on installment basis or on other conditions to be fixed by the Court.

**SECTION 4.35. EFFECT OF NON-PAYMENT OF FINES**

- A. When a defendant sentenced to pay a fine defaults in the payment thereof or of any installment, the Court, on motion of the prosecuting attorney or upon its own motion, may require him to show cause why his default should not be treated as contempt of Court and may issue a citation or a warrant of arrest for his appearance.
- B. Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the Court or to a failure on his part to make a good faith effort to make the payment, the Court may find that his default constitutes contempt and may order him committed until the fine, or a specified part thereof, is paid.
- C. The term of imprisonment for contempt for non-payment of fines shall be set forth in the commitment order, and shall not exceed one day for each \$25.00 of the fine. A person committed for non-payment of a fine shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.
- D. If it appears to the satisfaction of the Court that the default in the payment of the fine is not contempt, the Court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or the unpaid portion thereof in whole or in part.
- E. A default in the payment of a fine or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine has actually been collected.

**PART VII. INCHOATE CRIMES**

**SECTION 4.36. ATTEMPT**

A person is guilty of an attempt to commit a crime when he intentionally engages in conduct which constitutes a substantial step toward commission of the crime.

**SECTION 4.37. IMPOSSIBILITY NOT A DEFENSE**

In a prosecution for an attempt, it is no defense that it was impossible to commit the crime which was the object of the attempt where the conduct engaged in by the actor would be a crime if the circumstances were as the actor believed them to be.

**SECTION 4.38. RENUNCIATION AS A DEFENSE TO ATTEMPT**

- A. A person is not liable under section 4.36 of this chapter if, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, he avoids the commission of the crime attempted by abandoning his criminal effort.
- B. The defense of renunciation is an affirmative defense.

**SECTION 4.39. SOLICITATION**

A person commits the crime of solicitation if, with the intent of causing another to engage in specific conduct constituting a crime or an attempt to commit a crime, he commands or solicits such other person to engage in that conduct.

**SECTION 4.40. RENUNCIATION AS A DEFENSE TO SOLICITATION**

- A. It is a defense to the crime of solicitation that the person soliciting the crime, after soliciting another person to commit the crime, persuaded the person solicited not to commit the crime or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal intent.
- B. The defense of renunciation is an affirmative defense.

**SECTION 4.41. CONSPIRACY**

A person is guilty of criminal conspiracy if, with the intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

**SECTION 4.42. CONSPIRATORIAL RELATIONSHIP**

If a person is guilty of conspiracy, as defined above, and knows that a person with whom he conspires to commit a crime has conspired or will conspire with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

**SECTION 4.43. RENUNCIATION AS A DEFENSE TO CONSPIRACY**

- A. It is a defense to a charge of conspiracy that the actor, after conspiring to commit a crime, thwarted commission of the crime which was the object of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. Renunciation by one conspirator does not affect the liability of another conspirator who does not join in the renunciation of the conspiratorial objective.
- B. The defense of renunciation is an affirmative defense.

**SECTION 4.44. DURATION OF CONSPIRACY**

- A. Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are completed or the agreement that they be committed is abandoned by the defendant and those with whom he conspired.
- B. Abandonment is presumed if neither the defendant nor anyone with whom he conspired does any overt act in pursuance of the conspiracy during the applicable period of limitation.
- C. If an individual abandons the agreement, the conspiracy is terminated as to him only if and when he advises those with whom he conspired of his abandonment or he informs the law enforcement authorities of the existence of the conspiracy and of his participation therein.

**SECTION 4.45. DEFENSES TO SOLICITATION AND CONSPIRACY**

- A. Except as provided in subsection (B) of this section, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:
  - 1. He or the person he solicits or with whom he conspires does not occupy a particular position or have a particular characteristic which is an element of such crime, if he believes that one of them does; or



2. The person whom he solicits or with whom he conspires is irresponsible or has an immunity to prosecution or conviction for the commission of the crime, or, in the case of conspiracy, has feigned the agreement; or
  3. The person with whom he conspires has not been prosecuted for or convicted of the conspiracy of a crime based upon the conduct in question, or has previously been acquitted.
- B. It is a defense to the charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or an accomplice under section 4.10.

## **PART VIII. CRIMES AGAINST PUBLIC JUSTICE**

### **SECTION 4.46. DEFINITIONS RELATING TO CRIMES AGAINST PUBLIC JUSTICE**

As used in this part, unless the context requires otherwise:

- A. "Pecuniary benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary, in the form of money, property, commercial interests or economic gain.
- B. "Public servant" includes:
1. A public officer or employee of the Tribe or of any political subdivision thereof;
  2. A person serving as an advisor, consultant or assistant at the request or direction of the Tribe, or any political subdivision thereof;
  3. A person nominated, elected or appointed to become a public servant, although not yet occupying the position; and
  4. Jurors.
- C. "Benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary.
- D. "Material" means that which could have affected the course or outcome of any proceeding or transaction. Whether a false statement is "material" in a given factual situation is a question of law.
- E. "Statement" means any representation of fact and includes a representation of opinion, belief or other state of mind where the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.
- F. "Sworn statement" means any statement knowingly given under oath or affirmation attesting to the truth of what is stated.
- G. "Custody" means the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order.
- H. "Escape" means the unlawful departure, including failure to return to custody after temporary leave granted for a specific purpose or limited period, of a person from custody or a correctional facility.
- I. "Fireman" means any fire or forestry department employee, or authorized fire department volunteer, vested with the duty of preventing or combating fire or preventing the loss of life or property by fire.

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- J. “Official proceeding” means a proceeding before any judicial, legislative or administrative body or officer, wherein sworn statements are received, and includes any referee, hearing examiner, commissioner, notary or other person taking sworn statements in connection with such proceedings.
- K. “Physical evidence” means any article, object, record, document or other evidence of physical substance.
- L. “Public record” means any book, document, paper, file, photograph, sound recording, computerized recording in machine storage, records or other materials, regardless of physical form or characteristic, made, received, filed or recorded in any government office or agency pursuant to law or in connection with the transaction of public business, whether or not confidential or restricted in use.
- M. “Testimony” means oral or written statements that may be offered by a witness in an official proceeding.

**SECTION 4.47. BRIBE GIVING**

A person commits the crime of bribe giving if he offers, confers or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, action, decision or exercise or discretion in his official capacity. Bribe giving is a felony.

**SECTION 4.48. BRIBE RECEIVING**

- A. A public servant commits the crime of bribe receiving if he:
  - 1. Solicits any pecuniary benefit with the intent that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or
  - 2. Accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.
- B. Bribe receiving is a felony.

**SECTION 4.49. BRIBERY DEFENSES**

- A. In any prosecution for bribe giving it is a defense that the defendant offered, conferred or agreed to confer the pecuniary benefit as a result of the public servant's conduct constituting extortion or coercion.
- B. It is no defense to either bribe or giving or receiving that the person sought to be influenced was not qualified to act in the desired way, whether because he had not assumed office, lacked jurisdiction or for any other reason.

**SECTION 4.50. PERJURY**

A person commits the crime of perjury if he makes a false sworn statement in regard to a material issue, knowing it to be false. Perjury is a felony.

**SECTION 4.51. FALSE SWEARING**

A person commits the crime of false swearing if he makes a false sworn statement, knowing it to be false.

**SECTION 4.52. UNSWORN FALSIFICATION**

A person commits the crime of unsworn falsification if he knowingly makes any false written statement to a public servant in connection with an application for any benefit.

**SECTION 4.53. DEFENSES TO PERJURY AND FALSE SWEARING LIMITED**

It is no defense to a prosecution for perjury or false swearing that:

- A. The statement was inadmissible under the rules of evidence; or
- B. The oath or affirmation was taken or administered in an irregular manner; or
- C. The defendant mistakenly believed the false statement immaterial.

**SECTION 4.54. RETRACTION AS A DEFENSE**

It is a defense to a prosecution for perjury or false swearing committed in an official proceeding that the defendant retracted his false statement:

- A. In a manner showing a complete and voluntary retraction of the prior false statement; or
- B. During the course of the same official proceeding in which it was made; and
- C. Before the subject matter of the official proceeding is submitted to the ultimate trier of fact.

**SECTION 4.55. CORROBORATION OF FALSITY REQUIRED**

In any prosecution for perjury or false swearing, falsity of a statement may not be established solely through contradiction by the testimony of a single witness.

**SECTION 4.56. ESCAPE**

A. A person commits the crime of escape if he escapes from custody or permits or assists a person in custody to escape.

B. Escape is a felony if:

- 1. The person uses or threatens to use physical force escaping from custody; or
- 2. Having been convicted or found guilty of a felony, the person escapes from custody imposed as a result thereof; or
- 3. The person escapes from a correctional facility; or
- 4. Aided by another person actually present, the person uses or threatens to use physical force in escaping from custody or a correctional facility; or
- 5. The person uses or threatens to use a dangerous or deadly weapon escaping from custody or a correctional facility.

**SECTION 4.57. FAILURE TO APPEAR**

A. A person commits the crime of failure to appear if, having by Court order been released from custody upon a release agreement upon the condition that he will subsequently appear personally in connection with a charge against him of having committed a crime, he intentionally fails to appear as required.

B. Failure to appear is a felony if the underlying charge or crime is a felony.

**SECTION 4.58. OBSTRUCTING GOVERNMENTAL ADMINISTRATION**

A. A person commits the crime of obstructing governmental administration if he intentionally obstructs, impairs or hinders the administration of law or other governmental function by means of intimidation, force, physical interference or obstacle.

B. This section shall not apply to the obstruction of unlawful governmental action.

**SECTION 4.59. ASSAULTING A LAW ENFORCEMENT OFFICER OR FIRE FIGHTER**

A person commits the crime of assaulting a law enforcement officer or fire fighter when the person intentionally or knowingly causes physical injury to another person, if they know or reasonably should know the other person is a law enforcement officer or fire fighter, and while the other person is acting in the course of official duty. Assaulting a law enforcement officer or fire fighter is a felony.

**SECTION 4.60. REFUSING TO ASSIST A PEACE OFFICER**

A person commits the offense of refusing to assist a peace officer if upon command by a person known by him to be a peace officer, he unreasonably refuses or fails to assist in effecting an authorized arrest or preventing another from committing a crime.

**SECTION 4.61. REFUSING TO ASSIST IN FIRE FIGHTING OPERATIONS**

A person commits the crime of refusing to assist in fire fighting operations when a person knows or should reasonably know that another person is a fire fighter or law enforcement officer, and, upon command by the fire fighter or law enforcement officer, the person unreasonably refuses or fails to assist in extinguishing a fire, fails to assist in protecting property threatened by a fire, or disobeys a lawful order relating to the conduct of the person in the vicinity of a fire.

**SECTION 4.62. BRIBING A WITNESS**

A. A person commits the crime of bribing a witness if he offers, confers or agrees to confer any pecuniary benefit upon a witness in any official proceeding, or a person he believes may be called as a witness, with the intent that:

1. His testimony as a witness will thereby be influenced; or
2. He will avoid legal process summoning him to testify; or
3. He will absent himself from any official proceeding to which he has been legally summoned.

B. Bribing a witness is a felony.

**SECTION 4.63. BRIBE RECEIVING BY A WITNESS**

A. A witness in any official proceeding, or a person who believes he may be called as a witness, commits the crime of bribe receiving by a witness if he solicits any pecuniary benefit with the intent, or accepts or agrees to accept any pecuniary benefit upon an agreement or understanding, that:

1. His testimony as a witness will thereby be influenced; or
2. He will avoid legal process summoning him to testify; or
3. He will absent himself from any official proceeding to which he has been legally summoned.

B. Bribe receiving by a witness is a felony.

**SECTION 4.64. TAMPERING WITH A WITNESS**

A. A person commits the crime of tampering with a witness if:

1. He knowingly induces or attempts to induce a witness in any official proceeding to offer false testimony or unlawfully withhold any testimony; or
2. He knowingly induces or attempts to induce a witness to absent himself from any official proceeding to which he has been legally summoned.

B. Tampering with a witness is a felony.

**SECTION 4.65. TAMPERING WITH PHYSICAL EVIDENCE**

A person commits the crime of tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or to the knowledge of such person is about to be instituted; he:

- A. Destroys, mutilates, alters, conceals or removes physical evidence impairing its veracity or availability; or
- B. Knowingly makes, produces or offers any false physical evidence; or
- C. Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

**SECTION 4.66. TAMPERING WITH PUBLIC RECORDS**

A person commits the crime of tampering with public records if, without lawful authority, he knowingly destroys, mutilates, conceals, removes, makes a false entry in or falsely alters any public record.

**SECTION 4.67. RESISTING ARREST**

- A. A person commits the crime of resisting arrest if he intentionally resists a person known by him to be a peace officer in making an arrest.
- B. "Resists", as used in this section, means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person.
- C. It is no defense to a prosecution under this section that the peace officer lacked legal authority to make the arrest, provided he was acting under color of his official authority.

**SECTION 4.68. HINDERING PROSECUTION**

- A. A person commits the crime of hindering prosecution if, with intent to hinder the apprehension, prosecution, conviction or punishment of a person who has committed a crime or with the intent to assist a person who has committed a crime in profiting or benefiting from the commission of the crime, he:
  1. Harbors or conceals such person; or
  2. Warns such person of impending discovery or apprehension; or
  3. Provides or aids in providing such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or

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4. Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person; or
5. Suppresses by any act of concealment, alteration or destruction of physical evidence which might aid in the discovery or apprehension of such person; or
6. Aids such person in securing or protecting the proceeds of the crime.

B. Hindering prosecution is a felony.

**SECTION 4.69. DEFENSES FOR HINDERING LIMITED**

It is no defense to a prosecution for hindering prosecution that the principal offender is not apprehended, prosecuted, convicted or punished.

**SECTION 4.70. SIMULATING LEGAL PROCESS**

A person commits the crime of simulating legal process if he knowingly issues or delivers to another any document that in form and substance falsely simulates civil or criminal process. Simulating legal process is a felony.

**SECTION 4.71. CRIMINAL IMPERSONATION**

A. A person commits the crime of criminal impersonation if, with intent to obtain a benefit or to injure or defraud another, he falsely impersonates a public servant and does an act in such an assumed character.

B. Criminal impersonation is a felony if the public servant impersonated is a peace officer, judge or justice of the peace.

**SECTION 4.72. INITIATING A FALSE REPORT**

A person commits the crime of initiating a false report if he knowingly initiates a false alarm or report which is transmitted to a fire department, law enforcement agency or other organization that deals with emergencies involving danger to life or property.

**PART IX. GENERAL OFFENSES AGAINST PERSONS**

**SECTION 4.73. CRIMINAL HOMICIDE**

A. A person commits criminal homicide if, without justification or excuse, he intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being. Criminal homicide is a felony.

B. "Human being" means a person who has been born and was alive at the time of the criminal act.

**SECTION 4.74. ASSAULT**

A. A person commits the crime of assault if the person:

1. Intentionally, knowingly or recklessly causes physical injury however slight to another;
2. Intentionally places another in reasonable apprehension of being physically injured; or
3. With criminal negligence causes physical injury to another by means of a deadly weapon.

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- B. Assault is a felony if the person:
1. Has previously been convicted of assaulting the same victim;
  2. Has previously been convicted of assault and both assaults involved domestic abuse;
  3. The assault involves physical injury however slight and is committed in the immediate presence of, or is seen or directly perceived in any other manner by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim;
  4. Causing physical injury however slight, commits the assault knowing that the victim is pregnant;
  5. Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;
  6. Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;
  7. Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;
  8. Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle;
  9. While being aided by another person actually present, intentionally or knowingly causes physical injury to another;
  10. While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member of a youth correction facility while the other person is acting in the course of official duty;
  11. Intentionally, knowingly or recklessly causes physical injury to an emergency medical technician, or a paramedic while the emergency medical technician or paramedic is performing official duties;
  12. Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger;
  13. Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi;
  14. Intentionally or knowingly causes serious physical injury to another;
  15. Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon;
  16. Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;
  17. Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon;
  18. Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants; or

19. Strangles the victim and the assault involves domestic abuse.

**SECTION 4.75. MENACING**

A person commits the crime of menacing if, by word or conduct he intentionally attempts to place another person in fear of imminent serious physical injury.

**SECTION 4.76. RECKLESSLY ENDANGERING ANOTHER PERSON**

A person commits the crime of recklessly endangering another person if he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

**SECTION 4.77. CRIMINAL MISTREATMENT**

- A. A person commits the crime of criminal mistreatment if:

1. The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly or with criminal negligence withholds necessary and adequate food, physical care or medical attention from that other person; or
2. The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly or with criminal negligence:
  - a. Causes physical injury or injuries to the dependent person;
  - b. leaves the dependent person unattended at a place for such a period of time as may be likely to endanger the health or welfare of that person;
3. The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly:
  - a. Deserts the dependent person in a place with the intent to abandon that person;
  - b. Hides the dependent person's money or property, or takes the money or property for any use or purpose not in the due and lawful execution of the person's responsibility; or
  - c. Takes charge of a dependent person for the purposes of fraud.
4. If the person knowingly fails to report the crime of criminal mistreatment committed by another person.

- B. As used in this section:

1. "Dependent person" means a person who because of either age or a physical or mental disability is dependent upon another to provide for the person's physical needs.
2. "Legal duty" includes, but is not limited to a duty created by familial relationship, court order, contractual agreement, or statutory or case law.

- C. Criminal mistreatment is a felony if committed intentionally or knowingly.



**SECTION 4.78. FALSE IMPRISONMENT**

- A. A person commits the crime of false imprisonment if, with the intentional use of force, however slight, he confines the person of another.
- B. The victim of the crime of false imprisonment need not know that he has been confined.

**SECTION 4.79. KIDNAPPING**

A person commits the crime of kidnapping if, with the intentional use of force, he unlawfully effects the confinement and transportation of another. Kidnapping is a felony.

**SECTION 4.80. CUSTODIAL INTERFERENCE**

- A. A person commits the crime of custodial interference if they:
  - 1. knowing or having reason to know that he has no legal right to do so, takes, entices, or keeps a person from his lawful custodian with intent to hold him permanently for a protracted period or in violation of a lawful custody or visitation order;
  - 2. Causes the person taken, enticed or kept from his lawful custodian to be removed from the Umatilla Indian Reservation or the state of Oregon; or
  - 3. Exposes the person taken to a substantial risk of illness or physical injury.
- B. Custodial interference is a felony.

**SECTION 4.81. COERCION**

- A. A person commits the crime of coercion when he compels or induces another person to engage in conduct from which he has a legal right to abstain, or to abstain from engaging in conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complies with, the actor or another will:
  - 1. Cause physical injury to the actor or some other person;
  - 2. Cause damage to property;
  - 3. Engage in other conduct constituting a crime;
  - 4. Accuse some person of a crime or cause criminal charges to be instituted against him;
  - 5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;
  - 6. Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act;
  - 7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
  - 8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
  - 9. Inflict any other harm which would not benefit the actor.

B. Coercion is a felony.

#### SECTION 4.82. DEFENSE TO COERCION

In any prosecution for coercion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

#### SECTION 4.83. CRIMINAL DEFAMATION

A person commits the crime of criminal defamation if with intent to defame another person he knowingly:

- A. Publishes or causes to be published false and scandalous durable matter concerning such other person; or
- B. Publishes or causes to be published false and scandalous matter concerning such other person by means of a radio or television broadcast.
- C. It shall be a defense to any prosecution under this section that:
  - 1. The matter published was true and was published with good motives and for justifiable ends; or
  - 2. The publication is protected by an absolute or qualified privilege.

#### SECTION 4.84. STALKING

A. Definitions.

- 1. "Alarm" means to cause apprehension or fear resulting from the perception of danger.
- 2. "Coerce" means to restrain, compel or dominate by force or threat.
- 3. "Contact" includes but is not limited to:
  - a. Following the other person,
  - b. Waiting outside the home, property, place of work or school of the other person's family or household,
  - c. Sending or making written communications in any form to the other person,
  - d. Speaking with the other person by any means,
  - e. Communicating with the other person through a third person,
  - f. Committing a crime against the other person,
  - g. Communicating with a third person who has some relationship to the other person with the intent of effecting the third person's relationship with the other person, or with the intent of gaining knowledge about the other person,
  - h. Communicating with business entities with the intent of effecting some right or interest of the other person, or gaining knowledge of the other person,
  - i. Damaging the other person's home, property, place of work or school, or

- j. Delivering directly or through a third person any object to the other person at any time or place,
  - k. Using technology to track, monitor or otherwise gain knowledge of the other person's activity, including but not limited to the use of computer spy ware, surveillance equipment, tracking devices or long-distance magnification devices.
4. "Repeated" means two or more times.
- B. A person commits the crime of stalking when:
- 1. The person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person;
  - 2. It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and
  - 3. The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or the victim's immediate family or household.
- C. Stalking is a felony.

**PART X. CRIMES OF DOMESTIC OR FAMILY ABUSE**

**SECTION 4.85. DOMESTIC ABUSE**

- A. Purpose. The Confederated Tribes of the Umatilla Indian Reservation recognize that its strength and sovereignty is grounded in its members. The future of the Confederated Tribes requires a safe and healthy community. Domestic abuse is a serious crime which erodes our future. Through this code the Confederated Tribes will continue to embrace the time honored traditions of the sacredness of our people by ensuring the safety of our people, protecting the community from the impacts of violent acts and ensuring that offenders are held accountable to the community.
- B. Definitions.
- 1. Domestic abuse. The attempt, solicitation of, conspiracy to commit or commission of an act prohibited by Part IX, Part XII, or Section 4.89 of this Code between spouses, domestic partners, adult persons related by blood, marriage or adoption, persons cohabiting or who have cohabited with each other, persons who have been involved in an intimate relationship with each other prior to filing a petition for a protection order, or unmarried parents of a child.
  - 2. Descendant. Persons related by descending lineal consanguinity, step-children, lawfully adopted children, foster children and wards.
- C. Mandatory Arrest. When a law enforcement officer responds to a domestic disturbance call and has probable cause to believe that an offense of domestic abuse has occurred, the officer shall arrest and take into custody the predominant aggressor, but is not required to arrest both persons. A law enforcement officer shall arrest a person whom the officer has probable cause to believe violated a domestic abuse protection order.
- D. Predominant Aggressor. When a law enforcement officer makes an arrest pursuant to subsection (A) of this section, the officer shall make every effort to determine who is the predominant aggressor by considering, among other factors:

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1. The relative severity of the injuries inflicted or the seriousness of threats creating fear of physical injury;
  2. If reasonably ascertainable, the history of domestic abuse involving the persons in any jurisdiction;
  3. Whether any alleged crime was committed in self-defense;
  4. The likelihood of future injuries to each person; and
  5. Whether the incident occurred in the presence of children whether visually or auditorily, or perceived by them in any manner.
- E. Injury Not Determinative. If the officer determines that one person was the predominant aggressor, the officer is not required to arrest the other person believed to have caused physical harm or bodily injury against the predominant aggressor, if any.
- F. Prevention of Future Violence. Whenever a law enforcement officer has reason to believe that a person has been subjected to domestic abuse, the officer shall use all reasonable means to prevent further violence, including but not limited to:
1. Confiscating any weapon involved in the alleged domestic violence or taking temporary possession of any weapons found in the household;
  2. Assisting in obtaining transportation of the victim to a shelter if so desired;
  3. Assisting the victim in removing essential personal effects;
  4. Assisting the victim and children in obtaining necessary medical treatment;
  5. Giving the victim immediate and adequate notice of rights, remedies and services available which shall include the following:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, you have the right to go to the tribal court and file a petition requesting any of the following orders for relief: (a) an order restraining your attacker from contacting you or your children; (b) an order directing your attacker to leave your household; (c) an order preventing your attacker from entering your residence, school, business or place of employment; (d) an order awarding you or the other parent temporary custody of a minor child or children; or (e) an order directing the party not granted custody to pay support of minor children. You can obtain a copy of the officer's report at no cost to you.

You also have the right to obtain a protection order in state court.

The forms you need to obtain an order for protection can be obtained from the clerk of the court or from the Family Violence Program.

- G. Mandatory Consultation. Prosecution shall not decline to file or dismiss a domestic abuse case without prior consultation and review with the arresting officer(s) and a domestic abuse advocate.
- H. Protection Order Process. Any person who has been the victim of domestic abuse within the preceding 180 days may petition the Court for a protection order. The person may seek relief by filing a petition with the Court alleging that the person is in danger of abuse from the respondent, that the person has been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition, and particularly describing the nature of the abuse and the dates thereof. A petition form shall be available at the court and the Family Violence Program office.

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1. The petitioner has the burden of proving a claim by a preponderance of the evidence.
  2. For purposes of computing the 180-day period, any time during which the respondent is incarcerated or has a principal residence more than 100 miles from the principal residence of the petitioner shall not be counted as part of the 180-day period.
  3. The Court shall not assess fees for the filing of a petition for protection order or responses to that petition.
- I. Scope of Protection Orders. If the Court finds by a preponderance of the evidence that an individual has perpetrated an act of domestic abuse against another and the victim is in danger of further abuse, the court may issue an order:
1. restraining the individual from having any contact or communication, direct or indirect, including by phone, mail, email, text message, or through third persons, with a petitioner, the petitioner's children, or the petitioner's intimate partner;
  2. prohibiting the individual from being within a specified distance from petitioner, the petitioner's children, or the petitioner's intimate partner;
  3. directing the individual to leave a specified household;
  4. prohibiting the individual from being within a specified distance of the residence of the petitioner or the petitioner's intimate partner for the duration of the order;
  5. prohibiting the individual from entering the petitioner's residence, school, business or place of employment, or the children's school or daycare;
  6. awarding the petitioner temporary custody of or visitation with a minor child or children;
  7. awarding temporary child support. In the event child support is ordered, the Court shall notify the Office of Child Support Enforcement to assist in determining the amount of child support owed pursuant to the relevant provisions of the Family Law Code;
  8. excluding the respondent from the reservation, if the Court finds exclusion is necessary to prevent future acts of domestic abuse; or
  9. any other order the Court deems necessary or appropriate to ensure the safety of the petitioner or petitioner's children.
- J. Respondent's Rights in Protection Order Proceeding. Every respondent shall be given reasonable notice and opportunity to be heard sufficiently to protect that person's right to due process.
1. Except in the case of an ex parte temporary order, a hearing on a petition for a protection order shall be heard within 30 days of filing of the petition.
  2. At the time a petition for a protection order is filed, the court clerk shall issue a notice of hearing date. The Court shall forward a copy of the petition and notice of hearing date to the Umatilla Tribal Police Department. The Umatilla Tribal Police shall attempt to serve the notice on the respondent at least 7 days prior to the scheduled hearing date. The Umatilla Tribal Police Department shall file proof of service with the Court prior to the scheduled hearing date.
  3. Every respondent has the right to be represented by an attorney at their own expense in any protection order proceeding.

- K. Ex Parte Orders and Related Procedures. The Court may issue an ex parte temporary order for protection when it finds by a preponderance of the evidence that a petitioner is in immediate danger of domestic abuse.
1. If an ex parte temporary order is issued, the Court shall hold a full hearing within 30 days of issuance of the temporary order and provide both the petitioner and respondent with notice of the hearing at least 14 days prior to the hearing.
  2. Upon issuing a temporary protection order, the Court shall provide the Umatilla Tribal Police Department with the information it has available regarding the location of the respondent. The Umatilla Tribal Police Department shall make reasonable efforts to personally serve the respondent within 7 days of issuance of an ex parte order. If personal service is not had within 7 days of issuance of an ex parte order, the Umatilla Tribal Police Department shall mail a copy of the order, return receipt requested, to the last known address of the respondent. Proof of service shall be filed with the Court.
  3. Upon issuing an ex parte temporary protection order, the Court shall immediately notify the Umatilla Tribal Police Department and provide them with a copy of the order.
- L. Protection Order Requirements. Every protection order issued under this section shall contain the language substantially similar to the following in a separate section immediately above the signature of the judge, if any:

**CERTIFICATE OF COMPLIANCE WITH THE VIOLENCE AGAINST WOMEN ACT: This protective order meets all full faith and credit requirements of the Violence Against Women Act, [18 U.S.C. 2265](#). This court has jurisdiction over the parties and the subject matter. The respondent was afforded notice or this order has been issued ex parte due to immediate danger and the respondent has been given a timely opportunity to be heard or will be given an opportunity to be heard in a timely manner as provided by the law of this jurisdiction. THIS ORDER IS VALID AND ENTITLED TO ENFORCEMENT IN THIS AND ALL OTHER JURISDICTION'S UNDER FEDERAL FULL FAITH AND CREDIT LAWS.**

**WARNING: POSSESSION OF A FIREARM OR AMMUNITION BY RESPONDENT WHILE THIS ORDER IS IN EFFECT MAY BE PROHIBITED UNDER FEDERAL OR STATE LAW.**

**WARNING: ONLY THE COURT HAS THE POWER TO ALTER THESE CONDITIONS REGARDLESS OF THE CONSENT OF THE PROTECTED PARTY.**

1. The Court shall provide the Umatilla Tribal Police Department and Prosecutor's Office with a copy of every protection order it issues within 24 hours of issuance.
  2. The Umatilla Tribal Police Department shall make reasonable efforts to ensure every protection order issued in accordance with this part is recorded in Oregon's Law Enforcement Data System and other relevant local and national law enforcement criminal data information systems.
- M. Automatic Court Protection Order in Criminal Proceedings. As a condition of release, every defendant arrested and taken into custody for a domestic abuse crime shall be issued a court order of protection prior to release from custody, which shall be deemed an order of the court and is effective without the need for judicial signature and shall remain in effect until otherwise acted upon by the Court or 180 days has passed since issuance, whichever is earlier. The Umatilla Tribal Police Department shall ensure the defendant is given a copy of the

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protection order prior to release from custody. A copy of the protection order shall be sent to the victim, Court, and Prosecutor's Office within 24 hours. The Umatilla Tribal Police Department shall also retain a copy for their records.

1. The protection order shall state the following:
  - a. The defendant is restrained from having any contact or communication, direct or indirect, including by phone, mail, email, text message, or through third persons, with the victim(s), the victim(s)' children, and the victim's intimate partner;
  - b. The defendant is prohibited from being within 1000 feet of the victim(s), the victim(s)' children, or the victim(s) intimate partner(s);
  - c. The defendant shall leave the residence of the victim until further order of the Court regardless of whose name is on any lease, mortgage, or other real estate agreement;
  - d. The defendant is prohibited from being within a 1000 feet of the residence of the victim and the residence of the victim's intimate partner regardless of whose name is on any lease, mortgage, or other real estate agreement;
  - e. The defendant is prohibited from entering the victim's residence, school, business or place of employment, or the children's school or daycare, until further order of the Court;
  - f. The defendant has a right to request a hearing before the Court to modify or dismiss the protection order, and has a right to have an attorney present at that hearing;
  - g. A violation of any provision in the protection order is a crime under the laws of the Confederated Tribes of the Umatilla Indian Reservation and may be a crime in any other jurisdiction.
2. A defendant may request a hearing on the default protection order at any time.
3. A hearing on the request for hearing shall be held within 30 days of a defendant filing such a request.
4. In the event a defendant files a request for hearing within 30 days of receipt of a default protection order, the Court shall notify the Prosecutor's Office at least 7 days prior to the scheduled court date.
5. A form automatic protection order shall be made available to the Umatilla Tribal Police Department and relevant jail facility to use in accordance with this subsection.
6. The Prosecutor shall represent the Confederated Tribes at any hearing on the default protection order requested by a defendant.

**SECTION 4.86. ARREST WITHOUT WARRANT**

- A. A law enforcement officer shall arrest and take into custody a person without a warrant if 1) the officer has probable cause to believe that the person has committed a crime of domestic abuse, whether that crime was committed in or outside the presence of the officer; 2) the officer has probable cause to believe a person has violated the terms of a restraining or protective order that was previously personally served upon the person, or that the person to be arrested has actual notice of the order; 3) the person protected by a foreign restraining or protective order presents a copy of the order to the officer and represents that the order

supplied is the most recent order in effect between the parties and that the person restrained by the order was personally served with a copy of the order or has actual notice of the order, and the officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining or protective order; 4) the person protected by a foreign restraining or protective order has filed a copy of the order with a court or has caused the order to be entered into the Law Enforcement Data System, or in the databases of the National Crime Information Center of the United States Department of Justice, and the officer has probable cause to believe that the person to be arrested has violated the terms of the order; or 5) the officer has probable cause to believe that the person to be arrested has been charged with an offense and is presently released as to that charge, and that the person has failed to comply with a no contact provision of the release agreement or a no contact provision of conditional release on recognizance ordered by a court.

- B. No law enforcement officer shall be held liable criminally or civilly for making an arrest without a warrant upon probable cause as set forth above provided that
  - 1. the officer acted in good faith; or
  - 2. The law enforcement officer had a reasonable belief that any protective or restraining order in question is in effect and that the person restrained was personally served with the order or has actual notice of the terms of the order.
- C. No provision of this Code section shall be construed so as to abrogate or infringe upon the sovereign immunity of the Confederated Tribes of the Umatilla Indian Reservation.

#### SECTION 4.87. AUTHORITY OF LAW ENFORCEMENT TO SEIZE WEAPONS

- A. Incident to an arrest for a crime of domestic abuse or an arrest for violation of a protective order, restraining order, or for violation of the terms and conditions of a release order, a law enforcement officer:
  - 1. Shall seize all weapons that are alleged to have been involved or threatened to be used in a commission of the crime;
  - 2. May seize a weapon that is in the plain view of the officer or that was found pursuant to a consensual search, as necessary for the protection of the officer or the other person.

#### SECTION 4.88. OFFICIALS WHO BATTER

- A. No special consideration shall be made for any person because of their official capacity as a law enforcement officer or other public official. All procedures and duties set out in this code shall be strictly adhered to, regardless of any administrative, interagency, or departmental investigation and sanctions.
- B. Upon receiving notification that a law enforcement officer is a possible perpetrator:
  - 1. The dispatcher shall immediately notify the Chief of Police and the Tribal Prosecutor. The Chief or an appropriate designee shall respond and investigate the alleged incident.
  - 2. No officer of equal or lesser rank shall act as primary investigator for an incident involving another officer. If there is no officer of greater rank available to investigate the incident, the Tribal Prosecutor shall engage an individual law enforcement official from another jurisdiction to investigate the incident. The Tribal Prosecutor shall not be involved in the investigation.



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3. Any officer alleged to have committed an offense shall immediately surrender all weapons to the investigating officer. No weapons shall be returned to the officer under investigation without the written consent of the Chief of Police and the Tribal Prosecutor.
4. Investigation and prosecution will proceed regardless of administrative, interagency, or departmental investigation and sanctions.

**SECTION 4.89. VIOLATION OF PROTECTION ORDER**

- A. A person commits the crime of violating a protection order when, after having been served with a protection order, they violate any provision of that order.
- B. Violation of a protection order is a felony if:
  1. A defendant has been issued a default protection order and violates that order while the underlying domestic abuse case is pending and the underlying case was charged as a felony;
  2. The defendant has been convicted of violating a domestic abuse related protection order in this or any other jurisdiction within the proceeding 5 years;
  3. The defendant has a prior conviction for domestic abuse; or
  4. The protection order was violated by commission of a felony.

**SECTION 4.90. PENALTIES FOR CRIME OF DOMESTIC ABUSE**

- A. In order to succeed in meeting the goal of eliminating domestic abuse, the Court shall impose appropriate penalties.
- B. The Court shall consider both aggravating and mitigating factors in sentencing the defendant after conviction.
- C. The aggravating factors include but are not limited to:
  1. Nature and Degree of injury to the victim,
  2. Other impacts to victim's life as a result of the incident,
  3. The use of a weapon,
  4. Prior history of personal crimes against current or former victim(s),
  5. Prior convictions of crimes against persons,
  6. Use of alcohol and drugs at the time of the incident,
  7. Whether children were in the residence at the time of the incident,
  8. Whether children witnessed, saw or heard the incident,
  9. Fleeing from law enforcement,
  10. Violation of release agreements,
  11. Prior violation of restraining orders,
  12. Intimidation of witnesses and or victims.

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- D. Mitigating factors shall include but are not limited to:
1. Appropriate progress in Court-approved counseling and or treatment,
  2. Adherence to release conditions,
  3. Documentation of abstinence from alcohol and drugs,
  4. Lack of criminal history,
  5. Voluntary relinquishment of weapons.
- E. Mandatory Restitution:
1. In addition to any other civil or criminal penalty that may be sentenced, the Court shall order restitution for any offenses under this chapter.
  2. Scope and nature of Order:
    - a. The order of restitution under this section shall direct the defendant to pay to the victim (through the court) the full amount of the victim's losses as determined by the court pursuant to paragraph b.
    - b. For purposes of this section, the phrase "full amount of the victim's losses" includes any costs incurred by the victim for:
      - i. Medical services relating to physical, psychiatric, or psychological care;
      - ii. Physical and occupational therapy or rehabilitation;
      - iii. Necessary transportation, temporary housing, and child care expenses;
      - iv. Lost income;
      - v. Attorneys' fees, plus any costs incurred in obtaining a civil protection order; and
      - vi. Any other losses suffered by the victim as approximate result of the offense.
    - c. The issuance of a restitution order under this section is mandatory. A court may not decline to issue an order under this section because of (i) the economic circumstances of the defendant; or (ii) the fact that a victim has, or is entitled to receive, compensation for his or her injuries from the proceeds of insurance or any other source.
    - d. For purpose of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

**SECTION 4.91. VICTIM – ADVOCATE PRIVILEGE**

- A. Except as otherwise provided in subsection B., a victim of domestic violence may refuse to disclose, and may prevent an advocate, elder, or medical provider from disclosing confidential oral communications between the victim and that the advocate, and/or any

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written records or reports of the advocate concerning the victim, unless the privilege is waived by:

1. the victim; or
  2. the death of the victim.
- B. The privilege does not relieve a person from any duty to report child abuse or neglect, or if the advocate believes the victim's life is in peril. A person may not claim the privilege when providing evidence in proceedings regarding child abuse or neglect.
- C. As used in this section, "advocate" means an employee of or volunteer for a program for victims of domestic violence who:
1. Has a primary function of rendering advice, counseling, or assistance to victims of domestic violence; supervising the employees or volunteers of the program; or administering the program;
  2. Has undergone a minimum of 40 hours of specialized domestic violence advocacy training; and
  3. Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

**SECTION 4.92. ABANDONMENT OF A CHILD**

A person commits the crime of abandonment of a child if, being a parent, lawful guardian or other person lawfully charged with the care or custody of a child under 15 years of age, he deserts the child in any place with intent to abandon it. Abandonment of a child is a felony.

**SECTION 4.93. CHILD NEGLECT**

- A. A person having custody or control of a child under 15 years of age commits the crime of child neglect if, with criminal negligence, he leaves the child unattended in any place for such period of time as may be likely to endanger the health or welfare of such child.
- B. Child neglect is a felony if the person knowingly leaves the child, or allows the child to stay:
1. In a vehicle where controlled substances are being criminally delivered or manufactured;
  2. In or upon premises and in the immediate proximity where controlled substances are criminally delivered or manufactured for consideration or profit or where a chemical reaction involving one or more precursor substances:
    - a. Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance; or
    - b. Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance; or
  3. In or upon premises that have been determined to be not fit for use.

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4. As used in this subsection, “vehicle” and “premises” do not include public places.

**SECTION 4.94. CRIMINAL NONSUPPORT**

- A. A person commits the crime of criminal nonsupport if, being the parent, lawful guardian or other person lawfully charged with the support of a child under 18 years of age, born in or out of wedlock, he refuses or neglects without lawful excuse to provide support for such child.
- B. It is no defense to a prosecution under this section that either parent has contracted a subsequent marriage, that issue has been born of a subsequent marriage, that the defendant is the parent of issue born of a prior marriage or that the child is being supported by another person or agency.
- C. In a prosecution for failing to provide necessary and proper medical attention, it is a defense that the medical attention was provided by treatment by prayer through spiritual means alone by adherents of a bona fide religious denomination that relies exclusively on this form of treatment in lieu of medical attention.
- D. Criminal nonsupport is a felony.

**SECTION 4.95. EVIDENCE OF PATERNITY; CONFIDENTIALITY BETWEEN HUSBAND AND WIFE NOT APPLICABLE; SPOUSES COMPETENT AND COMPELLABLE**

- A. Any disputes regarding paternity or parentage of a child shall be resolved according to the procedures set forth in the Confederated Tribes’ Family Law Code.
- B. No provision of law prohibiting the disclosure of confidential communications between husband and wife apply to prosecutions for criminal nonsupport. A husband or wife is a competent and compellable witness for or against either party.

**SECTION 4.96. ENDANGERING THE WELFARE OF A MINOR**

A person commits the crime of endangering the welfare of a minor if he knowingly:

- A. Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse;
- B. Commits the crime of domestic abuse in the presence of an unmarried person under eighteen (18) years of age;
- C. Permits a person under 18 years of age to enter or remain in a place where unlawful narcotic or dangerous drug activity is maintained or conducted;
- D. Induces, causes or permits a person under 18 years of age to participate in gambling as defined; or
- E. Sells, or causes to be sold, tobacco in any form to a person less than 18 years of age.

**PART XI. CRIMES AGAINST ELDERS OR INCAPACITATED ADULTS**

**SECTION 4.97. TRIBAL ELDER AND INCAPACITATED ADULT PROTECTION**

- A. Purpose. The purpose of this part is to protect elders and incapacitated adults within the jurisdiction of the Reservation from abuse, harassment, exploitation or neglect as defined in this code. This code provides remedies for elder abuse, harassment or neglect situations. The code shall be liberally interpreted in order to achieve its purpose.
- B. Definitions.

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1. Abuse.
  - a. Intentional, knowing, reckless or negligent infliction of bodily injury, unreasonable confinement, intimidation, cruel punishment or treatment resulting in physical harm or pain or mental anguish, by any person, including but not limited to anyone who has a special relationship with the victim such as a spouse, a child, or other relative recognized by tribal ordinance and custom, or a care provider.
  - b. Sexual abuse: any physical contact with the victim intended for sexual gratification of the person making such contact, or for the purpose of degrading or humiliating the victim, and which is not consented to by the victim or for which the consent was obtained by intimidation or fraud;
  - c. Emotional abuse: intentional infliction of threats, humiliation, or intimidation,
  - d. Exploitation: the unauthorized or improper use of funds, property, or other resources of an elder or incapacitated person, or failure to use the funds, property, or other resources to the elder or incapacitated person's benefit or according to the elder's direction.
2. Care Provider: A person, institution, or agency that is either: 1) required by law or custom, 2) is employed to, or 3) volunteers to provide care, services, or resources to an elder.
3. Elder: A senior citizen found on the Reservation who is at least sixty (60) years of age
4. Emergency: A situation in which an elder is immediately at risk of death or injury to person or property and is unable to consent to services which would remove the risk.
5. Family: Immediate family members are the mother, father, siblings, half-siblings, foster-children, children of a person or other persons residing in the same house that owe a duty of care to each other, as determined by tribal custom. Descendants of immediate family members, grandparents, aunts, uncles, and other relatives owe a duty of care as determined by tribal custom and tradition.
6. Good Faith: An honest belief or purpose and the lack of intent to abuse, exploit or neglect.
7. Harassment: Gestures, words or actions which tend to annoy, alarm, or verbally abuse or cause tension or stress on an elder or incapacitated person. Harassment includes, but is not limited to, situations where a person willfully subjects an elder or incapacitated person to unwanted or unwelcome sales, soliciting or begging.
8. Incapacity: The current inability or functional inability of a person to make responsible decisions about himself/herself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age. A person's incapacity can be recognized by an official determination, by the Community, or by circumstances existing at a relevant time.
9. Neglect: The failure by a care provider to provide for, or the interference with, the basic needs of an elder or incapacitated adult by not supplying resources, services, or supervision necessary to maintain minimum physical and mental health, or failing to provide services or resources essential to the elder or incapacitated adult's practice of his customs, traditions, or religion.

**SECTION 4.98. ABUSE OF ELDER OR INCAPACITATED ADULT**

A. A person commits the crime of abuse of an elder or incapacitated adult when he intentionally, knowingly, recklessly or with criminal negligence abuses, harasses, neglects or exploits an elder or incapacitated person.

B. Abuse of an elder or incapacitated adult is a felony if the person has a prior conviction for the same or substantially similar offense.

**SECTION 4.99. DUTY TO REPORT ABUSE, HARASSMENT, OR NEGLECT OF AN ELDER OR INCAPACITATED ADULT**

A. All adults living or working on the Reservation have a duty to report suspected abuse, harassment, exploitation or neglect of an elder or incapacitated adult to the Tribal Police and Department of Children & Family Services.

B. A person who in good faith reports suspected abuse, harassment, exploitation or neglect of an elder or incapacitated adult is immune from any civil or criminal suit based on the person's report.

C. Any person who is required by this code to report such abuse and fails to do is subjected to a civil penalty of up to \$500.00.

D. Any person who knowingly or intentionally makes a report of such abuse not in good faith is subject to 1) a civil penalty of up to \$500.00 and 2) a criminal charge of initiating a False Report.

E. The name of the reporting party who reports abuse, harassment, exploitation or neglect as required by this code is confidential and shall not be released to any person unless the reporting party consents to the release or release is ordered by the Tribal Court.

**SECTION 4.100. ELDER OR INCAPACITATED ADULT PROTECTION ORDER**

A. Any person, including the elder or incapacitated person, may file a petition for a protection order. The petition shall contain the information, sworn before a Notary Public, required by the Tribal Court on its approved petition form, including, but not limited to the name, age and address of the elder; a brief description of the abuse, harassment, exploitation or neglect; and the identity and location of the person(s) perpetrating the abuse, harassment, exploitation or neglect.

1. If a petition in the proper form is filed with the Tribal Court, a protection order may be issued ex parte immediately. The ex parte order shall also set the date for a show cause hearing and be served on all the parties by the Tribal Police. The show cause hearing shall be scheduled within 10 working days of the granting of the ex parte protective order. At the show cause hearing the protection order may be continued or modified, upon a showing by a preponderance of the evidence that the abuse, harassment, exploitation or neglect has occurred.

2. Upon proof of service that the parties have been served with notice of the show cause hearing, the court may 1) reschedule a hearing, 2) issue a default order, or 3) dismiss the protection order if one or both of the parties fail to appear at the hearing.

B. The court shall issue a protection order which provides appropriate protection for an elder or incapacitated person if the Tribal Court determines that an elder or incapacitated person is either 1) abused, 2) harassed, 3) neglected, 4) at risk of physical harm, 5) at risk of financial harm or duress, or in imminent danger of any of the above. Such protection may include, but is not limited to the following:

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1. Restraining the person who has abused, harassed, exploited or neglected an elder from continuing such acts or contacting the elder.
  2. Removing the elder or incapacitated person or the person responsible for abuse, harassment, or neglect from the place where the abuse, harassment, or neglect has taken or is taking place.
  3. Requiring an elder's or incapacitated person's family, conservator/guardian, care provider or other fiduciary to account for the elder's or incapacitated person's funds and property.
  4. Requiring any person who harmed an elder or incapacitated person to pay restitution to the elder for damages resulting from that person's wrong doing.
  5. Ordering the care provider, elder's or incapacitated person's family, Department of Children & Family Services, and or conservator/guardian to prepare a plan for and deliver elder or incapacitated person protection services which provide the least restrictive alternatives for services, care, treatment, placement or financial management consistent with the elder's or incapacitated person's needs.
  6. Ordering the commencement of a proceeding for appointment of a conservator or guardian for the elder or incapacitated person.
- C. Any party may request modification or termination of a protection order. The Court must hold a hearing with the parties present, unless it is shown through a lawful return of service that a party cannot be located.
- D. A protection order shall be issued for a period not to exceed 12 months, but may be extended as many times as necessary to protect the person upon petition to the Court.

**PART XII. SEX – RELATED CRIMES**

**SECTION 4.104. DEFINITIONS RELATING TO SEXUAL OFFENSES**

As used in this part, unless the context requires otherwise:

- A. "Forcible compulsion" means to compel by physical force or threat of physical force; or a threat, express or implied, that places a person in fear of immediate physical injury to himself or another person or in fear that he or another person will immediately or in the future be kidnapped or harmed.
- B. "Mentally defective" means that a person suffers from a mental disease or defect that renders him incapable of appraising the nature of his conduct.
- C. "Mentally incapacitated" means that a person is rendered incapable of appraising or controlling his conduct at the time of the alleged offense because of the influence of a narcotic or other intoxicating substance administered to him without his consent or because of any other act committed upon him without his consent.
- D. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- E. "Sexual contact" means any touching of the sexual or other intimate parts of another person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party, or for the purpose of abusing, humiliating, harassing, or degrading the other person.

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- F. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.
- G. "Place of prostitution" means any place where prostitution is practiced.
- H. "Prostitute" means a person who engages in sexual contact or sexual intercourse for a fee.
- I. "Prostitution enterprise" means an arrangement whereby two or more prostitutes are organized to conduct prostitution activities.

**SECTION 4.105. INCAPACITY TO CONSENT, SEXUAL OFFENSES**

A person is considered incapable of consenting to a sexual act if he is:

- A. Under 18 years of age;
- B. Mentally defective;
- C. Mentally incapacitated;
- D. Physically helpless; or
- E. Incapacitated for any reason, including by the voluntary or involuntary use of intoxicants, medication or drugs.

**SECTION 4.106. IGNORANCE OR MISTAKE AS A DEFENSE**

- A. In any prosecution under these provisions relating to sexual offenses in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that he reasonably believed the child to be older than the age of 16.
- B. When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that he reasonably believed the child to be above the specified age at the time of the alleged offense.
- C. In any prosecution under these provisions relating to sexual offenses in which the victim's lack of consent is based solely upon his incapacity to consent because he is mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense for the defendant to prove that at the time of the alleged offense he did not know of the facts or conditions responsible for the victim's incapacity to consent.

**SECTION 4.107. *REPEALED BY RESOLUTION 09-023 (MARCH 9, 2009)***

**SECTION 4.108. RAPE**

- A. A person who has sexual intercourse with another commits the crime of rape if:
  - 1. The victim is subjected to forcible compulsion by the actor;
  - 2. The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness;
  - 3. The victim is incapacitated; or
  - 4. The victim is under 16 years of age.
- B. Rape is a felony.



**SECTION 4.109. SEXUAL ASSAULT**

- A. A person who has sexual contact with another person or causes such other person to have sexual contact with him or her, is guilty of sexual assault if:
1. He or she knows the conduct is offensive to the other person;
  2. He or she knows that the other person suffers from mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;
  3. He or she knows that the other person is unaware that a sexual act is being committed;
  4. The other person is less than fourteen years old;
  5. He or she has substantially impaired the other person's power to appraise or control his or her conduct by administering or employing drugs, intoxicants or other means for the purpose of preventing resistance;
  6. The other person is less than 16 years old and the actor is at least four years older than the other person;
  7. The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for the general supervision of his or her welfare; or
  8. The other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him or her.
- B. Sexual Assault is a felony.

**SECTION 4.110. SEXUAL EXPLOITATION**

- A. A person commits the crime of sexual exploitation when he or she causes another to be exposed to explicit sexual acts, explicit sexual photographs, or explicit sexual movies, or takes sexually explicit photographs or videos of another if:
1. The victim is less than 16 years of age;
  2. The victim is unaware of the photographs or videos being taken; or
  3. The victim suffers from a mental disease or defect, which renders him or her incapable of appraising the nature of his or her conduct.
- B. Sexual Exploitation is a felony.

**SECTION 4.111. CONTRIBUTING TO THE SEXUAL DELINQUENCY OF A MINOR**

A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if he or she engages in sexual contact or sexual intercourse with another person less than 18 years of age with whom he or she is not married, or causes that other person to engage in sexual contact or sexual intercourse.

**SECTION 4.112. PUBLIC INDECENCY**

A person commits the crime of public indecency if, while in, or in the view of, a public place he performs:

- A. An act of sexual contact or sexual intercourse; or

- B. An act of exposing his or her genitals with the intent of arousing his or her sexual desire or that of another person.

#### SECTION 4.113. BIGAMY

A person commits the crime of bigamy if that person knowingly marries or purports to marry another person at a time when either is lawfully married.

#### SECTION 4.114. INCEST

A person commits the crime of incest if that person marries or engages in sexual contact or sexual intercourse with a person whom they would be prohibited from marrying under Family Law Code Section 2.08(A) including an uncle and his nephew and an aunt and her niece. Incest is a felony.

#### SECTION 4.115. PROSTITUTION

A person commits the crime of prostitution if that person engages in or offers or agrees to engage in sexual contact or sexual intercourse in return for a fee, or that person pays or offers or agrees to pay a fee to engage in sexual contact or sexual intercourse.

#### SECTION 4.116. PROMOTING PROSTITUTION

- A. A person commits the crime of promoting prostitution if, with intent to promote prostitution, that person knowingly:
1. Owns, controls, manages, supervises or otherwise maintains a place of prostitution or a prostitution enterprise;
  2. Induces or causes a person to engage in prostitution or to remain in a place of prostitution;
  3. Receives or agrees to receive money or other property pursuant to an agreement or understanding that the money or other property is derived from a prostitution activity; or
  4. Engages in any conduct that institutes, aids or facilitates an act or enterprise of prostitution.
- B. Promoting prostitution is a felony.

#### SECTION 4.117. COMPELLING PROSTITUTION

A person commits the crime of compelling prostitution if that person knowingly uses force or intimidation to compel another to engage in prostitution; or induces or causes a person under 18 years of age to engage in prostitution; or induces or causes his spouse, child or stepchild to engage in prostitution. Compelling prostitution is a felony.

#### SECTION 4.118. EVIDENCE REQUIRED

- A. A person shall not be convicted for Promoting Prostitution or Compelling Prostitution solely on the uncorroborated testimony of the victim whose prostitution that person is alleged to have promoted or compelled.
- B. On the issue of whether a place is a place of prostitution, its general repute and repute of persons who reside in or frequent the place shall be competent evidence.
- C. Notwithstanding any other limitations, spouses are competent and compellable witnesses for or against either party in prosecutions in actions for Promoting Prostitution and Compelling Prostitution.

**PART XIII. OFFENSES AGAINST PROPERTY**

**SECTION 4.119. DEFINITIONS RELATING TO OFFENSES AGAINST PROPERTY**

- A. “Appropriate property of another to oneself or a third person” or “appropriate” means to:
1. Exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of such property; or
  2. Dispose of the property of another for the benefit of oneself or a third person.
- B. “Deprive another of property” or “deprive” means to:
1. Withhold property of another or cause property of another to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him; or
  2. Dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.
- C. “Obtain” includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.
- D. “Owner of property taken, obtained or withheld” or “owner” means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.
- E. “Property” means any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, real property, choses-in-action, evidence of debt or of contract.

**SECTION 4.120. THEFT**

- A. A person commits the crime of theft when, with intent to deprive another of property or to appropriate property to himself or a third person he takes, appropriates, obtains or withholds such property from the owner thereof.
- B. Theft is a felony if the total value of the property is \$1000 or more.

**SECTION 4.121. DEFENSES TO THEFT**

- A. In a prosecution for theft it is a defense that the defendant acted under an honest claim of right, in that:
1. He was unaware that the property was that of another; or
  2. He reasonably believed that he was entitled to the property involved or had a right to acquire or dispose of it as he did.
- B. In a prosecution for theft by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.
- C. In a prosecution for theft by receiving, it is a defense that the defendant received, retained, concealed or disposed of the property with the intent of restoring it to the owner.

- D. It is a defense that the property involved was that of the defendant's spouse, unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft.

#### SECTION 4.122. THEFT OF LOST, MISLAID PROPERTY

A person who comes into control of property of another that knows or has good reason to know to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to the owner.

#### SECTION 4.123. THEFT BY EXTORTION

- A. A person commits theft by extortion when he compels or induces another person to deliver property to himself or to a third person by means of instilling in him a fear that if the property is not so delivered, the actor or another will in the future:
1. Cause physical injury to some person;
  2. Cause damage to property;
  3. Engage in other conduct constituting a crime;
  4. Accuse some person of a crime or cause criminal charges to be instituted against him;
  5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;
  6. Cause or continue a strike, boycott or other collective action injurious to some person's business; except that such conduct shall not be considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act;
  7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
  8. Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
  9. Inflict any other harm that would not benefit the actor.
- B. Theft by extortion is a felony if the total value of the property is \$1000 or more.

#### SECTION 4.124. THEFT BY DECEPTION

- A. A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, he:
1. Creates or confirms another's false impression of law, value, intention or other state of mind which the actor does not believe to be true;
  2. Fails to correct a false impression which he previously created or confirmed;
  3. Prevents another from acquiring information pertinent to the disposition of the property involved;

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4. Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property whether such impediment is or is not valid, or is or is not a matter of official record; or
  5. Promises performance which he does not intend to perform or knows will not be performed.
- B. “Deception” does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary person in the group addressed.
- C. In a prosecution for theft by deception, the defendant's intention or belief that a promise would not be performed shall not be established by or inferred from the fact alone that such promise was not performed.
- D. In a prosecution for theft by deception committed by means of a bad check, it is prima facie evidence of knowledge that the check or order would not be honored if:
1. The drawer has no account with the drawee at the time the check or order is drawn or uttered; or
  2. Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.
- E. Theft by deception is a felony if the total value of the property is \$1000 or more.

**SECTION 4.125. THEFT BY RECEIVING**

- A. A person commits theft by receiving if he receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property was the subject of theft.
- B. Theft by receiving is a felony if the total value of the property is \$1000 or more.
- C. “Receiving” means acquiring possession, control or title, or lending on the security of the property.

**SECTION 4.126. RIGHT OF POSSESSION**

Right of Possession of property is as follows:

- A. A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds the property from him by means of theft.
- B. A joint or common owner of property shall not be deemed to have a right of possession of the property superior to that of any other joint or common owner of the property.
- C. In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest in the property, even if legal title to the property lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

**SECTION 4.127. THEFT OF SERVICE**

- A. A person commits the crime of theft of services if:
1. With intent to avoid payment therefore, he obtains services that are available only for compensation by force, threat, deception or other means to avoid payment for the services; or

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2. Having control over the disposition of labor or of business, commercial or industrial equipment or facilities of another, he uses or diverts to the use of himself or a third person such labor, equipment or facilities with intent to derive a commercial benefit for himself or a third person not entitled thereto.
- B. As used in this section, "services" includes, but is not limited to, labor, professional services, toll facilities, transportation, telephone or other communications service, entertainment, the supplying of food, lodging or other accommodations in hotels, restaurants or elsewhere the supplying of equipment for use and the supplying of commodities of a public utility nature such as gas, electricity, steam and water.
- C. Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception.
- D. Theft of services is a felony if the total value of services is \$1000 or more.

**SECTION 4.128. UNAUTHORIZED USE OF A VEHICLE**

- A. A person commits the crime of unauthorized use of a vehicle when:
1. He takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner;
  2. Having custody of a vehicle, boat or aircraft pursuant to an agreement between himself or another and the owner thereof whereby he or another is to perform for compensation, a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, he intentionally uses or operates it, without consent of the owner, for his own purpose in a manner constituting a gross deviation from the agreed purpose; or
  3. Having custody of a vehicle; boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, he knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.
- B. Unauthorized use of a vehicle is a felony.

**SECTION 4.129. DEFINITIONS RELATING TO OFFENSES AGAINST PROPERTY**

As used in this part, unless the context requires otherwise:

- A. "Building", in addition to its ordinary meaning, includes any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, including but not limited to separate apartments, offices or rented rooms, each unit is, in addition to being a part of such building, a separate building.
- B. "Dwelling" means a building which regularly or intermittently is occupied by a person lodging therein at night, whether or not a person is actually present.
- C. "Enter or remain unlawfully" means:
1. To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed or privileged to do so; or

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2. To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge.
- D. "Open to the public" means premises which by their physical nature, function, custom, usage, notice or lack thereof or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain is required.
- E. "Person in charge" means a person, his representative or his employee who has lawful control of premises by ownership, tenancy, official position or other legal relationship.
- F. "Premises" includes any building and any real property, whether privately or publicly owned.

**SECTION 4.130. BURGLARY**

- A. A person commits the crime of burglary if he enters or remains unlawfully in a building with the intent to commit a crime therein, or if in effecting entry or while in the building or in immediate flight there from he:
  1. Is armed with burglar's tools as defined in section 4.118 or a deadly weapon;
  2. Causes or attempts to cause physical injury to any person; or
  3. Uses or threatens to use a dangerous weapon.
- B. Burglary is a felony.

**SECTION 4.131. POSSESSION OF BURGLAR'S TOOLS**

- A. A person commits the crime of possession of burglar's tools if he possesses any burglar tool with the intent to use the tool or knowing that some person intends to use the tool to commit or facilitate a forcible entry into premises or theft by a physical taking.
- B. "Burglar tool" means an acetylene torch, electric arc, burning bar, thermal lance, oxygen lance or other similar device capable of burning through steel, concrete or other solid explosive, tool, instrument or other article adapted, designed or commonly used for committing or facilitating a forcible entry into premises or theft by a physical taking.

**SECTION 4.132. CRIMINAL TRESPASS**

A person commits the crime of criminal trespass if he enters or remains unlawfully in a dwelling or in or upon premises.

**SECTION 4.133. ARSON**

- A. A person commits the crime of arson if, by starting a fire or causing an explosion, he intentionally damages:
  1. Any structure, place or thing customarily occupied by people; or
  2. Any property, whether his own or another's and such act recklessly places another person in danger of physical injury or any structure, place or thing customarily occupied by people in danger of damage.
- B. Arson is a felony.

**SECTION 4.134. RECKLESS BURNING**

A person commits the crime of reckless burning if he recklessly damages property of another by fire or explosion.

**SECTION 4.135. CRIMINAL MISCHIEF**

- A. A person commits the crime of criminal mischief if, with intent to cause substantial inconvenience to the owner or to another person or with the intent to damage property, and having no right to do so nor reasonable ground to believe that he has such right he intentionally or recklessly damages, tampers or interferes with the property of another.
- B. Criminal mischief is a felony if the damage caused is more than \$1000.

**SECTION 4.136. ROBBERY**

- A. A person commits the crime of robbery if, in the course of committing or attempting to commit theft, he:
  - 1. Uses or threatens the immediate use of physical force upon the person of another with the intent of:
    - a. Preventing or overcoming resistance to his taking of the property or to his retention thereof immediately after the taking; or
    - b. Compelling the owner of such property or person to deliver the property or to engage in other conduct which might aid in the commission of the theft; or
  - 2. Represents by word or action that he is armed with what purports to be a dangerous or deadly weapon;
  - 3. Is aided by another person actually present;
  - 4. Is armed with, uses or attempts to use a dangerous or deadly weapon; or
  - 5. Causes or attempts to cause serious physical injury to any person.
- B. Robbery is a felony.

**SECTION 4.137. OFFENSIVE LITTERING**

- A. A person commits the crime of offensive littering if he creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally:
  - 1. Discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way;
  - 2. Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle wastes holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way; or
  - 3. Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle which is operating.
- B. As used in this section, “public way” includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities, operated by the Tribe, for use by the general public.



**PART XIV. OFFENSES INVOLVING FRAUD AND DECEPTION**

**SECTION 4.138. DEFINITIONS RELATING TO OFFENSES INVOLVING FRAUD AND DECEPTION**

As used in this part, unless the context requires otherwise:

- A. “Written instrument” means any paper, document, instrument or article containing written or printed matter or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.
- B. “Complete written instrument” means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.
- C. “Incomplete written instrument” means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.
- D. To “falsely make” a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument which purports to be an authentic creation of its ostensible maker but which is not, either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing thereof.
- E. To “falsely complete” a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.
- F. To “falsely alter” a written instrument means to change without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him.
- G. To “utter” means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument or object to another.
- H. “Forged instrument” means a written instrument which has been falsely made, completed or altered.

**SECTION 4.139. FORGERY**

- A. A person commits the crime of forgery if, with intent to injure or defraud, he:
  - 1. Falsely makes, completes or alters a written instrument; or
  - 2. Utters a written instrument which he knows to be forged.
- B. Forgery is a felony if the person violates subsection A:
  - 1. And the written instrument is or purports to be any of the following:
    - a. Part of an issue of money, securities, postage or revenue stamps, or other valuable instruments issued by a government or governmental agency;

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- b. Part of an issue of stock, bonds or other instruments representing interests in or claims against any property or person;
  - c. A deed, will, codicil, contract or assignment;
  - d. A check for \$1,000 or more, a credit card purchase slip for \$1,000 or more, or a combination of checks and credit card purchase slips that, in the aggregate, total \$1,000 or more, or any other commercial instrument or other document that does or may evidence, create, transfer, alter, terminate or otherwise affect a legal right, interest, obligation or status; or
  - e. A public record; or
2. By falsely making, completing or altering, or by uttering, at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels or a combination of at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels.
- C. The value of single check or credit card transactions may be added together under subsection (B)(1)(d) of this section if:
- 1. Against multiple victims within a 30-day period; or
  - 2. Against the same victim within a 180-day period.

**SECTION 4.140. CRIMINAL POSSESSION OF A FORGED INSTRUMENT**

- A. A person commits the crime of criminal possession of a forged instrument if, knowing it to be forged and with intent to utter same, he possesses a forged instrument.
- B. Criminal possession of a forged instrument is a felony if it is of the kind and in the amount specified in Section 4.139(B)(1).

**SECTION 4.141. CRIMINAL SIMULATION**

A person commits the crime of criminal simulation if:

- A. With intent to defraud, he makes or alters any object in such a manner that it appears to have an antiquity, rarity, source or authorship that it does not in fact possess; or
- B. With knowledge of its true character and with intent to defraud, he utters or possesses an object so simulated.

**SECTION 4.142. FRAUDULENTLY OBTAINING A SIGNATURE**

A person commits the crime of fraudulently obtaining a signature if, with intent to defraud or injure another, he obtains the signature of a person to a written instrument by knowingly misrepresenting any fact.

**SECTION 4.143. NEGOTIATING A BAD CHECK**

- A. A person commits the crime of negotiating a bad check if he makes, draws or utters as check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.
- B. For purposes of this section, unless the check or order is postdated, it is prima facie evidence of knowledge that the check or order would not be honored if:

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1. The drawer has no account with the drawee at the time the check or order is drawn or uttered; or
2. Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.

**SECTION 4.144. MISAPPLICATION OF ENTRUSTED PROPERTY**

A person commits the crime of misapplication of entrusted property if, with knowledge that the misapplication is unlawful and that it involves a substantial risk of loss or detriment to the owner or beneficiary of such property, he intentionally misapplies or disposes of property that has been entrusted to him as a fiduciary or that is property of the government or a financial institution.

**SECTION 4.145. OBTAINING EXECUTION OF DOCUMENTS BY DECEPTION**

A person commits the crime of obtaining execution of documents by deception if, with intent to defraud or injure another or to acquire a substantial benefit, he obtains by means of fraud, deceit or subterfuge the execution of a written instrument affecting or purporting to affect the pecuniary interest of any person.

**PART XV. OFFENSES AGAINST PUBLIC ORDER, FIREARMS**

**SECTION 4.146. RIOT**

A person commits the crime of riot if while participating with five or more other persons, he engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm. Riot is a felony.

**SECTION 4.147. DISORDERLY CONDUCT**

A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

- A. Engages in fighting or in violent, tumultuous or threatening behavior;
- B. Makes unreasonable noise;
- C. Uses abusive or obscene language, or makes an obscene gesture, in a public place;
- D. Disturbs any lawful assembly of persons without lawful authority;
- E. Obstructs vehicular or pedestrian traffic on a public way;
- F. Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse;
- G. Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or
- H. Creates a hazardous or physically offensive condition by any act which he is not licensed or privileged to do.

**SECTION 4.148. PUBLIC INTOXICATION**

A person commits the crime of public intoxication if he creates, while in a state of intoxication, any disturbance of the public in any public or private business or place.

**SECTION 4.149. PURCHASE OR POSSESSION OF TOBACCO OR TOBACCO PRODUCTS BY A PERSON UNDER 18 YEARS OF AGE**

- A. No person under the age of 18 years shall attempt to purchase or acquire tobacco or tobacco products.
- B. No person under the age of 18 years shall have personal possession of tobacco or tobacco products.
- C. No person shall provide, sell, or give, or attempt to provide, sell or give tobacco or tobacco products to a minor.
- D. Violations of this provision shall be punishable only by a fine of not more than \$250.00 per violation.

**SECTION 4.150. LOITERING**

A person commits the crime of loitering if he loiters or prowls in a public place without apparent reason and under circumstances which warrant justifiable alarm for the safety of person or property in the vicinity, and upon inquiry by a peace officer, refuses to identify himself and give a reasonable, credible account of his presence and purposes.

**SECTION 4.151. HARASSMENT**

A person commits the crime of harassment if, with intent to harass, annoy or alarm another person, he:

- A. Subjects another to offensive physical contact;
- B. Publicly insults another by abusive or obscene words or gestures in a manner likely to provoke a violent or disorderly response;
- C. Communicates with a person, anonymously or otherwise, by telephone, mail or other form of written communication in a manner likely to cause annoyance or alarm; or
- D. Engages in a course of conduct that alarms or seriously annoys another person and which serves no legitimate purpose.

**SECTION 4.152. ABUSE OF VENERATED OBJECTS**

- A. A person commits the crime of abuse of venerated objects if he intentionally abuses a public monument or structure, a place of worship or burial.
- B. As used in this section and section 4.153 “abuse” means to deface, damage, defile or otherwise physically mistreat in a manner likely to outrage public sensibilities.

**SECTION 4.153. ABUSE OF CORPSE**

- A. A person commits the crime of abuse of corpse if, except as otherwise authorized by law, he intentionally:
  - 1. Abuses a corpse; or
  - 2. Disinters, removes or carries away a corpse.
- B. Abuse of a corpse is a felony.

**SECTION 4.154. NEGLIGENCELY WOUNDING ANOTHER**

Any person who, as a result of his failure to use ordinary care under the circumstances, wounds any other person with a bullet or shot from any firearm, or with an arrow from any bow, shall be punished by imprisonment for a period not to exceed six months or by a fine not to exceed \$500.00, or both. In addition, any person so convicted shall forfeit any privilege to hunt for a period of 10 years following the date of his conviction.

**SECTION 4.155. POINTING FIREARM AT ANOTHER**

Any person over the age of 12 years who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver, or other firearm, at or toward any other person within range of the firearm, except in self defense, shall be fined upon conviction in a sum of not less than \$10.00 nor more than \$500.00, or be imprisoned not less than 10 days nor more than six months, or both.

**SECTION 4.156. CONCEALED WEAPONS**

- A. It shall a misdemeanor for any person to carry a concealed dangerous weapon upon his person without also having in his possession a permit signed by a Judge of the Umatilla Tribal Court or the Chief of the Umatilla Tribal Police Department. A concealed weapons permit issued by any other governmental authority is not recognized on the Umatilla Indian Reservation.
- B. Upon conviction, any weapons so carried shall be confiscated by order to the Umatilla Tribal Court.
- C. This section does not apply to persons in their place of residence or business or to duly appointed law enforcement officers.

**SECTION 4.157. CONCEALED WEAPON PERMITS**

- A. The Judges of the Umatilla Tribal Court and the Chief of the Umatilla Tribal Police Department shall not issue a permit to carry a concealed weapon unless the applicant has demonstrated to their satisfaction that the applicant:
  - 1. Is a citizen of the United States,
  - 2. Is a resident of Oregon, an enrolled member of the Confederated Tribes of the Umatilla Indian Reservation, or the residency requirement has been waived by the Umatilla Tribal Judge or Umatilla Tribal Chief of Police because the applicant is a resident of a State contiguous to Oregon and has shown a compelling business interest or other legitimate need to possess a concealed weapon on the Umatilla Indian Reservation,
  - 3. Is at least 21 years of age,
  - 4. Has no outstanding warrants for arrest in any jurisdiction,
  - 5. Is not on pre-trial release from any jurisdiction,
  - 6. Has demonstrated competency with a handgun by any of the following:
    - a. Completion of any hunter education or hunter safety course approved by the State Department of Fish and Wildlife or a similar agency of another state if handgun safety was a component of the course,
    - b. Completion of any National Rifle Association firearms safety or training course if handgun safety was a component of the course,

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- c. Completion of any firearms safety or training course or class available to the general public offered by law enforcement, community college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or a law enforcement agency if handgun safety was a component of the course,
  - d. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, reserve law enforcement officers or any other law enforcement officers if handgun safety was a component of the course,
  - e. Presents evidence of equivalent experience with a handgun through participation in organized shooting competition or recent military service,
  - f. Is licensed or has been licensed to carry a firearm, unless the license has been revoked, or
  - g. Completion of any firearms training or safety course or class conducted by a firearms instructor certified by a law enforcement agency or the National Rifle Association if handgun safety was a component of the course,
7. Has never been convicted or otherwise found guilty of a felony in any jurisdiction and in the case of tribal jurisdictions, never convicted of a crime that would be considered a felony under the criminal laws of the Confederated Tribes of the Umatilla Indian Reservation,
  8. Has not been convicted or otherwise found guilty of a misdemeanor within the four years immediately preceding the application,
  9. Has not been found to have committed an act as a juvenile that would be considered a felony or a misdemeanor involving violence under the laws of the Confederated Tribes of the Umatilla Indian Reservation within the four years immediately preceding the application,
  10. Has not been committed to the Oregon Health Authority or other similar entity in another state,
  11. Has not been found to be mentally ill and is not subject to an order that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness,
  12. Has not been convicted of a crime involving controlled substances or participated in a court supervised drug diversion program,
  13. Is not the responded of a domestic violence, stalking, sex assault, or other similar protection order,
  14. Has not received a dishonorable discharge from the Armed Forces of the United States, and
  15. Would not be required to register as a sex offender if their residence were within the exterior boundaries of the Umatilla Indian Reservation, or is otherwise required to register as a sex offender in any jurisdiction.
- B. All applicants must:
1. Submit a signed and sworn application that states their legal name, current address and telephone number, date and place of birth, hair and eye color, height and weight, residence address(es) for the previous three years, that they meet the requirements of

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Section 4.157, and may voluntarily list their social security number. The application form shall be provided by the Umatilla Tribal Court or Umatilla Tribal Police Department upon request.

2. Submit to fingerprinting and photographing. The Chief of Police may fingerprint and photograph the applicant and shall conduct any investigation necessary to corroborate the requirements listed under subsection 4.157. If a nationwide criminal records check is necessary and direct NCIC access is not available, the Chief of Police shall request the Department of State Police to conduct the check, including fingerprint identification, through the Federal Bureau of Investigation. If the applicant possesses a valid Oregon Concealed Handgun License the Chief of Police may forgo these requirements and cause a criminal history check to be conducted after the applicant has been positively identified.
- C. A \$25 dollar fee shall be assessed for each permit issued.
- D. Any permit issued under this section shall be valid for a period of four years from the date of issuance.
- E. Any permit issued under this section is valid only within the exterior boundaries of the Umatilla Indian Reservation and may be revoked at any time by the Umatilla Tribal Court or Chief of Police at their discretion.
- F. Immediately upon acceptance of an application for a concealed handgun permit, the Umatilla Tribal Police Department shall enter the applicants name into the police Records Management System indicating the person is an applicant for a concealed handgun permit or is a permit holder.
- G. No tribal official engaged in the receipt and review of any application for or in the issuing of denial of any license under this section shall incur any civil or criminal liability as the result of the lawful performance of their duties under this section.

**SECTION 4.158. SETTING SPRINGGUN OR SETGUN**

Any person who places or sets any loaded spring gun, set gun, or any gun, firearm or other device of any kind designed for containing or firing explosives, in any place where it may be fired, exploded or discharged by the contact of any person or animal with any string, wire, rod, stick, spring or other contrivance affixed to or connect with it, or with its trigger, shall be punished upon conviction by a fine of not less than \$100.00 nor more than \$500.00, or by imprisonment for not less than 30 days nor more than six months, or both.

**SECTION 4.159. COMMITTING OR ATTEMPTING TO COMMIT FELONY WHILE ARMED;  
SUBSEQUENT CONVICTIONS; PRESUMPTION**

- A. Any person who commits or attempts to commit any felony while armed with any pistol, revolver, machine gun or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, upon conviction of a felony or of an attempt to commit the felony, shall, in addition to the punishment prescribed for the crime of which he has been convicted, be punished by imprisonment for not more than 3 years. Such additional period of imprisonment shall commence upon the expiration or other termination of the sentence imposed for the crime of which he stands convicted and shall not run concurrently with such sentence.
- B. In the trial of a person charged with committing or attempting to commit a felony against the person of another while armed with any pistol, revolver, machine gun or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, the fact that he was so armed is prima facie evidence of his attempt to commit such felony.

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- C. In no case shall any person punishable under this section be granted probation by the Tribal Court, nor shall the execution of the sentence imposed upon such person be suspended by the Court.
- D. Committing or attempting to commit a felony while armed is a felony.

**SECTION 4.160. EXPLOSIVES**

No person shall use, possess, detonate or transport dynamite or other explosives within the Umatilla Indian Reservation unless such person possesses a valid license from the State of Oregon for such activities. The use of explosives within the Umatilla Indian Reservation shall conform to all other provisions of this code.

**SECTION 4.161. FIREWORKS DEFINED**

- A. "Fireworks" shall mean any combustible or explosive composition or substance, or any combination of such composition or substance which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, or detonation, including but not limited to firecrackers, torpedoes, skyrockets, roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents or any other article of like construction, or any article containing any explosive substances or inflammable compound.
- B. Fireworks does not include:
  - 1. Sparklers, toy pistols paper caps, toy pistols, toy canes, toy guns or other devices in which paper caps containing .25 grains or less of explosive compound are used, and when the rate of burning and the explosive force of the materials in such devices are not greater than an equivalent weight of F.F.F.G. black powder, and when such devices are so constructed that the hand cannot come in contact with the cap when in place for explosion, and the major explosive force is contained or dispelled within the housing or shell of the device, there is no visible flame during discharge, there is no flaming or smoldering of any of the components or parts of the device after discharge, and the device does not produce sufficient heat to readily ignite combustible materials upon which the device may be placed. The sale and use of such devices shall be permitted at all times.
  - 2. Snakes or similar smoke-producing material containing no more than 100 grains of combustible substances when there is no visible flame during discharge, there is no after-smoldering, and the devices do not produce sufficient heat to readily ignite combustible materials upon which the devices may be placed. The sale and use of such devices shall be permitted at all times.
  - 3. Model rockets and model rocket motors designated for the purpose of propelling recoverable aero models. The sale and use of such devices shall be permitted at all times.

**SECTION 4.162. FIREWORKS PROHIBITED**

No person shall sell, manufacture, keep, or offer for sale, expose for sale, use, explode or have exploded any fireworks on the Umatilla Indian Reservation except as follows:

- A. Sale to or use of fireworks by a person or organization authorized by the Board of Trustees for a supervised public display;
- B. Sale of shells cartridges, gunpowder, or explosives for use in legally permitted firearms.



**PART XVI. OFFENSES INVOLVING NARCOTICS, DRUGS AND ALCOHOLIC LIQUORS**

**SECTION 4.163. DEFINITIONS, AS USED IN THIS PART**

- A. “Alcoholic liquor” means any alcoholic beverage containing more than one-half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being.
- B. Whenever the words “sell” or “to sell” refer to anything forbidden under this part and relate to alcohol liquor, they include:
  - 1. To solicit or receive an order.
  - 2. To keep or expose for sale.
  - 3. To deliver for value or in any way other than purely gratuitously.
  - 4. To peddle.
  - 5. To keep with intent to sell.
  - 6. To traffic in.
  - 7. For any consideration, promised or obtained, directly or indirectly, or under any pretext or by any means, to procure for any other person.
- C. The word “sale” includes every act of selling as defined in subsection (B) of this section and barter, exchange or offer therefor, and such transaction made by any person, whether as principal, proprietor, agent, servant or employee unless the selling and purchasing of alcoholic beverages is authorized by the Board of Trustees and then shall be in strict accordance with regulations governing such activities.
- D. “Person” includes any corporation, association, co-partnership or one or more individuals.
- E. “Physician” means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.
- F. “Dentist” means a person authorized by law to practice dentistry medicine in this state.
- G. “Veterinarian” means a person authorized by law to practice veterinary medicine in this state.
- H. “Manufacturer” means a person, who, by compounding, mixing, cultivating, growing or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescription.
- I. “Wholesaler” means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not on prescriptions.
- J. “Apothecary” means a licensed pharmacist, as defined by the laws of the state of Oregon, and where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this state.
- K. “Hospital” means an institution for the care and treatment of the sick and injured, approved by the Oregon State Board of Pharmacy as proper to be entrusted with the custody of narcotic

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- drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.
- L. “Laboratory” means a laboratory approved by the Oregon State Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the use of narcotic paraphernalia and for purposes of instruction.
- M. “Sale” includes barter, exchange or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.
- N. “Coca leaves” include cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine or substances from which cocaine or ecgonine may be synthesized or made.
- O. “Opium” includes morphine, codeine and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium.
- P. “Marijuana” includes the leaves, stems, flowers and seeds of the plant Cannabis family Moraceae, whether growing or not; but shall not include the resin or oil extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation from such resin or oil, including hashish and natural or synthetic tetrahydrocannabinol; and shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.
- Q. “Hashish” means the resin produced by the plant Cannabis family Moraceae.
- R. “Hashish oil” means the viscous liquid concentrate of tetrahydrocannabinols extracted from hashish.
- S. “Narcotic drugs” means coca leaves, opium, marijuana and every other substance neither chemically nor physically distinguishable from them; or other drugs to which the federal narcotic laws may now or hereafter apply; or any drug found by the State Board of Pharmacy after reasonable notice and opportunity for hearing, to have addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the publication of such finding. “Narcotic drugs” does not include hashish, hashish oil or liquid tetrahydrocannabinols, whether synthetic or naturally derived, extracted from hashish.
- T. “Dangerous drug” means:
1. Amobarbital, secobarbital, pentobarbital, phenobarbital, acid diethylbarbituric, amphetamine, dextro amphetamine, mephentermine, methamphetamine, phenmetrazine, methylphenidate hydrochloride, glutethimide, methyprylon, meprobamate, chlordiazepoxide HCL, diazepam, oxazepam, chloral hydrate, paraldehyde, ethchlorunol, and ethinamate, any salts, derivates of compounds of the foregoing substances, any preparations or compound containing any of the foregoing substances of the sales, derivatives or compounds or any registered trade-marked or copyrighted preparation or compound registered in the United States Patent Office containing any of the foregoing substances;
  2. All products containing the substances lysergic acid diethylamide, psilocybin, dimethyltryptamine, methyltryptamine, peyote and mescaline;
  3. Hashish, hashish oil or liquid tetrahydrocannabinols, whether synthetic or naturally derived, extracted from hashish; and

4. Any other drug designated by the Committee on Drug Problems as a dangerous drug and included in published regulations by the Oregon State Board of Pharmacy.

#### SECTION 4.164. LIQUOR SALES PROHIBITED

Except as permitted by the Liquor Code, no person shall sell or purchase alcoholic beverages within the boundaries of the Umatilla Indian Reservation. Violation of this section is a civil infraction punishable by not more than five hundred dollars.

#### SECTION 4.165. DISPOSAL OF LIQUOR CONTAINERS

- A. No person shall permit any empty or discarded containers of alcoholic liquor to be in public view on the exterior of his premises or in parking areas maintained in connection with such premises.
- B. No person shall discard, throw away or dispose of any container of alcoholic liquor, whether broken or not, upon any street, alley, public grounds or public place.
- C. Violation of this section is a civil infraction punishable by not more than five hundred dollars.

#### SECTION 4.166. PUBLIC DRINKING

Except as permitted by the Liquor Code, no person shall drink or consume any alcoholic beverage in or upon any public street, alley public ground, or other public place. Public Drinking is a civil infraction punishable by not more than five hundred dollars.

#### SECTION 4.167. GIFT OF LIQUOR TO PERSON UNDER 21 YEARS OF AGE OR TO INTOXICATED PERSON

- A. No person shall give or otherwise make available any alcoholic liquor to any person under the age of 21 years.
- B. No person shall give or otherwise make available any alcoholic liquor to a person visibly intoxicated.

#### SECTION 4.168. MINOR IN POSSESSION OF ALCOHOL

- A. A person of age 18, 19, or 20 years commits the crime of minor in possession of alcohol if he or she possesses, consumes, acquires, purchases, or attempts to purchase any alcoholic beverage.
- B. It is unlawful for a person age 18, 19, or 20 years old to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection does not apply if the person has consumed or is consuming an alcoholic beverage under circumstances described in subsection C of this section.
- C. This section does not prohibit the acceptance or consumption of sacramental wine as part of a bona fide religious rite or service, or the possession, consumption, acquisition, purchase, or attempt to purchase any official medicinal or pharmaceutical preparations containing alcohol when prescribed by a duly authorized physician or intended solely for medicinal purposes.

**SECTION 4.169. CONFISCATION OF LIQUOR AND PROPERTY**

Whenever any law enforcement officer arrests any person for violation of this part, he shall take into his possession all alcoholic liquor and other related property which the person so arrested has in his possession, or on his premises, which is apparently being used in violation of this part. If the person so arrested is convicted, and it is found that the liquor and other property has been used in violation of the law, the same shall be forfeited and shall be delivered to the Tribal Court. The Court is authorized to destroy or make such other disposition thereof as it considers to be in the public interest.

**SECTION 4.170. DANGEROUS DRUGS**

- A. Except as provided in subsection (B) below, no person shall sell, give away, barter, distribute, buy, receive or possess a dangerous drug.
- B. Subsection (A) above:
  - 1. shall not apply to Physicians, Dentists, Apothecaries, or other persons duly licensed and authorized by law to prescribe or dispense said drugs in the course of their professional employment;
  - 2. is a felony, with the exception of offenses involving possession of marijuana; and.
  - 3. is a misdemeanor if it involves less than one avoirdupois ounce of marijuana, and a civil infraction punishable by a fine of not more than \$100 if it involves possession of less than one avoirdupois ounce of marijuana.

**SECTION 4.171. CRIMINAL ACTIVITY IN DRUGS**

- A. A person commits the offense of criminal activity in drugs if he knowingly and unlawfully manufactures, cultivates, transports, possesses, furnishes, prescribes, administers, dispenses or compounds a narcotic or dangerous drug. Except for subsection (B) below, criminal activity in drugs is a felony.
- B. If the conviction is for possession of less than one avoirdupois ounce of marijuana, it is a civil infraction punishable by a fine of not more than \$100.00.

**SECTION 4.172. CRIMINAL USE OF DRUGS**

- A. A person commits the offenses of criminal use of drugs if he knowingly uses or is under the influence of a narcotic or dangerous drug, except when administered or dispensed by or under the direction of a person authorized by law to prescribe and administer narcotic drugs and dangerous drugs to human beings.
- B. Pursuant to subsection (A) of this section, it is not necessary to allege or prove what specific drug the defendant used, or was under the influence of, in order to establish a prima facie case.
- C. If the conviction is for criminal use of marijuana, criminal use of drugs is a civil infraction punishable by a fine of not more than \$100.00.

**SECTION 4.173. TAMPERING WITH DRUG RECORDS**

- A. A person commits the crime of tampering with drug records if he knowingly:
  - 1. Alters, defaces or removes a narcotic or dangerous drug label affixed by a manufacturer, wholesaler or apothecary to remove or deface such a label for the purpose of filling prescriptions;

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2. Affixes a false or forged label to a package or receptacle containing narcotic or dangerous drugs;
3. Makes or utters a false or forged prescription or false or forged written order for narcotic or dangerous drugs; or
4. Makes a false statement in any narcotic or dangerous drug prescription, order, report or record.

B. Tampering with drug records is a felony.

**SECTION 4.174. CRIMINAL DRUG PROMOTION**

A person commits the offense of criminal drug promotion if he knowingly maintains, frequents or remains at a place:

- A. Resorted to by drug users for the purpose of unlawfully using narcotic or dangerous drugs;
- B. Which is used for the unlawful keeping or sale of narcotic or dangerous drugs; or
- C. If the conviction is for knowingly maintaining, frequenting or remaining at a place where less than one avoirdupois ounce of marijuana is found at the time of an arrest under this section, criminal drug promotion is a civil infraction punishable by a fine of not more than \$100.00.

**SECTION 4.175. OBTAINING A DRUG UNLAWFULLY**

A person commits the crime of obtaining a drug unlawfully if he obtains or procures the administration of a narcotic or dangerous drug by:

- A. The forgery or alteration of a prescription or any official written order;
- B. The concealment of a material fact;
- C. Falsely representing himself to be a person authorized by law to obtain narcotic or dangerous drugs; or
- D. Any other form of fraud, deceit or misrepresentation.

**SECTION 4.176. PRIMA FACIE EVIDENCE PERMITTED IN PROSECUTIONS OF DRUG OFFENSES**

- A. Proof of unlawful manufacture, cultivation, transportation, or possession of a narcotic or dangerous drug is prima facie evidence of knowledge of its character.
- B. Proof of possession of a narcotic drug not in the container in which it was originally delivered, sold or dispensed is prima facie evidence that the possession is unlawful.

**SECTION 4.177. SEARCH, SEIZURE AND FORFEITURE OF CONVEYANCE IN WHICH DRUGS ARE UNLAWFULLY TRANSPORTED OR POSSESSED**

- A. The Tribal prosecutor or law enforcement officer charged with enforcement of this code, having personal knowledge or reliable information that narcotic or dangerous drugs are being unlawfully transported or possessed in any boat, vehicle or other conveyance, may search the same without warrant or other conveyance, may search the same without warrant and without an affidavit being filed. If narcotic or dangerous drugs are found in or upon such conveyance, he may seize them, arrest any person in charge of the conveyance and, as soon as possible, take the arrested person and the seized drugs before the Tribal Court. He shall also, without delay, make and file a complaint for any crime justified by the evidence obtained.

- B. Any boat, vehicle or other conveyance used by or with the knowledge of the owner, operator or person in charge thereof for the unlawful transportation, possession or concealment of narcotic or dangerous drugs shall be forfeited to the Tribe in the same manner and with like effect as provided in section 4.169.

**PART XVII. OFFENSES AGAINST PUBLIC HEALTH AND DECENCY**

**SECTION 4.178. ANIMAL ABUSE**

- A. A person commits the crime of animal abuse when the person intentionally, knowingly, or recklessly:
  - 1. Causes serious physical injury to an animal; or
  - 2. Cruelly causes the death of an animal.
- B. Any practice of good animal husbandry is not a violation of this section.
- C. It is a civil infraction for a person to fail to report the crime of animal abuse committed in their presence by another person.

**SECTION 4.179. ANIMAL NEGLECT**

- A. A person commits the crime of animal neglect if the person intentionally, knowingly, recklessly, or with criminal negligence:
  - 1. Fails to provide minimum care for an animal in that person's custody or control; or
  - 2. Such failure to provide care results in serious physical injury or death to the animal.
- B. It is a civil infraction for a person to knowingly fail to report the crime of animal neglect by another person.

**SECTION 4.180. ANIMAL ABANDONMENT**

- A. A person commits the crime of animal abandonment if the person intentionally, knowingly, recklessly or with criminal negligence leaves a domesticated animal at a location without providing for the animal's continued care.
- B. It is a civil infraction for a person to knowingly fail to report the crime of animal abandonment by another person.

**SECTION 4.181. PROMOTION OF UNLICENSED BOXING, WRESTLING AND MIXED MARTIAL ARTS EVENTS**

A person commits the crime of promoting unlicensed boxing, wrestling and mixed martial arts events when the person intentionally, knowingly or recklessly plans, promotes, hosts or offers a boxing, wrestling or mixed martial arts event that is not conducted in full compliance with the laws of the Confederated Tribes, including but not limited to, the Intergovernmental Agreement between the Confederated Tribes and the State of Oregon acting by and through the Oregon State Police and the Oregon State Athletic Commission dated June 28, 2012.

**PART XVIII. TRAFFIC, MOTOR VEHICLES**

**SECTION 4.182. TRAFFIC, MOTOR VEHICLES**

Except insofar as it may be inconsistent with other provisions of this code or clearly inapplicable, Title 59, Chapters 801-822 of the Oregon Revised Statutes, as may be amended or renumbered from time to time, setting forth the laws regulating motor vehicle licensing and registration, operator's

licenses, traffic and equipment, safety, school busses, ambulances, financial responsibility and boats and boating among other things, is hereby adopted as tribal law.

#### SECTION 4.183. SPECIAL TRIBAL DRIVER'S LICENSES

Notwithstanding the provisions of section 4.182 above, the Chief Judge of the Umatilla Tribal Court may issue a special tribal driver's license under such rules or conditions as may be established by the Tribal Court. In the interests of public safety, the Tribal Court shall not issue any such special Tribal driver's license unless the petitioner secures adequate liability insurance.

### **PART XIX. OFFENSES INVOLVING GAMING**

#### SECTION 4.184. DEFINITIONS

For purposes of this part, the definition of capitalized terms shall be as set forth in section 1.04 of the Gaming Code.

#### SECTION 4.185. GAMBLING

- A. It shall be unlawful for any person to engage in Class II or Class III Gaming activity or to possess any gaming devices except as may be specifically authorized by the Gaming Code.
- B. Notwithstanding subsection (A) of this section, Class I Gaming is not prohibited.
- C. For purposes of this section, "Stick Game" shall be considered as a form of Class I Gaming.

#### SECTION 4.186. GAMING OFFENSES

- A. It shall be unlawful for any person to:
  - 1. Operate or participate in gaming on Umatilla Indian Lands in violation of the provisions of this Code, the Gaming Code or the rules and/or regulations promulgated there under;
  - 2. Knowingly make a false statement in an application for an employment or contractor License application as required in the Tribal Gaming Code;
  - 3. Bribe or attempt to bribe, or unduly influence or attempt to unduly influence, any person who Licenses, operates, conducts, assists, or is otherwise employed in a gaming activity or enterprise located on Umatilla Indian Lands;
  - 4. Cheat at any Class II or Class III game;
  - 5. Commit fraudulent acts regarding the Class II and Class III games at the Gaming Operation, or at any other gaming facility licensed and operated pursuant to the Tribal Gaming Code, including the following:
    - a. To alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is made sure but before it is revealed to the players;
    - b. 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;

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- c. To claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a gambling game, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won;
  - d. 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;
  - e. 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;
  - f. To manipulate, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose for the component, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game;
6. Use, or possess with the intent to use, any device intended to be used to violate the provisions of this section, including but not limited to a device to assist in projecting the outcome of the game, in keeping track of the cards played, in analyzing the probability of the occurrence of an event relating to the game, or in analyzing the strategy for playing or betting to be used in the game, except as permitted by the Tribal Gaming Commission;
7. Use or possess counterfeit chips, counterfeit debit instruments or other counterfeit wagering instruments in a gambling game, associated equipment or a cashless wagering system;
8. In playing or using any gambling 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 Gaming Commission or by unlawful coin of the United States of America:
  - a. Knowingly use other than chips, tokens, wagering credits or other wagering instruments approved by the Gaming Commission or lawful coin, legal tender of the United States of America, or use coin or tokens not of the same denomination as the coin or tokens intended to be used in that gambling game, associated equipment or cashless wagering system; or
  - b. Use any device or means to violate the provisions of this Part or the Gaming Code;
9. When such person is not a duly authorized employee of the Gaming Operation acting in furtherance of his employment within the Gaming Facility, have on his person or in his possession any key or device known to have been designated for the purpose of and suitable for opening, entering or affecting the operation of any gambling game, cashless wagering system or drop box, or any electronic or mechanical device connected thereto, or for removing money or other contents there from;
10. 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 Part;
11. Knowingly entice or induce another to go to any place where a gambling game is being conducted or operated in violation of the provisions of this Part, with the intent that the other person play or participate in that gambling game;



12. Manufacture, sell or distribute any cards, chips, dice, game, receipts from Class II or Class III games that can be redeemed for cash, printed paper used to generate receipts used for Class II or Class III games that can be redeemed for cash, or device which is intended to be used to violate any provision of this Part;
  13. Mark, alter or otherwise modify any associated equipment or gaming device in a manner that affects the result of a wager by determining win or loss, or alters the normal criteria of random selection, which affects the operation of a game or which determines the outcome of a game.
- B. Any Indian who violates a provision of this Part may be fined not more than \$1,000 and/or imprisoned for up to one year for each violation. A separate violation occurs on each day that a violation arises or continues.

## **PART XX. OFFENSES INVOLVING CRIMINAL GANGS**

### **SECTION 4.187. FINDINGS AND PURPOSES**

- A. The Board of Trustees finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.
- B. The Board of Trustees has determined that the presence of gangs and gang activity on the Umatilla Indian Reservation has a direct and negative effect on the health, safety, and welfare of the Confederated Tribes. Gang activity has a particularly negative effect on the tribal youth. Gang membership and gang activity on the Umatilla Indian Reservation involves both Indians and non-Indian persons. The Board of Trustees has the inherent sovereign power to pass laws to protect the interests, health, safety and general welfare of all persons and activities within the boundaries of the Umatilla Indian Reservation. The Board of Trustees also has authority to protect these interests pursuant to Article VI, Section 1(d) of the Tribal Constitution and Bylaws. The Confederated Tribes has the authority to remove and exclude from the reservation non-Indians and Indians pursuant to the inherent power of the tribal court.
- C. It is the intent of the Board of Trustees in enacting this part to seek the eradication of criminal activity by gangs by focusing upon patterns of criminal gang activity and upon the organized nature of gangs, which together, are the chief source of terror created by gangs.
- D. It is not the intent of this part to interfere with the exercise of the constitutionally protected rights of freedom of speech, peaceably to assemble and petition for a redress of grievances.

### **SECTION 4.188. DEFINITION OF GANG**

“Gang” means any combination, conspiracy, understanding, or similar arrangement in law or in fact of three or more persons that, through its membership or through the agency of any member, engages in a course or pattern of criminal activity. It may include any combination of persons organized formally or informally, so constructed that the organization will continue in operation even if individual members enter or leave the organization. It does not include political organizations that regularly practice or otherwise advocate civil disobedience.

### **SECTION 4.189. MANDATORY MINIMUM SENTENCES**

- A. Any person convicted of a crime while having committed the crime as a member of a gang, in furtherance of a gang, or where the crime otherwise constituted gang related activity shall be punished according to the following mandatory minimum sentences:
  1. 30 days in jail and 40 hours of community service for the first gang related crime.

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2. 60 days in jail and 60 hours of community for the second gang related crime.
  3. 90 days in jail and 80 hours of community service for the third gang related crime.
  4. 120 days in jail, 120 hours of community service, and banishment from the reservation for a period of 5 years for the fourth or more gang related crimes.
- B. All community service mandated by this section shall be service authorized, operated, and monitored by the Department of Public Safety.
- C. All jail mandated by this section shall be in a secured jail facility and shall not include home monitoring, electronic surveillance, a drug or alcohol treatment facility, or other alternative sentencing arrangements.

**SECTION 4.190. SOLICITATION OF GANG MEMBERSHIP**

In addition to any other crime in this code, it shall be a crime for any person to solicit another to join a gang whether or not such person solicited actually joins the gang.

## APPENDIX A

### LEGISLATIVE HISTORY

## CRIMINAL CODE

### LEGISLATIVE HISTORY

Public Law 83-280 (18 U.S.C. § 1162), enacted in 1953, allows certain states to acquire criminal jurisdiction over certain Indian reservations. Through this law the United States ceded criminal jurisdiction over the Umatilla Indian Reservation to the State of Oregon. The law also abrogated the criminal jurisdiction exercised by the Confederated Tribes of the Umatilla Indian Reservation in favor of jurisdiction by the State of Oregon. A 1968 amendment to that law (P.L. 90-284, codified at 18 U.S.C. § 1323) allows states that have acquired jurisdiction over Indian reservations to retrocede that jurisdiction back to the United States and the affected tribes. Executive Order No. 11435 (November 21, 1968) delegated to the Secretary of Interior the President's authority to accept such retrocessions. It further stated that "acceptance of retrocession . . . by the Secretary hereunder shall be effected by publication in the Federal Register of a notice which shall specify the jurisdiction retroceded and the effective date of the retrocession . . . ."

In Resolution 79-31 (June 20, 1979) the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation authorized a letter formally requesting that the State of Oregon retrocede criminal jurisdiction over the Umatilla Indian Reservation. Oregon Governor Atiyeh responded with Governor's Executive Order 80-8 (May 13, 1980). EO-80-8 offered to retrocede to the United States all the criminal jurisdiction over the Umatilla Indian Reservation that P.L. 280 had ceded to the State of Oregon. In 46 Fed. Reg. 2195 (January 8, 1981) the United States accepted the State of Oregon's retrocession of "all criminal jurisdiction exercised by the State of Oregon over the Umatilla Indian Reservation," effective January 2, 1981. The notice specified that, "Through retrocession to the United States, criminal jurisdiction will return to the Confederated Tribes of the Umatilla Indian Reservation."

In Resolution 81-14 (December 22, 1980), the Board of Trustees established the Umatilla Tribal Police Department, making it "responsible for the enforcement of all tribal criminal laws."

In Resolution 81-15 (December 22, 1980) the Board of Trustees renamed and expanded the jurisdiction of the Umatilla Tribal Court of Fish and Game Offenses (which had been created under the 1978 Fish and Game Code). The name of the court became the Umatilla Tribal Court, and it gained "full jurisdiction to hear and decide cases involving the violation of tribal criminal laws."

In Resolution 81-16 (December 22, 1980), the Board of Trustees noted that a Tribal Criminal Code was in draft form, and that criminal jurisdiction would soon be returned to the Tribes. The resolution adopted the criminal laws of the State of Oregon to serve as a temporary criminal code for the Confederated Tribes for the time period from the return of criminal jurisdiction to the enactment of the Tribal Criminal Code.

In Resolution 81-62 (August 19, 1981), the Board of Trustees noted that the Tribes' Law and Order Committee had approved the draft Law and Order Code, and that the Board was currently reviewing that draft. Noting that the draft code was preferable to the adoption of Oregon criminal laws (which the Board had ordered in Resolution 82-16), the Board then enacted the *draft* Law and Order Code "as tribal law effective immediately and shall remain in effect until such time as the Board completes its review of the draft Law and Order Code and revises the draft into final tribal law." The Board set a July 1982 deadline for the completion of that review and the enactment of a final Law and Order Code.

There is no record that the Board of Trustees ever passed a resolution enacting a final version of the "draft Law and Order Code." The record of the Board's 1982 and 1983 resolutions is complete, and contains no such resolution. Nevertheless, subsequent Board resolutions refer to an existing "Tribal Criminal Code and Procedures" or a "Tribal Criminal Code." For instance, Resolution 83-05 (October 20, 1982) refers to "the Tribal Criminal Code." Likewise, the first recital of Resolution 83-26 (January 14, 1983) states: "Whereas the Board of Trustees enacted a Tribal Criminal Code and Procedures on August 19, 1981, pursuant to Resolution 81-62." From that point forward, all references to tribal criminal law in Board resolutions are always to the "Tribal Criminal Code."

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In addition to codifying the tribe's criminal law, the new code enacted in Resolution 81-62 (August 19, 1981) also adopted the civil motor vehicle laws of the State of Oregon as civil law of the Confederated Tribes (section 162 of the original Criminal Code).

Following the enactment of the Criminal Code, the Confederated Tribes has entered into many cooperative agreements with neighboring law enforcement entities. In Resolution 82-2 (October 7, 1981), the Board approved an agreement between the Confederated Tribes and the State of Oregon establishing mutual extradition procedures and authorizing fresh pursuit of suspects into areas under each other's jurisdiction. In this resolution the Board also enacted a two-page tribal Extradition Code. The Extradition Code was incorporated into later amendments of the Criminal Code. In Resolution No. 04-036 (June 2, 2004), the Board of Trustees approved a new Fresh Pursuit Agreement with the State of Oregon, and continuing the 1981 agreement regarding extradition pending further negotiations.

To allow for the uniform enforcement of law on the Umatilla Indian Reservation, the Confederated Tribes, on April 28, 1995, signed a Memorandum of Understanding (MOU) with Umatilla County. The MOU authorizes a procedure for the cross-deputization of Tribal police officers by the County Sheriff, "so that said cross-deputized UTPD officers can exercise the arrest authority of County Sheriff law enforcement personnel . . ." Consequently, cross-deputized Tribal police officers may arrest non-Indians who violate state law on the Umatilla Indian Reservation.

Prior to opening a class III gaming facility on the Umatilla Indian Reservation in 1995, the Confederated Tribes and the State of Oregon entered into a Tribal - State Compact for Regulation of Class III Gaming, dated November 18, 1993, which was approved by the U.S. Department of Interior on February 9, 1994, and was subsequently amended seven times. The Confederated Tribes and Oregon entered into an Amended and Restated Compact on December 9, 1999, which was approved by the U.S. Department of Interior on March 17, 2000. Pursuant to section 5(B) of the amended compact, the Confederated Tribes entered into a Memorandum of Agreement with the State of Oregon which deputized Oregon State Police officers to arrest American Indians on the Umatilla Indian Reservation for violations of the tribal Criminal Code. That agreement took effect on October 1, 2003.

Other cooperative law enforcement agreements entered into by the Confederated Tribes include: 1) a Major Crime Team Agreement entered into by the tribe, the Umatilla County Sheriff, and the Oregon State Police, 2) a May 31, 2001, Cooperative Policing Agreement between the sixteen law enforcement agencies operating within Umatilla and Morrow counties, Oregon, and 3) the Blue Mountain Enforcement Narcotics Team agreement.

The Criminal Code was amended seventeen times between 1981 and 2006. The resolutions enacting those amendments were: No. 83-05 (October 20, 1982), No. 83-26 (January 14, 1983), No. 83-65 (June 28, 1983), No. 93-19 (April 23, 1993), No. 93-51 (November 22, 1993), No. 94-23 (March 16, 1994), No. 96-90 (November 20, 1996), No. 96-104 (December 18, 1996), No. 97-36 (July 23, 1997), No. 97-39 (August 6, 1997), No. 99-12 (March 3, 1999), No. 99-63 (July 28, 1999), No. 99-100 (December 15, 1999), No. 00-26 (March 13, 2000), No. 01-05 (January 8, 2001), No. 04-037 (June 2, 2004), and No. 05-095 (October 3, 2005).

In Resolution No. 07-031 (March 26, 2007), the Board of Trustees enacted a revised Criminal Code, containing many new provisions relating to prevention and prosecution of crimes of domestic violence, and reformatting the Criminal Code to make it consistent with the general format that has been adopted for use in all tribal codes.

In Resolution No. 09-023 (March 9, 2009), the Board of Trustees adopted a comprehensive Sex Offender Registration Code. Resolution No. 09-023 expressly repealed in its entirety section 4.107 of the Criminal Code, pertaining to Sex Offender Registration.

In Resolution No. 09-086 (July 6, 2009), the Board of Trustees corrected a clerical error that had been present in the Code due to the March 2007 amendments. As a result of the 2007 amendments,

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sections 4.169(A) and (B) incorrectly referenced sections 4.151 to 4.155. Sections 4.169(A) and (B) were amended to reference the correct sections, 4.164 to 4.166.

Towards the goal of eradicating gang activity on the Umatilla Indian Reservation, the Board of Trustees approved Resolution 10-043 (June 7, 2010), thereby enacting a new Part XX to the Criminal Code. Part XX establishes mandatory minimum sentences applicable to persons convicted of gang-related crimes and establishes solicitation of gang membership as a crime.

In Resolution No. 10-058 (July 12, 2010), the Board of Trustees amended the Criminal Code to add a new provision dealing with underage users of alcohol who are of the age 18 through 20. Minors possessing or consuming alcohol between the ages of 18 and 20 were formerly addressed under the Confederated Tribes' Juvenile Code. In preparing the official version of the Code as amended by Resolution 10-058, the Confederated Tribes' Office of Legal Counsel changed the numbering of the Code section from 4.167.A to 4.168 to conform to the Confederated Tribes' standard Code format, which affected the numbering of subsequent sections. No substantive changes were made to the language approved by Resolution 10-058.

In Resolution No. 10-066 (August 9, 2010), the Board of Trustees amended the Criminal Code to exercise jurisdiction over crimes committed by Indians at the In Lieu and Treaty Fishing Access Sites on the Columbia River designated by Public Laws 79-14 and 100-581. These amendments also authorized officers of the Columbia River Inter-Tribal Fisheries Enforcement department to enforce the Criminal Code at those sites.

In Resolution No. 11-031 (March 21, 2011), the Board of Trustees amended the Criminal Code to exercise felony sentencing authority as authorized by the Tribal Law and Order Act.

In Resolution No. 12-038 (June 11, 2012), the Board of Trustees amended the Criminal Code to address the process for Tribal Court issuance of domestic violence protection orders.

In Resolution 12-040 (June 25, 2012), the Board of Trustees amended the Criminal Code by adding a new subsection 4.181 making it a crime to promote unlicensed boxing, wrestling, and mixed martial arts events.

In Resolution 13-020 (July 1, 2013), the Board of Trustees amended the Criminal Code to exercise criminal jurisdiction over non-Indians in the limited circumstances permitted by the 2013 enactment of the Violence Against Women Act.

In Resolution 13-040 (October 14, 2013), the Board of Trustees amended the Criminal Code to further ensure the ability of the Tribes to exercise VAWA 2013 jurisdiction over non-Indians by making jury verdicts unanimous, creating a tribal habeas corpus appeal process, requiring a first appearance within 48 hours of someone taken into custody regardless of weekends and holidays, and further clarifying that automatic protection orders are orders of the court.

In Resolution 14-018 (March 24, 2014), the Board of Trustees amended the Criminal Code to address/clarify various issues concerning VAWA 2013 and TLOA 2010 as well explicitly include tribal nations in the extradition process and enhance the concealed weapons permit process.