

ASSINIBOINE AND SIOUX TRIBES
OF THE
FORT PECK INDIAN RESERVATION

VAWA Project on Tribal Criminal Jurisdiction.

The Fort Peck Indian Reservation is in the northeast corner of Montana covering two million acres. In 1960, the enrolled members of the Assiniboine and Sioux Tribes enacted the current Constitution of the Fort Peck Tribes. Since the enactment of the Constitution, the Fort Peck Tribes have maintained a civil and criminal court of record.

The modern era for the Fort Peck Tribal Court began in 1985 with the enactment of the Comprehensive Code of Justice (CCOJ). The CCOJ is a 700 page code, in 36 titles and appendices, encompassing the civil and criminal laws of the Tribes.

The CCOJ is continually amended as the needs of the Tribes dictate. Amendments to the CCOJ are passed, through resolution, by a majority vote of the Fort Peck Tribal Executive Board.

Beginning in 2005, the Fort Peck Tribal Court has maintained a website at fptc.org. The official current version of the CCOJ is maintained at this website with unrestricted access.

The Right to Trial by an Impartial Jury

1. In a criminal proceeding in which the Tribes will exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ), the Tribes will provide to the defendant the right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and the impartial jury will not systematically exclude any distinctive group in the community including non-Indians.

See CCOJ at Title 6, Section 507. *Right to jury trial.* (Exhibit 1)

The Right to Effective Assistance of Counsel

2. In a criminal proceeding in which the Tribes will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, the Tribes will provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution.

See CCOJ at Title 6, Section 401(d) *Arrestment* (Exhibit 2) and Title 7, Section 249. *Special domestic violence criminal offense* (Exhibit 3)

The Right to Indigent Defense Counsel

3. In a criminal proceeding in which the Tribes will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, the Tribes will provide to each indigent defendant, at no cost to the defendant, the right to assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.

See CCOJ at Title 6, Section 401(d) *Arrest* (Exhibit 2) and Title 7, Section 249 *Special domestic violence criminal offense* (Exhibit 3)

The Tribes determine indigence using 125% of the Federal Poverty Guidelines.

4. The Fort Peck Tribes will provide a licensed attorney public defender for every indigent Indian and non-Indian charged under 7 CCOJ 244, 245, 249. Whenever the attorney public defender employed by the Tribes is not available, a licensed attorney will be hired. The current public defender for the Fort Peck Tribal Court is a graduate of the University of Montana School of law and is licensed in the Fort Peck Tribal Court and will be licensed in Montana by April, 2015, such licensure is a condition of continued employment. The attorney has worked in the Missoula County Attorney's office, the Beaverhead County Attorney's Office and the Public Defender office of the Confederated Salish Kootenai Tribal Court. The Fort Peck Tribal Court Public Defender's office is also staffed with a Deputy and Assistant Public Defender who are experience lay advocates. By policy, Public Defender defense continues through the appellate process. Should a conflict arise with a Public Defender taking a case, another attorney will be appointed for the defendant.

The Right to a Law -Trained, Licensed Judge

5. In a criminal proceeding in which the Tribes will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, the Tribes will provide to the defendant the right to a criminal proceeding presided over by a judge who has sufficient legal training to preside over criminal proceedings and is licensed to practice law by any jurisdiction in the United States.

See CCOJ at Title 7, Section 249(d) *Special domestic violence criminal offense* (Exhibit 3)

6. Pursuant to the Comprehensive Code of Justice, the Fort Peck Tribes have hired

a lawyer judge. The Honorable Eldena Bear Don't Walk has been admitted to the Montana Bar since 2006 and is admitted to practice in federal court. She has been Chief Justice of the Crow Appellate Court and served as an appellate justice on other tribal courts for 8 years. Periodically, she serves as a substitute justice of the peace for Lake County, Montana. She is an adjunct professor at the Montana School of Law

The Honorable Richard Jackson has been the Chief Judge of the Fort Peck Tribal Court for the past 10 years. He is licensed to practice in the Fort Peck Tribal Court. He has a Bachelor of Arts degree. He has two certificates from the Judicial College in Reno, Nevada; one in Tribal Judicial Skills and one in Special Court Trial Skills. For the past 10 years he has met the Code requirement of 40 hours of annual training. He presides over criminal trials on a weekly basis and has presided over two homicide trials.

The Right to Publicly Available Laws and Rules

7. All the laws of the Fort Peck Tribes are available, unrestricted, on the Fort Peck Tribal Court website, fptc.org. All laws can be printed by title, chapter or section. Portions of the CCOJ will be printed by the Court for the public upon request. The Tribes set out Criminal Procedure at Title 6 and the Tribes have adopted the Federal Rules of Criminal Procedure to supplement the Tribal code.

The Right to Records of the Criminal Proceeding

8. The Fort Peck Tribal Court utilizes the "For the Record" digital recording system for every hearing. A CD recording or USB download is available upon request, usually for a nominal fee. The fee may be waived for indigent defendants that meet the Court's criteria. Recordings are kept forever.

The Right to Timely Notice of Federal Habeas Corpus Rights and Privileges

9. The Tribes will provide to each person detained by order of the Tribes timely notice of the person's rights and privileges to file in a court of the United States a petition for a writ of habeas corpus under 25 U.S.C. 1303 and a petition to stay further detention under 25 U.S.C. 1304(e).

See CCOJ at Title 6, Section 401(c)(2)(E), *Arrestment* (Exhibit 2).

Other Rights Protected by the Indian Civil Rights Act of 1968

10. The Fort Peck Tribal Court has always provided defendants all applicable rights under the ICRA. After the enactment of the CCOJ in 1985, the Fort Peck Court of Appeals (FPCA) has dealt with 17 cases wherein the FPCA assured that rights provided under ICRA were protected through the CCOJ. (See FPCA Nos. 30, 33, 47, 55, 56, 57, 62, 71, 78, 84, 85, 88, 96, 224, 368, 370, 463 at fptc.org under Appellate Opinions).

Tribal Criminal Jurisdiction

11. The Tribes will exercise SDVCJ over a defendant only for criminal conduct constituting, within the meaning of 25 U.S.C. 1304, either (a) an act of domestic violence or dating violence that occurs in the Indian country of the Tribes, or (b) an act that occurs in the Indian country of the Tribes and violates the portion of a protection order that (1) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; (2) was issued against the defendant; (3) is enforceable by the Tribes; and (4) is consistent with 18 U.S.C. 2265(b).

See CCOJ at Title 2, Section 106, *Criminal Jurisdiction of the Court* (Exhibit 4)

12. In a criminal proceeding in which the Tribes will exercise SDVCJ, the Tribes will convict a non-Indian defendant at trial only if the Tribes prove the alleged victim is an Indian.

See CCOJ at Title 2, Section 106, *Criminal Jurisdiction of the Court* (Exhibit 4)

13. In a criminal proceeding in which the Tribes will exercise SDVCJ, the Tribes will convict a defendant at trial only if the Tribes prove that the defendant resides in the Indian country of the Tribes; is employed in the Indian country of the Tribes; or is a spouse, intimate partner, or dating partner either of a member of the Tribes or of an Indian who resides in the Indian country of the Tribes.

See CCOJ at Title 2, Section 106, *Criminal Jurisdiction of the Court* (Exhibit 4).

Other Considerations

14. - Equal protection under the law is a guarantee provided by the Fort Peck Tribes to members, nonmember Indians and non-Indians. To ensure that all defendants who are charged under the domestic violence statutes of 7 CCOJ 244, 245, 249 are totally apprised

of their rights, the Fort Peck Tribal Court will institute a domestic violence docket, separate from the existing criminal docket, to address all domestic violence, dating violence and violation of orders of protection cases.

- The Tribes have hired a person to serve as a Special Assistant United States Attorney and Tribal Prosecutor.

- To insure the competency and professional responsibility of attorneys and lay counselors/advocates, at Appendix 5, Canon 22 of the Code of Ethics for Attorneys and Lay Counselors, the administrative procedure is set out to handle complaints on attorneys and lay counselors/advocates. (Exhibit 5)

- For the past three decades, the Family Violence Resource Center has been a Tribal program dedicated to providing comprehensive services to victims of domestic violence and sexual assault. The center provides a court advocate, housing, counseling and support services to any victim.

- The Fort Peck Tribal Court will sponsor information conferences with tribal, state and federal law enforcement designed to present the Fort Peck Tribes' approach to SDVCJ.

- A number of newspaper article will be published in the local tribal affiliated newspaper and the county-wide newspaper explaining all aspects of SDVCJ.

- In cases where orders of protection are issued, the Fort Peck Tribal Court provides the petitioner with a Hope Card. The Hope Card allows someone who has been granted an order of protection in one jurisdiction to easily prove it in another jurisdiction. Hope Cards are wallet-sized and compact and are intended as a more convenient way for people who have permanent orders of protection to keep relevant information about their orders with them at all times.

- The Jury Management Plan for SDVCJ states that the jury pool will be drawn from a master juror list utilizing a list of adult enrolled members of the Fort Peck Tribes and a jury source list prepared by the clerk of the 15th Judicial District of Montana. The 15th Judicial District comprises ninety-eight percent of the Reservation. (Exhibit 6)

The population on the Fort Peck Reservation is 60% Indian and 40% non-Indian. The Fort Peck Tribes anticipate that it may be difficult to seat a significant number of non-Indians in the jury pool. Therefore, to avoid non-Indians being underrepresented, the Tribes will select 50 non-member residents for the jury pool and summon 21 non-member residents for each trial. Similarly, the Tribes will select 50 enrolled members for the jury pool and summon 21 enrolled members for each SDVCJ trial. Selecting a higher number of non-Indians when there is a concern for underrepresentation is consistent with the American Bar Association's *Principles for Juries and Jury Trials*, Principle 10(B)(1). (Exhibit 8)

- On November 14, 2012, the Fort Peck Tribes passed code amendments implementing the Tribal Law and Order Act. Any defendant charged, excluding a defendant charged with a misdemeanor, under the Tribes' Special Domestic Violence

Criminal Offense statute may be sentenced up to three years in the new Tribal 100-bed jail. (Exhibit 7)

Title 6

Section 507

Sec. 507. Right to jury trial.

(a) Any person accused of a crime punishable by imprisonment shall be granted a jury trial, upon his/her request made at time of arraignment. Any person charged pursuant to 7 CCOJ 244, 245 or 249 shall automatically have their case set for a jury trial. A jury shall consist of at least 6 members of the Reservation community selected at random from a list of eligible jurors prepared each year by the Court.

(b) An eligible juror is a tribal member who has reached the age of 18 years, is of sound mind and discretion, has never been convicted of a felony, is not a member of the Tribal Executive Board, or a judge or justice, officer or employee of the Court or an employee of the Reservation police force or Reservation jail, and is not otherwise disqualified according to standards established by the Court.

(1) Where the Tribes are exercising Special Criminal Domestic Violence Jurisdiction under the Violence Against Women Reauthorization Act of 2013, an eligible juror is any resident within the boundaries of the Fort Peck Reservation of the age of 18 or over, regardless of race or tribal citizenship, is of sound mind and discretion, has never been convicted of a felony, is not a judge or justice, officer or employee of the Court or an employee of the Reservation police force or Reservation jail, and is not otherwise disqualified according to standards established by the Court.

(c) A list of at least 21 resident enrollees of the Tribes, and in the case of the Tribes exercising Special Criminal Domestic Violence Jurisdiction, a list of at least 21 non-member residents of the Reservation, who are eligible for jury duty shall be prepared and maintained by the clerk.

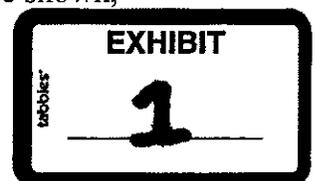
(d) Under the supervision of the presiding judge, a panel of jurors shall be drawn by lot from the jury list. A trial jury shall consist of 6 qualified jurors selected from a panel of 12 eligible persons taken from the jury list, none of whom has an interest in the case, or is related as spouse, parent, brother or sister to any of the parties or their attorneys. If the jury panel is exhausted before a sufficient number of jurors are selected for the trial jury, additional jurors shall be drawn by lot from the jury list for the panel until a trial jury is selected.

(e) The judges of the Court shall have the power to issue subpoenas to compel the attendance of members of the jury panel and of trial jurors. Subpoenas shall be signed by the judge issuing them.

(f) The judge assigned to the case shall have the power to excuse persons from jury duty on account of sickness, disability or other good cause.

(g) Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury.

(h) In criminal cases, in addition to disqualifying jurors for cause as determined by the judge, the prosecution and the defendant, each side shall be entitled to 3 peremptory challenges without assigning any cause. Where there is more than one defendant, they must join in a challenge before it can be made unless the Court, for due cause shown,



shall permit otherwise, or shall permit each defendant to exercise 2 peremptory challenges.

(i) Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to compensation at a rate paid to jurors by Roosevelt County, Montana, and may, in the discretion of the presiding judge, be allowed mileage at a rate to be fixed by the Court. All payments of per diem and mileage shall be supported by vouchers signed by the presiding judge. Such vouchers shall be paid in order of presentation, from available funds on deposit for the purpose.

(j) The judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law. At the close of evidence or at such earlier time during the trial as the judge directs, any party may file with the judge written instructions on the law which the party requests the judge to deliver orally to the jury. At the same time copies of such requests shall be furnished to the opposing party. The judge shall inform each party of his/her proposed action upon each request prior to the arguments to the jury, but the judge shall deliver his/her instructions to the jury after arguments are completed. No party may assign as error any portion of the judge's charge or any omission unless he/she makes his/her objection and reasons for it before the jury retires to consider its verdict. Opportunity shall be given to make the objection out of the hearing of the jury.

(k) After deliberation in private, the jury in criminal cases shall return to the judge in open court a verdict of "Guilty" or "Not Guilty" with respect to each defendant. A verdict in criminal cases shall be rendered by a unanimous vote of the jury.

(AS PER RESOLUTION NOS. 27-201-2013-12; DATED 12/23/2013; 27-788-2014-06, DATED 6/09/2014.)

Title 6 Arraignment

Sec. 401. Arraignment

(a) Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charges against him/her, receiving his/her plea, and setting conditions of pre-trial release as appropriate in accordance with this Code.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of Court. The accused shall not be in custody longer than 48 hours without a probable cause determination.

(c) Before an accused is required to plead to any criminal charges, the judge shall:

(1) Read the complaint to the accused and determine that he/she understands the complaint and the section of the Tribal Code which he/she is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he/she has the right:

(A) to remain silent,

(B) to have a speedy and public trial where he/she has had sufficient time to prepare his/her defense if he/she pleads "not guilty",

(C) to be tried by a jury if the offense charged is punishable by imprisonment,

(D) to be represented by counsel at his/her expense, before he/she pleads to the charge, and

(E) to file a writ of habeas corpus in the United States District Court if the accused feels his/her rights have been violated.

(d) If the accused is arraigned pursuant to the Fort Peck Tribes Special Domestic Violence Criminal Jurisdiction over non-Indians, the accused has the right to obtain counsel and the right to a reasonable continuance to obtain counsel. If the accused cannot afford counsel, one will be appointed for him/her at the expense of the Tribes. The right to appointed counsel continues through the appeals process.

(e) If the arrest was without a warrant, and the defendant is to be continued in custody, the judge shall also determine during arraignment whether there is probable cause to believe that an offense against Tribal law has been committed by the named accused.

(f) The judge shall call upon the defendant to plead to the charge:

(1) if the accused pleads "not guilty" to the charge, the judge shall then set a pretrial or trial date and consider conditions for release prior to trial as provided in Section 402.

(2) If the accused pleads "guilty" to the charge, the judge shall accept the plea only if the judge is satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights which he/she is waiving by the plea. The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information the judge deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing.

(3) If the accused refuses to plead, the judge shall enter a plea of "not guilty" on his/her behalf.

(AS PER RESOLUTION NOS. 27-201-2013-12, DATED 12/23/2013; 26-788-2014-06, DATED 6/09/2014)



Sec. 101. Complaint.

(a) A complaint is the written statement of the essential facts charging that a named individual has committed a particular criminal offense. All criminal prosecutions shall be initiated by a complaint filed with the Court signed by the prosecutor and sworn to before a judge. All complaints initiated by the prosecutor shall be based on probable cause that the crime charged happened and that the defendant(s) committed the crime charged. A judge shall have the authority to demand the filing of an information by the prosecutor or to hold a preliminary hearing to determine whether lawful probable cause as to the crime exists, and whether the appropriate defendant(s) exist prior to the issuance of a summons or warrant for the arrest of the defendant(s).

(b) Complaints shall contain:

(1) A written statement of the violation describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained. Statements or affidavits by persons having personal knowledge may be expressly referenced in and attached to the complaints.

(2) The name and description of the person(s) alleged to have committed the offense.

(3) A statement describing why the Court has personal jurisdiction of the defendant.

(4) A description of the offense charged.

(5) A statement of the maximum authorized penalty.

(6) The signature of the prosecutor sworn to before a judge.

(c) 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:

(1) That the defendant is a non-Indian.

(2) That the victim is Indian.

(3) That the offense occurred within the Fort Peck Tribes' Indian country.

(4) That the defendant has sufficient ties to the Fort Peck Tribes, such that:

(A) The defendant resided in the Fort Peck Tribes' Indian country at the time of the offense.

(B) The defendant was employed in the Fort Peck Tribes' Indian country at the time of the offense, or

(C) At the time of the offense, the defendant was a spouse, intimate partner, or dating partner of either

(i) A member of the Fort Peck Tribes, or

(ii) a non-member Indian who resides in the Fort Peck Tribes' Indian

country.

(d) For purposes of crimes involving non-Indian protection order violations, the complaint shall also allege, and the prosecution must prove beyond a reasonable doubt:

- (1) That the defendant is a non-Indian,
- (2) That the protection order was issued against the defendant,
- (3) That the protected person is an Indian,
- (4) That the violation occurred within the Fort Peck Tribes' Indian country,
- (5) That the defendant has sufficient ties to the Fort Peck Tribes, such that:
 - (A) The defendant resided in the Fort Peck Tribes' Indian country at the time of the offense;
 - (B) The defendant was employed in the Fort Peck Tribes' Indian country at the time of the offense, or
 - (C) At the time of the offense, the defendant was a spouse, intimate partner, or dating partner of either
 - (i) A member of the Fort Peck Tribes , or
 - (ii) A non-member Indian who resides in the Fort Peck Tribes' Indian country.
- (6) That the protection order is consistent with 18 U.S.C. 2265(b), and
- (7) 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.

(e) The Chief Judge may designate an individual or individuals who shall be available to assist persons in drawing up complaints and who shall screen them for sufficiency. Such complaints shall then be submitted without necessary delay to the prosecutor and, if he/she approves, to a judge to determine whether an arrest warrant or summons should be issued.

(AS PER RESOLUTION NOS. 27-201-2013-12, DATED 12/23/2013; 27-788-2014-06, DATED 6/09/2014.)

Title 7

Section 249

Sec. 249. Special domestic violence criminal offense.

(a) *Jurisdiction.* The Fort Peck Tribal Court is vested with jurisdiction to enforce this section against any person who has committed an act of Dating Violence, Domestic Violence or Violation of a Protection Order against an Indian victim within the Indian country of the Assiniboine and Sioux Tribes provided the defendant has sufficient ties to the Fort Peck Tribes.

A defendant has sufficient ties if the defendant resides or is employed in the Indian country of the Assiniboine and Sioux Tribes; or if the defendant is a spouse, intimate partner, or dating partner of any Indian who resides in the Indian country of the Assiniboine and Sioux Tribes.

(b) *Definitions.*

(1) *Dating Violence* - 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.

(2) *Domestic Violence* - 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. 7 CCOJ 244, 245.

(3) *Indian Country* - The term *Indian country* has the meaning given the term in section 1151 of title 18, United States Code.

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

(5) *Spouse or Intimate Partner* - The terms *spouse or intimate partner* has the meaning given the term in section 2266 of title 18, United States Code.

(c) *Offenses; Domestic and Dating Violence, Violations of Protection Orders.*

Every person who commits an act of domestic violence, dating violence or violation of a protective order is guilty of an offense punishable as a felony as per 7 CCOJ 501(1), and subject to the requirements of 7 CCOJ 244(4), except that an act that constitutes domestic abuse under 7 CCOJ 245, is punishable as a Class A misdemeanor, as per 7 CCOJ 501(2) and subject to the requirements of 7 CCOJ 245(1).

Domestic and dating violence include the offenses as stated in 7 CCOJ 244 and 245.



Violation of a Protection Order includes any act where the protection order was issued against the defendant, the protection order is consistent with 18 U.S.C. 2265(b), and 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.

(d) *Rights of Defendants.* In any criminal proceeding under this section, the defendant shall be entitled to:

(1) all applicable rights under the Indian Civil Rights Act, 25 U.S.C. 1301-1304;

(2) if a term of imprisonment of any length may be imposed, the Tribal Court shall:

(A) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

(B) at the expense of the Fort Peck tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

(C) require that the judge presiding over the criminal proceeding has sufficient legal training to preside over criminal proceedings; and is licensed to practice law by any jurisdiction in the United States;

(D) prior to charging the defendant, make publicly available the criminal laws, rules of evidence, and rules of criminal procedure (including rules of governing the recusal of judges in appropriate circumstances) of the Fort Peck Tribes; and

(E) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(3) the right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the Fort Peck Reservation community; and do not systematically exclude any distinctive group in the community;

(4) timely notification of the right to petition for a writ of habeas corpus in a court of the United States under section 25 U.S.C. 1303, and the right to petition that court to stay further detention pursuant to 25 U.S.C. 1304(e);

(5) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the Fort Peck Tribes to exercise special domestic violence criminal jurisdiction over the defendant.

(e) Any person arrested under this Section shall not be released from custody except at arraignment as described in 6 CCOJ 402.

(AS PER RESOLUTION NOS. 27-201-2013-12, DATED 12/23/2013; 26-788-2014-06, DATED 6/09/2014)

Title 2 Section 106

Sec. 106. Criminal Jurisdiction of the Court.

(a) *Generally.* The Fort Peck Tribal Court is vested with jurisdiction to enforce all provisions of this Code, as amended from time to time, against any person violating the Code within the boundaries of the Fort Peck Tribes' Indian country. 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 Fort Peck 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 Fort Peck Tribes' Indian country provided the non-Indian has sufficient ties to the Fort Peck Tribes.

(1) A non-Indian has sufficient ties to the Fort Peck Tribes for purposes of jurisdiction if they:

- (A) reside in the Fort Peck Tribes' Indian country;
- (B) are employed in the Fort Peck Tribes' Indian country; or
- (C) are a spouse, intimate partner, or dating partner of either :
 - (i) a member of the Fort Peck Tribes, or
 - (ii) a non-member Indian who resides in the Fort Peck Tribes' Indian country.

(c) *Criminal jurisdiction over non-Indian protection order violations.* The Fort Peck Tribal Court is vested with criminal jurisdiction to enforce all provisions of this Code related to violations of protection orders against a non-Indian who has sufficient ties to the Tribes as identified in Section 106(b)(1) and who has violated a protection order within the Fort Peck Tribes' Indian country provided the protected person is an Indian, and the 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.
- (AS PER RESOLUTIONS NOS. 27-201-2013-12, DATED 12/23/2013; 27-788-2014-06, DATED 6/09/2014)**



APPENDIX 5

Canon 22

RULE OF COURT FOR HANDLING COMPLAINTS AGAINST ATTORNEYS AND LAY ADVOCATES

1. The initial complaint must be written and submitted to the Tribal Court Administrator.

The Tribal Court Administrator will review the complaint and request that the complaining party submit an affidavit to support the complaint.

2. The Tribal Court Administrator will forward the complaint to the respondent attorney/lay advocate and request a response within 10 working days.

3. The Tribal Court Administrator will forward the written complaint, affidavit and response to the Tribal attorney for review.

4. The Tribal attorney will investigate the complaint. If the Tribal attorney decides that the allegations lack probable cause, the complaint will be dismissed. If the Tribal attorney decides that there is probable cause, a hearing will be set. The Tribal attorney or his designee within the prosecutor's office, as long as there is no conflict between the parties, will prosecute the complaint, with all parties present, at a hearing before the Chief Judge.

5. If the Chief Judge initiated the complaint, the judge with the most seniority as a tribal court judge will preside at the hearing.

6. If the complaint is filed against the Tribal attorney, the Chief Prosecutor will investigate the complaint to determine if probable cause exists. If probable cause exists, the Chief Prosecutor or her designee will prosecute the complaint.

7. A final decision by the Chief Judge can be appealed to the Fort Peck Court of Appeals.



Jury Management Plan
Special Domestic Violence Criminal Jurisdiction

A. JURY POLICY STATEMENT

It is the policy of the Fort Peck Tribal Court that all persons selected for jury service shall be selected at random from the broadest feasible cross-section of the population of the Fort Peck Reservation. Qualified citizens have an obligation to serve as jurors when summoned for that purpose.

B. PROHIBITION OF DISCRIMINATION

A citizen shall not be excluded from jury service on the Reservation on account of race, color, creed, religion, sex, national origin, marital status, status with regard to public assistance disability, age, occupation, physical or sensory disability, or economic status.

C. MANAGEMENT OF JURY SELECTION PROCESS

The Chief Clerk of the Fort Peck Tribal Court shall perform the duties and responsibility of Jury Administrator under this plan to manage the juror selection process under the supervision and control of the Tribal Court Administrator.

D. JUROR SOURCE LIST

The Chief Clerk of the Fort Peck Tribal Court will receive from the Clerk of Court of the Montana 15th Judicial District the Jury Source List prepared by the Court Services Division of the Montana State Court Administrator's Office. The Jury Source List contains the name, address, and date of birth of potential jurors.

The Chief Clerk will also retain a list of all enrolled adult members of the Fort Peck Tribes.

E. JUROR MASTER LIST

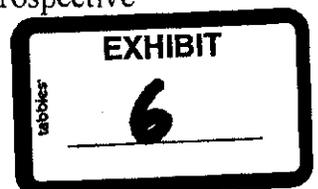
The Chief Clerk will maintain a master list of 50 jurors enrolled in the Fort Peck Tribes and a second master list of 50 jurors that includes non-member Indians and non-Indians.

F. RANDOM SELECTION OF NAMES FOR JURY SERVICE

The Chief Clerk shall randomly draw from the Jury Source List the names of 21 non-member residents and 21 enrolled members for each jury trial. The selected jurors shall be summoned for trial.

G. FAILURE TO APPEAR FOR JURY SERVICE

Prospective jurors who fail to appear pursuant to a Summons or Notice to Appear are contacted by telephone, if available, to explain their non-compliance. A letter requesting compliance is mailed to all jurors who fail to appear and were not contacted by telephone. The Chief Judge may issue an Order to Show Cause ordering the prospective



juror to appear before the court to show good cause for failure to appear.

H. PRESERVATION OF RECORDS

All lists mentioned in this plan are retained by the Court Administrator for the required retention period.

I. JUROR COMPENSATION

Jurors shall be entitled to compensation at a rate paid to jurors by Roosevelt County, and may in the discretion of the presiding judge, be allowed mileage at a rate to be fixed by the Court.

Tribal Law and Order Act code amendments.

Title VI.

Sec. 510. Federal Rules of Evidence and Federal Rules of Criminal Procedure.

- (a) The Federal Rules of Evidence shall be followed in all Tribal Court proceedings.
- (b) When necessary, the Tribal Court will supplement the Rules of Criminal Procedure of this Title with the Federal Rules of Criminal Procedure.

Sec. 511. Enhanced punishment.

(a) If the Tribal Prosecutor intends to seek an enhanced punishment greater than 1 year, the Tribal Prosecutor shall file notice of this intention not less than 30 days before the pretrial conference. If the notice is untimely, the trial judge shall grant the defendant, on motion, a reasonable continuance of the trial.

The notice shall specify that the Tribes intend to seek the enhanced sentence and shall specify the aggravating circumstances the Tribes intend to rely on at the sentence hearing. The Tribes may specify by referring to the statutory citation of the aggravating circumstance.

(b) If the Tribal Prosecutor files notice that the Tribal Prosecutor intends to seek an enhanced punishment greater than 1 year, the Tribal Court shall notify the defendant that the defendant is entitled to have counsel appointed for him/her at the expense of the Tribal Court.

(c) The Fort Peck Tribal Court shall not impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(1) Impose on a person in a criminal proceeding a total penalty or punishment greater than a term of 9 years.

(d) A defense attorney/counsel provided by the Fort Peck Tribes for a defendant when the Tribes are seeking an enhanced sentence shall be someone who has passed the Fort Peck Tribal Bar Exam and has practiced within the Fort Peck Tribal Court for a minimum of one year.

(e) A judge presiding over a case when the Tribes are seeking an enhanced sentence shall be someone who has passed the Fort Peck Tribal Bar Exam and completed a minimum of 40 hours of legal education from the National Judicial College or an equivalent course of study from another institution.

Sec. 512. Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000.

(a) The Tribal Court may subject the defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who:

(1) Has been previously convicted of the same or a comparable offense by any jurisdiction in the United States ; 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.

(AS PER RESOLUTION NO. 26-1654-2012-11; DATED 11/14/2012.)



2. The jury source list and the assembled jury pool should be representative and inclusive of the eligible population in the jurisdiction. The source list and the assembled jury pool are representative of the population to the extent the percentages of cognizable group members on the source list and in the assembled jury pool are reasonably proportionate to the corresponding percentages in the population.
 3. The court should periodically review the jury source list and the assembled jury pool for their representativeness and inclusiveness of the eligible population in the jurisdiction.
 4. Should the court determine that improvement is needed in the representativeness or inclusiveness of the jury source list or the assembled jury pool, appropriate corrective action should be taken.
 5. Jury officials should determine the qualifications of prospective jurors by questionnaire or interview, and disqualify those who fail to meet eligibility requirements.
- B. Courts should use random selection procedures throughout the juror selection process.
1. Any selection method may be used, manual or automated, that provides each eligible and available person with an equal probability of selection, except when a court orders an adjustment for underrepresented populations.
 2. Courts should use random selection procedures in:
 - a. Selecting persons to be summoned for jury service;
 - b. Assigning jurors to panels;
 - c. Calling jurors for voir dire; and
 - d. Designating, at the outset of jury deliberations, those jurors who will serve as "regular" and as "alternate" jurors.
 3. Departures from the principle of random selection are appropriate:
 - a. To exclude persons ineligible for service in accordance with basic eligibility requirements;
 - b. To excuse or defer jurors in accordance with C. below;
 - c. To remove jurors for cause or if challenged peremptorily in accordance with D. and E. below; or
 - d. To provide jurors who have not been considered for selection with an opportunity to be considered before other jurors are considered for a second time, as provided for in Standard



**CERTIFICATION OF THE CHAIRMAN OF THE TRIBAL EXECUTIVE
BOARD OF THE FORT PECK TRIBES**

1. I am the Chairman of the Tribal Executive Board of the Fort Peck Tribes.
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Fort Peck Tribes has adequate safeguards in place to protect defendants' rights consistent with 25 U.S.C. 1304.

Signature: A. T. Stafne

Dated this 2nd day of March, 2015

Name: A.T. Stafne
Title: Chairman, Fort Peck Tribes
Address: P.O. Box 1027, Poplar, MT 59255
Phone: (406) 768-2300
FAX: (406) 768-5478
Email: atstafne@fortpecktribes.net

**CERTIFICATION OF THE CHIEF JUDGE
OF THE FORT PECK TRIBAL COURT**

1. I am the Chief Judge of the Fort Peck Tribal Court
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice of the "Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence" published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Fort Peck Tribes has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

Signature: _____

Dated this 2 day of March, 2015.

Name: Honorable Richard K. Jackson
Title: Chief Judge
Address: P.O. Box 1027, Poplar, MT 59255
Phone: (406) 768-2400
FAX: (406) 768-3710
Email: rjackson@fptc.org

**CERTIFICATION OF THE CHIEF LEGAL OFFICER
OF THE FORT PECK TRIBES**

1. I am the chief legal officer of the Fort Peck Tribes
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice of the "Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence" published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Fort Peck Tribes has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304.

Signature: _____

Dated this 2 day of MARCH, 2015.

Name: Ryan Rusche, Esq.
Title: Senior Tribal Attorney
Address: P.O. Box 1027, Poplar, MT 59255
Phone: (406) 890-8450
FAX: (406) 768-5478
Email: r rusche@fortpecktribes.net

CERTIFICATION OF THE FORT PECK TRIBES' POINT OF CONTACT

1. I have been authorized by the governing body of the Fort Peck Tribes to serve as the Tribes' point of contact (POC) with the Department of Justice for the purposes of the VAWA Pilot Project.
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the "Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence" published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to assist the Department of Justice in fulfilling its statutory duty to determine whether the criminal justice system of the Fort Peck Tribes has adequate safeguards in place to protect defendants' rights, consistent with 25 U.S.C. 1304, I will make best efforts, for the remainder of the Pilot Project's duration (i.e., prior to March 7, 2015), to promptly answer written or oral questions from the Departments of Justice and Interior about the Fort Peck Tribes' criminal justice system; to promptly update any answers to this Application Questionnaire if they become incomplete, inaccurate, or outdated; to promptly fix any omissions in the Application Questionnaire; and to promptly submit to the Department of Justice any additions, deletions, or corrections to the Application Questionnaire.

Signature: Rene A. Martell
Dated this 2 day of MARCH, 2015
Name: Rene A. Martell,
Title: Staff Attorney
Address: P.O. Box 1027, Poplar, MT 59255
Phone: (406) 768-2472
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