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**TITLE 13. LAW AND ORDER****ARTICLE I****GENERAL PROVISIONS**

[NOTE: Except as otherwise noted, the provisions of Article I, Title 13 were enacted on January 18, 2001 by Ord. No. 1-2001, adopted by Res. No. 1-2001.]

**CHAPTER 1. DEFINITIONS AND CONSTRUCTION****Sec. 13-1101. Definitions.**

Unless the context requires otherwise or a different definition is provided for a particular Article or Chapter, as used in this Title:

(a) “Crime” means a reference to an offense under this Code and any other ordinance of the Tribe and other applicable laws for which upon conviction a person may be subject to a criminal fine, imprisonment or criminal forfeiture, or any combination thereof.

(b) “Law enforcement officer” means an officer or agent of the Tribe or the United States with the authority to enforce laws within the Settlement and includes, but is not limited to, police officers of the Sac & Fox Tribe of the Mississippi in Iowa Police Department, wardens of the Sac & Fox Tribe of the Mississippi in Iowa Fish and Game Department, and commissioners and agents of the Sac & Fox Tribe of the Mississippi in Iowa Gaming Commission.

(c) “Police Department” means the Sac & Fox Tribe of the Mississippi in Iowa Police Department established in this Title.

(d) “Prosecutor” means the Prosecutor and any Deputy Prosecutors of the Sac & Fox Tribe of the Mississippi in Iowa as designated pursuant to this Title to prosecute crimes against offenders in the name of the Tribe.

(e) “Tribe” refers to the Sac & Fox Tribe of the Mississippi in Iowa and its agencies, departments, divisions, instrumentalities, economic enterprises, officials, agents, officers and employees.

**Sec. 13-1102. Construction.**

Nothing in this Title shall be construed as a waiver or diminution of or limitation upon the sovereignty of the Tribe or the jurisdiction of the Tribe.

**CHAPTER 2. MISCELLANEOUS****Sec. 13-1201. Sovereign Immunity.**

Nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or

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the sovereign immunity of the Sac & Fox Tribe of the Mississippi in Iowa or any of its agencies, departments, enterprises, agents, officials or employees.

**Sec. 13-1202. Severability.**

If any article, chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining articles, chapters, sections or provisions of this Title and amendments made by this Title shall continue in full force and effect.

**TITLE 13. LAW AND ORDER****ARTICLE II****TRIBAL POLICE**

[NOTE: Except as otherwise noted, the provisions of Article II, Title 13 were enacted on January 18, 2001 by Ord. No. 1-2001, adopted by Res. No. 1-2001.]

**CHAPTER 1. GENERAL PROVISIONS****Sec. 13-2101. Definitions.**

Unless the context requires otherwise, as used in this Article:

(a) “Chief” means the Chief of Police and includes any temporary Chief of Police appointed pursuant to the provisions of this Article.

(b) “Department” means the Sac & Fox Tribe of the Mississippi in Iowa Police Department as established by this Article.

(c) “Police officer” means a law enforcement officer of the Department and includes temporary police officers during their term and members of the Reserve who are peace officers.

(d) “Reserve” means the Sac & Fox Tribe of the Mississippi in Iowa Police Reserve authorized by this Article.

**CHAPTER 2. POLICE DEPARTMENT****Sec. 13-2201. Establishment.**

(a) Pursuant to Article X, Section (q) of the Constitution, there is hereby established a Tribal police department, to be known as the Sac & Fox Tribe of the Mississippi in Iowa Police Department, as a subordinate agency of the Tribe, delegated the powers, duties, and responsibilities of the Tribal Council as set forth herein and as otherwise provided by the laws of the Tribe.

(b) The Department shall consist of a Chief of Police and of such police officers and employees as may be required.

**Sec. 13-2202. General Authority.**

(a) The Police Department shall have the power, authority, and duty to prevent crime, to detect and apprehend criminals, to protect the public safety, to enforce and carry out orders of the Tribal Council and any tribunals of the Tribe, and to enforce such other laws as specified by the laws of the Tribe.

(b) The Chief and, when authorized by the Chief, all police officers and employees of the Police Department, except clerical workers therein, shall be vested with and exercise all the powers and authority of peace officers of the Tribe.

**Sec. 13-2203. Agreements for Law Enforcement Services.**

(a) The Tribal Council may enter into written agreements with private organizations or entities or agencies of other jurisdictions:

(1) To act as the Department, or any portion or division thereof, subject to the following:

(i) The terms of any such written agreement shall expressly provide that the organization, entity, or agency and any and all persons providing services pursuant to the written agreement shall:

(A) Be subject to the authority of the Chief; and

(B) Comply with and be subject to the laws of the Tribe, including this Title, and any other applicable laws; and

(ii) In the event the Tribal Council has not appointed a Chief as provided in this Article, the written agreement shall designate within its terms a particular individual within or without the organization, entity, or agency to act as temporary Chief pursuant to 13-2301(c);

(2) To provide law enforcement services to the Tribe as police officers or agents of the Department;

(3) To act as additional police officers within the Department; or

(4) To provide other services to the Department or within the Department.

(b) Any individual providing law enforcement services as a police officer or other peace officer pursuant to a written agreement entered into pursuant to this Section shall be issued a temporary commission and badge of authority pursuant to Section 13-2204(d) subject to the following:

(1) Such temporary commissions shall be of a duration no longer than the duration of the written agreement; and

(2) Such temporary commissions shall expire no later than the date of expiration or termination of the written agreement.

**Sec. 13-2204. Commissions; Badge of Authority.**

(a) The Chief and every police officer shall swear or affirm the following oath before the Tribal Council or its designee:

"I, \_\_\_\_\_, do solemnly swear [or affirm] that I will support and defend the Constitution of the Sac & Fox Tribe of the Mississippi in Iowa and the Constitution of the United States against all enemies, foreign and domestic; that I will carry out faithfully and impartially the duties of my office to the best of my ability; that I will cooperate, promote and protect the best interests of the Sac & Fox Tribe of the Mississippi in Iowa in accordance with the Constitution and Bylaws of the Sac & Fox Tribe of the Mississippi in Iowa."

(b) The Chief and each police officer shall be issued identification cards to certify their commission. The commission card of the Chief of Police shall be signed by the Chairman and the Secretary of the Tribal Council. The commission card of police officers shall be signed by the Chairman of the Tribal Council and the Chief of Police.

(c) The Tribal Council shall issue to the Chief a badge of authority of such design as the Tribal Council may determine. The Chief shall issue to each police officer of the Department a badge of authority which badge shall be of such design as the Chief may determine.

(d) The Tribal Council may issue temporary commissions and badges of authority to individuals as other commissions and badges of authority are issued, subject to the following:

(1) All such commissions and badges of authority shall conspicuously state "temporary" across their face;

(2) All such commissions shall contain on their face a date of expiration; and

(3) Except as otherwise expressly provided herein, all such commissions and badges of authority shall not exceed six (6) months in duration *provided* that such temporary commissions and badges may be renewed for additional six (6) month periods upon approval of the Tribal Council.

**Sec. 13-2205. Cross-Deputization.**

(a) Police officers of the Department may be deputized, permanently or for a time certain, by another jurisdiction to aid in the effective law enforcement on the Settlement.

(b) Law enforcement officers or security officers from other departments, agencies, or enterprises of the Tribe may be deputized into the Department, permanently or temporarily, to aid in the enforcement of the laws of the Tribe.

(c) Law enforcement officers from other jurisdictions may be deputized into the Department, permanently or temporarily, only pursuant to an agreement, approved by the Tribal Council, between the Tribe and the other jurisdiction.

**Sec. 13-2206. Cooperation with Other Jurisdictions.**

Subject to the approval of the Tribal Council, the Department may enter into agreements with other jurisdictions related to cross-deputization, mutual aid, the establishment of task forces, and other law enforcement matters consistent with the purposes of the Department.

**Sec. 13-2207. Appropriations.**

(a) The Tribal Council shall appropriate and authorize the expenditure of Tribal funds for the operation of the Department. The amounts to be appropriated shall be consistent with the needs of the Department for proper law enforcement and public safety within the Settlement and for the Tribe as determined by the Tribal Council.

(b) To assist the Tribal Council in making such appropriations, the Chief shall submit proposed budgets and reports of expenses and expenditures to the Tribal Council, at such intervals and in such form as may be prescribed by the Tribal Council.

**CHAPTER 3. CHIEF OF POLICE****Sec. 13-2301. Appointment and Qualifications.**

(a) The Tribal Council shall appoint a Chief upon such terms and conditions of appointment as they shall direct.

(b) In addition to any other qualifications set by the Tribal Council, the Chief shall be a person of good moral character and of good standing in the community in which he or she lives.

(c) In the event the position of Chief is or becomes vacant, the Tribal Council may designate and appoint a Chief on a temporary basis until a permanent Chief is appointed. Such temporarily appointed Chief shall have all of the powers, duties, and authority of the Chief, except that the duration of such appointment shall not exceed six (6) months unless the Tribal Council thereafter extends the term of appointment for another period not to exceed six (6) months.

**Sec. 13-2302. Direction of Chief of Police.**

The Chief and, in his absence, the next in command, shall be under the direction of the Tribal Council, or its designee, who shall carry out the policies and mandates of the Tribal Council. All such actions of the Tribal Council, or its designee, shall be subject to subsequent action by the Tribal Council.

**Sec. 13-2303. Duties of Chief.**

The duties of the Chief shall be as follows:

(a) To be responsible for and have charge over all tribal police functions on the Settlement;

- (b) To hire police officers and other employees of the Department, subject to appropriations;
- (c) To discipline and dismiss police officers and other employees of the Department in accordance with the personnel rules and regulations applicable to employees of the Tribe;
- (d) To supervise and direct the operations of the Department, its police officers and other employees;
- (e) To be in command of all police officers and other employees of the Department;
- (f) To instruct, train and advise police officers of the Department for the efficient maintenance of law and order on the Settlement;
- (g) To report to the Tribal Council on police activities;
- (h) To prepare and submit proposed budgets and reports of expenses and expenditures to the Tribal Council;
- (i) To provide policemen to the Tribe to perform bailiff service, transportation of prisoners, and service of process;
- (j) To adopt rules and regulations as provided herein;
- (k) To act as a liaison to other law enforcement agencies;
- (l) To perform such other law enforcement related activities as the Tribal Council may, from time to time, direct; and
- (m) To delegate the duties provided herein to subordinate police officers and employees *provided* the Chief shall always maintain the primary responsibility for the operations of the Department.

**Sec. 13-2304. Absence of Chief of Police.**

In the absence of the Chief, the next in command shall perform the functions of the Chief.

**Sec. 13-2305. Rules and Regulations.**

The Chief shall promulgate rules and regulations governing the operation of the Department and the conduct of police officers and other employees of the Department subject to approval of the Tribal Council.

**CHAPTER 4. POLICE OFFICERS****Sec. 13-2401. Qualifications of Police Officers.**

(a) It shall be the goal of the Department to attract and retain experienced and professional police officers and other employees.

(b) Subject to the approval of the Tribal Council, the Chief shall establish minimum standards of training and qualifications which all police officers will be encouraged or required to meet.

(c) The Chief shall explore, schedule, and arrange periodic training and retraining programs for police officers from all available sources. Such programs shall stress not only basic police procedures and techniques, but shall also deal with crime prevention, community and public relations and other appropriate topics.

**Sec. 13-2402. Duties of Police Officers.**

The duties of police officers of the Department shall be:

- (a) To enforce the laws of the Tribe and, where applicable, the laws of the United States;
- (b) To protect the property, safety and welfare of the community;
- (c) To obey promptly all orders of the Chief, ranking police officers, or other supervisor;
- (d) To report and investigate all violations of any law or regulation when there exists sufficient grounds for doing so;
- (e) When ordered by the Chief or the Tribal Council or requested by the Prosecutor, to appear and provide testimony in appropriate tribunals regarding their law enforcement investigations and activities;
- (f) To lend assistance to other police officers of the Department and, when permitted by a valid inter-governmental agreement or other applicable law, officers of other law enforcement agencies;
- (g) To prevent, whenever possible, violations of the laws;
- (h) To inform themselves as to the laws of the Tribe;
- (i) To attend such training sessions as the Tribal Council or Chief may direct;
- (j) To become familiar with and practice at all times principles of good police procedure;
- (k) To report to their superior officers all deaths or accidents of a serious nature or other events or impending events of importance;

- (l) To keep all equipment furnished by the Tribe in good repair and order and to immediately report the loss of any or all such property; and
- (m) To obey all rules and regulations which the Chief shall adopt.

**Sec. 13-2403. Conduct of Police Officers.**

Police officers of the Department shall:

- (a) Not use unnecessary force or violence in making arrests, searches or seizures;
- (b) Whether on or off duty, abstain from the use of narcotics or the excessive use of alcohol;
- (c) Whether on or off duty, refrain from engaging in any act which would reflect discredit on the Tribe or the Department;
- (d) Refrain from the use of profane, vulgar, insolent, or offensive language; and
- (e) Comply with the rules of conduct imposed by the Chief and the Tribal Council.

**CHAPTER 5. POLICE DEPARTMENT RESERVE**

**Sec. 13-2501. Establishment.**

The Chief may provide for an organization to be known as the Sac & Fox Tribe of the Mississippi in Iowa Police Reserve, which organization shall consist of individuals who shall render auxiliary support to the Department as the Chief may prescribe. The Police Reserve may consist of members who are peace officers and members who are not peace officers.

**Sec. 13-2502. Powers of Reserve.**

The Chief shall define the powers and duties of the reserve, but such powers and duties shall not be in excess of those accorded to Department police officers and employees nor inconsistent therewith.

**Sec. 13-2503. Commission; Badge of Authority.**

(a) Members of the Reserve who are peace officers shall take the oath required of all police officers of the Department and shall be issued identification cards which bear the signature of the Chairman of the Tribal Council and the Chief *provided* that such identification cards contain the word “reserve” conspicuously on their face.

(b) The Chief shall also issue to each member of the Reserve a badge of authority to be used by the members of the Reserve for activities authorized by the Chief. The badge shall be of such design as the Chief may determine, but shall bear the word “reserve” across the face thereof.

**Sec. 13-2504. Compensation.**

The members of the Reserve may be composed of volunteers who receive no compensation, or may be composed of individuals who receive compensation, or may be composed of any combination of volunteers and compensated individuals, as the Chief may determine, *provided* that any compensation paid to members of the Reserve shall be subject to appropriations.

**TITLE 13. LAW AND ORDER****ARTICLE III****OFFICE OF THE PROSECUTOR**

[NOTE: Except as otherwise noted, the provisions of Article III, Title 13 were enacted on July 6, 2005 by Res. No. 27-2005.]

**CHAPTER 1. GENERAL PROVISIONS****Sec. 13-3101. Establishment.**

There is hereby created an Office of the Prosecutor, which shall consist of a Lead Prosecutor, appointed by the Tribal Council, and such associates and staff as authorized by the Tribal Council. The Lead Prosecutor shall serve at the will of the Tribal Council.

**Sec. 13-3102. Duties of the Office of the Prosecuting Attorney Prosecutor.**

The Office of the Prosecutor shall:

- (a) Be responsible for the representation of the Tribe in all criminal proceedings brought in the name of the Tribe, including arraignments, motions, trials and appeals;
- (b) Determine, in its discretion, whether to bring criminal charges on behalf of the Tribe
- (c) Serve as presenting officer in child dependency matters filed in the Tribe's Court;
- (d) Have the authority to represent the Tribe in Indian Child Welfare cases in foreign jurisdictions;
- (e) Have the authority to represent the Tribe on civil infraction allegations in the Tribe's Court;
- (f) Have the authority to represent the Tribe in any other matter as directed by the Tribal Council;
- (g) Establish a working relationship with local, state and federal jurisdictions and establish a protocol for coordinating criminal investigations and prosecutions with such local, state and federal jurisdictions; and
- (h) Work in conjunction with the Tribe's police force to establish, implement, review, and modify prosecutorial policies and priorities.

**TITLE 13. LAW AND ORDER**

**ARTICLE IV**

**JAIL AND DETENTION**

[RESERVED]

**TITLE 13. LAW AND ORDER****ARTICLE V****CRIMES AND OFFENSES**

[NOTE: Except as otherwise noted, the provisions of Article V, Title 13 were enacted on July 6, 2005 by Res. No. 27-2005.]

**CHAPTER 1. IN GENERAL****Sec. 13-5101. Construction of Article.**

(a) The provisions of this Article shall be construed according to the fair meaning of their terms to promote justice and effect the objects of the law.

(b) Unless the context clearly requires otherwise:

(1) A separate count may be charged for each act which occurs at a separate time or location;

(2) For each offense under chapters 6, 7, and 8 of this Title, and any other offenses against a person, a separate count may be charged related to each separately harmed person;

(3) For offenses involving a sex act, a separate count may be charged for each separate sex act;

(4) For offenses involving unlawful possession of any item other than alcohol, a separate count may be charged for each separate item possessed; and

(5) For continuing offenses, a separate count may be charged for each day that the offense continues.

**Sec. 13-5102. Definitions.**

Unless the context requires otherwise, as used in this Article:

(a) “Accomplice” means a person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, who, with the intent to promote or facilitate the commission of an offense:

(1) Solicits or commands another person to commit the offense;

(2) Aids, counsels, agrees to aid or attempts to aid another person in planning or committing the offense; or

(3) Provides means or opportunity to another person to commit the offense.

(b) “Benefit” means gain or advantage, present or prospective, or anything regarded by the beneficiary as gain or advantage, present or prospective, including benefit to any other person or entity in whose welfare he is interested.

(c) “Child” means:

(1) A person who is under 15 years of age; and

(2) A person who is under 18 years of age who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that he is unable to care for his own personal safety or to provide necessities such as food, shelter, clothing, and medical care.

(d) “Civil violation” means any conduct for which a civil fine or other civil remedy is provided by any law of the Tribe.

(e) “Conduct” means an act or omission and its accompanying culpable mental state, or, where relevant, a series of acts and omissions.

(f) “Controlled substance” means:

(1) Marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and any other substances contained in schedules I – V of 21 U.S.C. §812, and provided that a substance added to any of the referenced schedules shall become a controlled substance under this Article thirty days after the substance is added to the schedule unless the Council by determines otherwise by resolution; and

(2) Psychotoxic chemical solvents, when used, possessed, purchased, sold, manufactured, or provided to another for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system of any person.

(g) “Criminal negligence” means, with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive 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 perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(h) “Culpable mental state” means intentionally, knowingly, recklessly or with criminal negligence as those terms are defined in this Article.

(i) “Element of an offense” means such conduct or such attendant circumstances or such a result of conduct as:

(1) Is included in the description of the forbidden conduct in the definition of the offense;

(2) Establishes the required culpable mental state;

- (3) Negatives a defense for which the prosecution has the burden of proof;
- (4) Establishes jurisdiction.

(j) "Firearm" means a pistol, revolver, rifle, shotgun, and any device that is capable of being used as a weapon because it expels a projectile by some means of force.

(k) "Indian custodian" means any person who has legal custody of an Indian child under tribal law or custom or to whom temporary physical care, custody, and control has been transferred voluntarily by the parent or guardian of such child.

(l) "Intentionally" or "with the intent to" means, with respect to a result or to conduct described by a law defining an offense, that a person's objective is to cause that result or to engage in that conduct.

(m) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that his conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

(n) "Offense" means conduct for which a sentence to a term of imprisonment or of a penal fine is provided by any law of the Tribe, but does not include civil violations.

(o) "Officer of the Tribe" means:

- (1) The Chairman, Vice-Chairman, Secretary, and Treasurer of the Tribal Council;
- (2) Any other member of the Tribal Council;
- (3) Any person elected or appointed to office for the Tribe or any of its commissions, boards, departments, agencies, or economic enterprises;
- (4) Any law enforcement officer or peace officer of the Tribe;
- (5) Any other commissioner, boardmember, director, agent, official, officer, or employee of the Tribe or any of its commissions, boards, departments, agencies, or economic enterprises;
- (6) Any other agent, officer, official, or employee of the Tribe, whether elected, appointed or otherwise employed; and
- (7) Any person participating as advisor, consultant or otherwise in performing a governmental function, except jurors or witnesses.

Officer of the Tribe includes those who have been elected, appointed, employed or designated to become an officer of the Tribe although not yet occupying that position.

- (p) “Omission” means a failure to act.
- (q) “Organization” means any corporation, partnership, association, enterprise or other entity, but does not include the Tribe.
- (r) “Petty offense” means an offense for which a sentence of a penal fine only is authorized by law, except for civil violations.
- (s) “Possess” means to knowingly, either jointly or exclusively, have physical possession or otherwise exercise dominion, control, or constructive possession, over property.
- (t) “Property” means anything of value, tangible or intangible.
- (u) "Psychotoxic chemical solvents" includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone, an acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluene, any group of polyhalogenated hydrocarbons containing fluorine and chlorine, or any other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.
- (v) “Recklessly” means, with respect to a result or to a circumstance described by a statute defining an offense, 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 of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.
- (w) "Sex act" means sexual intercourse and any other contact between two or more persons by: contact between the finger or hand of one person and the genitalia or anus of another person (except in the course of examination or treatment by a licensed medical provider) or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.
- (x) “Sexual contact” means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female.
- (y) “Sexual Intercourse” means any contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person.
- (z) “Structure” means any item, permanent or temporary, created or adapted by humans for accommodation of persons or animals, for carrying on business or other activity, or for the

storage or safekeeping of anything of value. It includes, but is not limited to any house, building, or vehicle.

(aa) "Tribe" means the Sac & Fox Tribe of the Mississippi in Iowa and its commissions, boards, departments, agencies, and economic enterprises.

(bb) "Unlawful" means contrary to the laws of the Tribe or other applicable law or, where the context so requires, not permitted by the laws of the Tribe or other applicable law.

(cc) "Voluntary act" means a bodily movement performed consciously and as a result of effort and determination.

(dd) "Vulnerable adult" means a person eighteen years of age or older who has the functional, mental, or physical inability to care for himself; any adult over whom any Court has appointed a guardian; and any adult being cared for, whether voluntarily or involuntarily, in a mental health facility, hospital, nursing home, or similar care facility.

(ee) "Weapon" means a loaded or unloaded firearm, an explosive device, an instrument with a sharpened blade longer than four inches, a club longer than twelve inches, or any other 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 injury.

### **Sec. 13-5103. Territorial Applicability.**

Except as otherwise provided within any article, chapter, or section and any limitations, restrictions or exceptions imposed by or under the authority of the Constitution or laws of the United States, the Tribe has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which such person is legally accountable if:

(a) Conduct constituting any element of the offense or a result of such conduct occurs on the Settlement;

(b) The conduct outside the Settlement constitutes an attempt or conspiracy to commit an offense on the Settlement and an act in furtherance of the attempt or conspiracy occurs on the Settlement;

(c) The conduct on the Settlement constitutes an attempt, solicitation, conspiracy or facilitation to commit or establishes criminal accountability for the commission of an offense off the Settlement that is also an offense under the laws of the Tribe;

(d) The offense consists of an omission to perform a duty imposed by the laws of the Tribe regardless of the location of the defendant at the time of the offense; or

(e) The offense is a violation of a law of the Tribe that prohibits conduct outside the Settlement.

**Sec. 13-5104. Classification of Offenses.**

(a) Offenses are classified, for the purpose of sentence, into the following seven categories:

- (1) Class 1 offenses;
- (2) Class 2 offenses;
- (3) Class 3 offenses;
- (4) Class 4 offenses;
- (5) Class 5 offenses;
- (6) Class 6 offenses; and
- (7) Petty offenses.

(b) Where this Article or any other tribal law defines any act or omission as a crime but does not clearly state the classification or punishment therefor, the crime shall be a class 5 offense, provided that this subsection shall not convert or be construed to convert any civil violation into an offense or any exercise of criminal jurisdiction.

**Sec. 13-5105. Sentences for Classifications of Offenses.**

(a) A sentence of imprisonment for an offense shall be a definite term.

(b) The sentence for an offense shall be determined as follows:

- (1) For a class 1 or 2 offense, up to one year imprisonment and a five thousand dollar fine;
- (2) For a class 3 offense, up to 240 days imprisonment and a five thousand dollar fine;
- (3) For a class 4 offense, up to 120 days imprisonment and a five thousand dollar fine;
- (4) For a class 5 offense, up to 60 days imprisonment and a five thousand dollar fine;
- (5) For a class 6 offense, up to thirty days imprisonment and a five thousand dollar fine; and
- (6) For a petty offense, up to a five thousand dollar fine.

**CHAPTER 2. DEFENSES****Sec. 13-5201. Lawful Use of Force.**

(a) In any prosecution for a crime, it is a defense that the actor used, attempted to use, or threatened to use reasonable force upon or toward the person of another in the following cases:

(1) By a law enforcement officer in effecting a lawful arrest, executing legal process, enforcing a lawful order of the Tribal Court, or executing any duty imposed upon the officer by law;

(2) By a person assisting a law enforcement officer and acting under the officer's direction where the officer reasonably appeared to be effecting a lawful arrest, executing legal process, enforcing a lawful order of the Tribal Court, or executing any duty imposed upon the officer by law;

(3) By any person who reasonably believed that the force used was reasonably necessary for the defense of oneself or another against the immediate use of unlawful force;

(4) By an occupant, owner, or renter of land or a structure, or an agent thereof who reasonably believed that the force used was reasonably necessary to prevent or terminate conduct which the actor reasonably believed to be the commission or attempted commission of a crime involving trespass, damage to, or theft at the land or structure;

(5) By an occupant, owner, or renter of land or a structure, or an agent thereof, to detain a person at or near the land or structure pending arrival of a police officer when the actor had probable cause to believe that the person detained was attempting to commit or had just committed a crime involving trespass, damage to, or theft at the land or structure; or

(6) By any person who used force, where the actor's knowledge, if known by an occupant, owner or renter of land or a structure, or an agent thereof, would have provided sufficient grounds for the occupant, owner, renter, or agent to use the force under subsections (3) or (4).

(b) "Reasonable force" is force of a type and duration which a reasonably prudent member of the Tribe would use under the same or similar conditions as they appeared to the actor, taking into consideration all of the relevant facts and circumstances known to the actor at the time the incident, provided that deadly force may only be used to prevent the use of deadly force.

(c) Whenever the defendant introduces sufficient evidence to support a reasonable belief as to the existence of a defense under this section, the Tribe has the burden of disproving such defense beyond a reasonable doubt.

**Sec. 13-5202. Duress.**

(a) In any prosecution for a crime it is a defense that:

- (1) The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal the actor or another would be subject to immediate substantial bodily injury;
  - (2) Such apprehension was reasonable upon the part of the actor; and
  - (3) The actor would not have participated in the crime except for the duress involved.
- (b) The defense of duress is not available if the actor intentionally or recklessly places himself in a situation in which it is probable that he will be subject to duress.
- (c) Defendant bears the burden to prove duress by a preponderance of the evidence.

**Sec. 13-5203. Entrapment.**

- (a) In any prosecution for a crime it is a defense that:
- (1) The criminal design originated in the mind of law enforcement officials, or any person acting under their direction; and
  - (2) The actor was lured or induced to commit a crime the actor had not otherwise intended to commit.
- (b) The defense of entrapment is not established by showing only that law enforcement officials merely afforded the actor an opportunity to commit a crime.
- (c) Defendant bears the burden to prove entrapment by a preponderance of the evidence.

**Sec. 13-5204. Ignorance or Mistake.**

Ignorance or mistake as to a matter of fact or law is not a defense unless it negates an element of an offense.

**Sec. 13-5205. Intoxication.**

- (a) Self-induced intoxication is not a defense unless it negates an element of the offense.
- (b) When negligence or recklessness establishes an element of the offense, self-induced intoxication is no defense.

**Sec. 13-5206. Mental Disease or Defect and Involuntary Intoxication.**

- (a) In any prosecution for a crime it is a defense that at the time of the commission of the offense, as a result of mental disease or defect or involuntary intoxication, the mind of the actor was affected to such an extent that the actor lacked substantial capacity either to appreciate the wrongfulness of that conduct or to conform that conduct to the requirements of law.

- (b) As used in this Section, the terms "mental disease or defect" does not include:
- (1) An abnormality caused by intoxication or abuse of alcohol or drugs; or
  - (2) An abnormality manifested only by repeated criminal or otherwise antisocial conduct.

**Sec. 13-5207. Affirmative Defense – Special Verdict.**

(a) In any case where the jury is instructed on one or more defenses for which defendant bears the burden of proof, the jury shall, upon request by either party, be required to determine, by special verdict, whether the affirmative defense was the sole reason for any “not guilty” verdict rendered.

(b) Where a defendant is found not guilty of a charge solely because of an affirmative defense for which defendant met his burden of proof, the Court may, in its discretion, retain jurisdiction over defendant and issue reasonable orders, excluding criminal penalties, designed to prevent defendant from engaging in an act similar to that which would have been criminal but for the existence of the affirmative defense.

**CHAPTER 3. RESPONSIBILITY**

**Sec. 13-5301. Requirements for Liability.**

The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which the person is physically capable of performing.

**Sec. 13-5302. Liability Based on Conduct.**

A person may be guilty of an offense committed by such person’s own conduct or by the conduct of another for which such person is criminally accountable as provided in this Chapter, or both. In any prosecution, testimony of an accomplice need not be corroborated.

**Sec. 13-5303. Liability for Conduct of Another.**

- (a) A person is criminally accountable for the conduct of another if:
- (1) The person is made accountable for such conduct by the statute defining the offense;
  - (2) Acting with the culpable mental state sufficient for the commission of the offense, such person causes another person, whether or not such other person is capable of forming the culpable mental state, to engage in such conduct; or
  - (3) The person is an accomplice of such other person in the commission of an offense.

(b) If causing a particular result is an element of an offense, a person who acts with the kind of culpability with respect to the result that is sufficient for the commission of the offense is guilty of that offense if:

(1) The person solicits or commands another person to engage in the conduct causing such result; or

(2) The person aids, counsels, agrees to aid or attempts to aid another person in planning or engaging in the conduct causing such result.

**Sec. 13-5304. Nondefenses to Liability for Another.**

In any prosecution for an offense in which the criminal liability of the accused is based upon the conduct of another under Section 13-5303 or pursuant to Section 13-5403, it is no defense that:

(a) The other person has not been prosecuted for or convicted of such offense, or has been acquitted of such offense, or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction for such offense; or

(b) The accused belongs to a class of persons who by definition of the offense are legally incapable of committing the offense in an individual capacity.

**Sec. 13-5305. Organization Liability.**

(a) Notwithstanding any other provisions of law, an organization commits an offense if:

(1) The conduct constituting the offense consists of a failure to discharge a specific duty imposed by law;

(2) The conduct undertaken in behalf of the organization and constituting the offense is engaged in, authorized, solicited, commanded or recklessly tolerated by the directors of the organization in any manner or by a high managerial agent acting within the scope of employment; or

(3) The conduct constituting the offense is engaged in by an agent of the organization while acting within the scope of employment and in behalf of the organization; and

(i) The offense is a class 6 offense or petty offense; or

(ii) The offense is defined by a statute which imposes criminal liability on an organization.

(b) As used in this section:

(1) "Agent" means any officer, director, employee of an organization or any other person who is authorized to act in behalf of the organization.

(2) “High managerial agent” means an officer of an organization or any other agent in a position of comparable authority with respect to the formulation of organization policy.

**Sec. 13-5306. Liability of Individual for Organization.**

A person is criminally liable for conduct constituting an offense which such person performs or causes to be performed in the name of or in behalf of an organization to the same extent as if such conduct were performed in such person’s own name or behalf.

**CHAPTER 4. PREPARATORY OFFENSES**

**Sec. 13-5401. Attempt.**

(a) A person commits attempt if, acting with the kind of culpability otherwise required for commission of the offense, he:

(1) Purposely engages in conduct that would constitute the offense if the attendant circumstances were as he believes them to be;

(2) When causing a particular result is an element of the offense, does or omits to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part; or

(3) Intentionally does or omits to do anything that, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the offense.

(b) It is no defense that it was impossible for the person to aid the other party’s commission of the offense, provided such person could have done so had the circumstances been as he believed them to be.

(c) Attempt is a:

(1) Class 2 offense if the offense attempted is a class 1 offense;

(2) Class 3 offense if the offense attempted is a class 2 offense;

(3) Class 4 offense if the offense attempted is a class 3 offense;

(4) Class 5 offense if the offense attempted is a class 4 offense;

(5) Class 6 offense if the offense attempted is a class 5 offense; and

(6) Petty offense if the offense attempted is a class 6 offense or petty offense.

**Sec. 13-5402. Solicitation.**

(a) A person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, commits solicitation if, with the intent of promoting or facilitating the commission of an offense, he commands, encourages, requests, or solicits another person to engage in specific conduct that would constitute such offense or an attempt to commit such offense or would establish his complicity in its commission or attempted commission.

(b) It is immaterial under subsection (a) of this Section that the actor fails to communicate with the person he solicits to commit a crime if his conduct was designed to effect such communication.

(c) Solicitation is a:

- (1) Class 2 offense if the offense solicited is a class 1 offense;
- (2) Class 3 offense if the offense solicited is a class 2 offense;
- (3) Class 5 offense if the offense solicited is a class 3 offense;
- (4) Class 6 offense if the offense solicited is a class 4 or class 5 offense; and
- (5) Petty offense if the offense is a class 6 offense or petty offense.

**Sec. 13-5403. Conspiracy.**

(a) A person commits conspiracy if, with the intent of promoting or facilitating the commission of an offense he:

(1) Agrees with such other person or persons that they or one or more of them will engage in conduct that constitutes such offense or an attempt or solicitation to commit such offense; or

(2) Agrees to aid such other person or persons in the planning or commission of such offense or of an attempt or solicitation to commit such offense.

(b) If a person guilty of conspiracy, as defined by subsection (a) of this Section, knows or has reason to know that a person with whom he conspires to commit an offense has conspired with another person or persons to commit the same offense, he is guilty of conspiring with such other person or persons to commit such offense, whether or not he knows their identity.

(c) A person who conspires to commit a number of offenses is guilty of only one conspiracy if the multiple offenses are the object of the same agreement or relationship and the degree of the conspiracy shall be determined by the most serious offense conspired to.

(d) Conspiracy is an offense of the same class as the most serious offense which is the object of or result of the conspiracy.

**Sec. 13-5404. Facilitation.**

(a) A person commits facilitation if, acting with knowledge that another person is committing or intends to commit an offense, the person knowingly provides the other person with means or opportunity for the commission of the offense.

(b) This section does not apply to peace officers who act in their official capacity within the scope of their authority and in the line of duty.

(c) Facilitation is a:

- (1) Class 2 offense if the offense facilitated is a class 1 offense;
- (2) Class 4 offense if the offense facilitated is a class 2 offense;
- (3) Class 5 offense if the offense facilitated is a class 3 offense;
- (4) Class 6 offense if the offense facilitated is a class 4 or class 5 offense; and
- (5) Petty offense if the offense facilitated is a class 6 offense or a petty offense.

**Sec. 13-5405. Effect of Renunciation.**

(a) In a prosecution for attempt, conspiracy, or facilitation, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the attempt, conspiracy, or facilitation.

(b) In a prosecution for solicitation, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent completed both of the following acts:

- (1) Notified the person solicited; and
- (2) Gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result solicited.

(c) A renunciation is not voluntary and complete within the meaning of this Section if it is motivated in whole or in part by:

- (1) A belief that circumstances exist which increase the probability of immediate detection or apprehension of the accused or another participant in the criminal enterprise or which render more difficult the accomplishment of the criminal purpose; or
- (2) A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim, place, or another but similar objective.

(d) A warning to law enforcement authorities is not timely within the meaning of this Section unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the conduct or result. An effort is not reasonable within the meaning of this section unless the defendant makes a substantial effort to prevent the conduct or result.

**Sec. 13-5406. Effect of Immunity or Incapacity.**

(a) It is not a defense to a prosecution for solicitation, conspiracy, or facilitation that a person solicited, facilitated, or with whom the defendant conspired could not be guilty of committing the offense because:

(1) Such person is, by definition of the offense, legally incapable in an individual capacity of committing the offense;

(2) Such person is not criminally responsible as defined in Chapter 3 of this Article, or has an immunity to prosecution or conviction for the commission of the offense; or

(3) Such person does not have the state of mind sufficient for the commission of the offense in question.

(b) It is not a defense to a prosecution for solicitation or conspiracy that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense that is the object of the solicitation or conspiracy.

**CHAPTER 5. OFFENSES AGAINST THE TRIBE AND AGAINST PUBLIC ORDER**

**Sec. 13-5501. Bail Jumping.**

(a) A person who, having been released on bail or on his own recognizance by court order or other lawful authority upon condition that he subsequently appear on a charge of an offense, fails without just cause to appear at the time and place lawfully designated for the appearance, commits Bail Jumping.

(b) Bail Jumping is a class 4 offense.

**Sec. 13-5502. Bribery of Tribal Official.**

(a) A person commits Bribery of a Tribal Official if such person:

(1) Offers, confers or agrees to confer any benefit, directly or indirectly, upon an officer of the Tribe with the intent to influence the officer's vote, opinion, judgment, exercise of discretion, or other action in his official capacity as an officer of the Tribe; or

(2) Solicits, accepts or agrees to accept, directly or indirectly, any benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion, or other action as an officer of the Tribe may thereby be influenced.

(b) It is no defense to a prosecution under this Section that a person sought to be influenced was not qualified to act in the desired way because such person had not yet assumed office, lacked jurisdiction, or for any other reason.

(c) Bribery of a Tribal Official in the First Degree occurs when the benefit offered, conferred, agreed upon, solicited or accepted had a value of \$100 or more. Bribery of a Tribal Official in the First Degree is a class 1 offense.

(d) Bribery of a Tribal Official in the Second Degree is any bribery of a Tribal Official which does not amount to Bribery of a Tribal Official in the First Degree. Bribery of a Tribal Official in the Second Degree is a class 4 offense.

**Sec. 13-5503. Disobedience of a Lawful Court Order.**

(a) A person who knowingly disobeys any lawful order, subpoena, or warrant of the Tribal Court or any officer thereof, commits Disobedience of a Lawful Court Order.

(b) Disobedience of a Lawful Court Order is a class 4 offense.

**Sec. 13-5504. Escape.**

(a) A person who, being in lawful custody for any offense, escapes, or fails to return to official detention following temporary leave granted for a specific purpose for a limited period (excluding probation, parole, or release on bail) commits Escape.

(b) Escape is a class 3 offense.

**Sec. 13-5505. False Alarm.**

(a) A person who, knowing that there is not cause for the alarm, causes a fire alarm or alarm of other emergency to be transmitted, commits False Alarm.

(b) False Alarm is a class 4 offense.

**Sec. 13-5506. False Swearing.**

(a) A person commits false swearing if while under oath, whether by affidavit, declaration, testimony, or otherwise, he knowingly:

(1) Falsifies, conceals, or covers up any material fact;

(2) Misstates or omits relevant information to the Tribe's Court; or misleads the Tribe's Court; or

(3) Makes uses any writing or document knowing the same to contain any materially false, fictitious, misleading, or fraudulent statement or entry.

(b) For purposes of this Section:

(1) “Material” means that which could have affected the course or outcome of any proceeding or transaction.

(2) “Statement” means any representation, but includes a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

(c) False swearing is a class 3 offense.

**Sec. 13-5507. Impersonating a Public Servant.**

(a) A person who knowingly pretends to be an Officer of the Tribe or any other government, commits Impersonating a Public Servant.

(b) Impersonating a Public Servant is a class 3 offense.

**Sec. 13-5508. Interests in Contracts.**

(a) No officer of the Tribe shall knowingly be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the Tribe, or to any benefit to arise thereupon.

(b) This section shall not apply to any contracts or agreements entered into by an officer of the Tribe directly with the Tribe for employment, compensation for service as an officer of the Tribe, or benefit provided generally by the Tribe to its members or employees, or provided by the Tribe to its members or employees based upon standardized eligibility criteria.

(c) Interests in contracts of the First Degree occurs when the value of the share, part, or benefit had a value of \$100 or more. Interest in contract in the First Degree is a class 1 offense.

(d) Interest in contracts in the Second Degree is any interest in contract which does not amount to interest in contract in the First Degree. Interest in contract in the Second Degree is a class 2 offense.

**Sec. 13-5509. Interfering with Tribal Official.**

(a) A person commits interfering with a Tribal Official if he:

(1) By means of any threat, force or violence, attempts to deter or prevent any officer of the Tribe from performing his duty; or

(2) Knowingly resists by threat, force or violence any officer of the Tribe in the performance of his duty.

(b) Interfering with a Tribal Official is a class 4 offense.

**Sec. 13-5510. Kickback.**

- (a) No person may:
- (1) Offer, confer, or agree to confer any kickback;
  - (2) Solicit, accept, or agree to accept any kickback; or
  - (3) To include, directly or indirectly, the amount of any kickback prohibited by subsection (1) or (2) in the contract price or other consideration charged by a person or entity contracting or otherwise doing business with the Tribe.

(b) For purposes of this section, the term “kickback” means any money, fee, commission, credit, gift, gratuity, benefit, thing of value, or compensation of any kind which is provided, directly or indirectly, to any person for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or other business transaction involving the Tribe.

(c) Kickback in the First Degree occurs when the kickback offered, conferred, agreed upon, solicited or accepted had a value of \$100 or more. Kickback in the First Degree is a class 1 offense.

(d) Kickback in the Second Degree is any kickback which does not amount to kickback in the First Degree. Kickback in the Second Degree is a class 4 offense.

**Sec. 13-5511. Obstructing Justice.**

(a) A person commits Obstructing Justice when the person, with the purpose of hindering the apprehension, prosecution, conviction, or punishment of another for the commission of an offense:

- (1) harbors or conceals the other or provides or aids in providing the other with a weapon, disguise, transportation or other means of escape;
- (2) warns the other of impending discovery; or
- (3) volunteers false information to a police officer or conceals or destroys evidence of the offense.

(b) Obstructing Justice is a class 3 offense.

**Sec. 13-5512. Offer to Influence Tribal Official.**

(a) A person who intentionally or knowingly obtains or seeks to obtain any benefit from another person upon a claim or representation that he can or will improperly influence the action of an officer of the Tribe commits Offer to Influence Tribal Official.

(b) Offer to Influence Tribal Official a class 4 offense.

**Sec. 13-5513. Resisting Arrest or Process.**

(a) A person who knowingly by force or violence resists or assists another person to resist a lawful arrest or the serving or execution of any legal process, commits Resisting Arrest or Process.

Resisting Arrest or Process in the First Degree occurs if the defendant possesses a weapon or claims to possess a weapon. Resisting Arrest or Process in the First Degree is a class 1 offense.

(b) Resisting Arrest or Process in the Second Degree is any Resisting Arrest or Process which does not amount to Resisting Arrest or Process in the First Degree. Resisting Arrest or Process in the Second Degree is a class 4 offense.

**Sec. 13-5514. Trading in Tribal Office.**

(a) A person commits Trading in Tribal office if:

(1) Such person offers, confers or agrees to confer any benefit, directly or indirectly, upon an officer of the Tribe upon an agreement or understanding that he will or may be appointed to a Tribal office or designated or nominated as a candidate for Tribal office; or

(2) While an officer of the Tribe, such person solicits, accepts, or agrees to accept, directly or indirectly, any benefit from another upon an agreement or understanding that that person will or may be appointed to a Tribal office or designated or nominated as a candidate for Tribal office.

(b) This section does not apply to contributions to campaign funds or other similar contributions made without corrupt intent.

(c) Trading in public office is a class 1 offense.

**Sec. 13-5515. Threatening Tribal Official.**

(a) A person commits Threatening a Tribal Official if he:

(1) Threatens unlawful harm to any person with purpose to influence the decision, opinion, recommendation, vote or other exercise of discretion of an officer of the Tribe or voter;

(2) Threatens unlawful harm to any person with purpose to influence the vote of a voter in a tribal, federal, or state election;

(3) Threatens harm to any person with purpose to influence an officer of the Tribe to violate a legal duty known to that officer;

(4) Privately addresses to any officer of the Tribe who has or will have an official discretion in any proceeding any representation, entreaty, argument or other communication with purpose to influence the outcome on the basis of considerations other than those authorized by law; or

(5) Harms another by any unlawful act in retaliation for anything lawfully done by an officer of the Tribe.

(b) It is no defense to a prosecution under this Section that a person sought to be influenced was not qualified to act in the desired way because such person had not yet assumed office, lacked jurisdiction, or for any other reason.

(c) Threatening a Tribal Official is a class 1 offense.

#### **Sec. 13-5516. Tampering with Evidence.**

(a) A person who, without proper authority, knowingly alters, destroys, conceals, removes, or fails to return any record, document or thing which belonged to or was being kept by the Tribe for information or record, or which was being kept by appropriate authorities for evidentiary purposes in an official proceeding or investigation, commits Tampering with Evidence.

(b) Tampering with Evidence is a class 3 offense.

#### **Sec. 13-5517. Tampering with Witness or Juror.**

(a) A person who, believing that an official proceeding or investigation is pending or about to be instituted, causes another person to testify or inform falsely or to withhold, destroy or conceal any information, document or thing or its authenticity or availability, or to elude legal process summoning him to testify or supply evidence, or who attempts to influence by any means the vote or decision of a jury or who does any act in retaliation for a person serving as a witness or juror member commits Tampering with Witness or Juror.

(b) Tampering with Witness or Juror in the First Degree occurs when the tampering results in physical harm to a person or when the tampering relates to an official proceeding or investigation of a Class 1 offense. Tampering with a Witness in the First Degree is a class 1 offense.

(c) Tampering with a Witness or Juror in the Second Degree is any tampering with a witness or juror which does not constitute Tampering With a Witness or Juror in the First Degree. Tampering With a Witness in the Second Degree is a class 3 offense.

### **CHAPTER 6. ASSAULT AND RELATED OFFENSES**

#### **Sec. 13-5601. Abuse of a Vulnerable Adult**

(a) A person commits Abuse of a Vulnerable Adult when the person:

(1) knowingly inflicts physical or mental pain or injury on a vulnerable adult or threatens to do the same;

- (2) knowingly misuses the funds, property or resources of a vulnerable adult; or
  - (3) is responsible for the care of a vulnerable adult and knowingly fails to provide food, clothing, shelter, medical care or other services reasonably necessary to sustain the life or health of the vulnerable adult.
- (b) Abuse of a Vulnerable Adult is a class 1 offense.

**Sec. 13-5602. Arson Dangerous to a Person.**

- (a) A person who knowingly sets a fire manifestly dangerous to any human being commits Arson Dangerous to a Person.
- (b) Arson Dangerous to a Person is a class 1 offense

**Sec. 13-5603. Assault.**

- (a) A person commits Assault when the person:
- (1) with apparent ability, attempts unlawful contact with another; or
  - (2) intentionally threatens unlawful contact upon another, coupled with an apparent ability to carry out that threat, and does some act which creates a well-founded fear in such other person that such contact is imminent.
- (b) A person who commits an assault and uses or displays a weapon in connection with the assault shall be guilty of Assault in the First Degree. Assault in the First Degree is a class 1 offense.
- (c) A person who commits assault which does not amount to assault in the First Degree commits assault in the Second Degree. Assault in the Second Degree is a class 5 offense.

**Sec. 13-5604. Battery.**

- (a) A person commits Battery when the person:
- (1) with the purpose of causing physical injury to a person, causes physical injury to the intended person or any other person; or
  - (2) purposely causes stupor, unconsciousness, or physical or mental impairment or injury to another person by administering to him, without his consent, any drug or other substance.
- (b) Battery is a class 1 offense.

**Sec. 13-5605. Causing or Aiding Suicide.**

- (a) A person who knowingly causes or aids another to commit suicide shall be guilty of the offense of Causing or Aiding Suicide.
- (b) Causing or Aiding Suicide is a class 1 offense.

**Sec. 13-5606. Criminal Homicide.**

- (a) A person who knowingly, recklessly or negligently causes the death of another human being commits Criminal Homicide.
- (b) Criminal Homicide is a class 1 offense.

**Sec. 13-5607. Reckless Endangerment.**

- (a) A person who recklessly engages in conduct which places another human being in danger of death or serious bodily injury commits Reckless Endangerment.
- (b) Reckless Endangerment is a class 1 offense.

**Sec. 13-5608. Vehicular Homicide.**

- (a) A person who, while under the influence of an alcoholic beverage or a controlled substance or drug, causes the death of another by operating a vehicle, commits Vehicular Homicide.
- (b) Vehicular Homicide is a class 1 offense.

**CHAPTER 7. ABDUCTION AND RELATED OFFENSES****Sec. 13-5701. Abduction.**

- (a) A person commits abduction when, without lawful authority, the person substantially interferes with the liberty of another by knowingly removing the other from the place where the other is found without the consent of:
- (1) the removed person, if the removed person is not a child; or
  - (2) a person with lawful custody of the child, if the removed person is a child.
- (b) Abduction is a class 1 offense.

**Sec. 13-5702. False Imprisonment.**

- (a) A person commits false imprisonment when, without lawful authority, the person substantially interferes with the liberty of another by knowingly restraining the other against the will of:

- (1) the restrained person, if the restrained person is not a child; or
  - (2) a person with lawful custody of the restrained person, if the restrained person is a child.
- (b) False Imprisonment is a class 1 offense.

**Sec. 13-5703. Interference with Custody.**

- (a) A person commits the crime of interference with custody if, knowing that he has no legal right to do so, he takes or entices from legal custody any person entrusted by order of a court to the custody of another person or institution.
- (b) Interference with Custody is a class 1 offense.

**CHAPTER 8. SEXUAL OFFENSES**

**Sec. 13-5801. Indecent Liberties.**

- (a) A person commits Indecent Liberties when the person knowingly causes another person to have sexual contact with him or another:
- (1) by forcible compulsion;
  - (2) when the other person is a child; or
  - (3) when the other person is mentally or physically incapable of consent.
- (b) Indecent Liberties is a class 1 offense.

**Sec. 13-5802. Indecent Exposure.**

- (a) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any other human other than his spouse, exposes his genitalia under circumstances in which he knows his conduct is likely to cause affront or alarm, commits Indecent Exposure.
- (b) Indecent Exposure is a class 1 offense.

**Sec. 13-5803. Prostitution.**

- (a) A person who loiters in or within view of a public place for the purpose of being hired to engage in, or who engages in, or offers or agrees to engage in, any sex act with another person for a fee, or who pays or offers or agree to pay another person a fee for the purpose of engaging in a sex act, or who owns, controls, manages, supervises or keeps a house of prostitution or a prostitution business, or who procures or attempts to procure a prostitute for another, or who encourages, induces or purposely causes another to become or remain a prostitute, commits Prostitution.
- (b) Prostitution is a class 3 offense.

**Sec. 13-5804. Rape.**

- (a) A person who engages in a sex act with another person without the consent of the other person commits Rape.
- (b) Rape is a class 1 offense.

**Sec. 13-5805. Spreading Sexually Transmitted Disease.**

- (a) A person who is infected with a sexually transmittable disease which is incurable or otherwise dangerous to the public health, including, but not limited to human immunodeficiency virus, acquired immunodeficiency syndrome, syphilis, herpes, gonorrhea, Hepatitis B, and knowingly has sexual intercourse with another person commits Spreading Sexually Transmitted Disease.
- (b) Spreading Sexually Transmitted Disease in the First Degree occurs when the disease is human immunodeficiency virus, acquired immunodeficiency syndrome, or any disease which even with commonly available medical treatment may be fatal. Spreading Sexually Transmitted Disease in the First Degree is a class 1 offense
- (c) Spreading Sexually Transmitted Disease in the Second Degree is any Spreading Sexually Transmitted Disease which does not amount to Spreading Sexually Transmitted Disease in the First Degree. Spreading Sexually Transmitted Disease in the Second Degree is a class 4 offense.
- (d) It is an affirmative defense to Spreading Sexually Transmitted Disease in the Second Degree, for which defendant has the burden of proof, that the person with whom defendant had sexual intercourse was eighteen years of age or older, knew that defendant had the disease, and voluntarily had sexual intercourse with defendant.

**Sec. 13-5806. Unlawful Sex with a Child.**

- (a) A person who engages in a sex act with a child commits Unlawful Sex with a Child.
- (b) Unlawful Sex with a Child is a class 1 offense.

**CHAPTER 9. TRESPASS AND DAMAGE TO PROPERTY****Sec. 13-5901. Arson Dangerous to a Structure.**

- (a) A person who knowingly burns or sets on fire any structure commits Arson Dangerous to a Structure.
- (b) It is an affirmative defense, for which defendant has the burden of proof, that all co-owners of the structure consented to burning, that the burning was conducted in a manner which did not pose a substantial threat to people, domesticated animals, or property of another, and that the burning has not resulted in and will not result in an insurance claim or similar claim.
- (c) Arson Dangerous to a Structure is a class 1 offense.

**Sec. 13-5902. Burglary.**

- (a) A person who enters or remains in a structure with the purpose of committing an offense therein, unless he is licensed or privileged to enter and remain, commits Burglary.
- (b) Burglary is a class 1 offense.

**Sec. 13-5903. Destruction of Communication Equipment.**

(a) A person commits destruction of communication equipment when the person knowingly attempts to prevent access to or use of any communication equipment or knowingly attempts to render communication equipment permanently or temporarily unfit for the transmission of a message, when:

- (1) the act was taken during the course of commission of another criminal offense;
- (2) the act prevented or delayed any person from reporting to a police officer or any other person allegations of a crime, fire, or personal injury; or
- (3) defendant knew that the act was likely to prevent or delay any person from reporting to a police officer or any other person allegations of a crime, fire, or personal injury.

(b) For purposes of this section “communication equipment” means a telephone, transmitter radio, or similar device, and includes any cord, antenna, jack, electrical power source, or similar associated component.

(c) It is not a defense to this section that the owner or any or all co-owners of the property consented to the destruction.

- (d) Destruction of Communication Equipment is a class 1 offense.

**Sec. 13-5904. Malicious Mischief.**

- (a) A person who intentionally or recklessly disturbs, injures or destroys any property of any other person without the consent of all owners or co-owners, commits Malicious Mischief.
- (b) Malicious Mischief is a class 3 offense.

**Sec. 13-5905. Possession of Burglar's Tools.**

- (a) A person who possesses any key, tool, instrument, device or explosive, with the intent to use it in the perpetration of a burglary, commits Possession of Burglar’s Tools.
- (b) Possession of Burglar’s Tools is a class 3 offense.

**Sec. 13-5906. Possession of Incendiary Materials.**

(a) A person who possesses any device, contrivance, or material causing or designed to cause destruction of property by fire or explosion with the intent to use such device or material to commit any public offense commits Possession of Incendiary Materials.

(b) Possession of Incendiary Materials is a class 1 offense.

**Sec. 13-5907. Trespass to Buildings.**

(a) A person who enters or remains in any building or occupied structure or the premises of another person, knowing that he is not authorized to do so, whether by day or night, commits Trespass to Buildings.

(b) Trespass to Buildings is a class 3 offense.

**Sec. 13-5908. Trespass to Lands.**

(a) A person who enters or remains upon any land as to which notice against trespass is given to him by actual communication, or by posting in a manner reasonably likely to come to the attention of intruders or by fencing or other means of enclosure manifestly designed to exclude intruders, or who knowingly allows livestock to occupy or graze on the fenced lands of another commits Trespass to Lands.

(b) Trespass to Lands is a class 5 offense.

**CHAPTER 10 THEFT, FORGERY, AND RELATED OFFENSES****Sec. 13-51001. Forgery.**

(a) A person who, with intent to defraud, falsely signs, executes, alters or counterfeits any written instrument or currency, commits Forgery.

(b) Forgery is a class 3 offenses.

**Sec. 13-51002. Fraud.**

(a) A person who, by knowing misrepresentation or deceit or by false interpreting or by the use of false weights or measure, obtains any money or other property commits Fraud.

(b) Fraud is a class 3 offense.

**Sec. 13-51003. Fraudulent Credit Card Use.**

(a) A person who uses a credit card when the person is not authorized to use it commits Fraudulent Credit Card Use.

(b) Fraudulent Credit Card Use is a class 3 offense.

**Sec. 13-51004. Misappropriation.**

(a) A person who misappropriates property which the person was given in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person, commits Misappropriation.

(b) Misappropriation in the First Degree occurs when the value of the property misappropriated exceeded \$1,000 or when the misappropriation was from a vulnerable adult. Misappropriation in the First Degree is a class 1 offense.

(c) Misappropriation in the Second Degree is any misappropriation which does not amount to Misappropriation in the First Degree. Misappropriation in the Second Degree is a class 4 offense.

**Sec. 13-51005. Receiving Stolen Property.**

(a) A person who receives or conceals or exercises control over, or aids in receiving or concealing or exercising control over, any property, knowing or having reasonable cause to believe it to be stolen, embezzled, or obtained by fraud or false pretense, robbery or burglary, or other unlawful means, commits Receiving Stolen Property.

(b) Receiving Stolen Property in the First Degree occurs when the value of the property exceeded \$1,000. Receiving Stolen Property in the First Degree is a class 1 offense.

(c) Receiving Stolen Property in the Second Degree is any Receiving Stolen Property which does not amount to Receiving Stolen Property in the First Degree. Receiving Stolen Property in the Second Degree is a class 4 offense.

**Sec. 13-51006. Robbery.**

(a) A person who, the purpose of committing theft or resisting apprehension immediately thereafter, commits an assault, commits Robbery.

(b) Robbery is a class 1 offense.

**Sec. 13-51007. Theft.**

(a) A person who takes the property of another person with intent to steal commits Theft.

(b) Theft in the First Degree occurs when the value of the property stolen exceeded \$1,000 or when the theft is from a vulnerable adult. Theft in the First Degree is a class 1 offense.

(c) Theft in the Second Degree is any misappropriation which does not amount to Theft in the First Degree. Theft in the Second Degree is a class 4 offense.

**Sec. 13-51008. Unlawful Issuance of Bank Check.**

(a) A person who, with the intent to defraud, issues, or passes a check, draft or order for payment of money upon any bank or other depository for the purpose of obtaining money, property or any other thing of value, or paying for services, knowing at the time of such issuance or delivery that: 1) he has insufficient funds in or credit with the bank or depository for payment in full; or 2) prior to the issuance or delivery of said check or order he has closed his account with the bank or depository; or 3) he issues a stop-payment order directing the bank or depository on which the check is drawn not to honor said check and who fails to make payment of money in the amount of the check or draft or otherwise arrange a settlement agreed upon by the holder of the check within 30 days of issuing said check or draft, commits Unlawful Issuance of a Bank Check.

(b) The word "credit" as used herein means an arrangement or understanding with the bank or depository for the payment of such check or draft.

(c) Unlawful Issuance of Bank Check is a class 3 offense.

**Sec. 13-51009. Unauthorized Use of Motor Vehicle.**

(a) A person who operates another's motor vehicle without the consent of an owner or co-owner commits Unauthorized Use of Motor Vehicle.

(b) Unauthorized Use of Motor Vehicle is a class 1 offense.

**CHAPTER 11. OFFENSES AGAINST PUBLIC ORDER****Sec. 13-51101. Abandoning a Dangerous Refrigerator.**

(a) A person who abandons or otherwise leaves unattended any refrigerator, icebox, or similar container, with doors that may become locked, outside of buildings and accessible to children, or any person who allows any such refrigerator, ice box, or similar container, to remain outside of buildings on premises in the person's possession or control, abandoned or unattended and so accessible to children, commits Abandoning a dangerous refrigerator. A tribal officer shall have authority to immediately confiscate and/or take into possession for evidentiary purposes any item which has been abandoned or otherwise left unattended in violation of this section.

(b) Abandoning a Dangerous Refrigerator is a class 3 offense.

**Sec. 13-51102. Contributing to the Delinquency of a Child.**

(a) A person who, by act or omission, encourages, causes or contributes to the delinquency of a child commits Contributing to the Delinquency of a Child.

(b) Contributing to the Delinquency of a Child is a class 3 offense.

**Sec. 13-51103. Criminal Non-Support.**

(a) A person who, without just cause, fails to provide for the support of the person's parent, spouse, child or other dependent who is in needy circumstances, commits Criminal Non-Support.

(b) Criminal Non-Support is a class 4 offense.

**Sec. 13-51104. Criminal Possession of Alcoholic Beverages.**

(a) A person who possesses an alcoholic beverage on the premises of the Community Center or at any powwow or any encampment adjacent to any powwow commits Criminal Possession of an Alcoholic Beverages.

(b) Criminal Possession of an Alcoholic Beverages is a class 6 offense

**Sec. 13-51105. Disorderly Conduct.**

(a) A person who engages in fighting in a public place, or who disturbs or annoys any public or religious assembly, or who disturbs other persons while in an intoxicated or disorderly condition, or who makes unreasonable noise or offensively coarse utterances or gestures, commits Disorderly Conduct.

(b) Disorderly Conduct is a class 5 offense.

**Sec. 13-51106. Distributing Alcohol to a Person Under Twenty-One.**

(a) A person who sells, barter or gives any alcoholic beverage to any person under the age of twenty-one years commits Distributing Alcohol to a Person Under Twenty-one.

(b) Distributing Alcohol to a Person Under Twenty-one is a class 4 offense.

**Sec. 13-51107. Doing Business Without a License.**

(a) A person who, without a valid license from the Tribe, commences or carries on any business, trade, profession or calling on the Settlement, the transaction or carrying on of which is required by this Code to be licensed, commits Doing Business Without a License.

(b) Doing Business Without a License is a Petty offense.

**Sec. 13-51108. Endangering the Welfare of a Child.**

(a) A person who having control over a child, commits Child Endangerment when the person does any of the following:

(1) Knowingly acts in a manner that creates a substantial risk to the child's physical, mental or emotional health or safety;

- (2) Knowingly uses unreasonable force, torture or cruelty upon the child;
  - (3) Knowingly deprives the child of necessary food, clothing, shelter, health care or supervision appropriate to the child's age, provided that it is an affirmative defense for which defendant has the burden of proof that defendant had applied for all based benefits, including need-based benefits, offered by the Tribe or other governmental authorities but still did not have sufficient economic resources to provide the necessary food, clothing, shelter, or health care;
  - (4) Abandons the child to fend for the child's self, knowing that the child is unable to do so; or
  - (5) Knowing that the child is being physically, sexually, or emotionally abused, fails to report the abuse to a Child Welfare Officer, provided that it is an affirmative defense to this subsection, for which defendant has the burden of proof, that defendant had a reasonable apprehension that reporting the abuse would result in substantial bodily harm to the person or the child.
- (b) For the purposes of this section, "person having control over a child" means any of the following:
- (1) a parent, guardian or Indian custodian of the child;
  - (2) A person who has accepted, undertaken, or assumed supervision or control of a child, whether with or without explicit consent from a parent, guardian, or Indian custodian of the child;
  - (3) A person who operates a motor vehicle with a child present in the vehicle.
- (c) Child Endangerment is a class 1 offense.

**Sec. 13-51109. Failure to Protect Tribal Interest in a Child.**

- (a) A person who is the parent, guardian, Indian custodian of a child who is a member of the Tribe or eligible for membership in the Tribe, commits Failure to Protect Tribal Interest in a Child when the person does any of the following:
- (1) attempts to change of the domicile of the child from a location on the Settlement to a location off of the Settlement without the consent of all people having joint legal or physical custody of the child; or
  - (2) fails to provide proper notice to the Tribe's Executive Director of the filing, in any state, tribal, or foreign court, of any child custody proceeding, including, but not limited to proceedings for voluntary or involuntary adoption, foster care placement, termination of parental rights, preadoptive or adoptive placement of the child. "Proper notice" means written notice which identifies the Court in which the action is filed, the caption of the matter, all other parties to the matter, and the Court case number if assigned.

(b) A person who is related as parent, child or sibling to the person who is the parent, guardian, or Indian custodian of a child who is a member of the Tribe or eligible for membership in the Tribe, commits Failure to Protect Tribal Interest in a Child when the person, knowing that the parent, guardian, or Indian custodian of the child intends to or has violated subsection (a), does not provide written notice of the violation or intended violation to the Tribe's Executive Director.

(c) Where a person is required to provide notice to the Executive Director under this section, if the person is not within the jurisdiction of the Tribe at the time that notice is required to be filed, the person commits an additional violation of this subsection by entering the jurisdiction of the Tribe without having provided the required notice.

(d) Failure to Protect Tribal Interest in a Child is a class 4 offense.

**Sec. 13-51110. False Arrest.**

(a) A person who knowingly makes, or causes to be made, the unlawful arrest, detention, or imprisonment of another person, commits False Arrest.

(b) False Arrest is a class 3 offense.

**Sec. 13-51111. Intimidation.**

(a) A person who, directly or indirectly, uses unjustified force or violence or threatens the use thereof or engages in any other unlawful act with intent to force or coerce any other person to do something against such person's will commits Intimidation.

(b) Intimidation is a class 4 offense.

**Sec. 13-51112. Possession of an Alcoholic Beverage by a Person Under 21.**

(a) A person who, being under the age of 21 years old, possesses, purchases, consumes, obtains, or sells any beer, wine, ale, whiskey or other alcoholic beverage or misrepresents his age for the purpose of buying or otherwise obtaining an alcoholic beverage commits Possession of an Alcoholic Beverage by a Person Under 21.

(b) Possession of an Alcoholic Beverage by a Person Under 21 is a class 5 offense.

**Sec. 13-51113. Public Intoxication.**

(a) A person who is under the influence of an intoxicating beverage, drug or other controlled substance, or a substance dangerous to himself or another, in a public place, commits Public Intoxication.

(b) Public Intoxication is a class 5 offense.

**Sec. 13-51114. Public Nuisance.**

(a) A person who, without proper authority, does any act or fails to perform any duty, which act or omission unreasonably annoys, injures or endangers the comfort, repose, health, property or safety of any person, or which offends public decency, commits Public Nuisance.

(b) Public Nuisance is a class 5 offense.

**Sec. 13-51115. Riot.**

(a) A person who simultaneously with two or more other person engages in violent conduct and thereby knowingly or recklessly creates a substantial risk of causing public alarm, commits Riot.

(b) Riot is a class 5 offense.

**Sec. 13-51116. Vicious Animal.**

(a) It is unlawful for any person to harbor or keep a vicious animal within the Settlement. An animal is deemed to be vicious when it has attacked or bitten any person without provocation, or when propensity to attack or bite persons exists and is known or ought reasonably to be known to the owner.

(b) It is the duty of the owner of any dog, cat or other animal which has bitten or attacked a person or any person having knowledge of such bite or attack to report this act to the Meskwaki Nation Police Department.

(c) The Meskwaki Nation Police Department shall investigate complaints received from residents of the Settlement involving animals that may be vicious and shall have the authority to designate an animal as vicious. Individuals desiring to have an animal designated as vicious by the Meskwaki Nation Police Department shall submit sworn affidavit(s). The owner of the animal being investigated, shall, if possible, be interviewed before a determination is made.

(d) A Meskwaki Nation Police Department Law Enforcement Officer, upon being satisfied that there is a vicious animal or animals at large, shall, if practicable, notify in writing that the owner must immediately confine the animal in the manner directed. If the owner fails to confine such animal in the manner directed, the animal shall be apprehended and impounded at the direction of the Police. The Law Enforcement Officer may or may not, in his or her discretion, institute a prosecution for violation of this subsection.

(e) When an animal has been apprehended and impounded, written notice shall be provided to the owner within two (2) days after impoundment, if the owner's name and current address can reasonably be determined by accessing a tag or other device that is on or part of the animal. Impounded animals may be recovered by the owner upon payment of impounding costs. If the owner fails to redeem the animal within seven (7) days from the date the notice is mailed, or if the owner cannot be located within seven days, the animal shall be disposed of in an expeditious and humane manner.

(f) Any person may kill any vicious animal that may suddenly assault a person of his or her family or in his or her company, while the person, so assaulted is out of the enclosure of the owner or keeper of that vicious animal; and, may kill any vicious animal found outside the enclosure of its owner or keeper, assaulting, wounding or killing any livestock or pets on the property of the owner of the livestock or pets.

(g) A law enforcement officer may kill any vicious animal that has suddenly assaulted a person while the person, so assaulted is out of the enclosure of the owner or keeper of that vicious animal; and, may kill any vicious animal found outside the enclosure of its owner or keeper that has assaulted, wounded or killed any livestock or pets on the property of the owner of the livestock or pets, whether the offense was committed within or without the presence of the officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to kill a vicious animal does not give rise to civil liability.

(h) Harboring or keeping a Vicious Animal is a class 5 offense.

(i) A law enforcement officer is not liable for any act or omission in the good faith exercise of the officer's duties under this section.

[NOTE: Except as otherwise noted, the provisions of Title 13, Article V, Chapter 11 (Offenses Against Public Order) Section 13-51116 (Vicious Animal), were enacted on June 13, 2012 by Res. No. 10-2012.]

## **CHAPTER 12. WEAPONS AND EXPLOSIVES**

### **Sec. 13-51201 Carrying or Displaying a Weapon.**

(a) A person commits Carrying or Displaying a Weapon when the person:

(1) carries a weapon into any school, child day care facility, adult care facility, senior center, medical clinic or facility, meeting of the Tribe, meeting of the Tribal Council, meeting of a tribal committee, building in which voting is taking place, or pow-wow;

(2) carries a weapon concealed on his person unless he or she shall have a current valid permit to carry such a weapon concealed signed by the Chief of the Tribal Police under regulations promulgated by the Chief; or

(3) carries a weapon under circumstances that either manifests an intent to intimidate other or warrants alarm for the safety of other persons.

(b) The provision of this section shall not apply to any person who by virtue of his office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty.

(c) Carrying or Displaying a Weapon is a class 1 offense.

**Sec. 13-51202. Criminal Misuse of a Firearm.**

(a) A person who knowingly points or discharges a firearm at or in the direction of another, whether the actor believes the firearm to be loaded or not, commits Criminal Misuse of a Weapon.

(b) Criminal Misuse of a Weapon is a class 1 offense.

**CHAPTER 13. DRUG OFFENSES****Sec. 13-51301. Distribution of a Controlled Substance.**

(a) A person who distributes, manufactures, or sells; or who possesses with intent to distribute, manufacture or sell; any controlled substance commits Distribution of a Controlled Substance.

(b) This section shall not preclude possession, distribution, manufacture or sale:

(1) For bona fide religious ceremonies; or

(2) By a duly licensed dispenser of controlled substances.

(c) Distribution of a Controlled Substance is a class 1 offense.

**Sec. 13-51302. Possession of a Controlled Substance.**

(a) A person who possesses, purchases, consumes, obtains, ingests, or injects any controlled substance commits Possession of a Controlled Substance.

(b) This section shall not preclude the possession, purchase, consumption, obtaining, ingestion, or injection:

(1) For bona fide religious ceremonies; or

(2) Of any substances as prescribed by a duly licensed physician.

(c) Possession of marijuana shall be a class 5 offense. Possession of any other controlled substance is a class 1 offense.

**Sec. 13-51303. Possession of Drug Paraphernalia.**

(a) A person who possesses drug paraphernalia commits Possession of Drug Paraphernalia.

(b) "Drug paraphernalia" means all equipment, products, or materials of any kind used or attempted to be used or designed to be used in combination with a controlled substance, except those

items used in combination with the lawful use of a controlled substance, to knowingly or intentionally and primarily do any of the following:

(1) Cultivate, grow, harvest, manufacture, compound, convert, produce, or distribute a controlled substance;

(2) Prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance; prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance;

(3) Test the strength, effectiveness, or purity of a controlled substance; or

(4) Enhance the effect of a controlled substance.

(c) Possession of Drug Paraphernalia with intent to use it to cultivate, grow, harvest, manufacture, compound, convert, produce, or distribute a controlled substance constitutes Possession of Drug Paraphernalia in the First Degree. Possession of Drug Paraphernalia in the First Degree is a Class 1 Offense.

(d) Possession of Drug Paraphernalia which is not Possession of Drug Paraphernalia in the First Degree shall constitute Possession of Drug Paraphernalia in the Second Degree. Possession of Drug Paraphernalia in the Second Degree is a class 5 offense.

**TITLE 13. LAW AND ORDER****ARTICLE VI****CRIMINAL PROCEDURE****LEGISLATIVE HISTORY:**

[NOTE: Except as otherwise noted, the provisions of Article VI, Title 13 were enacted on July 6, 2005 by Res. No. 27-2005.]

[NOTE: Except as otherwise noted, the provisions of Article VI, Title 13, Chapters 6, 7, 8 was amended and adopted on April 22, 2015 by Res. No. 11-2015. This shall supersede all prior provisions of the original chapters 6, 7, 8.]

[NOTE: Except as otherwise noted, the provisions of Article VI, Title 13, Sec. 13-6204 were enacted on June 30, 2016 by Res. No. 18-2016.]

**CHAPTER 1. GENERAL PROVISIONS****Sec. 13-6101. Definitions.**

- (a) "Criminal action" means the proceedings by which a party is charged with a crime.
- (b) "Mandatory arrest offense" means:
  - (1) Any offense under Title 13, Article 5, Chapters 6, 7, or 8, when the defendant and the person threatened, injured or assaulted have a qualifying relationship or when the person threatened, injured or assaulted is a child or vulnerable adult;
  - (2) Any offense under Title 13, Article 5, Chapter 9 when the defendant has a qualifying relationship with an owner or co-owner of the property which was damaged, threatened, or trespassed;
  - (3) Violation of a lawful order from any Court restricting or conditioning contact with a person with whom defendant has ever had a qualifying relationship; Cruelty to an Animal, where the animal is a pet of a person with whom defendant had, at the time of the offense, a qualifying relationship; Destruction of Communication Equipment, where the destruction delayed or was intended to delay the reporting of an offense by a person with whom defendant had, at the time of the offense, a qualifying relationship;
  - (4) Criminal Homicide, Vehicular Homicide, or Rape; or
  - (5) Attempt, solicitation, or conspiracy to commit an offense listed in subsections 1-4.
- (c) "Qualifying Relationship " means any one of the following:
  - (1) Spouses.
  - (2) Former spouses.

(3) Persons who have a child in common or who are expecting a child in common, regardless of whether they have been married or have lived together at any time.

(4) Persons who are presently residing together.

(5) Persons sixteen years of age or older who have a dating relationship.

(6) Persons who have a biological or legal parent-child relationship, or who are stepparent and stepchild or grandparent and grandchild.

(d) "Probable cause" exists under this chapter when an officer or the Tribal Court has substantial objective basis for believing the relevant facts or claims. In determining whether probable cause exists, the officer or tribal judge may take into account all information which a prudent officer or judge would deem relevant to the likelihood that an offense has been committed and that the person charged has committed it.

(e) "Reasonable doubt" means a doubt for which a reason exists based upon the evidence or lack of evidence in the case. It is the kind of doubt that would cause a reasonable person, after careful and thoughtful reflection, to hesitate to act in the graver or more important matters in life. Reasonable doubt does not mean proof beyond all possible doubt.

(f) "Commencement of trial" means:

(1) For a jury trial, the time that the jury panel is sworn

(2) For a judge trial, the earlier of the time that the prosecution begins opening statement or calls its first witness.

### **Sec. 13-6102. Limitations on Filing of Criminal Charge.**

No complaint shall be filed charging the commission of an offense as defined by this Code unless the offense shall have been committed within the time period for that class of offense as follows:

(a) There is no statute of limitations for a charge of criminal homicide;

(b) Five years for Class 1 or 2 offenses, other than criminal homicide;

(c) Three years for Class 3 or 4 offenses; and

(d) One year for all other offenses.

### **Sec. 13-6103. Rights of Defendant.**

In a criminal action the defendant is entitled:

(a) To a speedy and public trial;

- (b) To be informed of the nature of the charges against him and to have a written copy of the charges;
- (c) To appear and defend in person or by an attorney at the defendant's expense;
- (d) To not be twice placed in jeopardy for the same offense by the Tribe;
- (e) To not be compelled in a criminal action to be a witness against himself;
- (f) To confront and cross examine all witnesses against him; and
- (g) To be subjected before conviction to no more restraint than is necessary to insure his appearance to answer the charge and/or to protect the public;
- (h) To compel by subpoena the attendance of witnesses in his own behalf;
- (i) To a trial by a jury of six tribal members, unless expressly waived, except that jury trial is not permitted when only petty offenses are charged; and
- (j) To appeal in all cases.

## **CHAPTER 2. INITIATION OF CASE AND BAIL**

### **Sec. 13-6201. Mode of Initiating Criminal Charge.**

(a) Except as otherwise permitted by this chapter, all criminal proceedings shall be initiated by a summons issued by the Court based upon a finding that there is probable cause to believe that defendant has committed the offense or offenses stated in a complaint filed by the prosecutor.

(b) A criminal proceeding may be initiated by an arrest warrant issued by the Court based upon a finding that:

- (1) There is probable cause to believe that defendant has committed an offense or offenses stated in a complaint filed by the prosecutor; and
- (2) That in the Court's discretion, based upon review of the seriousness of the offense charged, the facts alleged, the risk of bodily harm to the accused or another, or the accused's record of failures to appear in Court, the Court concludes that an arrest warrant should be issued.

(c) A criminal proceeding may be initiated by the police bringing defendant to Court under arrest to answer to a complaint or citation, without the issuance of an arrest warrant or summons, where the police officer had grounds to make a warrantless arrest and the Court finds that there is probable cause to believe that defendant committed an offense or offenses.

(d) A criminal proceeding may be initiated by the issuance of a citation and notice to appear to defendant, where the citation and notice to appear are issued to the defendant within 24 hours of the time of the alleged offense, provided that the Court must, at arraignment, determine whether there is probable cause to believe that defendant committed the alleged offense or offenses.

**Sec. 13-6202. Summons – Form and Service**

(a) A summons shall be signed by a judge and shall direct the person accused to appear before the Court at a stated date, time and place. The summons shall also inform the defendant that a warrant of arrest will be issued if he fails to appear as directed.

(b) A summons shall be served, together with the complaint, on the defendant by personal delivery, and a return of service shall be filed with the Court within two business days of service. Should a defendant refuse service, the police shall have authority to arrest defendant without warrant.

(c) Where the prosecution shows by a preponderance of the evidence that the Tribe has made reasonable efforts to serve defendant but has not been able to serve defendant, the Court shall issue an arrest warrant.

**Sec. 13-6203. Arrest Warrant – Form and Service.**

(a) An arrest warrant shall be signed by a Judge and shall direct the police to arrest the defendant.

(b) A Tribal police officer shall arrest and detain a person when the officer is aware that the police have a warrant issued by the Tribal Court commanding the arrest of the person.

(c) An officer need not have the warrant in his possession at the time of arrest; but, if he does not, he shall inform the defendant that a warrant has been issued and the nature of the charge and shall provide the warrant to the person arrested as soon as practicable but not later than defendant's next appearance in Court in the case.

**Sec. 13-6204. Arrest Without Warrant—When Required, Permitted and Prohibited.**

(a) A Tribal police officer shall arrest and detain a person until arraignment when the officer has probable cause to believe that the person has committed a criminal offense and any of the following circumstances exists:

(1) It reasonably appears to the arresting officer that the person arrested is about to leave the jurisdiction of the Tribe for an extended period of time;

(2) The person continues to refuse to sign a written promise to appear in Court; or

(3) The officer has probable cause to believe that defendant has committed a mandatory arrest offense.

(b) A Tribal police officer has authority to arrest and detain until a subsequent Court hearing any person where the arrest would not violate defendant's civil rights and the police have probable cause to believe that any of the following circumstances exists:

- (1) Defendant has committed any offense for which arrest is mandatory;
- (2) Defendant committed one or more class 1, or 2 offenses;
- (3) Defendant committed one or more class 3 or 4 offenses which was committed in the presence of the officer;
- (4) Defendant committed a criminal offense other than a petty offense and defendant has another outstanding arrest warrant in any jurisdiction or has failed to appear for a criminal hearing in Tribal Court in the preceding five years;
- (5) Defendant initially refused to sign the written promise to appear in Court, even if defendant subsequently signed the promise or agreed to sign the promise; or
- (6) The safety of the Defendant, other persons, the community, or property belonging to a person other than Defendant, is at risk of harm or injury.

(c) Where the person is arrested based upon probable cause that the person has committed only class 5, 6 or petty offenses, the officer must issue a citation and release the defendant unless arrest is permitted in subsection (b). Detention of a defendant in violation of this subsection shall bar prosecution for any class 5, 6 or petty offense arising from the incident for which defendant was arrested.

(d) An officer's failure to arrest and detain when arrest and detention are mandatory under subsection (a) shall not prevent subsequent arrest for the offense or prosecution for the offense.

[NOTE: Except as otherwise noted, the provisions of Article VI, Title 13, Sec. 13-6204 were enacted on June 30, 2016 by Res. No. 18-2016.]

**Sec. 13-6205. Complaint – Form and Amendment.**

- (a) A complaint shall be in writing and shall set forth:
- (1) The name of the court;
  - (2) The title of the action and the name of the offense or offenses charged;
  - (3) The name of the person charged; and
  - (4) The offense or offenses charged, in the language of the statute, together with a statement as to the time, place, person, and property involved to enable the defendant to understand the character of the offense charged.

(b) The complaint shall contain a form of certificate by the a prosecutor, that he or she certifies, under penalty of perjury, that he or she has probable cause to believe the person committed the offense contrary to law.

(c) The court shall allow the complaint to be amended for good cause upon request of the prosecution until the commencement of trial.

**Sec. 13-6206. Citation – form and amendment of allegations.**

(a) A citation shall be issued on a standardized form, which, when completed, shall:

- (1) Contain the defendant’s name, date of birth, sex, and address;
- (2) Contain citation to the statute or statutes alleged to have been violated;
- (3) Allege the date, time, place and essential elements of the offense or offenses charged;
- (4) Contain the signature of the arresting officer upon a sworn statement that the officer had, at the time the citation was issued, probable cause to believe that the defendant committed the offense or offenses charged;
- (5) Contain a space for the defendant to promise to appear, together with explicit notice to defendant that signing the promise to appear does not admit guilt and does not constitute evidence of guilt;
- (6) State the time and place at which the person is to appear in Court for arraignment, which shall be not less than 96 hours after the date of the citation, nor more than 40 days after the date of the citation.

(b) The citation may not be amended after it has been provided to the defendant, but the Court shall allow the prosecutor to replace the citation with a complaint:

- (1) Without cause at or before arraignment;
- (2) For good cause upon request of the prosecution until the commencement of trial.

**Sec. 13-6207. Citation– decision to issue citation in lieu of holding defendant.**

(a) Except as otherwise provided by tribal law, a police officer shall have discretion to determine whether to hold a defendant pending posting of bail or arraignment or whether to issue a citation and release defendant. In making that decision, an officer shall consider the following factors:

- (1) Whether defendant has identified himself satisfactorily;

(2) Whether detention appears reasonably necessary to prevent imminent bodily harm to defendant or to another, injury to property, or breach of the peace;

(3) Whether defendant has ties to the Tribes or is a local resident, sufficient to provide reasonable assurance of his appearance before the Court, or whether there is substantial likelihood that defendant will refuse to respond to the citation; and

(4) Whether defendant previously has failed to appear in response to a citation issued pursuant to this section or to other lawful process of the Court.

(b) To secure his release, the defendant must give his written promise to appear in Court as required by the citation and notice to appear.

**Sec. 13-6208. Arrest Procedure.**

Upon taking an arrested person into custody and before interrogation, an officer shall inform the defendant that:

(a) He has the right to remain silent;

(b) Anything he says can be used against him in court; and

(c) He has the right to talk to an attorney for advice before he is asked any questions and to have an attorney present during questioning;

(d) That if he cannot afford an attorney, one will be appointed for him without cost.

**Sec. 13-6209. Fresh Pursuit.**

(a) Any police officer may continue in fresh pursuit of a person including outside the boundaries of the Settlement, if the officer has probable cause to believe:

(1) That the person has committed an offense on the Settlement or is wanted on a valid arrest warrant issued by the Tribal Court; or

(2) That the person has committed, or attempted to commit, any offense or civil infraction on the Settlement in the presence of the officer.

(b) When an arrest following fresh pursuit occurs outside of the boundaries of the Settlement, the arresting officer may return the arrested individual to the Settlement.

**Sec. 13-6210. Arraignment.**

(a) A person who is retained in custody shall be taken without unnecessary delay, but in no case later than seventy-two hours after arrest, before a tribal judge for arraignment. In the event a summons or citation has been issued, the defendant shall appear for arraignment at the time designated in the summons.

(b) During arraignment, the defendant shall be provided with a copy of the complaint if he has not received one. If the defendant does not have counsel and desires to be represented, he shall be given a reasonable time to secure counsel before entering his plea or making any statement. Unless reading is waived by defendant, the complaint shall be read to the defendant. Defendant will be asked to plead guilty or not guilty to the offense charged.

**Sec. 13-6211. Bail Hearing – amount of bail.**

(a) At the time of arraignment, or within 72 hours of arrest on any warrant where arraignment is not required, the person arrested shall be brought before the Court for a hearing to determine whether bail should be set, except that a bail hearing is not mandatory when all charges are resolved by plea or dismissal at arraignment and any sentence immediately imposed.

(b) The Court shall have discretion to determine whether to release defendant on his personal recognizance or to set bail in a reasonable amount. In determining the amount of any bail, the judge may consider the following factors:

- (1) The nature and gravity of the offense or offenses charged;
- (2) The facts related to the offenses charged;
- (3) Whether the person has identified himself satisfactorily;
- (4) Whether detention appears necessary to prevent imminent bodily harm to defendant or to another, injury to property, or breach of the peace;
- (5) Whether it appears likely that defendant will appear for all required court dates, including whether the person has ties to the Tribe; is a local resident or employee; or has failed to appear in the past;
- (6) Whether defendant will comply with any terms or conditions of release; and
- (7) Defendant's financial resources.

**Sec. 13-6212. Hearing –Permissible and Mandatory Conditions of release.**

(a) Where a defendant is admitted to bail or released on personal recognizance, the Court shall impose the following conditions:

- (1) To secure his release, the person must give written promise to appear in Court at trial; and
- (2) Any condition which appears reasonably required to protect the safety of the alleged victim and to assure the appearance of the person in court;

(b) In addition to or in lieu of bail the Court may set any reasonable conditions upon pre-trial release, including, but not limited to:

(1) An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim and/or any witness;

(2) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;

(3) An order restricting or prohibiting the person from using or possessing firearms or other weapon;

(4) An order prohibiting the person from possessing or consuming alcohol or controlled substances.

(c) The court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

(d) If conditions of release are imposed without a hearing, the arrested or charged person may request a hearing before the court to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.

#### **Sec. 13-6213. Bail Schedule.**

The Chief Judge may establish a schedule of bail and conditions for release pending arraignment for any offense under this Code. Where a bail schedule applies to an arrested person, the person shall be promptly informed of the bail and conditions required by the schedule and defendant shall be released upon posting of that bail and agreement to the conditions.

#### **Sec. 13-6214. Denial of Bail, Detention.**

The judge may deny a person release on bail if it appears reasonably certain that the person will pose a serious threat to the safety and well-being of himself, the Settlement, or its residents, if released, or if there is a substantial likelihood that the person will not appear for trial or will not comply with other conditions of release.

### **CHAPTER 3. PRE-TRIAL PROCEDURES**

#### **Sec. 13-6301. Pretrial hearing.**

In every criminal case, the Court shall hold a pretrial hearing approximately 45 days before the trial date. The Rules of Civil Procedure related to pretrial hearings shall apply to the pretrial hearings under this section.

**Sec. 13-6302. Pleadings and Motions Before Trial; Defenses and Objections.**

(a) Any defense, objection, or request which is capable of determination outside of trial may be raised before trial by motion. Except as otherwise provided in this Article, the contents, timing, and procedures for motions, responses, and replies shall be governed by the rules of civil procedure.

(b) At the pretrial, Defendant must have filed or must provide notice of intent to file and request a filing and briefing schedule, for any of the following:

- (1) Discovery motions;
- (2) Motions demanding separate trials for multiple defendants or severance of multiple charges;
- (3) Defense and objection based on defects in the institution of the prosecution, or in the complaint other than the failure to show jurisdiction or to charge an offense;
- (4) Motions to suppress evidence based upon civil rights of the defendant; and
- (5) Motions challenging generally applicable procedures for selection of the jury pool or the petite jury.

(c) The failure to file or provide notice of intent to file any motion under subsection (b) at or before the pretrial hearing shall constitute waiver unless the court for cause shown determines that relief from the waiver will be granted. Any such waiver may be conditioned upon defendant's waiver of the right to speedy trial. All rulings on motions under subsection (b) will be made at least three days before trial unless the court for good cause determines that the ruling will be made at trial.

(d) To secure the right to a speedy trial, unless the Court finds that motion presented unusually complex legal or factual issues, a motion which was filed or noticed at the time of pretrial shall be deemed granted unless the Court ruling was issued at least three days before trial.

**Sec. 13-6303. Discovery and Notice.**

(a) The prosecutor shall, within seven days of any request, permit the defendant to inspect and copy or photograph the following items which are within the possession, custody or control of the prosecutor and/or police:

- (1) Relevant written or recorded statements made by the defendant or copies thereof;
- (2) Police incident reports related to the charge or charges filed;
- (3) Copies of the defendant's prior criminal record;

(4) Books, papers, documents, photographs, or tangible objects, or copies or portions thereof obtained in connection with the defendant's case; and

(5) Results or reports of physical or mental examinations, scientific tests or experiments, or copies thereof made in connection with the defendant's case.

(b) Regardless of a request by the defendant, the prosecution and/or tribal police shall, by the pretrial hearing, provide the defendant with:

(1) Any evidence of an exculpatory nature in their possession or of which they may be aware;

(2) Written notice or notice in open Court of the names and addresses of the witnesses the prosecution intends to call at trial.

(c) Upon the request of the prosecutor, at least fourteen days before trial or at such other time as set by the Court, the defendant shall

(1) Permit the prosecutor to inspect and copy or photograph:

(i) Results or reports of physical or mental examinations, scientific tests or experiments made in connection with the defendant's case which defendant intends to introduce at trial;

(ii) Books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof obtained in connection with the defendant's case which defendant intends to introduce at trial

(2) Provide the prosecutor with written notice or notice in open Court of:

The names and addresses of the witnesses it intends to call at trial, except that defendant need not disclose whether defendant is an intended witness.

Whether defendant is waiving his right to a jury trial.

(d) If, prior to or during trial, a party discovers additional evidence or material which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or the court of the existence of the additional evidence or material.

(e) Upon motion by a party, the court may deny or restrict discovery or issue such other order as is appropriate. If the court enters an order granting relief all items or documents reviewed in camera shall be sealed and preserved in the record of the court to be made available to the appellate court in the event of an appeal.

(f) Once the court determines that a party has failed to comply with this rule, it may grant a motion to compel submitted by the opposing party, grant a continuance, prohibit the party from introducing evidence not disclosed or it may enter such other order as it deems just. In addition to

any other action taken by the court upon a finding that a party has failed to comply with this rule, the court may award attorneys fees and costs to the prevailing party resulting from procedures to compel discovery.

**Sec. 13-6304. Subpoena.**

(a) Unless otherwise provided in this Article, the rules of civil procedures related to subpoenas shall apply in criminal actions.

(b) The court on motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive.

(c) Where a witness has been properly subpoenaed but fails to appear, in addition to or in lieu of other appropriate remedies, the Court may issue a warrant for the arrest of the witness upon a showing that it is highly probable that the witness would provide substantial and material evidence. Where the witness is not a police officer and the witness' testimony would likely benefit the prosecution, the Court may continue trial for cause. The Court's jurisdiction to issue a material witness warrant shall apply to any person, not solely to Indians. The procedures related to arrest and bail shall apply to a person arrested as a material witness.

**CHAPTER 4. TRIAL**

**Sec. 13-6401. Trial Procedures.**

(a) Before opening statements, the court shall hear and rule on any remaining pre-trial motions. All arguments on such motions shall be made outside the presence of the jury in a trial by jury.

(b) The exclusion of witnesses shall be allowed by the court upon motion of either party. Once a motion is made the court will invoke the rule excluding all witnesses for either party from the courtroom until they are called to testify. If invoked, the court shall order that the witnesses remain outside and out of hearing of the courtroom until they are called as witnesses. The court shall also instruct the witnesses not to discuss their testimony with any other witnesses under penalty of contempt until the trial has been declared ended. The defendant is entitled to be present during the entire trial regardless of a motion to exclude witnesses.

(c) A jury of six members and an alternate shall be selected unless defendant has waived his or her right to a jury trial or unless the defendant is charged solely with petty offenses. The procedure for selection of the jury shall be the same as established under the Tribe's Rules of Civil Procedure.

(d) The court will allow opening statements by the prosecution and defendant. The prosecution will present its statement first followed by the defense who may preserve its opening statement until the end of the prosecution's case in chief. Either party may waive making a statement.

(e) After the opening statement or statements, the prosecution shall present its case. The burden of proof is upon the prosecution to show that the defendant committed all elements of the specific charge or charges in the complaint, beyond a reasonable doubt, and this burden remains with the prosecution at all times. The burden of defendant regarding affirmative defenses are stated in the Tribe's criminal code.

(f) Following the prosecution's case in chief, the defendant may present any witnesses, documents and other exhibits.

(g) Following presentation of the case for the defense the prosecution may offer rebuttal witnesses.

(h) After all of the evidence has been presented, the parties may make closing arguments. The prosecution will have the right to open, the defense to follow and the prosecution to close.

#### **Sec. 13-6402. Motion for Judgment of Acquittal.**

(a) The court on motion of a defendant shall, and on its own motion may, order the entry of judgment of acquittal of any of charges if the evidence is insufficient to sustain a conviction of such offense. If a defendant's motion for judgment of acquittal at the close of evidence offered by the Tribe is not granted, the defendant may proceed to offer evidence without having reserved the right to do so.

(b) If a motion for judgment of acquittal is made at the close of all of the evidence, the court may either decide the motion or reserve decision on the motion, until after the jury verdict.

(c) If the jury returns a verdict of guilty, no verdict or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed immediately after the jury is discharged, or within such further time as the court may fix. If the court grants the motion following a verdict of guilty, it may set aside the verdict and enter the judgment of acquittal.

#### **Sec. 13-6403. Jury Instruction.**

(a) The Court may require that the parties submit proposed jury instructions, and the court may request proposed jury instructions and either accept or reject each instruction.

(b) In all criminal cases, the court will inform the jury that the defendant's plea of not guilty places upon the prosecution the burden of proving guilt beyond a reasonable doubt, that the defendant is presumed innocent until his guilt is established, and that if the defendant does not testify this may not be considered as any evidence of guilt.

#### **Sec. 13-6404 Verdict.**

(a) After the presentation of evidence in non-jury cases is completed and all motions have been ruled upon, the court shall render its decision as to the guilt or innocence of the defendant. The court may take the case under advisement rather than passing judgment immediately.

## (b) In jury trials:

(1) The verdict shall be unanimous and shall be returned by the jury to the judge in open court;

(2) If the verdict is not guilty the court will order the defendant released from custody and conditions of bail, but the Court may retain jurisdiction over the defendant as otherwise permitted by this Code; and

(3) if the verdict is guilty the court may impose sentence immediately or at a later date.

(c) If the jury is unable to reach a unanimous verdict, the court must declare a mistrial.

(d) Polling of the jury may take place upon the request of either party.

(e) If there are multiple defendants, the trier of fact (judge/jury), at any time during its deliberations, may return a verdict or verdicts with respect to any charge.

(f) The defendant may be found guilty of an offense necessarily included in the offense charged and the lesser included offense need not have been included in the original charge.

**CHAPTER 5. POST-TRIAL****Sec. 13-6501. Judgment and Sentencing.**

(a) A judgment of conviction shall set forth the plea, the verdict or findings, and sentence when imposed. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered into record by the court clerk.

(b) If a motion for withdrawal of a plea of guilty is made before sentence is imposed, the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. In order to correct manifest injustice, the court after sentence, may set aside the judgment of conviction and permit the defendant to withdraw his plea.

(c) The Court shall have discretionary authority to defer sentencing in any case where defendant agrees to deferral of sentencing and waives his right to sentencing within 60 days.

(d) The Court shall have discretionary authority to impose any sentence, up to the maximum sentence permitted by the Tribe's laws; to suspend any or all jail time upon any reasonable conditions; to require restitution to any party harmed, with no limit on the cost to defendant for such restitution.

(e) Defendant shall be sentenced within 60 days of entry of a plea or verdict of guilt, or within 30 days in cases where defendant is held in custody solely pending sentencing, provided that

the sole remedy for failure to sentence within the above stated period shall be that defendant is, without further court order, released solely on personal recognizance pending sentencing.

**Sec. 13-6502. Motion to Set Aside the Verdict.**

(a) The defendant may file a motion to set aside the verdict if he believes the jury verdict was contrary to the law or the evidence presented at trial. The court will set the jury verdict aside only where it finds there was insufficient evidence to support the verdict and there was reasonable doubt as to the defendant's guilt as a matter of law.

(b) The defendant may file a motion for a new trial based upon error or mistake by the court or on the basis of newly discovered evidence. The court may grant the motion only if the errors or mistakes substantially prejudice the defendant or if the newly discovered evidence could result in acquittal. In the case of a non-jury trial, on motion of a defendant for new trial the court may vacate the judgment if entered, take additional testimony and enter a new judgment. A motion for a new trial based on:

(1) Newly discovered evidence shall be made within thirty (30) business days after final judgment, but if an appeal is pending, the court may grant the motion only once the appeal is resolved; and

(2) Any other grounds shall be made within ten business (10) days after a guilty verdict is entered.

(c) While an appeal is pending, the court may stay the execution of the sentence pending the filing and conclusion of an appeal. The court may order the defendant released on bail, released with out bail or continued in detention.

**Sec. 13-6503. Appeal.**

Defendant shall have the right to appeal as provided for in Title 5 of this Code.

**CHAPTER 6. PROBATION AND PAROLE**

**Sec. 13-6601. Title.**

The Title of this Code shall be the "Probation and Parole" Act of the Sac & Fox Tribe of the Mississippi in Iowa.

**Sec. 13-6602. Policy and Purpose.**

(a) The purpose of the Probation and Parole Act is to establish a Tribal probation and parole department. Probation and parole can be desirable dispositions of appropriate criminal cases.

(b) The existence of a Tribal Probation and Parole Department is important to the Meskwaki community of the Sac & Fox Tribe of the Mississippi in Iowa because:

- (1) Probation and parole strive to reduce recidivism by helping an offender learn to live productively in the community;
- (2) Probation and parole programs seek to reform and rehabilitate an offender;
- (3) Probation and parole provide a framework by which the Tribe can provide an offender with a positive and culturally appropriate rehabilitative means;
- (4) An offender remains under the jurisdiction of the Court while engaging in the educational, therapeutic, cultural and community resources, including Wellness Court when appropriate, that are most likely to lead to successful rehabilitation;
- (5) Protection of the Meskwaki community is provided when the Probation and Parole Department accepts custody and supervision and rehabilitation of juvenile and adult offenders within the jurisdiction of the Sac & Fox Tribe of the Mississippi in Iowa who are: (a) placed on probation or released on parole by the Tribal Court; or (b) placed on probation or released on parole by a court of another jurisdiction when there is an executed Memorandum of Understanding and approval of the Tribal Council; (c) placed on pre-trial release supervision by the Tribal Court
- (6) Probation and parole maximize the liberty of the offender and at the same time, vindicate the authority of the law and effectively protect the public from further violations of the law.
- (7) Probation and parole affirmatively promote the rehabilitation of the offender by permitting the offender to engage in normal community contacts, employment, and education;
- (8) Probation and parole can be a tool to minimize the impact of the offender's conviction on the offender's dependents when the offender has minor children;
- (9) Tribal probation and parole provide the Tribe and the offender with an opportunity to promote healing and a law abiding lifestyle for the offender through Tribal tradition and culture; and
- (10) Creation of a Probation and Parole Department and codification of law establishes procedures and protocol for courts, prosecution, law enforcement, and offenders, and holds offenders accountable for their conduct while providing offenders with supervised and structured opportunities for personal improvement.

**Sec. 13-6603. Authorization.**

(a) The aboriginal and inherent sovereign power of the Sac & Fox Tribe of the Mississippi in Iowa to govern is vested in the Tribal Council of the Sac & Fox Tribe of the Mississippi in Iowa. The Tribal Council of the Sac & Fox Tribe of the Mississippi in Iowa has the authority to take action to preserve order among members of the Tribe and to appoint Tribal

committees and agencies and to delegate to them the execution of powers. Sac & Fox Tribe of the Mississippi in Iowa Constitution, Art. X, Sec. 1 (n), (q).

(b) Nothing in this section shall abrogate or diminish the power of self-government and inherent power of the Sac & Fox Tribe of the Mississippi in Iowa and nothing in this section creates or eliminates any federal or state criminal jurisdiction over Indian country and nothing in this section affects the authority of the United States or any state government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.

**Sec. 13-6604. Definitions.**

Unless the context clearly requires otherwise, as used in this Title:

(a) “Appellate court” means the appeals court of the Sac & Fox Tribe of the Mississippi in Iowa.

(b) “Court” means the Tribal Court of the Sac & Fox Tribe of the Mississippi in Iowa.

(c) “Crime” means those offenses set forth in the SAC & FOX TR. OF MISS. CODE, Title 13, and as may be amended, and certain offenses in the Traffic Code set forth in the SAC & FOX TR. OF MISS. CODE Title 18, and as may be amended, and any other ordinance or law of the Tribe for which upon conviction a person may be subject to a criminal fine, imprisonment, or criminal forfeiture, or any combination thereof.

(d) “Department” means the Probation and Parole Department of the Sac & Fox Tribe of the Mississippi in Iowa.

(e) “Disobedience of a lawful court order” means those elements of disobedience of a lawful court order set forth in the SAC & FOX TR. OF MISS. CODE, Title 13, Article V, Sec. 13-5503, and as may be amended.

(f) “Hearing” means a hearing or trial conducted before the courts of the Sac & Fox Tribe of the Mississippi in Iowa.

(g) “Indian” means, for purposes of this Title, a person who is enrolled in, eligible for enrollment in, or recognized as a member of a tribal community of an Indian or Alaska Native tribe, band, nation, pueblo, village or community that the United States Secretary of Interior acknowledges to exist as an Indian tribe and further includes, but is not limited to, a person who would be subject to the jurisdiction of the United States as an Indian under section 1153, Title 18, United States Code, if that person were to commit an offense listed in that section in Indian Country to which that section applies pursuant to 25 U.S.C. section 1301(3).

(h) “Law enforcement officer” means an officer or agent of the Tribe or the United States with the authority to enforce laws within the Settlement and includes, but is not limited to, police officers of the Meskwaki Nation Police Department, temporary Meskwaki Nation Police

Department officers during their term, Iowa certified police officers employed as probation-parole officers of the Sac & Fox Tribe of the Mississippi in Iowa, members of the police reserve of the Meskwaki Nation Police Department, commissioners and agents of the Sac & Fox Gaming Commission, and wardens of the Sac & Fox Tribe of the Mississippi in Iowa Natural Resources Department.

(i) “Meskwaki Nation Police Department of the Sac& Fox Tribe of the Mississippi in Iowa” means the personnel and police officers of the Sac & Fox Tribe of the Mississippi in Iowa Meskwaki Nation Police Department.

(j) “Meskwaki Settlement” and “Settlement” may be used interchangeably and means the “Settlement”.

(k) “Minor child” means a person under the age of eighteen [18] years.

(l) “Non-Indian” or “not an Indian” means a person who is not an Indian as defined in this Title.

(m) ”Non-member” means a person who is not an enrolled member of the Sac & Fox Tribe of the Mississippi in Iowa.

(n) “Notice” to probationer or parolee means the personal service or acceptance of service of a warrant or summons and petition for revocation of parole or probation on a supervised offender.

(o) “Parole” means the release from incarceration into the community, of an adult or juvenile offender as provided by law prior to the expiration of the offender’s term of incarceration, subject to the conditions imposed by the court and subject to supervision of the offender by the Probation and Parole Department pursuant to order of the court.

(p) “Parolee” means a person who is on parole by order of the court.

(q) “Police officer” means a law enforcement officer of the Meskwaki Nation Police Department of the Sac & Fox Tribe of the Mississippi in Iowa.

(r) “Probation” means the release by the court without imprisonment, of an adult or juvenile offender found guilty of a crime upon verdict or plea, subject to the conditions imposed by the court and subject to the supervision of the offender by the Probation and Parole Department pursuant to order of the court.

(s) “Probation-Parole officer” means a probation-parole officer employed by the Probation and Parole Department of the Sac & Fox Tribe of the Mississippi in Iowa and whose duties, powers, and training requirements are set forth in this Title.

(t) “Probationer” means a person who is on probation by order of the court.

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(u) “Prosecutor” means the prosecutor and any deputy prosecutor of the Sac & Fox

Tribe of the Mississippi in Iowa designated to prosecute crimes against offenders in the name of the Tribe pursuant to the SAC & FOX TR. OF MISS. CODE, Title 13, Article I, Ch. 1, Sec. 13-1101(d), and such other prosecutor designated by the Tribal Council to act in the place of the Office of the Prosecutor.

(v) “Settlement” means the physical territory subject to the jurisdiction of the Tribe as described in Article I of the Constitution of the Sac & Fox Tribe of the Mississippi in Iowa and shall include the lawful jurisdiction of the Tribe provided that nothing in this definition shall be construed to limit the physical territory, jurisdiction, or sovereignty of the Tribe.

(w) “Supervised offender” means an adult or juvenile offender:

(1) who is sentenced to probation subject to conditions imposed by the court and subject to supervision by the Probation and Parole Department; or

(2) who is sentenced to pre-trial release subject to conditions imposed by the court and subject to supervision by the Probation and Parole Department; or

(3) whose conviction or plea sentence is deferred and is subject to conditions imposed by the court and who may be investigated, assisted and/or supervised by the Probation and Parole Department; or

(4) who is released from incarceration subject to parole conditions imposed by the court and subject to supervision by the Probation and Parole Department.

(x) “Tribal code” means the SAC & FOX TR. OF MISS. CODE.

(y) “Tribal Council” and “Council” means the members of the Tribal Council of the Sac & Fox Tribe of the Mississippi in Iowa.

(z) “Trial Court” means the trial court of the Sac & Fox Tribe of the Mississippi in Iowa but does not include the appellate court.

(aa) “Tribal Court” means the courts of the Sac & Fox Tribe of the Mississippi in Iowa codified in the SAC & FOX TR. OF MISS. CODE, Title 5, Article II.

(bb) “Tribal member” means an enrolled member of the Sac & Fox Tribe of the Mississippi in Iowa.

(cc) “Tribe” means the Sac & Fox Tribe of the Mississippi in Iowa and its agencies, departments, divisions, instrumentalities, economic enterprises, officials, agents, officers, and employees.

### **Sec. 13-6605. Establishment of the Probation and Parole Department.**

(a) The Tribal Council of the Sac & Fox Tribe of the Mississippi in Iowa hereby establishes a Tribal Probation and Parole Department [also referred to herein as “Department.”]

(b) The purposes of the Department shall include the protection of the Meskwaki Settlement community by providing for the acceptance of custody and supervision and rehabilitation of juvenile and adult offenders within the jurisdiction of the Tribe who are:

(1) placed on probation, pre-trial release, or released on parole by the Tribal Court; or

(2) placed on probation or released on parole by a court of another jurisdiction when there is an executed Memorandum of Understanding and approval of the Tribal Council;

(c) The Department may adopt rules and policies for the conduct of offenders placed on probation or parole, except that the Department may not recommend any rule or policy that conflicts with conditions of probation or parole:

(1) imposed by the Tribal Court when the probationer or parolee is sentenced by the Tribal Court; or

(2) imposed by another court of competent jurisdiction when the probationer or parolee is sentenced by that other court and there is an executed Memorandum of Understanding and approval of the Tribal Council accepting Tribal supervision and/or custody of the probationer or parolee.

#### **Sec. 13-6606. Organization of the Probation and Parole Department.**

(a) The Probation and Parole Department shall be managed by a Department Director, subject to supervision by the Chief Judge of the Tribal Court.

(b) The Department shall be comprised of one or more adult and/or juvenile probation-parole officers, support staff, and such other personnel as may be deemed necessary and approved through the Tribal Council budget.

#### **Sec. 13-6607. Powers and duties of the Department.**

(a) The Probation and Parole Department through its departmentally designated personnel shall monitor the execution and progress of all court orders:

(1) With regard to a supervised offender, undertake investigations including background investigations, and current status investigations, assess risks, make reports, including pre-sentence investigation reports, which may include alternative sentencing recommendations;

(2) Utilize risk and needs assessment information to identify the level of supervision required and develop an appropriate case plan;

(3) Develop a case/supervision plan that outlines the conditions of probation or parole and a plan for services that promotes positive behavior change in the supervised

offender and incorporates culturally focused interventions when available;

(4) Review and monitor a supervised offender or potential supervised offender who is eligible for, or ordered on parole or probation, and report of findings to the court as required or deemed appropriate;

(5) Take and retain custody of all persons placed on parole and supervise the persons during their parole periods in accordance with the provisions in this Title and the conditions imposed by the court;

(6) Supervise an adult or juvenile probationer when requested to do so by the court or any court of competent jurisdiction, in accordance with the conditions set by the court;

(7) Conduct unannounced visits to the supervised offender's school, work, and home, as appropriate;

(8) Arrange random and/or scheduled drug and/or alcohol testing by any appropriate means, as applicable;

(9) Monitor the home electronic monitor (HEM) of the supervised offender when applicable, and monitor the secure, continuous, remote alcohol monitor (SCRAM) of the supervised offender, when applicable;

(10) Monitor the curfew of the supervised offender when applicable;

(11) Monitor the supervised offender's community service participation when applicable;

(12) Assure that a parolee or probationer signs a copy of the conditions of parole or probation and is given a copy. Assure that a copy of the conditions of parole or probation are given to the supervised offender's parole or probation officer;

(13) Evaluate supervised offender progress and recommend the intensity of supervision needed;

(14) Apply graduated sanctions (e.g., more frequent reporting to the probation or parole officer, more frequent random or scheduled drug and/or alcohol tests, recommend revocation of probation or parole) to respond to noncompliant behavior of the supervised offender;

(15) Provide appropriate rewards or incentives (e.g., travel permits, early termination from probation or parole upon approval of the court, decrease frequency of drug and/or alcohol tests) to respond to compliant behavior of the supervised offender;

(16) Maintain an awareness of a supervised offender's daily activities;

(17) Maintain a complete file about the supervised offender, including but not limited to, the supervised offender's home address and telephone number, place of employment and telephone number, school if applicable, and all other relevant information;

(18) Routinely evaluate the desirability of having a supervised offender remain at liberty;

(19) Regularly advise and consult with a supervised offender and encourage improvement of the supervised offender's condition;

(20) Keep records and report on the progress, lack of progress, and violations of the supervised offender as required by the court and make reports and recommendations to the court as appropriate;

(21) Identify, and when appropriate, facilitate participation by the supervised offender in Tribal or community programs to which the supervised offender may be or has been assigned for evaluation, treatment, or rehabilitation. To facilitate the supervised offender's performance of community service when ordered by the court.

(22) Assist each supervised offender with the following as feasible and appropriate:

- (i) Employment counseling and job placement;
- (ii) Family and individual counseling and treatment placement;
- (iii) Vocational and educational counseling and placement; and
- (iv) Referral services to any other appropriate agency.

(23) Monitor the execution and progress all court orders directed to the supervised offender;

(24) Be a liaison between the Tribal Court, the Wellness Court Team, and a Participant in the Wellness Court, and monitor the participant by various means which include, but are not limited to:

- (i) Conduct pre-intake and post-intake interviews with the Wellness Court participant;
- (ii) Ensure the participant understands the terms and conditions of the court order;
- (iii) Assist the Wellness Court Team in formulating a wellness plan for the court's consideration;

- (iv) Monitor the status of the participant by conducting unannounced visits to school, work, and home;
  - (v) Arrange random drug and/or alcohol testing;
  - (vi) Monitor and report compliance and noncompliance of the participant;
  - (vii) Prepare pre-disposition and all other relevant reports to the court;
  - (viii) Maintain a complete file of the participant;
  - (ix) Investigate and substantiate allegations of violations of orders;
  - (x) File appropriate revocation motions and/or recommendations for modification of orders in coordination with the Office of the Prosecutor;
- (25) Cooperate with all agencies, including Tribal, public, and private agencies:
- (i) That are providing or may provide services to the supervised offender; and
  - (ii) That have or may have an interest or concern about the status, treatment, or welfare of the supervised offender.
- (26) Appear as a witness at parole and probation revocation and other appropriate hearings; and
- (27) Maintain complete and updated files and case histories for each supervised offender.
- (b) The Probation and Parole Department through its departmentally designated personnel shall have the following powers:
- (1) The authority to request a judge of the court to issue an order for the release of records from any Tribal department, entity, agency, employee, or official, including but not limited to the Meskwaki Nation Police Department and the Meskwaki Bingo Casino Hotel, if such request is necessary for the Probation and Parole Department to fulfill their duties set forth in this Title. Any request for an order for the release of records must be supported by a sworn affidavit from a probation and/or parole officer explaining the need for the order and how the records will be used; and
  - (2) The authority to negotiate with probation and parole departments from other jurisdictions to enter into memoranda of agreement to facilitate the Department's supervision of offenders within the jurisdiction of the Sac & Fox Tribe of the Mississippi in Iowa who are subject to probation or parole requirements in jurisdictions other than the Sac & Fox Tribe of the Mississippi in Iowa. The final approval authority for any

memorandum of agreement described in this subsection shall remain with the Tribal Council of the Sac & Fox Tribe of the Mississippi in Iowa.

(3) When gathering information about a person who is subject to or ordered on probation or parole, the power to obtain information by access to, and by means of:

- (i) Criminal histories;
- (ii) Screening information;
- (iii) Various assessment results;
- (iv) Interviews with the offender and the families and social networks of the offender; and/or
- (v) Any other lawful means of obtaining information.

(4) The authority to intervene, upon a written request from the Meskwaki Nation Police Department, from the Tribal Court, or from the Tribal Prosecutor, in a matter involving a juvenile or adult who has exhibited behavior that could result in charges being filed against the juvenile or adult, but where charges have not yet been filed. A probation officer or parole officer, under these circumstances, may proceed with any or all of the following:

- (i) Discuss a juvenile's behavior with the juvenile or the juvenile's parent[s] or guardian[s] in an attempt to curtail inappropriate behavior and avoid the filing of charges against the juvenile;
- (ii) Discuss an adult's behavior with the adult in an attempt to curtail inappropriate behavior and avoid the filing of charges against the adult;
- (iii) Attempt to establish a written agreement between the juvenile or adult and the Department whereby the juvenile or adult agrees to attend appropriate counseling or treatment, agrees to a curfew, or agrees to other procedures or actions intended to curtail inappropriate behavior and avoid the filing of charges; and/or
- (iv) Advise the juvenile or adult that failure to curtail inappropriate behavior may result in the filing of charges against the juvenile or adult.

**Sec. 13-6608. Training, qualifications, powers and duties of probation-parole officers.**

(a) In addition to the duties and powers enumerated and delegated to the Department, a probation-parole officer shall have the training, qualifications, powers and duties set forth in this section.

(b) All probation-parole officers of the Department must:

- (1) Be at least 21 years of age;
  - (2) Be a citizen of the United States;
  - (3) Be a high school graduate or its equivalent;
  - (4) Have an associate or other two-year degree from an accredited junior college, community college or other college or university in the field of criminal justice, social work, or related field, and a bachelor's degree in the designated fields is preferred.
  - (5) Not have been convicted of any felony, not have been convicted of a misdemeanor involving perjury or a false statement, not have received a dishonorable discharge from any of the Armed Forces of the United States. Any person who pleads guilty or nolo contendere to, or is found guilty, of a felony, or of a misdemeanor involving perjury or a false statement, shall not be eligible for employment or appointment as a probation officer, notwithstanding suspension of sentence or withholding or deferral of adjudication;
  - (6) Have his or her processed fingerprints on file with the Department;
  - (7) Submit to a background investigation and have a good moral and law abiding character as determined by a background investigation pursuant to procedures established by the Tribe;
  - (8) Not be on summary or formal probation or parole at the present time or within the past seven (7) years;
  - (9) Be in good physical, emotional, and psychological condition; and
  - (10) Have a valid Iowa driver's license.
- (c) A probation-parole officer, in carrying out his or her duties under this Title, is vested with:
- (1) The authority to request a judge of the court to issue a warrant for the arrest of a supervised offender or for the search and seizure of the supervised offender's person or property;
  - (2) The authority to arrest a supervised offender without a warrant for violation of a condition of probation and commit the offender to Tribal incarceration facilities by presenting to the Tribal police a written statement that the offender has, in the judgment of the officer, violated the conditions of his or her release.
  - (3) The authority to detain a supervised offender in the interest of officer and/or community safety; and

(4) The authority to conduct a search without a warrant upon reasonable suspicion.

(d) The Probation and Parole Department may also employ high risk probation-parole officers and a high risk probation-parole officers shall:

(1) Be a currently certified State of Iowa law enforcement officer in good standing and shall retain that certification and good standing during all times of employment as a high risk probation-parole officer of the Department;

(2) Meet all qualifications and training required of a probation-parole officer;

(3) Have all of the duties and powers of a probation-parole officer and have the following additional duties and powers:

(i) All of the authority of a Tribal law enforcement officer; and

(ii) The authority to carry firearms when necessary.

(e) At the time of commencing employment with the Tribe as a probation-parole officer or a high risk probation-parole officer the officer shall take a sworn oath to uphold his or her duties and said oath shall be designated by the Director of the Department and approved by the Tribal Council.

**Sec. 13-6609. Probation eligibility and conditions.**

(a) Probation is a privilege and not a right, and may or may not be ordered in the discretion of the court.

(b) Probation may be granted by the court, in its discretion, when the offender:

(1) Poses no substantial threat to the community;

(2) Is not charged with, nor has ever been convicted of, a predatory crime, a crime involving substantial violence, a crime involving large scale drug trafficking, or a crime of equivalent gravity;

(3) Has no prior criminal history that makes probation an inappropriate sanction;

(4) Is not currently on probation or parole, unless the Department specifically consents to continued probation or parole; and

(c) Conditions of probation may include, but are not limited to, orders specifying and requiring:

(1) Curfew;

- (2) Counseling;
- (3) Rehabilitation treatment;
- (4) Community Service;
- (5) Compliance with Tribal and all other relevant laws;
- (6) Prohibition against contact with specified person[s] or being present in specified location[s];
- (7) Restitution and/or fines;
- (8) Periodic contact with the probation officer;
- (9) Random drug and/or alcohol testing; and/or
- (10) Imposition of fees to be paid by the parolee for probation-parole services.

**Sec. 13-6610. Parole eligibility and conditions.**

(a) An offender sentenced to incarceration on a conviction or combination of convictions, who has served at least one year of the imposed sentence, and whose confinement is not the result of a probation or parole violation, may file a petition for parole with the Tribal Court.

(b) Parole is a privilege and not a right, and may or may not be ordered in the discretion of the court.

- (c) Parole may be granted by the court, in its discretion, when the offender:
- (1) Poses no substantial threat to the community;
  - (2) Is not charged with, nor has ever been convicted of, a predatory crime, a crime involving substantial violence, a crime involving large scale drug trafficking, or a crime of equivalent gravity, as determined by the court;
  - (3) Has no prior criminal history that makes parole an inappropriate sanction;
  - (4) Is not currently on probation or parole, unless the Department specifically consents to continued probation or parole; and

**Sec. 13 -6611. Petition for parole.**

A petition for parole shall include the following:

- (a) The name, address, and telephone number of the petitioner/offender;
- (b) The date of conviction and the crime[s] the offender is convicted of;
- (c) The date of the first day of incarceration and the length of the sentence[s] imposed upon the offender;
- (d) Specific and detailed reasons stating why that the offender believes that parole should be granted;
- (e) Name, address, telephone number, and age of each person the offender intends to have appear and testify at the hearing on the petition for parole. A statement of the relationship between the offender and each person the offender intends to have appear and testify at the hearing.

**Sec. 13 -6612. Hearing on petition for parole.**

(a) The court shall hold a hearing on a petition for parole within ten (10) business days of the date the petition is filed with the court. All persons desiring to speak at the hearing shall be heard, including, but not limited to law enforcement officers, the Tribal prosecutor, family and friends of the offender, the offender and the offender's attorney [if any], victim[s] of the offense for which the offender was sentenced and incarcerated, and immediate, adult family members of the victim[s].

(b) Notice of the hearing shall be given at least five [5] business days prior to the hearing date to:

(1) Meskwaki Nation Police Department and all other law enforcement officers involved in the case who are not officers of the Meskwaki Nation Police Department;

(2) The victim[s];

(3) The immediate, adult family members of the victim's family if names and address are available through the Tribal Prosecutor;

(4) The Tribal Prosecutor;

(5) Probation and Parole Department Director or the Director's designee;

(6) Each person identified by the petitioner/offender in the petition for parole as a person the petitioner/offender intends to have appear and testify at the hearing on the petition for parole, so long as the person is qualified and eligible pursuant to the criteria set forth in paragraph 25-4103(a) of this section.

(7) The petitioner/offender's attorney, if any; and

- (8) The petitioner/offender.

**Sec. 13-6613. Court's authority to grant parole.**

(a) In determining whether to grant a petition for parole, the court shall consider all pertinent information and evidence, including, but not limited to the following:

- (1) The circumstances and nature of the offense;
- (2) The past criminal record of the petitioner;
- (3) The past employment record of the petitioner;
- (4) The conduct of the petitioner during incarceration;
- (5) The results of physical and/or psychological reports as to the petitioner;
- (6) The petitioner's employment status, family and community ties and responsibilities, and the petitioner's health, all of which must be balanced against the Tribe's interest in rehabilitation, public safety and the victim's rights.

(b) An order granting parole shall be in writing and shall set forth the duration of parole, the conditions of parole, an order committing the custody of the parolee to the Probation and Parole Department of the Sac & Fox Tribe of the Mississippi in Iowa, and specific provisions stating the consequences of violation of parole conditions.

(c) Conditions of parole may include, but are not limited to, orders specifying and requiring:

- (1) Curfew;
- (2) Counseling;
- (3) Rehabilitation treatment;
- (4) Community Service;
- (5) Compliance with Tribal and all other relevant laws;
- (6) Prohibition against contact with specified person[s] or being present in specified location[s];
- (7) Restitution and/or fines;
- (8) Periodic contact with the parole officer;
- (9) Random drug and/or alcohol testing; and/or

- (10) Imposition of fees to be paid by the parolee for probation-parole services.

**Sec. 13-6614. Violation of a condition of probation or parole.**

(a) A probation-parole officer may arrest a supervised offender for violation of a condition of probation or parole. Any probation-parole officer may arrest the supervised offender without a warrant or may request any other officer with power to arrest to do so by giving him or her a written statement setting forth that the supervised offender has, in the judgment of the probation-parole officer, violated the conditions of his or her release. The written statement delivered with the supervised offender by the arresting officer to the Tribal incarceration facilities shall be sufficient warrant for the detention of the supervised offender. Pending a hearing upon a charge of a probation violation, the supervised offender may be incarcerated in the Tribal incarceration facilities until the hearing.

(b) Upon the arrest of a supervised offender for probation or parole violation, the probation-parole officer, no later than one business day after the arrest, shall cause to be filed in Tribal Court, a petition for revocation of probation or parole, as applicable, which petition shall include, but not be limited to, a sworn statement of facts supporting the basis for the arrest and for the revocation of probation or parole. The probationer or parolee must be given notice and the petition must be served upon the probationer or parolee.

**Sec. 13-6615. Determination of probable cause after arrest.**

(a) An arrested probationer or parolee is entitled to a hearing within seventy-two [72] hours of arrest, exclusive of weekends and holidays, to determine whether there is probable cause to determine that the arrested probationer or parolee has committed acts which constitute a violation of his or her probation or parole conditions.

(b) If probable cause is found for the arrest, the offender shall be held in the Tribal incarceration facilities without bail until the probation or parole revocation hearing is held.

**Sec. 13-6616. Probation or parole revocation hearing.**

(a) Upon finding probable cause or waiver of the hearing to determine probable cause, or upon issuance of a notice of probation or parole violation by the probation-parole officer, the probation-parole officer shall file a petition for revocation of probation or parole with the court. The petition must be filed within the probation or parole time period and the probationer or parolee must be given notice and must be served with the petition. The petition shall include, but not be limited to, a sworn statement of facts supporting the basis for the arrest, if applicable, and facts supporting the revocation of probation.

(b) A probationer or parolee is entitled to a probation revocation hearing before the court within ten [10] business days of the date of service of the petition for revocation of probation or parole upon the probationer or parolee, or within ten [10] business days of the date of arrest for violating probation or parole, whichever is earlier, unless the court continues the hearing for good cause.

(c) The subject matter of a probation or parole revocation hearing is limited to allegations and testimony and evidence regarding the alleged violation of probation or parole conditions.

(d) A probationer or parolee does not have a right to a jury trial at a probation or parole revocation hearing.

(e) If a probationer or parolee admits a violation of a condition of probation or parole, the court, after the probationer or parolee has had the opportunity to offer testimony and evidence regarding circumstances tending to mitigate the violation, may revoke or not revoke probation or parole.

(f) If a probationer or parolee does not admit a violation of a condition of probation or parole, the prosecution has the burden of proving by a preponderance of the evidence, that the probationer or parolee violated a condition of probation or parole.

(g) Evidence that the probationer or parolee violated a condition of probation or parole is not excludable on the grounds that the probationer or parolee was not warned of his or her right not to incriminate himself or herself prior to admitting a violation.

(h) Hearsay evidence is admissible, although a decision to revoke probation or parole may not be based solely on hearsay evidence.

(i) The prosecution may present aggravating circumstances and the probationer or parolee may present mitigating circumstances.

(j) The probationer or parolee and the prosecution may call witnesses and/or introduce evidence and may cross examine all witnesses of the other party.

(k) The court shall determine the appropriate disposition of a petition for revocation by balancing the probationer's or parolee's interest in liberty, employment, family ties, responsibilities, health, and/or community ties, against the Tribe's interest in rehabilitation, public safety, victim's rights, and/or the probationer's or parolee's duty to comply with each condition of probation or parole.

(l) An order revoking probation or parole or an order denying the petition to revoke probation or parole shall be in writing and shall contain findings of fact and conclusions of law supporting the court's order.

**Sec. 13-6617. Probation revocation penalties.**

(a) A person who, after a hearing, is found to have violated a condition of his or her probation may be required to do the following:

(1) Serve his or her suspended sentence by incarceration for a time period equal to the suspended portion of the sentence or any part thereof; or

(2) Serve his or her deferred sentence by incarceration for a time period to be determined by the court after a sentencing hearing.

(b) Probation shall not be available to an offender whose probation is revoked.

**Sec. 13-6618. Parole revocation penalties.**

(a) A person who, after a hearing, is found to have violated a condition of his or her parole may be required to do the following:

(1) Serve his or her remaining sentence by incarceration for a time period equal to portion of the sentence not served at the time of granting parole; or

(2) Serve by incarceration some other portion of his or her sentence not served at the time of granting parole.

(b) Neither probation nor parole shall be available to an offender whose parole is revoked.

**Sec. 13 -6619. Probation or parole revocation. Review by appellate court.**

An offender whose probation or parole is revoked may file an appeal to the Tribal appellate court pursuant to the court's appeal procedures and deadlines. The court's refusal to revoke probation or parole is not appealable by or on behalf of the Tribe. The filing of an appeal does not stay the Trial Court's order revoking probation or parole and imposing penalties.

**Sec. 13-6620. Remedies.**

The remedies set forth in this Title for enforcement of the orders of the court are in addition to any other civil and criminal remedies available.

**Sec. 13-6621. Enforcement.**

(a) In addition to the powers and duties of a probation-parole officer set forth in this Title, a high risk probation-parole officer, and/or law enforcement officer within his or her jurisdiction inclusive of cross-deputization jurisdiction, with or without a warrant, may arrest a person if the law enforcement officer has probable cause to believe that the person has violated Title 13, Article V, Chapter 5, section 13-5503 by disobeying or resisting an order that is issued by the court, whether or not such violation occurred in the presence of the officer.

(b) A high risk probation-parole officer, and/or law enforcement officer who makes an arrest pursuant to this Title is not civilly or criminally liable for the arrest if the officer acts on probable cause and without malice.

[NOTE: Except as otherwise noted, the provisions of Article VI, Title 13 Chapter 6 were enacted on April 22, 2015 by Res. No. 11-2015.]

**CHAPTER 7. MISCELLANEOUS PROVISIONS****Sec. 13-6701. Search and Seizure.**

(a) Upon the request of a Prosecutor or any law enforcement officer, the Tribal Court may issue a written search warrant to search for and seize evidence of a criminal offense.

(b) A search warrant shall be supported by affidavit or sworn testimony and must particularly describe the person or place to be searched and the item(s) to be seized. If probable cause exists to believe that a crime has been committed and that evidence of the crime is present at the place or on the person to be searched the warrant shall issue. The search warrant shall direct police officers to search the location or person described for the items specified.

(c) A search warrant shall be served during the hours of 6:00 a.m. to 10:00 p.m., unless a night search is expressly provided for in the warrant. The officer taking property under a search warrant shall provide a copy of the warrant and a receipt for the property taken to the person from whom it was taken or in the absence of any such person, he shall leave it in the place where the property was found.

(d) A search warrant shall be executed within fourteen (14) days after issuance. Upon execution of the warrant, a return shall be executed and filed with the court along with an inventory of the items seized.

(e) A search warrant will not be required in the following situations:

(1) The evidence is in plain view and can be seen by the officer(s) from a place where the officer has a right to be;

(2) A person who has authority to do so voluntarily consents to the search and the search is limited to the scope of the consent given;

(3) The search is incident to a lawful arrest and is conducted on the person arrested and within the area of the person's immediate reach and control for any evidence, contraband or weapons;

(4) The officer(s) reasonably believe that a person is armed and presents a danger to the officer or the public in which case the officer may conduct a pat down of the person's outer clothing in search of weapons;

(5) The officer(s) enter a residence or structure in fresh pursuit of a fleeing suspect;

(6) The area to be searched is an automobile actually moving or temporarily stopped, as long as the officer(s) have probable cause to believe that it contains items which are subject to seizure; or

(7) There are reasonable grounds to believe that the delay in obtaining a search warrant would endanger the physical safety of the police officers or third persons or allow the destruction, dissipation or removal of seizable evidence.

### **Sec. 13-6702. Extradition.**

(a) A written request seeking the extradition of any individual found within the exterior boundaries of the Settlement to any state, tribal or federal jurisdiction shall be submitted to a judge of the Tribal Court and shall be accompanied by:

- (1) A certified exemplified copy of the warrant; or
- (2) Other reliable information that the warrant exists.

(b) If the judge, after receiving the extradition request is satisfied as to its validity, he shall issue an arrest warrant. The person named in the warrant shall be taken into custody by the tribal police officers with the assistance of the other law enforcement officials involved if requested and held by tribal police for arraignment by the Tribal Court.

(c) Once the person suspected of being the one named in the extradition request is in custody of the tribal police, the police shall notify the jurisdiction which issued the request.

(d) Within three (3) business days after arrest, the person arrested shall be brought before a judge of the Tribal Court. The court shall inform the person of the demand for his surrender and of the crime with which he is charged, that he has a right to representation of legal counsel and to request a hearing to challenge the extradition request. If a hearing is requested, the judge shall fix a reasonable time for the hearing release the person on bail, release the person with out bail or hold him in custody until the date of the hearing. If the hearing is waived, the person shall be promptly turned over to the custody of the appropriate authorities.

(e) Following an extradition hearing, if the judge determines that the person brought before the court is in fact the person named in the extradition request and that there is probable cause to believe that the he committed the offense complained of, an extradition order shall be issued and the person immediately turned over to the custody of the appropriate authorities.

[NOTE: Except as otherwise noted, the provisions of Article VI, Title 13 Chapter 7 were enacted on April 22, 2015 by Res. No. 11-2015.]

## **CHAPTER 8. HABEAS CORPUS**

### **Sec. 13-6801. Who May Prosecute Writ.**

Every person imprisoned or otherwise restrained of his liberty on the Settlement or under order of the Tribal Court may prosecute a Writ of Habeas Corpus to inquire into the cause of his imprisonment or restraint and, if it be illegal, to be delivered therefrom.

**Sec. 13-6802. Writ for Purpose of Bail.**

When a person is imprisoned or detained in custody on any criminal charge, for want of bail, such person is entitled to a Writ of Habeas Corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

**Sec. 13-6803. Application For - How Made.**

Application for the Writ is made by petition, signed either by the person for whose relief it is intended, or by some person in his behalf, and must:

(a) Alleged that the person in whose behalf the Writ is applied for is unlawfully imprisoned or restrained of his liberty, why the imprisonment or restraint is unlawful, the officer or person by whom he is confined or restrained, and the place where, naming all the parties if they are known, or describing them if they are not known

(b) Be verified by the oath or affirmation of the person making the application.

**Sec. 13-6804. Content of Writ.**

(a) The Writ must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command him to have the body of such person before the Court at a time and place therein specified.

(b) The issues to be determined upon return of the Writ may be stated either in the Writ, or in an order attached to the Writ, or in a copy of the petition attached to the Writ.

**Sec. 13-6805. Service of the Writ.**

The Writ must be served upon the person to whom it is directed and must be served in the same manner as a summons.

**Sec. 13-6806. Return of Writ—contents.**

The person upon whom the Writ is served must make a return to the Court and state in the return:

(a) Whether he has the detained person in his custody or under his restraint, and the authority for holding the detained person.

(b) If he had the detained person in his custody or under his restraint, the return must state particularly to whom, at what time and place, for what cause, and by what authority custody was released.

(c) The return must be signed by the person making it and unless he is a sworn public official and makes the return in his official capacity, it must be verified by his oath.

**Sec. 13-6807. Hearing on Return.**

- (a) The detained person shall be brought before the Court by the person commanded by the Writ as soon as possible.
- (b) The hearing must be held on the day set and may be summary in nature.
- (c) Evidence may be produced and compelled as in civil actions.

**Sec. 13-6808. Judgment.**

(a) If the detained person is in official custody, he may not be released on a Writ of Habeas Corpus for any technical defect in commitment not affecting his substantial rights. Following the hearing, the judge shall make a judgment regarding the custody of the detained person as the facts and circumstances warrant and the judgment shall be effective immediately.

[NOTE: Except as otherwise noted, the provisions of Article VI, Title 13 Chapter 8 were enacted on April 22, 2015 by Res. No. 11-2015.]

**TITLE 13. LAW AND ORDER****ARTICLE VII****BANISHMENT**

[NOTE: Except as otherwise noted, the provisions of Article VII, Title 13 were enacted on April 6, 2005 by Ord. No. 13-2005.]

**CHAPTER I. GENERAL PROVISIONS****Sec. 13-7101. Definitions.**

Unless the context requires otherwise, as used in this Article:

(a) “Intentionally” means, with respect to a result or to conduct described, that a person’s objective is to cause that result or to engage in that conduct.

(b) “Knowingly” means, with respect to conduct or to a circumstance described, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

(c) “Member” means an enrolled member of the Tribe.

(d) “Recklessly” means, with respect to a result or to a circumstance described, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists.

**Sec. 13-7102. Purpose of Article.**

(a) Banishment is a traditional non-criminal remedy which the Tribe, acting through its Council, imposes against members who take actions which cause substantial detriment to the Tribe or its members. This Article codifies and clarifies the existing common law grounds for banishment, but does not expand the grounds for banishment which existed at common law.

(b) The common law also establishes procedures applicable to banishment proceedings. This Article clarifies, supplements, and amends that common law in a manner which provides those subject to banishment with greater procedural protections than existed at common law.

(c) This Article does not and is not intended to impose criminal sanctions against any person.

**Sec. 13-7103. Preservation of Common Law Authority to Banish.**

Tribal common law permits a clan or a family to banish one of its own members. This Article does not reduce that common law authority. It does not provide the grounds upon which such banishments may be based, and does not provide procedures applicable to such banishments. The family or clan banishing one of its own members shall have responsibility for enforcing the

banishment decree. The family or clan shall provide a written copy of the decree or written description of the decree to the Tribal Council Secretary.

## **CHAPTER 2. SUBSTANTIVE LAW**

### **Sec. 13-7201. Persons Subject to Banishment.**

Any member over the age of 21 may be banished by the Tribe, provided that a banishment decree is not effective against a Tribal Council member, Gaming Commissioner, Tribal Court Judge, Tribal Court Justice, Election Committee member, or any person elected to tribal office, until the person has been lawfully removed from all such offices held.

### **Sec. 13-7202. Grounds for Banishment; Automatic Banishment.**

Any person shall be automatically banished, and the Tribal Council shall issue a banishment decree, upon conviction for knowingly or intentionally killing, or attempting to kill, a member of the Tribe, employee of the Tribe, or any person on the Settlement. A person may be banished by the Tribe for:

- (a) Upon conviction for recklessly killing or attempting to kill a member of the Tribe, employee of the Tribe, or any person on the Settlement;
- (b) Upon conviction of raping or attempting to rape a member of the Tribe, employee of the Tribe, or any person on the Settlement;
- (c) Upon conviction of having sexual contact with, or attempting to have sexual contact with, a member of the Tribe or person on the Settlement who is less than 16 years old;
- (d) Stealing or unlawfully retaining possession of tribal records or destroying tribal records without authorization;
- (e) Upon conviction for manufacturing or distributing illegal drugs;
- (f) Desecration of Meskwaki cultural or religious sites or artifacts;
- (g) Repeatedly engaging in assault intended to inflict serious bodily harm, or which does inflict serious bodily harm to a member of the Tribe, employee of the Tribe, or any person on the Settlement, or repeatedly engaging in aggravated assault of a member of the Tribe, employee of the Tribe, or any person on the Settlement; or
- (h) Conspiring with others to commit any of the acts stated above.

### **Sec. 13-7203. Length of Banishment.**

- (a) Unless the banishment decree expressly states that the banishment is for a specified

term, the banishment by the Tribe shall be in effect until the Tribal Council, in its unfettered discretion, lifts the banishment decree.

(b) After one year of banishment, a person banished may request, by letter written to the Tribal Chairman, that the Tribal Council lift the banishment decree, but the Council shall have unfettered discretion regarding whether or how it reviews that request, and the Council shall have no duty to respond to such a request.

**Sec. 13-7204. Effect of Banishment.**

(a) Unless the banishment decree expressly states otherwise, a person who is banished by the Tribe shall:

(1) Be immediately expelled from the jurisdiction of the Tribe and not be allowed to return for any reason during the period of banishment except when required to attend court or for a period of four (4) days for the funeral of an immediate family member, defined as mother, father, spouse, siblings, children, grandparents and grandchildren;

(2) Beginning seventy-two hours after the banishment, have no contact with members of the Tribe living on the Settlement; except that the banished person may write the Tribal Chairman solely for the purpose described in section 13-7203;

(3) Beginning immediately, have no contact with an agent of the Tribe while the agent is performing or seeking to perform any service for the Tribe; except as required for Court proceedings or as permitted by section 13-7203;

(4) Immediately forfeit all positions or offices of honor or profit with the Tribe, subject to the limitation stated in section 13-7201;

(5) Immediately be ineligible for any service, monies, or benefits provided by the Tribe, or due as a result of citizenship in the Tribe, and further provided that if the banishment is subsequently lifted, there will be no back pay of monies or benefits;

(6) Immediately be ineligible to vote in any election conducted by or hold any office in the Tribe;

(7) If the banished person becomes deceased during the period of banishment, burial of their remains on the Settlement shall be permitted without any action required by the Tribal Council or Tribe.

(b) Unless the banishment decree issued by the Tribe expressly states that the banishment is for a specified term, the person who is banished shall be considered for all tribal law purposes to be a nonentity seventy-two hours after the banishment decree is issued; including that any housing assignment held by the person shall be reassigned by the Tribe, and any personal property remaining on the Settlement shall be subject to distribution by the Tribe; except that the Tribe may bring civil or criminal causes of action, and may continue to prosecute any civil or criminal action pending,

against the banished person, and the person banished shall have the rights of a defendant in such action.

### **CHAPTER 3. PROCEDURE**

#### **Sec. 13-7301. Procedures Generally.**

(a) A preliminary hearing regarding banishment by the Tribe shall be conducted by the Tribal Council, under Tribal Council adjudicatory procedures defined by Article IV of Title 1 of this Code. After the hearing, the Council shall either:

- (1) recommend that the person be banished by the Tribe and set the matter for a meeting of the Tribe followed by a referendum vote of the Tribe; or
- (2) determine that the person should not be banished by the Tribe and may remain within the Settlement, and conclude the banishment proceeding.

(b) If the Tribal Council recommends that the person should be banished by the Tribe, the meeting of the Tribe shall be held no sooner than 10, and no later than thirty days after the Council issues its recommendation. At the meeting of the members, the Council shall present the basis for its recommendation, and the person subject to possible banishment shall have the right to attend and be heard. A referendum election on banishment by the Tribe shall be held within seven calendar days of the meeting of the Tribe. Only members of the Tribe residing on the Settlement shall be eligible to vote in a banishment referendum election, and for a referendum vote to result in banishment, no less than fifty percent (50%) of all eligible voters residing on the Settlement must vote in the referendum. The decision on whether the person shall be banished shall be determined by a simple majority vote. The referendum election shall be governed by the Tribal Code provisions for referendum elections, except as explicitly stated in this Title.

#### **Sec. 13-7302. Banishment Decree.**

If the majority of the votes in the referendum are cast in favor of banishment, the Council shall issue a tribal banishment decree. If the referendum vote is tied or a majority of the votes cast are opposed to banishment, the Council shall issue an order that the person is not banished by the Tribe. The Council order shall be issued within 24 hours of the certification of the results of the vote.

#### **Sec. 13-7303. Dissemination of Banishment Decrees.**

A copy of a tribal banishment decree issued under this Article excluding a person from all or any part of the Settlement or imposing conditions upon a person remaining within or entering upon the Settlement shall be:

- (a) Sent to Tribal, local, and state law enforcement officials, as determined by the Chairman;

- (b) Sent to the appropriate official of the Bureau of Indian Affairs and the United States Attorney for the Northern District of Iowa;
- (c) Sent to the Tribal Court;
- (d) Published in a newspaper of general circulation in the Settlement for one week;
- (e) Posted at the governmental offices of the Tribe for one week; and
- (f) Maintained collectively and separately in a manner which allows for subsequent examination of such orders by any member of the Tribe or other resident of the Settlement.

**Sec. 13-7304. Emergency Exclusion.**

(a) Except for a person against whom a tribal banishment decree cannot be enforced based upon section 13-7201, the Tribal Council may, by majority vote of a quorum, issue an emergency exclusion order against any member who, based on the grounds established in 13-7202, poses an immediate danger or the threat of immediate danger to the life, health, safety, or property of the Tribe or any of its members, employees, or residents, or where delay would result in irreparable damage or harm.

(b) In the case of any emergency exclusion under this section, a preliminary hearing regarding banishment, held before the Tribal Council, as provided by section 13-7301(a), shall be held as soon thereafter as is reasonably possible and no longer than twenty days after the emergency exclusion order is entered.

(c) An emergency exclusion order issued under this section shall remain in force until revoked by the Tribal Council or until the hearing provided for in this Section.

**CHAPTER 4. ENFORCEMENT OF BANISHMENT DECREES**

**Sec. 13-7401. Enforcement of Banishment Decrees Issued by the Tribal Council.**

(a) A Tribal Council banishment decree shall be enforced by all tribal officers to the fullest extent permitted by the Tribe's police powers.

(b) In addition to any other action permitted by Tribal law, the Tribe may bring suit in Tribal Court to enforce any order issued by the Tribal Council under this Article.

(c) In hearing a petition for enforcement under this section, the Tribal Court shall have the authority:

- (1) To convert any order of the Tribal Council issued under this Article into an order of the Court;

(2) To find the person who violates an order of the Tribal Council issued under this Article in contempt of court; and

(3) To issue any other orders appropriate or necessary to enforce the order of the Tribal Council.

(d) In hearing a petition for enforcement, the Court shall have no authority or jurisdiction to hear the merits of any order issued by the Tribal Council pursuant to this Article and shall consider and deem all matters subject of the Tribal Council's order final.

**TITLE 13. LAW AND ORDER****ARTICLE VIII****SEX OFFENDER REGISTRATION**

[NOTE: The original Title 13, Article VIII was adopted by the Tribal Council on October 24, 2007, by Resolution 32-2007, with the duty to be registered effective January 1, 2008. The provisions of this Code, adopted by the Tribal Council on June 29, 2011 by Resolution No. 9-2011 shall supersede all provisions of the original Title 13, Article VIII.]

**CHAPTER I. GENERAL PROVISIONS AND CONSTRUCTION****Section 13-8101. Definitions**

- (a) Title. This Code shall be known as the Sex Offender Registration Code.
- (b) Purpose. The intent of this code is to implement the federal Sex Offender Registration and Notification Act (“SORNA”) and shall be interpreted liberally to comply with the terms and conditions of that Act as presently written or hereafter amended.
- (c) Need. On July 27, 2006, the President of the United States signed into law the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901-16969) also known as the Sex Offender Registration and Notification Act, which established a comprehensive national system for registration of sex offenders. Section 127 of the Act requires each federally recognized Indian tribe that possesses criminal jurisdiction to either implement the provisions of the Act under its own authority or to allow the state government to implement it on tribal land. In Resolution No. 15-2007 (June 6, 2007) the Tribal Council elected to carry out the duties of a jurisdiction under the Adam Walsh Act, rather than to allow the state of Iowa to implement the Act within the Meskwaki Settlement. Although the Adam Walsh Act was enacted in 2006, the Final Guidelines for the National Guidelines for Sex Offender Registration and Notification were not published until after the enactment of the original Title 13, Article IV (October 24<sup>th</sup>, 2007). The original Title 13 did not have the benefit of the National Guidelines, which were issued to provide guidance and assistance to, among other jurisdictions, Indian tribes. This code is necessitated by the need to come into full compliance with federal requirements; and, in recognition of the fact that Tribal nations are disproportionately affected by violent crime in general and sex offenses in particular from both Indian and non-Indian perpetrators. Consequently, the conduct and presence of convicted sex offenders in Indian Country in general and on the Meskwaki Settlement in particular threatens the political integrity, economic security, health and welfare of the Sac & Fox Tribe of the Mississippi in Iowa.
- (d) Sex Offender Registry. There is hereby established a sex offender registry, which the Meskwaki Nation Police Department shall maintain and operate, pursuant to the provisions of this code as may be amended from time to time.

(e) Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, which the Meskwaki Nation Police Department shall maintain and operate pursuant to the provisions of this code as may be amended from time to time.

### **Section 13-8102. Construction**

(a) Nothing in this code shall be construed as a waiver or diminution of or limitation upon the sovereignty or the jurisdiction of the Sac & Fox Tribe of the Mississippi in Iowa.

(b) Nothing in this code shall be construed as limiting, waiving or abrogating the sovereign immunity of the Sac & Fox Tribe of the Mississippi in Iowa or any of its agencies, departments, enterprises, agents, officials or employees.

(c) If any section or provision of this code or amendment thereto is held invalid, the remaining provisions of this code and amendments thereto shall continue in full force and effect.

## **CHAPTER 2. DEFINITIONS AND COVERED OFFENSES**

### **Section 13-8201. Definitions**

(a) Convicted. An adult sex offender is “convicted” for the purposes of this code if the sex offender has been subject to penal consequences based on the conviction, however the conviction may be styled. This includes convictions of juveniles who are prosecuted as adults, and persons adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in 18 U.S.C. § 2241(a) or (b)), or was an attempt or a conspiracy to commit such an offense.

(b) Employee. The term “employee” as used in this code includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation including but not limited to volunteers, interns, externs, and apprentices.

(c) Immediate. “Immediate” and “immediately” mean within 3 business days.

(d) Imprisonment. The term “imprisonment” refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state “prison” as well as in a local or tribal “jail”.

(e) Jurisdiction. The term “jurisdiction” as used in this code refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the

Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe. This includes the Meskwaki Settlement.

(f) Minor. The term “minor” means an individual who has not attained the age of 18 years.

(g) Resides. The term “reside” or “resides” means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps. This includes sex offenders who visit the Settlement for a period of 24 hours or more.

(h) Sex Offense. The term “sex offense” as used in this code is limited to those offenses contained in section 111(5) of SORNA.

(i) Sex Offender. A person convicted of a sex offense is a “sex offender”.

(j) Sexual Act. The term “sexual act” means any direct touching of the genitals of a person under 16; or oral, anal, or vaginal penetration of any kind which occurs under any of the following circumstances: the victim is under 13, by force, by way of threat or intimidation, when the victim has been rendered unconscious, when the victim is incapable of appraising the nature of their conduct, when the victim is physically incapable of communicating non-consent, or when a drug or intoxicant has been administered which substantially impairs the ability of the other person to appraise or control their conduct.

(k) Sexual Contact. The term “sexual contact” means sexual touching of, or contact with, the intimate parts of the body, either directly or through the clothing.

(l) Student. A “student” is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

(m) SORNA. “SORNA” means Title I of the Adam Walsh Child Protection and Safety Act of 2006 (PL 109-248).

### **Section 13-8202. Covered Offenses**

Offenders who reside within the exterior boundaries of the settlement or otherwise reside on property owned by the tribe in fee or trust regardless of location, are employed within the exterior boundaries of the settlement or on property owned by the tribe in fee or trust regardless of location, attend school within the exterior boundaries of the settlement or on property owned by the tribe in fee or trust regardless of location, or offenders who visit the settlement for a period of 24 hours or more, that have been convicted of the following offenses, or convicted of an

attempt or conspiracy to commit any of the following offenses, are subject to the requirements of this code:

(a) Tribal Offenses. Any offenses listed within the Code of the Sac & Fox Tribe of the Mississippi in Iowa which are specifically set out as a Sex Offense or have an element involving a sexual act or sexual contact with another person.

(b) Federal Offenses. A conviction for any of the following, and any other offense hereafter included within SORNA:

- (1) 18 U.S.C. §1591 (sex trafficking of children),
- (2) 18 U.S.C. §1801 (video voyeurism of a minor),
- (3) 18 U.S.C. §2241 (aggravated sexual abuse),
- (4) 18 U.S.C. §2242 (sexual abuse),
- (5) 18 U.S.C. §2243 (sexual abuse of a minor or ward),
- (6) 18 U.S.C. §2244 (abusive sexual contact),
- (7) 18 U.S.C. §2245 (offenses resulting in death),
- (8) 18 U.S.C. §2251 (sexual exploitation of children),
- (9) 18 U.S.C. §2251A (selling or buying of children),
- (10) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
- (11) 18 U.S.C. §2252A (material containing child pornography),
- (12) 18 U.S.C. §2252B (misleading domain names on the internet),
- (13) 18 U.S.C. §2252C (misleading words or digital images on the internet),
- (14) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),
- (15) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
- (16) 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity),
- (17) 18 U.S.C. §2423 (transportation of minors for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, engaging in illicit sexual conduct in foreign places),
- (18) 18 U.S.C. §2424 (failure to file factual statement about an alien individual),

(19) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct)

(20) 18 U.S.C. §1152, §1153 (Assimilative Crimes Act).

(c) Foreign Offenses. Any conviction for a sex offense involving any conduct listed in this Section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

(d) Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note).

(e) Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241) and committed by a minor who is 14 years of age or older at the time of the offense.

(f) Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including this tribe, that involves:

- (1) Any type or degree of genital, oral, or anal penetration,
- (2) Any sexual touching of or sexual contact with a person's body, either directly or through the clothing,
- (3) Kidnapping of a minor,
- (4) False imprisonment of a minor,
- (5) Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,
- (6) Use of a minor in a sexual performance,
- (7) Solicitation of a minor to practice prostitution,
- (8) Possession, production, or distribution of child pornography,
- (9) Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,
- (10) Any conduct that by its nature is a sex offense against a minor, or
- (11) Any offense similar to those outlined in:

- (i) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
- (ii) 18 U.S.C. §1801 (video voyeurism of a minor),
- (iii) 18 U.S.C. §2241 (aggravated sexual abuse),
- (iv) 18 U.S.C. §2242 (sexual abuse),
- (v) 18 U.S.C. §2244 (abusive sexual contact),
- (vi) 18 U.S.C. §2422(b)(coercing a minor to engage in prostitution), or
- (vii) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

### CHAPTER 3. TIERED OFFENSES

#### Section 13-8301. Tier 1 Offenses

(a) Sex Offenses. A “Tier 1” offense includes any sex offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to Section 13-8202(c) that involves any sexual act or sexual contact with another person that is not included in Section 13-8302 or Section 13-8303.

(b) Offenses Involving Minors. A “Tier 1” offense also includes any offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to Section 13-8202(c) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.

(c) Tribal offenses. Any sex offense covered by this code where punishment was limited to one year in jail shall be considered a “Tier 1” sex offense, absent specific language to the contrary in the charging statute.

(d) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered a conviction for a “Tier 1” offense:

- (1) 18 U.S.C. §1801 (video voyeurism of a minor),
- (2) 18 U.S.C. §2252 (receipt or possession of material involving the sexual exploitation of a minor),
- (3) 18 U.S.C. §2252A (receipt or possession of child pornography),
- (4) 18 U.S.C. §2252B (misleading domain names on the internet),
- (5) 18 U.S.C. §2252C (misleading words or digital images on the internet),
- (6) 18 U.S.C. §2422(a) (coercion to engage in prostitution),

- (7) 18 U.S.C. §2423(b) (travel with the intent to engage in illicit conduct),
- (8) 18 U.S.C. §2423(c) (engaging in illicit conduct in foreign places),
- (9) 18 U.S.C. §2423(d) (arranging, inducing, procuring, or facilitating travel for illicit sexual conduct for personal or commercial gain),
- (10) 18 U.S.C. §2424 (failure to file factual statement about an alien individual), or
- (11) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

(e) **Certain Military Offenses.** Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 13-8301 (a) (b) or (c) shall be considered a “Tier 1” offense.

### **Section 13-8302. Tier 2 Offenses**

(a) **Recidivism and Felonies.** Unless otherwise covered by Section 13-8303, any sex offense, which is not the first sex offense for which a person has been convicted, that is punishable by more than one year in jail is considered a “Tier 2” offense. In the case of subsequent convictions from any tribal court, the offense shall be treated as if it is punishable by more than one year in jail if a substantially similar Iowa statute or federal offense is punishable by more than one year.

(b) **Offenses Involving Minors.** A “Tier 2” offense includes any sex offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to Section 13-8202(c) that involves:

- (1) The use of minors in prostitution, including solicitations,
  - (i) Enticing a minor to engage in criminal sexual activity,

(c) **Sexual contact with a minor 13 years of age or older, whether direct or through the clothing, that involves the intimate parts of the body,**

- (1) The Use Of A Minor In A Sexual Performance,
- (2) The production for distribution of child pornography, or
- (3) A non-forcible Sexual Act with a minor 16 or 17 years old.

(d) **Certain Federal Offenses.** Conviction for any of the following federal offenses shall be considered “Tier 2” offenses:

- (1) 18 U.S.C §1591 (sex trafficking by force, fraud, or coercion),
- (2) 18 U.S.C. §2244 (abusive sexual contact),
- (3) 18 U.S.C. §2251 (sexual exploitation of children),
- (4) 18 U.S.C. §2251A (selling or buying of children),
- (5) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),

- (6) 18 U.S.C. §2252A (material containing child pornography),
- (7) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),
- (8) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
- (9) 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution),
- (10) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct),
- (11) 18 U.S.C. §2423(d) (arranging, inducing, procuring, or facilitating travel for illicit sexual conduct for personal or commercial gain).

(e) Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 13-8302(a),(b), or (c) shall be considered “Tier 2” offenses.

(f) Tribal Offenses. A “Tier 2” offense includes any tribal offense listed under the Code of the Sac & Fox Tribe of the Mississippi in Iowa which expressly states that it is a Tier 2 offense, regardless of the term of punishment.

### **13-8303. Tier 3 Offenses.**

(a) Recidivism and Felonies. Any sex offense that is punishable by more than one year in jail where the offender has at least one prior conviction for a Tier 2 sex offense is a “Tier 3” offense. In the case of subsequent convictions from any tribal court, the offense shall be treated as if it is punishable by more than one year in jail if a substantially similar Iowa statute or federal offense is punishable by more than one year.

(b) General Offenses. A “Tier 3” offense includes any sex offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to Section 13-8202(c) that involves:

- (1) Non-parental kidnapping of a minor,
- (2) A sexual act with another,
- (3) Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

(c) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered “Tier 3” offenses:

- (1) 18 U.S.C. §2241 (aggravated sexual abuse),
- (2) 18 U.S.C. §2242 (sexual abuse),
- (3) 18 U.S.C. §2243 (sexual abuse of a minor or ward), or
- (4) 18 U.S.C. §2244 (abusive sexual contact, victim under 13),

(d) Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 13-8203 (a) (b) or (c) shall be considered a “Tier 3” offense.

(e) Tribal Offenses. A “Tier 3” offense includes any tribal offense listed under the Code of the Sac & Fox Tribe of the Mississippi in Iowa which expressly states that it is a Tier 3 offense, regardless of the term of punishment.

## **CHAPTER 4. REQUIRED INFORMATION**

### **Section 13-8401. General Requirements**

(a) Duties. A sex offender covered by this code who is required to register with the tribe pursuant to Chapter 5 shall provide all of the information detailed in this chapter to the tribal police department or designee, and the tribal police department or designee shall obtain all of the information detailed in this chapter from covered sex offenders who are required to register with the tribe in accordance with this code and shall implement appropriate policies and procedures.

(b) Digitization. All information obtained under this code shall be, at a minimum, maintained by the police department or designee in digitized format.

(c) Electronic Database. A sex offender registry shall be maintained in an electronic database by the police department or designee and shall be in a form capable of electronic transmission, or otherwise electronically accessible by other jurisdictions.

### **Section 13-8402. Criminal History**

The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender’s sex offense criminal history:

- (a) The date of all arrests,
- (b) The date of all convictions,
- (c) The sex offender’s status of parole, probation, or supervised release,
- (d) The sex offender’s registration status, and
- (e) Any outstanding arrest warrants.

### **Section 13-8403. Date of Birth**

The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender’s date of birth:

- (a) The sex offenders actual date of birth, and
- (b) Any other date of birth used by the sex offender.

### **Section 13-8404. DNA Sample**

(a) DNA. If the sex offender’s DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the tribal police or designee a sample of his

DNA. Such sample shall be taken by buccal swab by a duly trained police officer in accordance with the SORNA Policy and Procedures Manual.

(b) CODIS. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile in to CODIS. Such sample shall be submitted to the Iowa Division of Criminal Investigation Laboratory in accordance with the SORNA Policy and Procedures Manual.

#### **Section 13-8405. Driver's Licenses, Identification Cards, Passports and Immigration Documents**

(a) Driver's License. The tribal police or designee shall obtain, and a covered sex offender shall provide, a copy of all of the sex offender's valid driver's licenses issued by any jurisdiction. A copy shall be maintained in a digital format by the tribal police department.

(b) Identification Cards. The tribal police or designee shall obtain, and a covered sex offender shall provide, a copy of any identification card including the sex offender's tribal enrollment card issued by any jurisdiction. A copy shall be maintained in a digital format by the tribal police department.

(c) Passports. The tribal police or designee shall obtain, and a covered sex offender shall provide, a copy of any passports used by the sex offender. A copy shall be maintained in a digital format by the tribal police department.

(d) Immigration Documents. The tribal police or designee shall obtain, and a covered sex offender shall provide, a copy of any and all immigration documents. A copy shall be maintained in a digital format by the tribal police department.

#### **Section 13-8406. Employment Information**

The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions:

- (a) The name of the sex offender's employer,
- (b) The address of the sex offender's employer, and
- (c) Similar information related to any transient or day labor employment.

#### **Section 13-8407. Finger and Palm Prints**

The tribal police or designee shall obtain, and a covered sex offender shall provide, finger prints and palm prints of the sex offender in a digitized format. The tribal police shall ensure this digital information is uploaded to IAFIS in accordance with the SORNA Policy and Procedures Manual.

#### **Section 13-8408. Internet Identifiers**

The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:

- (a) Any and all email addresses used by the sex offender,

- (b) Any and all Instant Message addresses and identifiers,
- (c) Any and all other designations or monikers used for self-identification in internet communications or postings, and
- (d) Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

**Section 13-8409. Name**

The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:

- (a) The sex offender's full primary given name,
- (b) Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used, and
- (c) Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

**Section 13-8410. Phone Numbers**

The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's telephone numbers:

- (a) Any and all land line telephone numbers,
- (b) Any and all cellular telephone numbers, and
- (c) Any and all computer IP addresses used for internet communication (including, but not limited to, skype, google talk, etc.)
- (d) Any and all telephone numbers and any other designations used by sex offenders for purposes of routing or self-identification in telephonic communications.

**Section 13-8411. Picture**

- (a) Photograph. The tribal police or designee shall obtain, and a covered sex offender shall provide, a current digital photograph of the sex offender.
- (b) Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:
  - (1) Every 90 days for Tier 3 sex offenders,
  - (2) Every 180 days for Tier 2 sex offenders, and
  - (3) Every year for Tier 1 sex offenders.

**Section 13-8412. Physical Description**

The tribal police or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:

- (a) A physical description,
- (b) A general description of the sex offender's physical appearance or characteristics, and
- (c) Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos. Photographs shall be taken and preserved of such marks.

**Section 13-8413. Professional Licensing Information**

The tribal police or designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

**Section 13-8414. Residence Address**

The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence:

- (a) The address of each residence at which the sex offender resides or will reside, and
- (b) Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

**Section 13-8415. School**

The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

- (a) The address of each school where the sex offender is or will be a student, and
- (b) The name of each school the sex offender is or will be a student.

**Section 13-8416. Social Security Number**

The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information:

- (a) A valid social security number for the sex offender, and
- (b) Any social security number the sex offender has used in the past, valid or otherwise.

**Section 13-8417. Temporary Lodging**

- (a) Lodging Information. The tribal police or designee shall obtain, and a covered sex

offender shall provide, the following information when the sex offender will be absent from his residence for 3 days or more:

- (1) Identifying information of the temporary lodging locations including addresses and names, and
- (2) The dates the sex offender will be staying at each temporary lodging location.

(b) Travel Abroad. In the event the sex offender will be traveling abroad for more than 3 days, the tribal police or designee should consider providing this information to INTERPOL.

#### **Section 13-8418. Offense Information**

(a) Offense Information. The tribal police or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

(b) SORNA Database. The text of each provision of law mentioned in Section 13-8418(a) shall be cross linked to the SORNA Database containing the text of relevant sex related laws for all jurisdictions.

#### **Section 13-8419. Vehicle Information**

The tribal police or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

- (a) License plate numbers,
- (b) Registration numbers or identifiers,
- (c) General description of the vehicle to include color, make, model, and year, and
- (d) Any permanent or frequent location where any covered vehicle is kept.

#### **Section 13-8420. Frequency, Duration and Reduction**

(a) Frequency. A sex offender who is required to register with the tribe shall, at a minimum, appear in person at the tribal police department for purposes of keeping registration current in accordance with the following time frames:

- (1) For "Tier 1" offenders, once every year for 15 years from the date of conviction,
- (2) For "Tier 2" offenders, once every 180 days for 25 years from the date of conviction,
- (3) For "Tier 3" offenders, once every 90 days for the rest of their lives.

At each appearance a digital photograph of the sex offender shall be taken, and the sex offender shall review all personal information on file with the tribal police for accuracy, certifying that such information is accurate.

(b) Reduction of Registration Periods. A sex offender may have their period of registration reduced as follows:

(1) A Tier 1 offender may have their period of registration and notification terminated if the following conditions are met: the sex offender has had a clean record for 10 years as follows: the sex offender has not been convicted for any offense for which a sentence of more than 1 year may be imposed, has not been convicted of any sex offense, has successfully completed any period of supervised release, probation, and parole, and has successfully completed an appropriate sex offender treatment program certified by a jurisdiction or the Attorney General.

(2) A Tier 3 offender may have their period of registration and notification terminated if the following conditions are met: the sex offender was adjudicated delinquent of an offense as a juvenile which required Tier 3 registration, and the sex offender has maintained a clean record for 25 consecutive years as follows: the sex offender has not been convicted for any offense for which a sentence of more than 1 year may be imposed, has not been convicted of any sex offense, has successfully completed any period of supervised release, probation, and parole, and has successfully completed an appropriate sex offender treatment program certified by a jurisdiction or the Attorney General.

#### **Section 13-8421. Requirements For In-Person Appearances**

(a) Photographs. At each in-person verification, the sex offender shall permit the tribal police to take a photograph of the offender.

(b) Review of Information. At each in-person verification the sex offender shall review existing information for accuracy and certify that all information is accurate.

(c) Acknowledgement. Each sex offender shall sign an acknowledgement that they were advised of all registration requirements.

### **CHAPTER 5. REGISTRATION**

#### **Section 13-8501. When Registration is Required**

(a) Conviction. A sex offender must register if they were convicted of a covered sex offense in this tribe's court regardless of the sex offender's actual or intended residency.

(b) Incarceration. A sex offender must register if they are incarcerated while completing any sentence for a covered sex offense arising out of the court of the Sac & Fox Tribe of the Mississippi in Iowa, regardless of where they were convicted or reside.

(c) Residence. A sex offender who resides within the external boundaries of the Meskwaki Settlement or on any property owned by, or in trust for, the tribe, regardless of location, must register.

(d) Employment. A sex offender who is employed within the external boundaries of the Meskwaki Settlement or with any entity owned by, or considered a branch of the tribe regardless of location, must register.

(e) School Attendance. A sex offender who is a student at any school within the external boundaries of the Meskwaki Settlement is required to register with that jurisdiction.

**Section 13-8502. Initial Registration**

(a) Timing. A sex offender required to register with the tribe under this code shall do so in the following timeframe:

(1) If incarcerated, before release from imprisonment for the registration offense,

(2) If not incarcerated, within 3 business days of sentencing for the registration offense, and

(3) For foreign, federal, state, tribal and military convictions, a sex offender must appear in person at the tribal police department within 3 business days of establishing a residence on the settlement or tribal property after either release from incarceration or, if not incarcerated, sentencing, for purposes of complying with this code.

(b) Duties of Tribal Police Department. The tribal police department shall have policies and procedures in place to ensure the following:

(1) Any sex offender incarcerated or sentenced by the tribe for a covered sex offense completes their initial registration with the tribe,

(2) Any sex offender initially registering with the tribe is informed of their duties under SORNA and this code, and that such duties under SORNA and this code are explained to them,

(3) The sex offender reads and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement,

(4) That the sex offender is registered,

(5) That upon entry of the sex offender's information into the registry, that information is immediately uploaded to NCIC/NSOR and forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status. Such information shall be provided to police departments, sheriff's offices, prosecutor's offices, probation agencies, any agencies performing similar law enforcement functions, and any agencies responsible for employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119(a)). Such information shall also be uploaded to the tribal sex offender registry website.

(6) The tribal police shall monitor or utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment, or student status.

(c) Required Information. At initial registration the sex offender shall provide, and the tribal police shall obtain, all information required by Chapter 4 of this code in all formats required by this code.

**Section 13-8503. Recapture of Prior Sex Offenders for Registration and Notification**

(a) Categories. The tribal police department or designee shall have in place policies and

procedures to ensure the following three categories of sex offenders are recaptured for registration and notification:

- (1) Sex offenders incarcerated or under supervision of the tribe, whether for a covered sex offense or other crime,
- (2) Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the tribes' laws, and
- (3) Sex offenders reentering the justice system due to conviction for any crime.

(b) **Timing of Recapture.** The tribal police department or designee shall ensure recapture of the sex offenders mentioned in Section 13-8503(a) within the following timeframe to be calculated from the date of passage of this code:

- (1) For Tier 1 sex offenders, 1 year,
- (2) For Tier 2 sex offenders, 180 days, and
- (c) For Tier 3 sex offenders, 90 days.

(d) **Registration.** Registration of recaptured sex offenders shall follow the same procedures as initial registration pursuant to Section 13-8502.

#### **Section 13-8504. Updating Registration Information**

(a) **Duty of Offender to Update.** It shall be the duty of all sex offenders to update information with the tribal police as follows:

(1) If the sex offender resides within the boundaries of the Meskwaki Settlement, they shall immediately appear in person before the tribal police to update any change in name, residence (including termination of residence), employment, or school attendance. Any international travel shall be reported at least 21 days prior to departure. Personal appearance is not required, but immediate notification must be made to the tribal police, for any changes to email address(es), instant message address(es), any other designation(s) used in internet communications, postings, or telephone communications, vehicle information, or temporary lodging information (upon receipt of which the tribal police shall notify the jurisdiction where the temporary lodging will occur).

(2) If the sex offender is employed within the boundaries of the Meskwaki Settlement, but does not reside within such, they shall immediately appear in person before the tribal police to update any change in such employment, including termination of such employment.

(3) If the sex offender attends school within the boundaries of the Meskwaki Settlement, but does not reside or is not employed within such, they shall immediately appear in person before the tribal police to update any change in such school attendance, including termination of such attendance.

(b) **Duties of Tribal Police.** With regard to changes in a sex offender's registration information, the tribal police or designee shall:

- (1) Immediately notify all jurisdictions where a sex offender intends to reside, work, or attend school,
- (2) Immediately notify any jurisdiction where the sex offender is either registered or required to register
- (3) Specifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service.
- (4) Immediately update sex offender information on NCIC/NSOR and the tribal sex offender website.
- (5) Monitor or utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment, or student status.

### **Section 13-8505. Failure to Appear and Absconding**

(a) **Failure to Appear.** In the event a sex offender fails to register with the tribe as required by this code, the tribal police or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the tribe that the sex offender failed to appear for registration.

(b) **Absconded Sex Offenders.** If the tribal police or designee receives information that a sex offender has absconded the tribal police shall make an effort to determine if the sex offender has actually absconded.

- (1) In the event no determination can be made, the tribal police or designee shall ensure the tribal police and any other appropriate law enforcement agency is notified.
- (2) If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.
- (3) If an absconded sex offender cannot be located then the tribal police shall take the following steps:
  - (i) Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located,
  - (ii) Seek a warrant for the sex offender's arrest, and in the case of a non-Indian, the U.S. Marshals Service or FBI shall be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,
  - (iii) Notify the U.S. Marshals Service,
  - (iv) Update NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located,
  - (v) Enter the sex offender into the National Crime Information Center Wanted Person File.

(c) **Failure to Register.** In the event a sex offender who is required to register due to their employment or school attendance status fails to do so or otherwise violates a registration requirement of this code, the tribal police or designee shall take all appropriate follow-up measures including those outlined in Section 13-8505(b). The tribal police or designee shall first make an effort to determine if the sex offender is actually employed or attending school within the exterior boundaries of the Settlement or on property owned by the tribe in fee or trust regardless of location.

## **CHAPTER 6. PUBLIC SEX OFFENDER REGISTRY WEBSITE**

### **Section 13-8601. Website**

(a) **Website.** The tribal police department or designee shall use and maintain a public sex offender registry website. Any tribal specific national website provided or approved by the SMART Office shall qualify as a public sex offender registry website under this code.

(b) **Links.** The registry website shall include links to sex offender safety and education resources.

(c) **Instructions.** The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

(d) **Warnings.** The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

(e) **Search Capabilities.**

The registry website shall have the capability of conducting searches by name, county, city, zip code, and geographic radius.

### **Section 13-8602. Required and Prohibited Information**

(a) **Required Information.** The following information shall be made available to the public on the sex offender registry website:

(1) Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,

(2) All sex offenses for which the sex offender has been convicted,

(3) The sex offense(s) for which the offender is currently registered,

(4) The address of the sex offender's employer(s),

(5) The name of the sex offender including all aliases,

(6) A current photograph of the sex offender,

(7) A physical description of the sex offender,

(8) The residential address and, if relevant, a description of a habitual residence of the sex offender,

- (9) All addresses of schools attended by the sex offender, and
  - (10) The sex offender's vehicle license plate number along with a description of the vehicle.
- (b) **Prohibited Information.** The following information shall not be available to the public on the sex offender registry website:
- (1) Any arrest that did not result in conviction,
  - (2) The sex offender's social security number,
  - (3) Any travel and immigration documents, and
  - (4) The identity of the victim.
  - (5) The sex offender's internet identifiers.
- (c) **Witness Protection.** For sex offenders who are under a witness protection program, the tribal police may honor the request of the United States Marshal Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

### **Section 13-8603. Community Notification**

- (a) **Law Enforcement Community Notification.** Whenever a sex offender registers or updates their information with the tribe, the tribal police or designee shall:
- (1) Immediately notify the FBI and ensure the information is updated on NSOR,
  - (2) Immediately notify any agency, department, or program that is responsible for criminal investigation, prosecution, child welfare, or sex offender supervision functions, including, but not limited to, police, sheriff's and their deputies, prosecutors, and probation personnel.
  - (3) Immediately notify any and all other registration jurisdictions due to the sex offender's residency, school attendance, or employment, and
  - (4) Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a).
  - (5) Monitor or utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment or student status.
- (b) **Community Notification.** The tribal police or designee shall ensure there is an automated community notification process in place that ensures the following:
- (1) Upon a sex offender's registration or update of information with the tribe, the public registry website is immediately updated,
  - (2) Email notice is available to the general public to notify them when a sex offender commences residence, employment, or school attendance with the tribe, within a

specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity.

## **CHAPTER 7. SANCTIONS**

### **Section 13-8701. Sanctions**

(a) **Crime.** Any violation of a provision of this Code, including the provision of false or misleading information, by a sex offender shall be considered a Class 1 criminal offense.

(b) **Civil Penalty.** Any violation of a provision of this Code by a sex offender shall also be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to, the issuance of fines, forfeitures, civil contempt, and banishment.

### **Section 13-8702. Non-Sex Offender Related Crimes**

(a) **Harboring.** A person is guilty of a Class 1 criminal offense if they do any of the following:

(1) Knowingly harbor, attempt to harbor, or assist another in harboring or attempting to harbor a sex offender who is in violation of this Code;

(2) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question them about, or to arrest them for, noncompliance with the requirements of this Code; or

(3) Knowingly provide false information to a law enforcement agency regarding a sex offender

(b) **Misuse of Registration Information.** A person is guilty of a Class 1 criminal offense if they do any of the following:

(1) Willfully misuse or alter public record information relating to a sex offender or sexual predator, or a person residing or working at an address reported by a sex offender, including information displayed by law enforcement agencies on web sites; or

(2) Sell or exchange sex offender information for profit.

## **CHAPTER 8. IMMUNITY**

### **Section 13-8801. No Waiver of Immunity**

Nothing in this Code shall be construed as a waiver of sovereign immunity of the Sac & Fox Tribe of the Mississippi in Iowa, its departments, agencies, enterprises, employees, or agents.

### **Section 13-8802. Good Faith**

Any person acting in good faith under the terms of this Code shall be immune from any civil liability arising out of such action.