

**TITLE 9  
CRIMINAL OFFENSES**

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**§ 101 - Jurisdiction**

- (a) **Definition.** The criminal jurisdiction of the Grand Traverse Band (also referred to in this code as “GTB” and/or “the Band”) is its power to prohibit certain conduct, as a matter of public policy, within its territory.
- (b) **Power Implemented.** That power is exercised by enacting this code and by punishing people who violate its laws.
- (c) **Territorial Extent.** The criminal jurisdiction of the Grand Traverse Band shall extend to:
  - (1) all lands within the Grand Traverse Band Reservation, whether held in trust or privately-owned;
  - (2) all trust land held by the United States for the benefit of the Grand Traverse Band;
  - (3) any other Tribal lands; and
  - (4) the activities of Band members when exercising treaty hunting and fishing rights wherever such activity occurs.
- (d) **Persons Under GTB Criminal Jurisdiction.** The criminal jurisdiction of the Band shall extend to:
  - (1) all members of the Band; and
  - (2) all other Indians present within the areas described in § 101(c) of this code.

The criminal jurisdiction of the Band shall only extend to adults. However, upon motion of the Tribal Prosecutor, the judge may, in his/her discretion, try a minor as an adult.

History: The Criminal Code was adopted by the Tribal Council on April 20, 1988. As amended by Tribal Act #92-10.78, enacted by Tribal Council on October 20, 1992.

**Comment:** The Grand Traverse Band, as a sovereign Tribal entity, possesses the power to regulate conduct within its territory. The criminal jurisdiction of the Band, its power to prohibit certain conduct within its territory and to punish those who violate its laws, has been limited by the United States Congress and the United States Supreme Court in the following ways:

- (1) **Major Crimes Act:** The Major Crimes Act (MCA), 18 U.S.C. § 1153, originally enacted by the U.S. Congress in 1885, gives the federal government jurisdiction over certain enumerated “major crimes” committed by one Indian against the person or property of another in Indian country. These crimes include murder, manslaughter, kidnapping, rape, statutory rape, involuntary sodomy, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a deadly weapon, assault resulting in serious bodily injury, arson, burglary, and robbery. The MCA has backfired to a large extent, because many of these crimes committed in Indian country now go unpunished. The federal government has not devoted adequate resources to enforce the MCA, so federal prosecutors are reluctant to prosecute crimes that fall under MCA. Indian tribes retain concurrent jurisdiction over

these crimes. These “Major crimes” are thus included in this code to insure that those who commit major crimes in GTB territory are not allowed to go unpunished.

- (2) Indian Civil Rights Act (ICRA): The ICRA, 25 U.S.C. § 1302, was enacted by Congress in 1968. It makes many of the protections included in the United States Constitution’s Bill of Rights applicable to the conduct of Indian tribes. It also limits the punishment that an Indian tribe may impose to a one (1) year jail term or to a fine of five thousand dollars (\$5,000.), or both.
- (3) Non-Indians: Under *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), an Indian tribe cannot try a non-Indian in tribal court [for criminal matters]. This code, therefore, states that the Band’s criminal jurisdiction shall only be exercised over Band members and other Indians present within the Band’s territory.

§ 101(c) is drafted broadly to include all of the Band’s territory within its criminal jurisdiction. It is no longer debatable that the Band can exercise jurisdiction over its members when exercising treaty hunting and fishing rights, regardless of whether such activity occurs within “Indian country.”

## § 102 - Definitions

For purposes of this Criminal Code:

- (a) Indian. “Indian” means any person who is:
  - (1) a member of the Grand Traverse Band;
  - (2) a member of any federally-recognized Indian tribe, band, or group; or
  - (3) a person of Indian blood who is generally considered to be American Indian by the Grand Traverse Band community.
- (b) Mental State: Malice. A person acts “maliciously” or “with malice” when that person consciously formulates a plan to injure the person or property of another and takes steps to carry out such a plan.
- (c) Mental State: Intent. A person acts “intentionally” or “with intent” with respect to conduct when it is that person’s conscious desire to engage in certain conduct.
- (d) Mental State: Knowledge. A person acts “knowingly” or “with knowledge” when that person is aware of his/her actions and the probable consequences of such actions.
- (e) Mental State: Wanton or Reckless. A person acts “wantonly” or “recklessly” when that person is aware, or should be aware, that certain conduct will endanger the health, safety, or property of others but persists in engaging in the conduct despite the risks.
- (f) Mental State: Negligent. A person acts “negligently” or “with neglect” when that person acts in a manner that endangers the safety or property of others without exercising the care that a reasonably prudent person would exercise under the same or similar circumstances.

- (g) Minor. A “minor” is any person under eighteen (18) years of age.
- (h) Adult. For purposes of criminal jurisdiction, an “adult” is any person eighteen (18) years of age or older.
- (i) Motor Vehicle. “Motor vehicle” means any car, truck, motorcycle, or other motor-operated vehicle.

History: The Criminal Code was adopted by the Tribal Council on April 20, 1988. As amended by Tribal Act #92-10.78, enacted by Tribal Council on October 20, 1992.

**Comment:** The United States Congress has clarified that tribal governments may exercise criminal jurisdiction over non-member Indians on tribal lands. “Indian” is therefore defined as any member of the Grand Traverse Band or any federally-recognized tribe and any person of Indian blood who is generally considered to be an American Indian by the community.

This Chapter of the code also includes definitions of five different mental states. One of these mental states is an essential element of any given crime.

### § 103 - Requirements for Conviction

- (a) Culpability. A person shall not be guilty of an offense unless that person acted intentionally, maliciously, knowingly, recklessly, or negligently as the law requires with respect to each material element of the offense. Provided that any material element of an offense that does not require a mental state may be established by proving that the person participated in the prohibited conduct regardless of his/her state of mind.
- (b) Proof. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt.
- (c) Intoxication.
  - (1) Intoxication is not a defense unless it negates an element of the offense.
  - (2) Self-induced intoxication cannot negate the element of recklessness.
- (d) Statute of Limitations. Prosecution for any criminal offense must commence within three (3) years after the offense is discovered or reasonably could have been discovered.
  - (1) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.
  - (2) No time during which prosecution of the same person for the same conduct is pending in the Tribal Court or a federal court is a part of a limitation of time prescribed in this chapter.

- (3) The period of limitation does not run during any time when the defendant is continuously absent from GTB's jurisdiction after the offense is committed. This provision shall not extend the period of limitation prescribed by this chapter by more than three (3) years, but shall not be construed to limit the prosecution of a defendant who has been timely charged and who has not been arrested due to his or her absence from GTB's jurisdiction.
- (4) No retroactive effect. An amendment to this Subsection (d) that alters the length of the limitation period does not extend the statute of limitations on any action or conduct completed prior to the date of the amendment.
- (e) Multiple Counts. When the conduct of a defendant establishes the commission of more than one offense, the defendant may be prosecuted for each such offense, unless:
  - (1) one offense consists only of an attempt to commit the other;
  - (2) inconsistent findings of fact are required to establish commission of the offenses; or
  - (3) the offenses differ only in that one prohibits a designated kind of conduct generally, and the other prohibits a specific instance of such conduct.

History: The Criminal Code was adopted by the Tribal Council on April 20, 1988. As amended by Tribal Act #92-10.78, enacted by Tribal Council on October 20, 1992; and amended by Tribal Council motion at a Tribal Council Special Session on June 26, 2019.

**Comment:** Section 103(a) states that a person cannot be guilty of an offense unless that person acted with the requisite mental state, if a mental state is specified in the offense. For instance, to be convicted of battery it must be shown that a person intentionally struck another. If a person inadvertently bumps into another, he/she cannot be convicted of battery, because he/she did not act with intent.

Section 103(b) states that in order to convict a person of an offense, each element must be proved beyond a reasonable doubt. Beyond a reasonable doubt means more than a mere likelihood. It means that the evidence as presented makes it virtually impossible for any other conclusion to be reached. Each element must be proved beyond a reasonable doubt. For instance, in order to convict a person of improper influence of an official under § 107(h)(2), it must be proved beyond a reasonable doubt that the person: (1) threatened harm to a tribal official, and (2) did so with the intent of influencing such person's official actions.

Section 103(c) makes clear that intoxication in itself is not a viable defense. However, under certain circumstances it may negate an element of the offense, such as intent or knowledge. However, self-induced intoxication can never negate the element of recklessness. A person can act recklessly whether or not that person is aware of what he/she is doing.



**§ 104 - Affirmative Defenses**

- (a) **Duress.** It is an affirmative defense that the defendant, engaged in the conduct charged to constitute an offense, was coerced against his/her will by the use of, or threatened use of, unlawful force against his/her person or the person of another. The coercion must be such that a person of reasonable firmness would be unable to resist.
- (b) **Protection of Self, Property, or Other Person.** The use of reasonable force toward another person is justified and is an affirmative defense, if and only if:
  - (1) the force is directed toward one who is using unlawful force; and
  - (2) the person using such force reasonably believes the use of force is necessary for his/her protection or that of a third person.

The use of reasonable force toward another person is justified and is an affirmative defense if used to prevent the unlawful entry into the dwelling of the person asserting the defense, or into the dwelling of another, or to prevent the unlawful carrying away of personal property.
- (c) **Alibi.** The defense of alibi, that the accused was somewhere else when the crime was committed, shall be treated procedurally as an affirmative defense.
- (d) **Procedures for Raising Affirmative Defense.** The procedures for raising and pleading affirmative defenses shall be specified by Court Rule.

History: The Criminal Code was adopted by the Tribal Council on April 20, 1988. As amended by Tribal Act #92-10.78, enacted by Tribal Council on October 20, 1992.

**Comment:** An affirmative defense does not negate an element of the crime, but raises additional circumstances that provide justification for the actions, relieving the defendant of culpability, so that he/she is not held criminally liable. For instance, if a person raises the affirmative defense of duress when being accused of battery, that person does not deny that he/she intentionally struck another. But, that person may state, for example, that he/she was coerced into doing so by the threats of a third person.

Similarly, if a person raises the defense of protection of self, property, or other person, to a charge of battery, that person is not denying that he/she intentionally struck another. However, that person is stating that his/her actions were necessary to protect himself/herself or another, and therefore such actions are justified.

**§ 105 - Counsel**

- (a) **Right to Counsel.** Any person accused of an offense under this code may represent himself before the Tribal Court, or may be represented, at his/her own expense, by a person duly licensed to practice before the Tribal Court.
- (b) **Persons Licensed to Practice in Tribal Court.** An attorney admitted to practice law in any state may be licensed to practice in GTB Courts upon:

- (1) payment of an annual fee, as specified by Court Rule; provided that the fee may be waived if the attorney is providing pro bono services;
- (2) certification to the Tribal Court that he/she has read the Court Rules; and
- (3) taking of an oath to uphold the Constitution and laws of the Grand Traverse Band of Ottawa and Chippewa Indians, maintaining due respect for the Tribal Court, and employing, in his/her conduct and duties, the highest degree of ethical and moral standards with which the legal profession is charged. The Tribal Court Rules may also set out a procedure for licensing non-attorney Tribal members to practice before the Tribal Court.

History: The Criminal Code was adopted by the Tribal Council on April 20, 1988. As amended by Tribal Act #92-10.78, enacted by Tribal Council on October 20, 1992.

### **§ 106 - Sentencing**

- (a) Types of Sentences. The Court may suspend the imposition of sentence of a person who has been convicted of a crime, may order an appropriate rehabilitative treatment, may order the offender to be committed in lieu of sentence to a hospital or other institution for medical, psychiatric, or other rehabilitative treatment, or may sentence him/her as follows:
  - (1) To perform community service work;
  - (2) To pay restitution or provide restitutive services to the injured parties;
  - (3) To be placed on probation;
  - (4) To imprisonment for a definite period up to the term authorized by law; and/or
  - (5) To fine and probation, or fine and imprisonment.
- (b) Delayed Sentencing. The judge may delay final sentencing for a period up to one (1) year, and order community service and/or rehabilitative services during that time. At the end of the specified time, the judge may, if appropriate, dismiss the charges and expunge them from the Court record.
- (c) Taking Jurisdiction over Family or Household. When an offense has been committed against the family under § 107(k) of this Title, the Court may take jurisdiction over the family or household, make child/victims wards of the Court, and issue such orders as are necessary to ensure the safety and welfare of family members.
- (d) Probation. The Court shall have the discretion in any case, except where prohibited by this code or by Tribal ordinance, to suspend all or any part of an offender's sentence and release the defendant on probation. The offender shall sign a probationary pledge, the conditions and limitations of which shall be clearly set forth by the Court.

- (e) **Victim's Impact Statement.** Prior to sentencing, the Court shall inform the victim(s) of their right to submit a written statement to the Court detailing the physical, material, and emotional damages that they suffered as a result of the offender's actions. The judge, in his/her discretion, may allow oral testimony to be taken regarding such damages, in addition to, or in lieu of, the written statement.
- (f) **Sentencing Considerations.** Before imposing sentence, the Court shall take into consideration the offender's prior record, family circumstances, employment status, and any other circumstance which will aid in imposing a just and fair sentence, paying particular attention to the victim's impact statement described above. Restitution and community service work should generally be preferred over incarceration. A judge should only order incarceration when the Court determines that it is necessary for the safety of the community, or when the Court determines that the offender is unlikely to cooperate in providing restitution or performing community service work, or when the offense committed is such that incarceration is the only viable punishment.

History: The Criminal Code was adopted by the Tribal Council on April 20, 1988; as amended by Tribal Act #92-10.78, enacted by Tribal Council on October 20, 1992; as amended by Tribal Act #03-21.1200, enacted by Tribal Council on March 19, 2003.

**Comment:** The Tribal Court Judge has considerable discretion in fashioning an appropriate sentence for a person convicted of an offense. However, as was noted above, the maximum jail term and fine that a Tribal Judge may sentence a criminal to is one (1) year or five thousand dollars (\$5,000.), or both.

Keeping someone in jail is very expensive, and thus drains Tribal resources. Incarceration has not been proven to have significant rehabilitative value. Therefore, it is recommended that other forms of punishment, such as community service work, which will benefit the Tribe, or restitution to help the victim recover from his/her injuries, be preferred over incarceration. It is suggested that incarceration be utilized when the circumstances, such as the violent propensity of the offender, make it the only viable alternative.

The ICRA gives the accused a right to a jury trial any time imprisonment is a possibility. Section 106(g) allows the Court, prior to trial, to rule that imprisonment will be considered in the case. In all other cases, imprisonment will not be a potential punishment and thus the accused will not have the right to a jury trial.

## § 107 - Offenses

- (a) **Contempt of Court and Perjury**
  - (1) **Contempt of Court.**
    - (A) **Offense.** Intentional and unjustifiable behavior by any person, which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding of the Court, or which obstructs, or interferes with the administration of justice by the Court, including disobedience or resistance to, or interference with, any lawful summons, subpoena, process, order, rule, term of probation, sentence, decree, or command of the Court, including failure to appear for a court date, shall constitute contempt of court.
    - (B) **Contempt Committed in the Presence of the Court.** When contempt of court is committed in the presence of the Court it may be punished summarily by the Court. In such case, an order shall be made reciting the facts constituting

the contempt, adjudging the person guilty of contempt, and prescribing the punishment.

- (C) Contempt Committed Out of the Presence of the Court. When it appears to the Court that a contempt has been committed out of the presence of the Court, the Court may issue a summons to the person so charged directing him/her to appear at a time and place designated for hearing on the matter.
- (D) Sentence. A person found guilty of contempt of court may be sentenced to a jail term not to exceed thirty (30) days, or to a fine not to exceed one thousand dollars (\$1,000.), or to both. In addition, if a person is charged with contempt for jumping bail, the Court may order forfeiture of the person's bail.

(2) Perjury.

- (A) Offense. A person who knowingly gives false testimony when under oath in a proceeding before the Tribal Court shall be guilty of perjury.
- (B) Sentence. A person convicted of perjury may be sentenced to a jail term not to exceed six (6) months or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

(b) Scheming and Planning Offenses

(1) Solicitation

- (A) Offense. A person commits solicitation if, with intent that another person engage in illegal conduct, he/she commands, entreats, induces or otherwise endeavors to persuade such person to engage in illegal conduct.
- (B) Affirmative Defense. It is an affirmative defense to a charge of solicitation that the defendant completely renounced his/her criminal intent before commission of the crime, and made a reasonable attempt to prevent the solicited conduct.
- (C) Sentence. A person convicted of solicitation shall be subject to the same punishment as that specified in this code for the completed offense.

(2) Conspiracy

- (A) Offense. A person commits conspiracy if that person agrees with one or more persons, with the intent to promote or facilitate the commission of an offense, that at least one of them will engage in conduct constituting the offense, and one of the parties commits an overt act in furtherance of the agreement.

- (B) Affirmative Defense. It is an affirmative defense to a charge of conspiracy that the defendant completely and voluntarily renounced his/her criminal intent before commission of the crime, and made a reasonable attempt to prevent the illegal action.
  - (C) Sentence. A person convicted of conspiracy shall be subject to the same punishment as that specified in this code for the completed offense.
- (3) Attempt
- (A) Offense. A person commits an attempt, with respect to any of the enumerated offenses in this code, if that person, acting with the intent to commit the offense, takes a substantial step toward the commission of the crime, and does not retract his/her action, but is foiled by circumstances beyond his/her control.
  - (B) Sentence. A person convicted of an attempt shall be subject to the same punishment as that specified in this code for the completed offense.
- (4) Contributing to the Delinquency of a Minor
- (A) Offense. Any person who aids, abets, or encourages any minor to commit an act that would be an offense under this code, if committed by an adult, shall be guilty of contributing to the delinquency of a minor.
  - (B) Sentence. A person convicted of contributing to the delinquency of a minor may be sentenced to a jail term not to exceed sixty (60) days, or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
- (5) Aiding and Abetting
- (A) Offense. A person commits an offense if he/she knowingly aids or abets another person in the commission or furtherance of a crime.
  - (B) Sentence. A person found guilty of aiding and abetting will be subject to the same sentence as provided for the underlying crime.

**Comment:** A person cannot be found guilty of aiding and abetting if the principal offender is found not guilty of the underlying crime.

(c) Offenses Against the Person

(1) Assault

- (A) Offense. A person commits assault if that person, by any unlawful act, threat, or menacing conduct, causes another person to reasonably believe that the other person is in immediate danger of physical harm.

- (B) Sentence. A person convicted of assault may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
  - (2) Assault with a Weapon
    - (A) Offense. A person commits assault with a weapon if that person, through the use, or threatened use, of a weapon, causes another person to reasonably believe that he/she is in immediate danger of physical harm.
    - (B) Sentence. A person convicted of assault with a weapon may be sentenced to a jail term not to exceed one (1) year, or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
  - (3) Battery
    - (A) Offense. A person who intentionally strikes or offensively touches the person of another commits the offense of battery.
    - (B) Sentence. A person convicted of battery may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
  - (4) (Reserved)
  - (5) (Reserved)
  - (6) Unlawful Imprisonment
    - (A) Offense. A person commits unlawful imprisonment if, without lawful authority, that person intentionally removes, detains, restrains, or confines the person of another without his/her consent.
    - (B) Sentence. A person convicted of unlawful imprisonment may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
  - (7) Harassment
    - (A) Offense. A person who verbally harasses another, including obscene or threatening phone calls, with the intent of causing that person physical or emotional harm, shall be guilty of an offense.
    - (B) Sentence. A person convicted of harassment may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
- (d) Weapons and Explosives

- (1) Carrying of a Deadly Weapon without a License
  - (A) Offense. A person who carries a deadly weapon without being licensed to do so by the Grand Traverse Band or by the State of Michigan commits an offense.

- (B) Sentence. A person convicted of unlawful carrying of a deadly weapon without a license may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both. The judge may also order that the weapon be impounded.
- (2) Unlawful Use of a Weapon
- (A) Offense. A person commits unlawful use of a weapon if that person:
    - (i) discharges a firearm in the proximity of a building or vehicle so as to knowingly or recklessly endanger a person or property;
    - (ii) carries a firearm while intoxicated;
    - (iii) handles or uses a firearm or other weapon so as to knowingly or recklessly endanger the safety of another; or
    - (iv) carries a firearm or other weapon with unlawful intent.
  - (B) Sentence. A person convicted of unlawful use of a weapon may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed two thousand dollars (\$2,000.), or to both. The judge may also order that the weapon be impounded.
- (3) Dangerous Use of Explosives
- (A) Offense. A person commits dangerous use of explosives if, with intent to injure, intimidate or terrify another, or to damage another's property, that person maliciously explodes, attempts to explode or places any explosive anywhere within territorial jurisdiction of the Grand Traverse Band.
  - (B) Sentence. A person convicted of dangerous use of explosives may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.), or to both.
  - (C) In addition to, or in lieu of, the punishments set out above, the Court may order the offender to repair any property damaged by his/her actions or to pay the costs of such repairs to the injured party.
- (4) Negligent Use of Explosives
- (A) Offense. A person commits negligent use of explosives if that person negligently explodes, attempts to explode or places any explosive in such a manner as to result in injury to another or to the property of another, or by such action increases the probability of such injury.



- (B) Sentence. A person convicted of negligent use of explosives may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed three thousand dollars (\$3,000.), or to both.
  - (C) In addition to, or in lieu of, the punishments set out above, the Court may order the offender to repair any property damaged by his/her actions or to pay the costs of such repairs to the injured party.
- (e) Theft and Related Crimes
- (1) Theft of Property
    - (A) Offense. A person commits theft of property if, without lawful authority, that person intentionally or knowingly:
      - (i) controls property of another with the intent to permanently deprive the owner, or person in lawful possession, of such property;
      - (ii) obtains property of another by means of any material misrepresentation with intent to permanently deprive the owner, or person in lawful possession, of such property; or
      - (iii) comes into control of lost, mislaid or misdelivered property under circumstances providing means of inquiry as to the true owner and appropriates such property to himself/herself without making reasonable efforts to notify the true owner.
    - (B) Sentence. A person convicted of theft of property may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
    - (C) Return of Property. When a person is convicted of theft, the Court shall confiscate the stolen property and return it to its rightful owner. If the property has been lost or destroyed, the Court may require the offender to compensate the rightful owner for the value of the stolen property in addition to, or in lieu of, the sentence set out above.
  - (2) Robbery
    - (A) Offense. A person commits robbery if that person threatens another with bodily harm, through the use of force or a weapon, in order to obtain property that is in the lawful custody of the person being threatened.
    - (B) Sentence. A person convicted of robbery may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
  - (3) Theft of Services

- (A) Offense. A person commits theft of services if, without lawful authority, that person obtains services which are available only for compensation with the intent of avoiding payment for such services.
  - (B) Sentence. A person convicted of theft of services may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed two thousand dollars (\$2,000.), or to both.
  - (C) Payment for Services. The Court may require the offender to compensate the victim for the services wrongfully obtained in addition to, or in lieu of, the sentence set out above.
- (4) Unauthorized Use of a Vehicle
- (A) Offense. A person commits an offense if that person intentionally or knowingly operates, or tampers with, another's automobile, motorcycle, motorboat or other motor-operated vehicle, without the consent of the owner.
  - (B) Sentence. A person convicted of unauthorized use of a vehicle may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
- (5) Receiving Stolen Property
- (A) Offense. A person commits an offense if that person purchases, receives, conceals, or aids in concealing any property of another knowing, or having reason to know, that such property was obtained by theft or any other means declared by law to be unlawful.
  - (B) Sentence. A person convicted of receiving stolen property may be sentenced to a jail term not to exceed one hundred eighty (180) days or to pay a fine not to exceed five thousand dollars (\$5,000.), or to both.
- (6) Embezzlement and Theft from Grand Traverse Band Organizations
- (A) Offense. A person commits Embezzlement and theft from Grand Traverse Band organizations if that person embezzles, steals, knowingly converts to his/her use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Grand Traverse Band organization or entrusted to the custody or care of any officer, employee, or agent of a Grand Traverse Band organization; or
  - (B) Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his/her use or the use of another.

- (C) Sentence.
  - (i) An Indian convicted of Embezzlement and theft from Grand Traverse Band organizations shall be fined not more than five thousand dollars (\$5,000.), or imprisoned for not more than one year, or both; but if the value of such property does not exceed the sum of one hundred dollars (\$100.), he/she shall be fined not more than one thousand dollars (\$1,000.), or imprisoned not more than one hundred eighty (180) days, or both.
  - (ii) A non-Indian found responsible for embezzlement or theft from Grand Traverse Band Organizations shall be responsible for a civil infraction and subject to fines not to exceed five thousand dollars (\$5,000.) and/or exclusion from the lands of the Grand Traverse Band of Ottawa and Chippewa Indians.
- (7) Theft from GTB Gaming Enterprises
  - (A) Offense. A person commits theft from GTB gaming enterprises if that person abstracts, purloins, willfully misapplies or takes and carries away with intent to steal any money or other property belonging to a gaming enterprise operated by the Grand Traverse Band of Ottawa and Chippewa Indians, or whoever, knowing any such money or other property to have been so abstracted, purloined, willfully misapplied or taken and carried away with intent to be stolen, receives, conceals, or retains the same with intent to convert it to his/her use or the use of another.
  - (B) Sentence.
    - (i) An Indian convicted of theft from a GTB gaming enterprise shall be fined not more than five thousand dollars (\$5,000.), or imprisoned for not more than one (1) year, or both.
    - (ii) A non-Indian found responsible for theft from a GTB gaming enterprise shall be responsible for a civil infraction and subject to fines not to exceed five thousand dollars (\$5,000.) and/or exclusion from the lands of the Grand Traverse Band of Ottawa and Chippewa Indians.
- (8) Theft by Officers or Employees of GTB Gaming Enterprises
  - (A) Offense. A person being an officer or employee of a GTB gaming enterprise commits theft by officers or employees of GTB gaming enterprises if he/she embezzles, abstracts, purloins, willfully misapplies or takes and carries away with intent to steal any moneys, funds, assets or other property of such enterprise, or whoever, knowing any such moneys, funds, assets or other property to have been so embezzled, abstracted, purloined, willfully

misapplied or taken away with the intent to be stolen, receives, conceals, or retains the same with intent to convert to his/her use or the use of another.

(B) Sentence.

- (i) An Indian convicted of theft by officers or employees of GTB gaming establishments shall be fined not more than five thousand dollars (\$5,000.), or imprisoned for not more than one (1) year, or both.
- (ii) A non-Indian found responsible for theft by officers or employees of GTB gaming establishment shall be responsible for a civil infraction and subject to fines not to exceed five thousand dollars (\$5,000.) and /or exclusion from the lands of the Grand Traverse Band of Ottawa and Chippewa Indians.

(f) Burglary and Arson

(1) Burglary

- (A) Offense. A person commits burglary if that person enters into a building, boat, or motor vehicle belonging to another with the intent of committing an offense therein.
- (B) Sentence. A person convicted of burglary may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.

(2) Arson

- (A) Offense. A person commits arson if that person knowingly sets fire to the building or property of another, or sets fire to his/her own property with the intent of collecting insurance benefits, or with the intent of negatively impacting a family member or any person who has a rightful interest in the property.
- (B) Sentence. A person convicted of arson may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

(g) Forgery and Related Crimes

(1) Forgery

- (A) Offense. A person commits forgery if, with intent to defraud, that person:
  - (i) falsely makes, completes, or alters a written instrument; or

- (ii) offers or presents a forged instrument knowing such instrument to be forged.
- (2) Obtaining a Signature by Deception
  - (A) Offense. A person commits an offense if, with intent to defraud, that person obtains the signature of another person on a written instrument by knowingly misrepresenting or omitting any material fact relevant to the instrument or transaction.
  - (B) Sentence. A person who is convicted of obtaining a signature by deception may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed four thousand dollars (\$4,000.) or to both.
- (3) Criminal Impersonation
  - (A) Offense. A person commits criminal impersonation if that person:
    - (i) assumes a false identity with the intent to defraud another; or
    - (ii) pretends to be a representative of some person or organization with the intent to defraud
  - (B) Sentence. A person convicted of criminal impersonation may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
- (h) Bribery and Related Crimes
  - (1) Bribery of Officials
    - (A) Offense. A person commits the offense of bribery if that person:
      - (i) offers, confers, or agrees to confer any benefit upon a Tribal official, judge or employee with the intention of influencing such person's vote, opinion, judgment, exercise of discretion or other action in his/her official capacity; or
      - (ii) as a Tribal official, judge, or employee, solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his/her official actions may be thereby influenced.
    - (B) Sentence. A person convicted of bribery may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
  - (2) Improper Influence of Officials

- (A) Offense. A person commits improper influence of an official if that person threatens harm to any Tribal official, judge or employee with the intent of influencing such person's official actions.
  - (B) Sentence. A person convicted of improper influence of an official may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
- (3) Abuse of Office
- (A) Offense. A person commits abuse of office if that person acts or purports to act in an official capacity and:
    - (i) subjects another to arrest, detention, search or seizure without just and lawful cause; or
    - (ii) maliciously denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.
  - (B) Sentence. A person convicted of abuse of office may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed three thousand dollars (\$3,000.), or to both.
- (i) Obstruction of Tribal Administration
- (1) Resisting or Obstructing an Officer of the Grand Traverse Band or any Other Law Enforcement Officer
    - (A) Offense. A person commits an offense if that person intentionally or knowingly obstructs, impairs or hinders:
      - (i) any officer of the Grand Traverse Band in the lawful exercise of his/her duties;
      - (ii) any duly authorized person serving or attempting to serve or execute process, or any rule or order of the courts of the Grand Traverse Band;
      - (iii) any judge or other court personnel of the Grand Traverse Band, in the lawful exercise of his/her duties; or
      - (iv) any other law enforcement official in the lawful exercise of his/her duties.
    - (B) Sentence. A person convicted of obstruction of Tribal administration may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
  - (2) Escape from Lawful Custody

- (A) Offense. A person commits the offense of escape from lawful custody if that person escapes or attempts to escape from lawful custody or confinement.
  - (B) Sentence. A person convicted of escape from lawful custody may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
- (3) Helping a Person to Escape from Lawful Custody
- (A) Offense. A person commits an offense if that person helps or attempts to help a person escape from lawful custody or confinement.
  - (B) Sentence. A person convicted of helping a person to escape from lawful custody may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
- (4) Tampering with a Public Record
- (A) Offense. A person commits tampering with a public record if that person intentionally or knowingly and with proper authority:
    - (i) makes or completes a written instrument which purports to be a public record or true copy thereof or alters a written instrument which is a public record or true copy thereof;
    - (ii) presents or uses a written instrument which is or purports to be a public record or a copy thereof, knowing that it has been falsely made, completed or altered, with intent that it be taken as genuine;
    - (iii) offers for recording, registration or filing in a Tribal office or agency a written statement knowing that it has been falsely made, completed or altered or that it contains a false statement or information; or
    - (iv) knowingly destroys, conceals, removes or otherwise impairs the availability of any public record.
  - (B) Public Records. Public records mean all official books, papers, written instruments or records created, issued, received or kept by any Tribal office, branch or division.
  - (C) Sentence. A person convicted of tampering with a public record may be sentenced to a jail term not to exceed two hundred seventy (270) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
- (5) Malicious Criminal Prosecution

- (A) Offense. A person commits malicious criminal prosecution if that person maliciously causes or attempts to cause a criminal charge to be prosecuted against an innocent person, knowing such person to be innocent.
  - (B) Sentence. A person convicted of malicious criminal prosecution may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
- (6) Interfering with an Election
- (A) Offense. A person commits an offense if that person, during the course of any election held by the Grand Traverse Band, knowingly:
    - (i) attempts to influence the vote of any person or prevent a person from voting through the use or threatened use of force or violence;
    - (ii) attempts to cast more than one (1) vote in an election, or in any way interferes with the collection and counting of ballots.
  - (B) Sentence. A person convicted of interfering with an election may be sentenced to a jail term not to exceed two hundred seventy (270) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
- (j) Criminal Damage to Property and Trespass
- (1) Vandalism
- (A) Offense. A person commits the offense of vandalism if that person intentionally or recklessly:
    - (i) defaces or damages the personal or real property of another person; or
    - (ii) defaces or damages the real or personal property of the Grand Traverse Band.
  - (B) Sentence. A person convicted of vandalism may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
  - (C) Restitution. The judge may, in addition to, or in lieu of, the punishments set out above, order the offender to pay to the owner the repair or replacement costs of the damaged property or to perform work for the owner equal to the value of the damaged property.
- (2) Littering and Burning of Trash
- (A) Offense. A person commits the offense of littering or burning of trash if that person burns trash, garbage, or refuse on Tribal lands or throws, places,



drops or disposes of any litter in a place which is not a lawful waste disposal site or receptacle for the disposal of litter.

- (B) Sentence. A person convicted of littering or burning trash may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars (\$500.), or to both.
- (C) The judge may, in addition to, or in lieu of, the punishments set out above, order the offender to pick up litter or burned trash areas within Tribal lands, as a community service, for a time not to exceed eighty (80) hours.

(3) Dumping of Hazardous Material

- (A) Offense. A person commits an offense if that person throws, places, drops or disposes of any hazardous material in a place which is not a lawful disposal site for such materials.
- (B) Sentence. A person convicted of dumping hazardous materials may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both. In addition, the Court may order the person to remove the materials that have been dumped or to pay for the cost of such removal.

(4) Trespass

- (A) Offense. A person commits the offense of trespass if that person knowingly enters the property or dwelling of another with reason to know that the owner would not permit him/her to do so, or refuses to depart when requested to do so, or enters upon Tribal properties and refuses to depart when requested to do so by an officer or employee of the Grand Traverse Band.
- (B) Sentence. A person convicted of trespass may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed two thousand dollars (\$2,000.), or to both.

(k) Offenses Against the Family

- (1) Expansion of Court's Jurisdiction. The Court, in its discretion, may order the victim(s) or others touched by any of the offenses enumerated in this Section to undergo appropriate treatment(s) or participate in appropriate rehabilitative program(s).
- (2) Abandonment of a Child
  - (A) Offense. A parent, guardian or other person having legal custody of a child commits abandonment of a child if he/she intentionally or knowingly abandons a child under eighteen (18) years of age.

- (B) Sentence. A person convicted of abandonment of a child may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed three thousand dollars (\$3,000.), or to both.
  - (C) The judge may order the offender to undergo an appropriate rehabilitative program, in lieu of, or in addition to, the sentence set out above, if it appears from the totality of the circumstances that rehabilitative services could help the offender become a responsible parent.
- (3) Failure to Support a Dependent
- (A) Offense. A person commits an offense if that person knowingly and persistently fails to provide food, shelter, clothing, medical attention, financial support or other necessary care which he/she is capable of providing to his/her child or other dependent.
  - (B) Sentence. A person convicted of failure to support a dependent may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
  - (C) The judge may order the offender to undergo an appropriate rehabilitative program, in lieu of, or in addition to, the sentence set out above, if it appears from the totality of the circumstances that rehabilitative services could help the offender become a responsible parent.
- (4) (Reserved)
- (5) (Reserved)
- (6) Child Abuse
- (A) Offense. A person commits the offense of child abuse if that person intentionally, knowingly, or recklessly causes physical injury to a child in his/her care or custody.
  - (B) Sentence. A person who commits child abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
- (7) Spouse Abuse
- (A) Offense. A person commits an offense if that person intentionally, knowingly or recklessly causes physical injury to his/her spouse.
  - (B) Sentence. A person who commits spouse abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

**Comment:** In keeping with § 103(e)(3), a person should not be prosecuted for both an offense under this Section and for sexual assault under § 107(c)(4), because sexual conduct with a foster child or stepchild and incest are specific types of sexual assaults.

Also, a person should not be prosecuted for both child abuse and battery, or spouse abuse and battery, because these are specific types of battery. A person who abuses a child, not in his/her care or custody, should not be prosecuted for battery.

(l) Riot and Related Offenses

(1) Riot

(A) Offense. A person commits riot if, with five (5) or more other persons acting together, that person intentionally, knowingly or recklessly uses force or violence, or threatens to use force or violence, which disturbs the public peace.

(B) Sentence. A person who is convicted of riot may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed four thousand dollars (\$4,000.), or to both.

(2) Disorderly Conduct

(A) Offense. A person commits disorderly conduct if that person intentionally, knowingly or recklessly:

(i) engages in fighting, or provokes a fight;

(ii) makes any protracted commotion which prevents the transaction of the business of a lawful meeting, gathering or procession;

- (iii) makes loud and unreasonable noise; or
    - (iv) engages in the consumption of alcohol out of doors with two or more persons without a Tribal permit.
  - (B) Sentence. A person who is convicted of disorderly conduct may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
- (3) Obstructing a Highway or other Public Thoroughfare
- (A) Offense. A person commits an offense if that person intentionally, knowingly or recklessly interferes, having no legal privilege to do, with the use of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.
  - (B) Sentence. A person who is convicted of obstructing a highway or other public thoroughfare may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
- (4) Creating False Alarm
- (A) Offense. A person commits an offense if that person reports a bombing, fire, crime or other emergency knowing such report to be false or baseless and knowing that:
    - (i) it will cause action by an official or voluntary agency organized to deal with emergencies;
    - (ii) it will place a person in fear of imminent serious bodily injury; or
    - (iii) it will prevent or interrupt the occupation of any building, room, place of assembly or other public place.
  - (B) Sentence. A person convicted of creating false alarm may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed two thousand dollars (\$2,000.), or to both.
- (5) Public Intoxication
- (A) Offense. A person commits public intoxication if that person appears in public in an inebriated state to the degree that he/she is unable to care for his/her own safety or is creating a public nuisance.
  - (B) Sentence. A person convicted of public intoxication may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars (\$500.), or to both.

- (C) The judge may, in addition to, or in lieu of, the punishments set out above, order the offender to participate in an alcohol treatment program.
- (6) Curfew
    - (A) Offense. All minors must adhere to a curfew of 11:00 pm. It shall be unlawful for any minor to appear in public after curfew. Furthermore, it shall be unlawful for anyone to allow a minor to violate the Tribal curfew.
    - (B) Sentence. A person who is found guilty of a curfew violation may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed five hundred dollars (\$500.), or to both.
  - (7) Truancy
    - (A) Offense. It shall be unlawful for any minor under the age of sixteen (16) to be absent from school without proper permission or excuse. Furthermore, it shall be unlawful for any person to allow any minor under the age of sixteen (16) to be absent from school without proper permission or excuse.
    - (B) Sentence. Any person found guilty of truancy may be sentenced in the Court's discretion to ensure regular school attendance.
- (m) Traffic Offenses
    - (1) Reckless Driving
      - (A) Offense. A person commits reckless driving if that person operates a motor vehicle in a manner that he/she knows or should know, endangers the safety or property of others, including, but not limited to, driving on the wrong side of the street, weaving, or driving at a speed in excess of that which is prudent under the conditions.
      - (B) Sentence. A person convicted of reckless driving may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed two thousand dollars (\$2,000.), or to both.
    - (2) Driving while under the Influence of Intoxicating Liquor or other Drugs
      - (A) Offense. A person commits an offense if that person operates a motor vehicle within the territorial jurisdiction of the Grand Traverse Band while under the influence of alcohol or other drugs.
      - (B) Sentence. A person convicted of driving while under the influence of intoxicating liquor or other drugs may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

- (C) Order for treatment. The judge may, in addition to, or in lieu of, the punishments set out above, order the offender to participate in an alcohol or substance abuse treatment program.
- (3) Driving with an Open Alcohol Container
    - (A) Offense. A person commits an offense if that person operates a motor vehicle while an open container containing an alcoholic beverage is present anywhere in the passenger compartment of the vehicle.
    - (B) Sentence. A person convicted of driving with an open alcohol container may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
  - (4) Driving with a Loaded Firearm
    - (A) Offense. A person commits an offense if that person operates a motor vehicle with a loaded firearm present in the vehicle.
    - (B) Sentence. A person convicted of driving with a loaded firearm may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed two thousand dollars (\$2,000.), or to both.
  - (5) Operation of Motor Vehicle without Proof of Insurance
    - (A) Offense. A person commits an offense if that person operates a motor vehicle without proof of insurance on his/her person or present in the vehicle.
    - (B) Sentence. A person convicted of operation of a motor vehicle without proof of insurance may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.). The uninsured vehicle may be impounded by the Band until it is properly insured.
- (n) Criminal Homicide
    - (1) Offense. A person commits the offense of criminal homicide if:
      - (A) that person intentionally causes the death of another person;
      - (B) with intent to cause bodily injury to a person, that person causes the death of the intended victim or any other person;
      - (C) that person voluntarily commits or participates in the commission of, or attempts to commit, arson, robbery, burglary, kidnapping, assault, or sexual assault, and in the course of, or in furtherance of the crime that is being committed or attempted, or during flight from the scene of the crime, the death of a person is caused;

- (D) that person recklessly or by gross negligence causes the death of another person, including the reckless operation of a motor vehicle; or
  - (E) that person, through the negligent operation of a motor vehicle, causes the death of another person.
- (2) Sentence. A person convicted of criminal homicide may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both, or to the maximum penalty allowable under federal law.

**Comment:** As discussed above, under the Indian Civil Rights Act, a tribal court may only sentence an offender to a maximum of one (1) year in jail and/or a fine of five thousand dollars (\$5,000.). Every effort should be made to obtain a federal prosecution in cases of criminal homicide, in addition to the tribal prosecution. An offender can be prosecuted in both tribal and federal court without violating the United States Constitutional prohibition against double jeopardy because the tribal and federal governments are separate sovereign entities. *United States v. Wheeler*, 435 U.S. 313 (1978).

(o) Alcohol-Related Offenses

- (1) Possession or Consumption of Alcohol by a Person under 21 Years of Age
- (A) Offense. A person commits an offense if that person is under twenty-one (21) years of age and knowingly possesses or consumes any alcoholic beverage.
  - (B) Sentence. A person convicted of possession or consumption of alcohol by a person under twenty-one (21) years of age may be compelled to perform an amount of community service work and/or undergo rehabilitative treatment as deemed appropriate by the Tribal judge. In addition, the Court may sentence the person who commits this offense to a jail term not to exceed thirty (30) days or to pay a fine not to exceed one thousand dollars (\$1,000.), or to both.
- (2) Furnishing Alcohol to a Person Under 21 Years of Age
- (A) Offense. A person commits an offense if that person knowingly furnishes, purchases, provides or in any way procures, any alcoholic beverage for the possession or consumption by a person under twenty-one (21) years of age.
  - (B) Sentence. A person convicted of purchase of alcohol for a person under 21 years of age may be sentenced to a jail term not to exceed one (1) year or given a fine not to exceed five thousand dollars (\$5,000.), or both.
- (3) Allowing a Person Under 21 Years of Age to Consume Alcohol
- (A) Offense. A person commits an offense if that person knowingly allows a person under 21 years of age to consume alcohol in his/her residence, vehicle or presence.

- (B) Sentence. A person convicted of allowing a person under 21 years of age to consume alcohol may be sentenced to a jail term not to exceed one (1) year or given a fine not to exceed five thousand dollars (\$5,000.), or both.
- (p) Possession, Use, Sale, Manufacture and/or Distribution (Controlled Substances)
  - (1) Offense. It shall be unlawful for any person to possess, use, sell, manufacture, and/or distribute any controlled substance defined and/or described in the Uniform Controlled Substances Act, 21 U.S.C. § 812, as updated, without prior authorization.
    - (A) Possession and use of cannabis is exempt from prosecution under Subsection (p)(1), provided that both of the following conditions are met:
      - (i) Such possession and use is in conformity with the Michigan Medical Marihuana Act or the Michigan Regulation and Taxation of Marijuana Act to the extent that such possession or use would be lawful in the jurisdiction of the State of Michigan; and
      - (ii) Such possession and use does not occur in tribal programs funded by federal appropriations under the tribal housing programs and tribal health programs.
  - (2) Sentence. Any person convicted of this offense may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.), or to both.

**Comment:** As the Tribe may not have sufficient resources to effectively combat the trafficking of illicit substances, it is recommended that the Band allow the state and/or federal government to exercise jurisdiction over on-reservation sale of controlled substances in the event that this becomes a significant problem on the reservation.

- (q) Youth and Tobacco
  - (1) Offense. It shall be unlawful for any minor to possess, use, or purchase any tobacco or tobacco products. Furthermore, it shall be unlawful for any person to allow the possession, use, or sale of tobacco or tobacco products to any minor.
  - (2) Sentence. Any person found guilty of this offense may be sentenced to a jail term not to exceed ninety-three (93) days or to pay a fine not to exceed two thousand dollars (\$2,000.), or to both.
  - (3) Affirmative Defense. It shall be an affirmative defense to this offense when the alleged violation occurred in the furtherance of a recognized Tribal and/or religious purpose.
- (r) Animal Control
  - (1) Failure to Have a Dog Properly Licensed



- (A) Offense. Any person who owns a dog must have the dog properly licensed under the Leelanau County Animal Control Enforcement Ordinance or by the Grand Traverse Band if the Band sets up its own animal licensing system. A person commits an offense if that person fails to have his/her dog so licensed.
  - (B) Sentence. A person who commits an offense may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars (\$500.), or to both.
- (2) Allowing a Dog to be a Public Nuisance
- (A) Offense. Any person who owns, possesses, or maintains a dog is responsible for such dog. A person, whose dog barks outside to an extent that a person of reasonable sensibility is disturbed by such barking, or whose dog is vicious or has propensity to be vicious, commits an offense.
  - (B) Sentence. Any person convicted of allowing a dog to be a public nuisance may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed five hundred dollars (\$500.), or to both. In addition, the Court may order the destruction of the dog if necessary to protect the public.
- (3) Animal Abuse
- (A) Offense. A person commits an offense if that person intentionally beats, cruelly treats, torments, overloads or otherwise abuses any dog, livestock or poultry, or instigates any dog fight, cock fight, bull fight or other combat between animals or between animals and humans.
  - (B) Sentence. A person convicted of animal abuse may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
- (s) Violation of a Tribal Ordinance
- (1) Offense. In addition to the offenses specified above, a person commits an offense under this code if that person violates any criminal ordinance duly enacted by the Tribal Council.
  - (2) Sentence. A person convicted of violation of a Tribal ordinance may be subject to whatever punishment is specified in the ordinance that was violated.
- (t) Habitual Offender
- (1) Offense. Any person who is convicted under Tribal law, who has previous conviction(s) under Tribal law, may be charged as an habitual offender.

- (2) Sentence. A person convicted of being an habitual offender may be sentenced as follows:
  - (A) 2<sup>nd</sup> Offense: One and a half (1.5) times the maximum for the underlying offense not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.), or to both;
  - (B) 3<sup>rd</sup> Offense: Two (2) times the maximum for the underlying offense not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.), or to both;
  - (C) 4<sup>th</sup> or More Offense: Not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.), or to both.
  
- (u) Criminal Violation of Michigan Tribal-State Tax Agreement
  - (1) Offense. An individual under the jurisdiction of the Tribal Court that intentionally and maliciously violates the Tax Agreement between the Grand Traverse Band of Ottawa and Chippewa Indians and the State of Michigan, either during or after the Agreement's term, is guilty of criminally violating the Michigan Tribal-State Tax Agreement.
  - (2) Sentence. The Tribal Court may sentence a person convicted of criminally violating the Michigan Tribal-State Tax Agreement to a fine of up to five thousand dollars (\$5000) and may be ordered to pay restitution to the Grand Traverse Band.
  
- (v) Toxic Vapors
  - (1) Offense. A person commits the offense of inhaling toxic vapors if that person, for the purpose of becoming intoxicated or subjecting that person to the influence of them, willfully inhales the vapors or fumes of paint, gasoline, glue or any other substance producing intoxicating fumes or vapors.
  - (2) Sentence. A person guilty of inhaling toxic vapors may be sentenced to imprisonment for a period not to exceed thirty (30) days, or a fine not to exceed two hundred fifty dollars (\$250.), or both.

History: The Criminal Code was adopted by the Tribal Council on April 20, 1988; as amended by Tribal Act #92-10.78, enacted by Tribal Council on October 20, 1992; as amended by Tribal Act #00-18.883, adopted by Tribal Council in Special Session on August 10, 2000; as amended by Tribal Council in Special Session on February 27, 2001; as amended by Tribal Act #04-22.1389, enacted by Tribal Council on May 14, 2004; as amended by Tribal Act #04-22.1465, enacted by Tribal Council on November 24, 2004; as amended by Tribal Act #04-22.1467, enacted by Tribal Council on December 15, 2004; as amended by Tribal Act #07-25.1863, enacted by Tribal Council in Special Session on November 28, 2007; as amended by Tribal Act #10-28.2207, enacted by Tribal Council on July 21, 2010; as amended by Tribal Council Resolution #19-37.3091 on June 29, 2019, which implemented Tribal Council Resolution #18-36.3047<sup>1</sup>, adopted at a Tribal Council Regular Session on April 17, 2019.

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<sup>1</sup> This resolution set forth a referendum which was approved by a majority of the registered voters on June 11, 2019.

## **Chapter 2 - Application of Non-Tribal Laws**

### **§ 201 - Adoption of State Laws and Ordinances**

- (a) The Grand Traverse Band adopts the laws, codes, ordinances, and other instruments of the law of the State of Michigan to the extent these instruments, laws, codes, and ordinances do not conflict with appropriate federal law or Tribal codes, ordinances, and laws in force now or enacted in the future.
- (b) The intent behind this section is similar to Congress's intent behind the Assimilative Crimes Act, 18 U.S.C. § 13, which makes state law applicable to conduct occurring on lands reserved or acquired by the Federal Government when the act or omission is not made punishable by an enactment of Congress. Similarly, prosecutions instituted under this section are not to enforce the laws of the State of Michigan, but to enforce Tribal law, the details of which, instead of being recited, are adopted by reference from the State of Michigan and are essentially to provide gap fillers where the current GTB Code is silent.

History: Tribal Act #85-363, enacted by Tribal Council on December 18, 1995. As amended by Tribal Act #06-24.1712 enacted by Tribal Council September 27, 2006.

CROSS-REFERENCE: This section ("Application of non-Tribal Laws") is also included in 14 GTBC § 601 (the "Public Safety and Regulation" title).

### **§ 202 - Adoption of State of Michigan's Vehicle Code**

The Tribal Council of the Grand Traverse Band hereby adopts the Michigan Vehicle Code on a permanent basis.

History: Tribal Act #92-10.28, enacted by Tribal Council on April 21, 1992. The Michigan Vehicle Code had previously been adopted on a one year trial basis in Tribal Act #90-839, enacted by Tribal Council on May 19, 1990.

CROSS-REFERENCE: This provision is also contained in 14 GTBC § 603 (the "Public Safety and Regulation" title).

## **Chapter 3 - Domestic Violence Ordinance**

### **Subchapter A: General Provisions**

#### **§ 301 - General Provisions; Policy and Purpose**

The Grand Traverse Band of Ottawa and Chippewa Indians Tribal Council recognizes that GTB's survival and prosperity depends on strong and healthy families, and that domestic violence is incompatible with strong and healthy families. The purpose of this chapter is to protect the health, safety and welfare of the Grand Traverse Band of Ottawa and Chippewa Indians tribal

community, consistent with the Grand Traverse Band's reserved rights, by: preventing acts of domestic violence, affording victims of domestic violence maximum assistance, safety, and support; and holding perpetrators of domestic violence accountable for their actions and for changing their behavior.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 302 - Jurisdictional Statement**

Pursuant to Article IV, Section (1)(a) of the Tribal Constitution, the Tribal Council of the Grand Traverse Band hereby enacts this Domestic Violence Ordinance. The Grand Traverse Band has the inherent authority to protect its political integrity and provide for the welfare of its citizens. The jurisdiction of the Tribal Court over persons and territory is limited only by federal law and the Grand Traverse Band Constitution, under which the Tribal Court has the power to decide questions of jurisdiction that may be raised under this code.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 303 - Sovereign Immunity**

- (a) Nothing in this code is intended or shall be construed as a waiver of the sovereign immunity of the Grand Traverse Band or any of its departments, divisions or enterprises.
- (b) No manager, officer or employee of the Tribe is authorized or shall attempt to waive the immunity of the Tribe.
- (c) Damage suits against any employee, officer, agent, prosecutor, judge, or manager of the Grand Traverse Band or any of its departments, divisions, organizations or enterprises for disputes arising under this Code are prohibited.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

### **§ 304 - Liability of Law Enforcement Officers**

A law enforcement officer shall not be held liable in any civil or criminal action for an arrest based on probable cause, enforcement of any court order, or any other act or omission arising from an alleged domestic violence crime, if the officer acts in good faith and upon the best information so as to provide protection for victims of domestic violence and to carry out the purposes of this Code.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 305 - Court orders**

Restraint provisions contained in orders entered under this Code and comparable provisions contained in orders accorded full faith and credit by the Tribal Court shall govern conduct both on and off the reservation.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 306 - Time Computation**

In computing any period of time prescribed or allowed by this code, or by rules of the Court, the day of the act, event or default from which the designated period of time begins to run shall be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or holiday. When the period of time prescribed or allowed is less than (7) days, intermediate Saturdays, Sundays, holidays, and any other official tribal office closures shall not be counted in the computation.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 307 - Liberal Construction**

The provisions of this Code shall be liberally construed in order to further the purpose stated in

§ 301.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

**§ 308 - Repealer**

This Code is to be interpreted to supersede and replace any conflicting provisions of all prior codes and laws of the Grand Traverse Band.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 309 - Severability**

If any part of this Code or its application to any person or circumstance is held to be invalid, the remainder of this Code or its application to other persons or circumstances is not affected.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 310 - Definitions**

- (a) “Abuse” means:
- (1) Intentionally or recklessly or negligently causing or attempting to cause physical harm or mental anguish to another person; or
  - (2) Threatening or placing another person in reasonable apprehension of imminent serious physical injury.
- (b) “Advocate” or “Victims’ Advocate” means a person who is employed or volunteers to provide services to victims of domestic violence and/or sexual assault.
- (c) “Court” or “Tribal Court” means the Grand Traverse Band Tribal Court established in Article V of the GTB Constitution.
- (d) “Dating Relationship” means a social relationship of a romantic nature. In determining whether parties have a “dating relationship,” the Court shall consider:
- (1) The length of time the relationship has existed.
  - (2) The nature of the relationship;
  - (3) The frequency of the interaction between the parties.
- (e) “Domestic Violence” means:
- (1) Engaging in any of the following acts against family or household members or persons in a dating relationship:
    - (A) Attempting to cause or causing physical harm;
    - (B) Attempting to cause or causing injury to a pet or property damage;
    - (C) Attempting to cause or causing a family or household member to engage involuntarily in sexual activity by force, threats or duress;
    - (D) Inflicting injury to household pets, reasonable fear of physical harm, sexual assault, or property damage;
    - (E) Stalking, as defined in this Code;
    - (F) All crimes involving threats, violence, assault and/or physical or sexual abuse against, adults, children, the elderly or others enumerated in Title 9 of the Grand Traverse Band Constitution may be charged as domestic violence and those crimes listed under the Major Crimes Act, 18 U.S.C. § 1153.

- (2) Any act of self-defense or self-defense of another reasonably taken in response to an act of domestic violence shall not be considered a crime of domestic violence.
- (f) “Essential Personal Effects” means those items necessary for a person’s immediate health, welfare and livelihood, such as clothing, cribs, bedding, medications, personal documentation, personal hygiene items and tools of trade.
- (g) “Family or Household Member” includes:
- (1) Spouses or former spouses;
  - (2) Persons with whom the individual has or has had a dating relationship;
  - (3) Persons who have a child in common or who are expecting a child in common, regardless of whether they have been married or lived together at any time;
  - (4) Persons eighteen (18) years of age or older who are related by blood or marriage;
  - (5) Persons eighteen (18) years of age or older who are presently residing together or who have resided together in the past;
  - (6) Persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren;
  - (7) Physically or mentally disabled persons and their caregivers residing in the household;
  - (8) Elders fifty-five (55) years of age or older and their caregivers residing in the household;
  - (9) Minor children of a person in a relationship described in Subsection (g)(1) through (8) above; or
  - (10) Vulnerable adults residing in the household, including adults unable to protect themselves from abuse, neglect, or exploitation.
- (h) “Harassment” means conduct directed toward a victim/minor victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim/minor victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.
- (i) “Indian Country” has the meaning given the term in 18 U.S.C. § 1151.
- (j) “Law Enforcement” means the Grand Traverse Band Department of Public Safety or any other police department authorized by the Tribe.

- (k) “Minor” means any unmarried person who is less than eighteen (18) years of age, and has not been emancipated by order of a court of competent jurisdiction, or a person who is eighteen (18) years of age, but remains under the continuing jurisdiction of the court.
- (l) “Next Friend” means any legally competent adult that petitions or represents a minor in proceedings under this Code.
- (m) “Prosecutor” means the Grand Traverse Band Tribal Prosecutor or any other person authorized by the Tribe to perform the duties of the prosecutor for the purpose of this code.
- (n) “Protection order” means:
  - (1) Any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
  - (2) Includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.
- (o) “Reservation” means all territory within the exterior boundaries of the Grand Traverse Band Indian Reservation and six-county service area as defined in Article I, § 2(a) of the Grand Traverse Band Constitution.
- (p) “Restitution” means repayment to a victim of domestic violence, including but not limited to property damage, moving expenses, medical expenses related to the incident of domestic violence, or loss of earnings or support.
- (q) “Special domestic violence criminal jurisdiction” means the criminal jurisdiction that GTB may exercise under 25 U.S.C. § 1304 but could not otherwise exercise by operation of federal common law.
- (r) “Spouse or intimate partner” has the meaning given the term in 18 U.S.C. § 2266.
- (s) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual or minor that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (t) “Tribe” or “Tribal” refers to the Grand Traverse Band of Ottawa and Chippewa Indians, a sovereign nation.
- (u) “Unconsented contact” means any contact with another individual that is initiated or continued without that individual’s consent or in disregard of that individual’s expressed



desire that the contact be avoided or discontinued. Unconsented contact includes the following:

- (1) Coming into and remaining a visual or physical presence of the person;
  - (2) Following the person;
  - (3) Approaching or confronting the person in a public place or on private property;
  - (4) Waiting outside the home, property, place of work or school of the person or of a member of that person's family or household;
  - (5) Sending or making written communication in any form to the other person;
  - (6) Speaking with the person by any means;
  - (7) Communicating with the person through a third party;
  - (8) Committing a crime against the person;
  - (9) Communicating with a third party who has some relationship to the person with the intent of affecting the third party's relationship with the person;
  - (10) Communicating with business entities with the intent of affecting some right or interest of the person;
  - (11) Damaging the person's home, property, place of work or school; or
  - (12) Delivering directly or through a third party any object to the home, property, place of work, or school of the person.
- (v) "Victim" means a family or household member, or one with whom a dating relationship exists, who has been subjected to domestic violence.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

## ***Subchapter B: Domestic Violence Offenses***

### **§ 311 - Domestic Violence and Sentencing**

- (a) A person commits the crime of domestic violence when:
- (1) The person engages in any of the following acts against a family or household members or person in a dating relationship.

## (b) First Offense:

Any person who commits a crime of domestic violence with no prior conviction of domestic violence in any jurisdiction shall be deemed guilty of the first offense of domestic violence. A person convicted of a first offense of domestic violence shall be imprisoned, for a term of not less than three (3) days or more than one (1) year and shall be fined an amount not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000). A domestic violence assessment and a requirement that the defendant follows through with the recommendations made in the assessment shall be part of sentencing as well as restitution when appropriate.

## (c) Second Offense:

A person convicted of a second offense of domestic violence shall be imprisoned for a term of not less than thirty (30) days or more than one (1) year and fined an amount not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000). Mandatory counseling shall be part of sentencing as well as restitution when appropriate.

## (d) Third and Subsequent Offense:

A person convicted of a third or subsequent offense of domestic violence shall be imprisoned for a term of not less than ninety-three (93) days or more than one (1) year and fined an amount not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000). Mandatory counseling shall be part of the sentencing as well as restitution when appropriate.

## (e) Availability of Deferral of Sentence for First-Time Offender.

- (1) An individual who has not been convicted previously of an assaultive crime may plead guilty to a violation in Title 9, Chapter 2 or 3 of the Tribal Code and the victim of the assault is the offender's spouse or former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender. The court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney in consultation with the victim, may defer further proceedings and place the accused on probation as provided in this section. Before deferring proceedings under this subsection, the court shall consult any resource that may have knowledge that the accused has previously been convicted of an assaultive crime or has previously availed himself or herself of this section. If the search of the records reveals an arrest for an assaultive crime but no disposition, the court shall consult the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest.
- (2) Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided in this section.

- (3) An order of probation entered under this chapter may include any condition of probation authorized under the Tribal Code or Court Rules, including, but not limited to, requiring the accused to participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the mandatory counseling program. The court also may order the accused to participate in drug court. The court may order the defendant to be imprisoned for not more than twelve (12) months at the time or intervals, which may be consecutive or nonconsecutive and within the period of probation, as the court determines. However, the period of imprisonment shall not exceed the maximum period of imprisonment authorized for the offense if the maximum period is less than twelve (12) months.
- (4) The court shall enter an adjudication of guilt and proceed as otherwise provided in this chapter if any of the following circumstances exist:
- (A) The accused commits an assaultive crime during the period of probation;
  - (B) The accused fails to comply with court-ordered counseling regarding his or her violent behavior;
  - (C) The accused violates an order of the court that he or she have not contact with a named individual.

- (f) For Second and subsequent Convictions:

The Court may suspend up to half of the imposition of fines and imprisonment for domestic violence offense(s) on the condition that the perpetrator is placed on probation for not less than one (1) year and completes domestic violence counseling or treatment as ordered. Failure to comply with terms of probation shall result in the completion of the original sentence.

- (g) Revenue from Fines:

Revenue from fines may be used to help defray the costs of services required under this code for defendants who demonstrate that they are unable to afford mandatory services.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 312 - Aggravated Domestic Violence**

- (a) Any person who commits an act of domestic violence without a weapon, and inflicts serious or aggravated injury upon that person, but did not intend to commit murder or inflict great bodily harm less than murder has committed the crime of aggravated domestic violence.
- (b) Sentence for aggravated domestic violence: A person convicted of aggravated domestic violence shall be imprisoned for a term of not less than ninety-three (93) days or more than one (1) year and fined no less than one thousand dollars (\$1,000) or more than five

thousand dollars (\$5,000). Mandatory counseling shall be a part of the sentencing as well as restitution when appropriate.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

### **§ 313 - Violation of a Domestic Violence Restraining Order**

- (a) Any person who violates a restraint provision contained in an order entered under this code, or of a comparable provision of an order accorded full faith and credit by the court, of which the person had actual notice prior to the time of the alleged violation, has committed the crime of violating a domestic violence restraining order.
- (b) For the purposes of this code, violation of a domestic violence restraining order shall be considered a crime of domestic violence.
- (c) Penalty: Depending on the circumstances, violation of a restraining order or PPO may subject a respondent to immediate arrest and to the civil and criminal contempt powers of the court, which may include up to ninety-three (93) days' imprisonment and/or a fine up to one thousand dollars (\$1,000).

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007. On

### **§ 314 - Interfering With Reporting of Domestic Violence**

- (a) Any person who prevents or attempts to prevent a victim of domestic violence or a witness to an act of domestic violence from calling 911 emergency communication systems, obtaining medical assistance or making a report to any tribal, state or federal law enforcement official, has committed the crime of interfering with the reporting of domestic violence.
- (b) Penalty: The penalty for interfering with a report of domestic violence will be up to one hundred eighty (180) days imprisonment and/or up to a one thousand dollars (\$1,000) fine.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

### **§ 315 - Assaulting Domestic Violence Staff**

- (a) Any written or verbal threat or any other assault upon a person acting in an official or professional capacity in the protection of victims of domestic violence shall be considered an assault of the most serious nature and punishable by tribal law.
- (b) Penalty: The penalty for assaulting a domestic violence staff person will be up to one hundred eighty (180) days' imprisonment, and/or a five thousand dollars (\$5,000) fine.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 316 - Stalking**

- (a) A person commits the crime of stalking if, without lawful authority:
- (1) The person willfully and repeatedly engages in unwanted contact with another person, either directly or indirectly; and
  - (2) The person receiving the unwanted contact is intimidated, alarmed, emotionally distressed, or placed in fear that the stalker intends to injure the person or property of the person or of another person and the feeling of intimidation, alarm, emotional distress or fear is one that a reasonable person in the victim's situation would experience under all the circumstances; and
  - (3) The stalker either:
    - (A) Intends to frighten, intimidate, alarm or emotionally distress the other person; or
    - (B) Knows or reasonably should know that the other person being followed is frightened, intimidated, alarmed or emotionally distressed, even if the stalker did not intend such a result.
- (b) Penalty: Stalking will result in up to one (1) year imprisonment and/or up to a one thousand dollars (\$1,000) fine.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

**§ 317 - Stalking a minor**

- (a) A person commits the crime of stalking a minor if, without lawful authority:
- (1) The person willfully and repeatedly engages in unwanted contact with a minor, either directly or indirectly; and
  - (2) The minor receiving the unwanted contact is intimidated, alarmed, emotionally distressed, or placed in fear; the stalker intends to injure the person or property of the person or of another person and the feeling of intimidation, alarm, emotional distress or fear is one (1) that a reasonable person in the victim's situation would experience under all the circumstances; and
  - (3) The stalker either:
    - (A) Intends to frighten, intimidate, alarm or emotionally distress the minor; or

(B) Knows or reasonably should know that the minor being followed is frightened, intimidated, alarmed or emotionally distressed, even if the stalker did not intend such a result.

(b) Penalty: Stalking of a minor shall result in not less than ninety-three (93) days, but no more than a year imprisonment and/or up to a five thousand dollars (\$5,000) fine.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 318 - Aggravated Stalking**

(a) An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances:

(1) At least one (1) of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least one (1) of the actions is in violation of an injunction or preliminary injunction.

(2) At least one (1) of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.

(3) The course of conduct includes the making of one (1) or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.

(4) The individual has been previously convicted of a violation of this section or § 301.

(b) The Tribal Court may place an individual convicted of violating this section on probation for any term of years, accordingly. If a term of probation is offered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:

(1) Refrain from stalking any individual during the term of probation;

(2) Refrain from any contact with the victim of the offense;

(3) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(c) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

- (d) Penalty: Penalty for aggravated domestic violence shall result in no less than ninety-three (93) days, but no more than one (1) year imprisonment and/or up to a five thousand dollars (\$5,000) fine.
- (e) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 319 - Aggravated Stalking of a Minor**

- (a) An individual who engages in stalking a minor is guilty of aggravated stalking of a minor if the violation involves any of the following circumstances:
  - (1) At least one (1) of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least one (1) of the actions is in violation of an injunction or preliminary injunction;
  - (2) At least one (1) of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal;
  - (3) The course of conduct includes the making of one (1) or more credible threats against the minor victim, a member of the minor victim's family, or another individual living in the same household as the minor victim;
  - (4) The individual has been previously convicted of a violation of this section or § 301.
- (b) The Tribal Court may place an individual convicted of violating this section on probation for any term of years, accordingly. If a term of probation is offered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:
  - (1) Refrain from stalking any individual during the term of probation;
  - (2) Refrain from any contact with the minor victim of the offense.
  - (3) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.
- (c) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the minor victim after having been requested by the minor victim/minor victim's parent(s)/caregiver to discontinue the same or a different form of unconsented contact, and to refrain from any

further unconsented contact with the minor victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the minor victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

- (d) Penalty: Penalty of aggravated stalking of a minor shall result in not less than one hundred eighty (180) days, but no more than one (1) year imprisonment and/or up to a five thousand dollars (\$5,000) fine.
- (e) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007,

### **§ 320 - Use or Possession of a Dangerous Weapon**

A person who engages in conduct proscribed under §§ 311 through 319, and who, in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a crime.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

### **§ 321 - Stalking to Be Treated as Domestic Violence Crime**

All provisions, mandates, and definitions as stated in this Code shall be equally applied and enforced with regards to the crime of stalking as to the crime of domestic violence. The crime of stalking is not limited to family or household members or to persons in a dating relationship.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 322 - Location of Stalking Perpetrator Not Bar to Prosecution**

- (a) The location of the threatening action by a stalking perpetrator does not bar prosecution under this chapter. The act is a credible threat when full transmittal of the threat has been completed to the victim, when said victim is within the boundaries of the six-county service area.
- (b) Corroborated initial or intervening acts, used to establish a pattern of conduct for the purpose of probable cause under this section, but which occurred outside the boundaries of the six-county service area, may be used to establish and corroborate said pattern for prosecution of a violation under this section. However, initial or intervening acts occurring outside the boundaries of the six-county service area are not prosecutable as separate offenses under this section.



- (c) The incarceration of the person making the threat shall not bar prosecution under this chapter.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### ***Subchapter C: Law Enforcement Authority***

#### **§ 323 - Entering a Residence Without a Warrant**

- (a) A law enforcement officer need not obtain a search warrant to enter a residence where he or she has probable cause to believe a crime of domestic violence is occurring, or has just occurred and that the perpetrator is still in the residence.
- (b) When law enforcement responds to 911 or another emergency phone call or to any credible report alleging that domestic violence may be taking place in a residence, the officer may enter the home without a warrant if the officer reasonably believes entering the home is necessary to assure the safety of any potential victim of domestic violence.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

#### **§ 324 - Seize and Hold Weapons and/or Firearms**

- (a) Law enforcement officers shall seize all weapons that are alleged to have been involved or were threatened to be used in a domestic violence crime and any weapon in the vicinity of the alleged commission of the offense.
- (b) A law enforcement officer may seize a weapon that is in plain view of the officer or was discovered pursuant to a lawful search as necessary for the protection of the officer or other persons.
- (c) Law enforcement officers are authorized to confiscate weapons and/or firearms from, or accept and hold weapons and/or firearms for, a person who is prohibited from possessing or using them.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

#### **§ 325 - Mandatory Arrest**

- (a) A law enforcement officer who has probable cause to believe that a person has committed a domestic violence crime within the past four (4) hours shall, without a warrant, arrest the alleged perpetrator. A law enforcement officer shall arrest an alleged perpetrator of domestic violence whether or not the victim signs a complaint and whether or not the arrest is against the express wishes of the victim.

- (b) A person arrested for a domestic violence crime shall not be released from detention until seventy-two (72) hours after arrest unless a court hearing is held prior to the expiration of the seventy-two-hour period.
- (c) Law enforcement officers shall follow all jurisdictional guidelines when dealing with a domestic violence situation. If jurisdiction precludes arrest, the appropriate authority will be notified immediately of the situation.
- (d) The officer shall not make dual arrests unless probable cause determines both parties were assaulting each other equally or a determination cannot be made as to who was the primary assaulting party.
- (e) The officer shall not subject a victim to a lie-detector test.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 326 - Mandatory Arrest for Violation of Protection Order**

- (a) When a law enforcement officer has probable cause to believe that a respondent has violated one of the following orders of the Tribal court or of any other court order entitled to full faith and credit of this code, the officer shall, without a warrant, arrest the alleged violator. Arrest shall be mandatory where the violation is of one of the following:
  - (1) An order not to commit or threaten to commit further acts of domestic violence;
  - (2) An order not to contract, harass, annoy, telephone, or otherwise communicate, directly or indirectly, with the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence;
  - (3) An order to vacate, or stay away from the victim's residence;
  - (4) An order to stay away from any well-defined geographic area, including, but not limited to, a residence, workplace, school or daycare of the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence.
  - (5) An order prohibiting the possession or use of any firearm or other weapon specified by the court, and to turn such weapon over to law enforcement for safekeeping.
- (b) A person arrested for violation of a protection order shall not be released from detention until seventy-two (72) hours after arrest unless a court hearing is held prior to expiration of the seventy-two-hour period.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 327 - Cross Complaints of Domestic Violence**

- (a) If a law enforcement officer receives a complaint alleging domestic violence from two (2) or more opposing persons, the officer shall evaluate each complaint separately to determine who was more likely to have been the primary aggressor. If the law enforcement officer determines that one (1) person was the primary aggressor, the officer need not arrest the other person alleged to have committed a domestic violence crime. In determining whether one (1) party was the primary aggressor, the office shall consider:
- (1) The history of domestic violence, both documented prior complaints and convictions and the officer's own prior knowledge of the family.
  - (2) The comparative demeanor of the parties involved and the relative severity of the injuries inflicted on each person.
  - (3) The likelihood of future injury to each person.
  - (4) Whether one (1) person acted in self-defense or in defense of others.
  - (5) The degree to which one of the persons has acted with a more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or third party.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007. On

**§ 328 - Notice of Escape or Release**

- (a) Upon the escape from custody of a person arrested for, charged with, or convicted of a criminal offense under this code, law enforcement shall make reasonable efforts to immediately notify the victim of the crime, the victim's advocate, the court and the prosecutor.
- (b) When a person who was convicted of a criminal offense under this code is scheduled to be released from custody, law enforcement shall make reasonable efforts to notify the victim and/or victim's advocate prior to, or upon release of, the person from custody.
- (c) If a person who was convicted of a criminal offense under this code is scheduled for early release, law enforcement shall make reasonable efforts to notify the victim of the crime, the victim's advocate, the court and the prosecutor prior to such release.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 329 - Reporting Statistics**

In all cases of domestic violence, the officer involved in responding to or investigating the incident shall make a written report, and the number of such cases shall be tabulated. The Public Safety Department shall produce an annual report setting out the numbers of reports of domestic

violence, investigations, and arrests. The report and related statistics shall be made available to appropriate agencies and to the public.

History: Enacted by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.<sup>2</sup>

### ***Subchapter D: Court Procedures***

#### **§ 330 - Pre-Trial Release; Considerations for Pre-trial Release**

- (a) In determining whether to order release of a person lawfully arrested for a domestic violence crime, and, if so, under what conditions, the court shall consider:
- (1) The likelihood that the defendant will appear for further criminal proceedings;
  - (2) The nature and severity of the offense;
  - (3) The likelihood that the defendant will commit a violent crime, seek to intimidate a witness, or unlawfully interfere with the administration of justice;
  - (4) The criminal history of the defendant, with particular emphasis on prior acts of domestic violence and other assaultive crimes.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

#### **§ 331 - Conditions for Pre-trial Release**

- (a) If the court finds that the defendant should be released pending further criminal proceedings, the court may impose one or more of the following conditions of release:
- (1) Posting of bond in an amount deemed adequate to guarantee the appearance of the defendant throughout the criminal proceedings;
  - (2) Postponing release until after a further “cooling off” period not to exceed one hundred twenty (120) hours;
  - (3) An order to commit no further acts of domestic violence or exhibit any assaultive behavior;
  - (4) An order not to contact, harass, annoy, telephone, or otherwise communicate, directly or indirectly, with the alleged victim, the alleged victim’s family or household members, or any witness to the alleged act of domestic violence, except that essential contact may be made through application to the court;

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<sup>2</sup> Editor’s Note: This motion also provided for the renumbering of former §§ 329 through 358 as §§ 330 through 359, respectively.

- (5) An order to vacate, or stay away from the victim's residence, even if it is a shared residence or principally owned by the alleged perpetrator;
- (6) An order to stay away from any well-defined geographic area, including, but not limited to, residence, workplace, school or daycare of the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence;
- (7) An order prohibiting the possession or use of any firearm or other weapon specified by the court, and to turn such weapon over to law enforcement for safekeeping;
- (8) An order prohibiting the person from possessing or consuming alcohol or controlled substances and from being at any place where alcohol is served or being consumed. The court may order physical, mechanical, chemical or electronic testing to assure compliance.
- (9) Any other order the court believes is reasonably necessary to protect and ensure the safety of the alleged victim or family or household member, or to ensure the appearance of the person at subsequent court proceedings.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

### **§ 332 - Notifying the Defendant of Pre-trial Release Conditions**

- (a) When pre-trial release conditions are imposed on an alleged perpetrator, the court shall issue a written order containing the conditions of release and a statement, in either bold face type or capital letters, that substantially informs the released person that:

“Violation of this order is a criminal offense and will subject the violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate it. You have the sole responsibility to fully comply with all of the order's provisions.”

- (b) The court shall immediately distribute a copy of the order to law enforcement and direct law enforcement to provide a copy to the alleged perpetrator 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 had notice of the conditions.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

### **§ 333 - Duration of Pre-trial Release Conditions**

If a criminal complaint is not filed prior to the in-custody hearing or by the arraignment date, then any condition of pre-trial release ordered by the court shall expire.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal

Council Special Session on October 31, 2018.

### **§ 334 - Notifying the Victim of Pre-trial Release**

When a person who has been arrested for a crime under this code is released from custody, the Court shall direct law enforcement to use all reasonable means to notify the victim and/or the victim's advocate that the person is being released and to furnish the victim with a copy of the conditions of release.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

### **§ 335 - Mandatory Arrest for Violation of Pre-trial Release Conditions**

- (a) When a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed by the court after an arrest or detention for allegedly committing a domestic violence crime, the officer shall, without a warrant, arrest the alleged violator.
- (b) A person arrested for violation of pre-trial release conditions shall not be released from detention until seventy-two (72) hours after arrest unless a court hearing is held prior to the expiration of the seventy-two-hour period.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 336 - Trial Court Handling of Domestic Violence Cases**

- (a) Because of the serious nature of domestic violence, the court in domestic violence cases shall not:
  - (1) Dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;
  - (2) Require proof that either party is seeking dissolution of marriage prior to instigation of criminal proceedings;
  - (3) Disclose the alleged victim's location to any person upon a showing that there is a possibility of further violence. When the victim's location is not disclosed, any communication with the victim by the attorney of the defendant, or any other person, shall be conducted through the victim's advocate or the court.
  - (4) Subject a victim to a lie-detector test.
  - (5) Dismiss a criminal case involving domestic violence for the sole reason that civil settlement or compromise is reached. Evidence of a civil settlement or compromise

shall not be admissible in the criminal proceeding as evidence of consciousness of guilt or innocence, or an admission against interest. It shall not be used to impeach a victim's testimony.

- (6) Order peacemaking or mediation in cases involving domestic violence.
- (b) When the court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why any witnesses are unavailable and the reasons the case cannot be prosecuted. Any dismissal of a complaint by the court, for any reason other than insufficient evidence, may be appealed by the Tribe or the victim to the GTB Appellate Court.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

## ***Subchapter E: Evidence***

### **§ 337 - Rules of Evidence**

- (a) Spousal Privileges Not Applicable. In any proceeding under this code where a spouse is the alleged victim of domestic violence, the privilege of confidential communications between spouses and the testimonial privilege of spouses shall not apply to protect the defendant or respondent.
- (b) Victim/Advocate Privilege. In any proceeding under this code, a victim of domestic violence may refuse to disclose, and may prevent an advocate from disclosing, confidential communications between the victim and advocate and written records and reports concerning the victim. The victim/advocate privilege shall not, however, relieve the advocate of the mandatory duty to report child abuse and shall not apply when the advocate is required to give evidence in child abuse proceedings.
- (c) Evidence concerning Domestic Violence. In any proceeding under this code, the Court may admit into evidence without regard to any hearsay rule any of the following: expert testimony, learned treatise, articles, videos, or other relevant and reliable evidence concerning or examining the impact of domestic violence on its victims.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 338 - Statement by Declarant Relating to Infliction or Threat of Physical Injury; Admissibility; Notice**

- (a) Evidence of a statement by a declarant is admissible if all of the following apply:

- (1) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.
  - (2) The action in which the evidence is offered under this section is an offense involving domestic violence.
  - (3) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than five (5) years before the filing of the current action or proceeding is inadmissible under this section.
  - (4) The statement was made under circumstances that would indicate the statement's trustworthiness.
  - (5) The statement was made to a law enforcement officer.
- (b) Circumstances relevant to the issue of trustworthiness include, but are not limited to, all of the following:
- (1) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.
  - (2) Whether the declarant has bias or motive for fabrication of the statement, and the extent of any bias or motive.
  - (3) Whether the statement is corroborated by evidence other than statements that are admissible only under this section.
- (c) To offer evidence under this section, the prosecuting attorney must disclose the evidence, including the statements of witnesses or summary of the substance of any testimony that is expected to be offered, to the defendant not less than fifteen (15) days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.
- (d) Nothing in this section shall be construed to abrogate any privilege conferred by law.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

**§ 339 - Defendant's Commission of Other Acts of Domestic Violence; Admissibility; Notice**

- (a) Except as provided in Subsection (d) in a criminal action in which the defendant is accused of any offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant.
- (b) If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than



fifteen (15) days before the scheduled date of the trial or at a later time as allowed by the Tribal Court for good cause shown.

- (c) This section does not limit or preclude the admission or consideration of evidence under any other statute, rule of evidence, or case law.
- (d) Evidence of an act occurring more than ten (10) years before the charged offense is inadmissible under this section, unless the Tribal Court determines that admitting this evidence is in the interest of justice.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

#### **§ 340 - Reasons for Dismissal Required in Court File**

- (a) When a prosecutor moves to dismiss charges against a defendant accused of domestic violence, or when the court dismisses such charges, the specific reasons for the dismissal must be recorded in the court file.
- (b) If the dismissal is based on the unavailability of the alleged victim or any witness, the prosecutor shall indicate the specific reason why such person is unavailable and why the case cannot be prosecuted.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

#### **§ 341 - Firearms Disqualification; Purpose**

Consistent with federal law, 18 U.S.C. § 922, the purpose of this section is to prohibit any person who has been convicted of a crime of domestic violence under tribal, state or federal law, or any person who is subject to an order of protection based upon a finding that the person presents a credible threat of violence to the victim, from possessing a firearm.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

#### **§ 342 - Firearms Prohibition**

- (a) It shall be unlawful for any person to possess, receive, or transport a firearm who:
  - (1) Is subject to a court order that:
    - (A) Was issued after a hearing of which such person received actual notice and had an opportunity to participate; and
    - (B) Restrains such person from injuring, harassing, stalking or threatening an intimate partner or family or household member or engaging in other conduct

that would place an intimate partner or family or household member in reasonable fear of bodily injury; and

- (i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or household or family member; or
  - (ii) By its terms explicitly prohibit the use, attempted use, or threatened use of physical force against such intimate partner or household or family member that would reasonably be expected to cause bodily injury.
- (2) Has been convicted in state, federal or tribal court of a crime of domestic violence.
- (3) A person subject to an order issued under Subsection (a)(1) may petition the court for suspension or termination of the order to restore firearm use privileges. The person shall have the burden of demonstrating that:
- (A) The person no longer constitutes a threat against any household or family member; and
  - (B) Prior to issuance of the order, that the person used a firearm for subsistence hunting.
- (b) If the court finds that the person has met the requirements of Subsection (a)(3)(a) and (b), the court may exercise its discretion to allow the person to use a firearm for subsistence hunting during authorized hunting seasons.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007. On

### **§ 343 - Penalty**

Violating the firearms requirement set forth in this chapter is a crime of domestic violence. Any related sentences for a violation of this section and any other section of this code shall be served consecutively.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

## ***Subchapter F: Personal Protection Orders***

### **§ 344 - Civil Action**

There shall exist a civil action known as a “Petition for a Personal Protection Order.”

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal

Council Special Session on October 31, 2018.

### **§ 345 - Venue**

- (a) A petition may be filed in any of the following circumstances:
- (1) The petitioner resides or is domiciled within the six-county service area;
  - (2) The respondent resides or is domiciled within the six-county service area;
  - (3) The alleged act of domestic violence occurred within the six-county service area;
  - (4) A communication that allegedly constitutes domestic violence was either transmitted or received within the six-county service area.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 346 - Effects of Other Proceedings Pending**

A petition for an order of protection may be filed regardless of whether other court proceedings between the parties have been filed or criminal charges have been filed against the alleged abuser.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

### **§ 347 - Who May File a Petition for Order of Protection**

- (a) Any one of the following may file a petition for an order of protection on behalf of a victim of domestic violence or stalking:
- (1) Any person who alleges that he or she has been the victim of domestic violence or stalking;
  - (2) A family or household member, or a next friend, on behalf of a victim under the age of eighteen (18) years;
  - (3) A family or household member, or next friend, on behalf of a victim who is prevented from doing so by hospitalization, by physical or mental disability, or by fear;
  - (4) Family Services Department on behalf of a victim;
  - (5) The Tribal Prosecutor.
- (b) Family household members, including adults, may file a joint petition; provided, all adults included in the petition sign the petition.

- (c) Persons under the age of eighteen (18) must have a parent, guardian, or next friend file the petition unless the parent or guardian is the alleged abuser or unless the youth is emancipated. If the parent or guardian is the alleged abuser, an adult relative or friend may file on behalf of the youth. If the youth is emancipated, the youth may file on his or her own behalf.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

### **§ 348 - Contents of Petition**

- (a) A petition for an order of protection shall include the following information:
- (1) The name and address where the petitioner would like to receive notices from the court;
  - (2) An allegation that domestic violence or stalking has taken place;
  - (3) The names, ages, and tribal status of all persons known to the petitioner to be in need of protection;
  - (4) The name, age, tribal status and address of the alleged abuser, and his or her relationship to each victim;
  - (5) A signed statement or separate affidavit filed with the petition stating in the petitioner's own words the specific facts and circumstances of the alleged domestic violence, including whether the petitioner believes that he or she is in danger of further domestic violence;
  - (6) A statement listing each known civil or criminal action or proceeding, past and present, involving both parties or the custodial or residential placement of a child of the parties; the court of record for each action or proceeding; and any identifying information which may enable the court to access the court records regarding those proceedings.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

### **§ 349 - Omission of Petitioner's Address in Petition**

A petitioner may omit his or her address from the petition and any other documents filed with the court. If such information is omitted, and is determined by the court to be needed to advance the proceedings, the court may order that disclosure be made orally and in chambers, out of the presence of the respondent. If the court orders disclosure, the information shall be kept under seal.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 350 - Filing Fees**

A petition for an order of protection shall be filed with the Court Clerk. There shall be no fee for filing the petition.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 351 - Temporary Order of Protection**

- (a) When the court finds probable cause to believe that there is a danger of domestic violence to the petitioner, based on an allegation that domestic violence has occurred or is about to occur, the court may enter a temporary order of protection on an ex-parte basis, without notice to the respondent, pending a full hearing.
- (b) A temporary order may be issued by telephone or fax. A telephone order shall be followed by a written order from the Tribal Judge mailed or faxed within three (3) working days from the date of the telephone order.
- (c) Following entry of a temporary order of protection, the court shall:
  - (1) Set a date for a hearing on the petition for an order of protection in accordance with this section.
  - (2) Cause the order to be delivered to the GTB Tribal Police Department for enforcement purposes and for service upon the respondent.
  - (3) Transmit a copy of the order to any additional appropriate law enforcement or other agency designated by the petitioner.
- (d) If a hearing is not held within the time required by § 352, the temporary order shall expire unless it is re-issued by the court for good cause.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

**§ 352 - Notice of Hearing**

Upon receipt of a petition for an order of protection, the court shall set a date for hearing to be held within fifteen (15) days or at the next scheduled court date for civil cases, whichever is earlier.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

**§ 353 - Service of Process**

- (a) A petition, notice of hearing, and temporary order of protection issued pursuant to this subsection shall be served on the respondent at least seventy-two (72) hours before the

hearing. If service has not been made within seventy-two (72) hours of the hearing, the court may set a new hearing date and re-issue a temporary order of protection as appropriate.

- (b) Service may be made by tribal law enforcement or by any officer of the court by handing a copy to the respondent.
- (c) If, after a diligent effort has been made to personally serve the respondent, personal service cannot be made, the court may order that the respondent be served by certified mail, return receipt requested. Such service is complete upon delivery of the mail.
- (d) If the certified mail is returned with a notation by postal authorities that the respondent refused to accept the mail, or that the mail was unclaimed, the court may order that the respondent be served by mailing a copy by first class mail to the respondent at his or her last and best known address. Service by first class mail is deemed effective three (3) days after mailing.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 354 - Order of Protection**

- (a) Upon and after hearing, if the court finds, by a preponderance of the evidence, that domestic violence or stalking has occurred or is likely to occur in the future, the court may issue an order of protection containing provisions:
  - (1) Prohibiting the respondent from committing or threatening to commit acts of domestic violence against the petitioner or the petitioner's family or household members.
  - (2) Prohibiting the respondent from contacting, harassing, annoying, telephoning, or otherwise communicating with the petitioner, the petitioner's family or household members, directly or indirectly, through friends, relatives or co-workers.
  - (3) Requiring the respondent to vacate, or stay away from, the petitioner's residence, even if it is a shared residence or principally owned by the respondent.
  - (4) Requiring the respondent to stay away from any well-defined geographic area, including, but not limited to, a residence, workplace, school or daycare of the petitioner or the petitioner's family or household members.
  - (5) Prohibiting the respondent from possessing or using any firearm or other weapon specified by the court, and ordering the respondent to turn such weapons over to law enforcement for safekeeping. In exercising its discretion, the court shall give due consideration to 14 GTBC Chapter 7.
  - (6) Establishing possession of the parties' residence and use of vehicles or other essential personal effects, regardless of ownership, and directing law enforcement

to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the residence, vehicle, and other personal effects or to supervise the petitioner's or respondent's removal of personal belongings.

- (7) Prohibiting the destruction, liquidation or disposal of any and all joint assets or property and any and all specific assets and property of the petitioner.
- (8) Granting temporary custody of any minor children to the petitioner and/or establishing visitation rights. Any temporary custody order shall provide for child support and temporary support of the person having custody of the children in amounts deemed proper by the court.
- (9) Ordering the respondent to timely pay any existing debts of the respondent, including mortgage or rental payment necessary to maintain the petitioner in his/her residence.
- (10) Ordering the respondent to pay for the support of the petitioner and any minor children if the respondent is found to have a duty to support the petitioner or minor children.
- (11) Ordering the respondent to reimburse the petitioner for any expenses associated with the domestic violence incident, including, but not limited to, medical expenses, counseling, shelter, repair or replacement of damaged property, court costs and attorney fees.
- (12) Ordering the respondent to attend and successfully complete one or more programs, including but not limited to, a domestic violence perpetrator program, mental health counseling, substance abuse treatment, and parenting classes, and to execute all forms and releases that are necessary for the court to be kept apprised of the defendant's compliance with the court's order.
- (13) Any other order the court believes is reasonably necessary to protect and ensure the safety of the alleged victim or family or household member.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 355 - Service of Order of Protection**

- (a) All orders of protection not received in court shall be served by law enforcement on the respondent by delivering a copy personally to the respondent.
- (b) The clerk of the court shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to law enforcement for service upon the respondent. Service of an order under this chapter shall take precedence over the service of other documents, unless they are of similar emergency nature.

- (c) If law enforcement cannot complete service on the respondent within ten (10) days, the petitioner shall be notified. The petitioner shall provide information sufficient to permit notification if possible.
- (d) If the order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.
- (e) Any person who serves an order of protection upon a respondent shall file an affidavit with the court stating the date, time, place, and manner of service, and any other facts necessary for the court to determine if service has been made.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

#### **§ 356 - Duration of Order/Motion to Renew**

- (a) An order of protection shall remain in effect for a period of two (2) years unless it is terminated or modified by the court prior to that time. The court may make an order of protection for a longer period of time or may make a permanent order of protection if the court determines that it is necessary for the protection of the victim and the victim's family.
- (b) A petitioner may file a written motion to renew an order of protection at any time within three (3) months prior to the expiration of the order. The motion shall be supported by a declaration stating why the petitioner believes the order should be renewed. The motion shall be served and a hearing scheduled and conducted according to the procedures set forth in this chapter.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

#### **§ 357 - Request to Terminate or Modify Order by Petitioner**

- (a) A temporary modification may be made ex-parte upon a showing of immediate danger to the petitioner or a member of the petitioner's family or household. However, an order of protection shall not be dismissed until the following has been completed:
  - (1) The petitioner will attend a protection order dismissal session at the local Women's Resource Center or other agency providing this service; and
  - (2) A full court hearing is held and the request to dismiss the protection order is determined by the Judge.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007.

#### **§ 358 - Request to Modify Order by Respondent**



- (a) A respondent may request a modification of an order of protection if the order either:
- (1) Removes the respondent from a residence that he or she owns;
  - (2) Requires the respondent to stay away from a specific residence, school, place of employment or other location;
  - (3) Grants the petitioner possession and use of automobile and other essential personal effects;
  - (4) Grants the petitioner temporary custody of a child or children;
  - (5) Provides or denies the respondent visitation with his or her minor child or children;
  - (6) Requires the respondent to make payments to the petitioner, the court or another party.
- (b) Upon receiving the respondent's request, the court shall set a hearing date as soon as practicable, but in no event later than fifteen (15) days after the next day on which court is in session following the filing of respondent's request. Notice of the request for modification and the hearing date shall be served on the petitioner in accordance with § 355.
- (c) At the hearing, the court shall consider whether any less-restrictive alternatives may be appropriate under the circumstances. The court may modify the order where the order works an unreasonable hardship upon the respondent, provided that the safety of the victim and any family or household member remains the primary consideration.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

### **§ 359 - Domestic Violence Full Faith and Credit**

Consistent with federal law codified at 18 U.S.C. § 2265, Michigan Court Rule 2.615, the Enforcement of Tribal Judgments, and Chapter X of the GTB Court Rules, the courts of the Grand Traverse Band shall honor and enforce domestic violence protection orders issued by other jurisdictions, including tribal, federal and state courts. Chapter X of the Tribal Court Rules obligates the Tribal Court to grant full faith and credit to judgments of other tribal courts, Michigan courts, and federal courts. The Tribe finds that federal law, 18 U.S.C. § 2265, requires state and tribal courts to honor protection orders entered by each court. Moreover, MCR 2.615 (Enforcement of Tribal Judgments) provides that judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts are recognized by all state courts of Michigan.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

***Subchapter G: Special Domestic Violence Criminal Jurisdiction*****§ 360 - Definitions**

- (a) In this subsection:
- (1) Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - (2) Domestic Violence means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic or family violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.

History: Enacted by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.<sup>3</sup>

**§ 361 - Special Domestic Violence Criminal Jurisdiction**

- (a) Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by 25 U.S.C. §§ 1301 and 1303, the powers of self-government of GTB as a participating tribe include GTB's inherent power as a federally recognized and affirmed Indian tribe, to exercise domestic violence criminal jurisdiction over all persons.
- (b) Rights of defendants. In all proceedings in which the Tribal Court exercises special domestic violence criminal jurisdiction as a participating tribe, all rights afforded by GTB law and all those enumerated in the Indian Civil Rights Act, 25 U.S.C. §§ 1301 through 1304 shall apply to all defendants. In the event of any inconsistency, 25 U.S.C. § 1304 shall apply.
- (c) Petitions to stay detention.
- (1) The privilege of the writ of habeas corpus shall be available to any person to test the legality of his or her detention by order of the GTB and may petition the Tribal Court to stay further detention pending the habeas proceeding.
  - (2) A Court shall grant a stay if the Court:
    - (A) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

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<sup>3</sup> Editor's Note: This motion also provided for the renumbering of former § 359 as § 363.

- (B) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the Court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

History: Enacted by Tribal Council motion at a Tribal Council Special Session on October 31, 2018; and technical amendment approved on December 19, 2018, at Tribal Council Regular Session.

### **§ 362 - Criminal Conduct Applicable**

- (a) The Grand Traverse Band may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:
  - (1) Domestic violence and dating violence. An act of domestic violence or dating violence that occurs in GTB's Indian country.
  - (2) Violations of protection orders. An act that:
    - (A) Occurs in the GTB's Indian country; and
    - (B) Violates the portion of a protection order that:
      - (i) Prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
      - (ii) Was issued against the defendant;
      - (iii) Is enforceable by GTB; and
      - (iv) Is consistent with 18 U.S.C. § 2265(b).
- (b) Exceptions.
  - (1) Victim and defendant are both non-Indians.
    - (A) In general. The GTB may not exercise special domestic violence criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.
    - (B) Definition of victim. In this subsection and with respect to a criminal proceeding in which GTB exercises special domestic violence criminal jurisdiction based on a violation of a protection order, the term "victim" means a person specifically protected by a protection order that the defendant allegedly violated.

- (2) Defendant lacks ties to GTB. The GTB may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant:
  - (A) Resides in the Indian country of the GTB; or
  - (B) Is employed in the Indian country of the GTB; or
  - (C) Is a spouse, intimate partner, or dating partner of:
    - (i) A member of the GTB; or
    - (ii) An Indian who resides in the Indian country of the GTB.

History: Enacted by Tribal Council motion at a Tribal Council Special Session on October 31, 2018; and amended by Tribal Council motion on November 20, 2019, at a Tribal Council Regular Session.

### ***Subchapter H: HIV/AIDS Testing***

#### **§ 363 - HIV Testing Provision for Victims of Domestic Violence**

- (a) Victims of sexual assault or abuse
  - (1) A victim of sexual assault or abuse may request Grand Traverse Band Tribal Court to order HIV/AIDS testing of the person who has allegedly committed the offense of sexual assault or abuse, providing the victim can demonstrate the following:
    - (A) The defendant has been charged with the offense in Grand Traverse Band Tribal Court, and, if the defendant has been arrested without a warrant, a probable cause determination has been made;
    - (B) The test for the causing agent for acquired immune deficiency syndrome is requested by the victim after appropriate counseling; and
    - (C) The test would provide information necessary for the health of the victim of the alleged offense and the court determines that the alleged conduct of the defendant created a risk of transmission, as determined by the Center for Disease Control, of the causing agent for acquired immune deficiency syndrome to the victim.
  - (2) If the test is ordered by Grand Traverse Band Tribal Court, the defendant will be tested not more than forty-eight (48) hours from the incident or time of indictment.
  - (3) The defendant will be given appropriate referrals for testing and will be responsible for any costs incurred by the testing.
  - (4) The test results will be provided to the victim and the defendant.
- (b) Follow-up

- (1) Follow-up testing may be ordered by Grand Traverse Band Tribal Court to occur six (6) months and twelve (12) months following the first test.
  - (2) If the charges are acquitted or dismissed against the defendant the follow-up testing will be suspended.
- (c) Incompetence
- (1) If the victim is found to be incompetent, the guardian or legal caregiver may request HIV/AIDS testing for the victim.
  - (2) If the victim is found to be incompetent the guardian or legal caregiver will be provided with the test results along with the defendant.
- (d) Confidentiality of Test The results of any test ordered by the Grand Traverse Band Tribal Court shall be disclosed only to the victim or, where the Grand Traverse Band Tribal Court deems appropriate, to the parent or legal guardian of the victim, and to the person tested. The victim may disclose the test results only to a medical professional, counselor, family member or sexual partner(s) the victim may have had since the attack. Any such individual to whom the test results are disclosed by the victim shall maintain the confidentiality of such information.
- (e) Disclosure The Grand Traverse Band Tribal Court shall issue an order to prohibit the disclosure by the victim of the results of any test performed under this subsection to anyone other than those mentioned in Subsection (d). The contents of the Grand Traverse Band Tribal Court proceeding and test results pursuant to this section shall be sealed. The results of such test performed on the defendant under this section shall not be used as evidence in any criminal trial.
- (f) Contempt for disclosure Any person who discloses the results of a test in violation of this subsection may be held in contempt of court.
- (g) Non-Native Defendant If the defendant is non-native the charging decision will be made by the state or federal authorities for investigation, and all state or federal laws regarding HIV/AIDS testing will apply.

History: Tribal Act #07-25.1862, enacted by Tribal Council on December 19, 2007; and amended by Tribal Council motion at a Tribal Council Special Session on October 31, 2018.

## **Chapter 4 - Sex Offender Registration Code**

### **§ 4.01 - General Matters**

- (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) (Title I of Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.
- (c) Need. Violent crime in Indian Country is more than twice the national average. On some reservations it is twenty (20) times the national average. An astounding thirty percent (30%) of Indian and Alaska Native women will be raped in their lifetimes. Tribal nations are disproportionately affected by violent crime and sex offenses in particular from both Indian and non-Indian perpetrators; consequently, the conduct and presence of convicted sex offenders in Indian Country threatens the political integrity, economic security, health and welfare of tribal nations even to the point of imperiling the subsistence of tribal communities.
- (d) Intent. The GTB declares the intent of the Tribe is to use the tiering for sex offenders and sex offenses as provided in the State of Michigan Sex Offender Registration Act, Act 295 of 1994 (as amended).
- (e) Creation of Registries.
  - (1) Sex Offender Registry. There is hereby established a sex offender registry, which the Michigan State Police (MSP), based on information provided by the Grand Traverse Band (GTB), and as documented by a cooperative agreement (Memorandum of Agreement) between MSP and GTB dated June 25, 2009, shall maintain and operate pursuant to the provisions of this code, as amended.
  - (2) Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, which the MSP/State of Michigan and the GTB shall maintain and operate pursuant to the provisions of this code, as amended.

History: Tribal Act #10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and amended by Tribal Council motion on January 31, 2018.

#### **§ 4.02 - Terminology and Covered Offenses**

- (a) Definitions. The definitions below apply to this GTB Code only.
  - (1) Abscond. “Abscond” means failure to register and/or to leave, flee or depart quickly and secretly and hide oneself with intent to avoid arrest or prosecution.
  - (2) Convicted Adult Offender. An adult sex offender is “convicted” for the purposes of this code if the sex offender has been subjected to penal consequences based on the conviction, regardless of how the conviction may be styled. This shall include but not be limited to convictions or juvenile adjudications in tribal, state, and federal courts.
  - (3) Convicted Juvenile Offender. A juvenile offender is “convicted” for purposes of this code if the juvenile offender is either:

- (A) Prosecuted and found guilty as an adult for a sex offense; or
  - (B) Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is fourteen (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 either (a) or (b) of Section 2241 of Title 18, United States Code], or was an attempt or conspiracy to commit such an offense.
- (4) Dru Sjodin National Sex Offender Public Website (NSOPW). The public website maintained by the Attorney General of the United States pursuant to 34 U.S.C. § 20922.
  - (5) 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. Volunteers, interns, externs, apprentices, and those providing community services of or for a tribal agency or organization are included within the definition of employee for registration purposes.
  - (6) Federal Offense. “Federal Offense” (including an offense prosecuted under Section 1152 or 1153 of Title 18 of the United States Code) under Section 1591, or Chapter 109A, 110 (other than Section 2257, 2257A, or 2258), or 117, of Title 18 of the United States Code.
  - (7) Foreign Convictions. A foreign conviction is one obtained outside of the United States.
  - (8) Homeless. “Homeless” means a person who does not have a permanent or temporary residence and who may have a temporary abode at the home of a family member or friend or at a shelter and is subject to the same registration requirements and is also required to verify their address daily with the GTBPD, even if that address is a bench on a specific street or a tent in a particular location or any such place where the sex offender frequents or stations himself during the day or sleeps at night.
  - (9) Immediate. “Immediate” and “immediately” mean within three (3) business days.
  - (10) 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 federal, military, foreign, BIA, private or contract facility, or a local or tribal “jail.” Persons under “house arrest” following conviction of a covered sex offense are required to register pursuant to the provisions of this code during their period of “house arrest.”
  - (11) Jurisdiction. The term “jurisdiction” as used in this code refers to the fifty (50) states, the District of Columbia, the five (5) principal U.S. territories, i.e., the

Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe that elects to function as registration jurisdictions under SORNA § 127.

- (12) Loiter. “Loiter” means standing or sitting idly whether in or out of a vehicle, or remaining in or around property, not their own, without permission and a legitimate reason.
- (13) Minor. The term “minor” means an individual who has not attained the age of eighteen (18) years.
- (14) National Sex Offender Registry (NSOR). The national database maintained by the Attorney General of the United States pursuant to 34 U.S.C. § 20921.
- (15) Nonmember. “Nonmember” means a person who is not a member of any federally recognized Indian tribe.
- (16) Other tribal member. “Other tribal member” means a person who is duly enrolled or is a member of a federally recognized Indian tribe other than the GTB Indian tribe.
- (17) Primary address. “Primary address” is defined as the “mailing address” of the person’s dwelling, including “physical location of the dwelling described with as much specificity as possible.”
- (18) Residence. The term “residence” means a place where a person is living or temporarily staying for more than five (5) days, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.
- (19) 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. “Residing on the reservations” shall mean any person who maintains a permanent or temporary residence, including students, temporary employees, and military personnel on assignment.
- (20) School. “School” includes but is not limited to a building, facility, or room in a building or facility designated as a place for instruction, education, teaching, learning, or academics and is a public or private daycare, childcare facility, preschool, elementary school, secondary school, trade school, professional school, or institute of higher learning where teaching, training, supervision, recreation, and/or medical services for children of any age, for the disabled, or for the elderly, or anytime care given to preschool children or to school children after school or during vacation, as at a day care center, or to the elderly, as at a social agency.
- (21) School Personnel. “School personnel” includes but is not limited to teachers, caregivers, the principal, or superintendent of schools, a member of the school board or employee or any entity working for, or rendering or exchanging any service or performing any act for or on behalf of the Tribe in any capacity full or



part time.

- (22) Secondary address. “Secondary address” is defined as a mailing address of any place where the person regularly or occasionally stays overnight, including the physical location of the place described with as much specificity as possible.
- (23) Sexual Act. The term “sexual act” means:
- (A) Contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight.
  - (B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.
  - (C) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
  - (D) The intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of eighteen (18) years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (24) Sexual Contact. The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.
- (25) Sex Offender. A person convicted of a sex offense in any state, federal, tribal, or other court is a “sex offender.”
- (26) Sex Offender Registry. The term “sex offender registry” means the registry of sex offenders, and a notification program, maintained by GTB/State of Michigan.
- (27) Sex Offense. The term “sex offense” refers to those offenses covered by the definition of “sex offense” appearing in SORNA § 111(5), and those offenses enumerated in Section 4.02(b) of this code or any other covered offense under federal, state or tribal law as stated in Title 9 of the GTB Code. “Sex Offense” generally means:
- (A) A criminal offense that has an element involving a sexual act or sexual contact with another.
  - (B) A criminal offense that is a specified offense against a minor.
  - (C) A federal offense (including an offense prosecuted under Section 1152 or 1153 of Title 18 of the United States Code) under Section 1591, or Chapter

- 109A, 110 (other than Section 2257, 2257A, or 2258), or 117, or Title 18 of the United States Code.
- (D) A 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) An attempt or conspiracy to commit an offense described in Clauses (A) through (D); or
  - (F) Any tribal offense consistent with the above Clauses (A) through (E).
- (28) SMART Office. The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 34 U.S.C. § 20945.
- (29) SORNA. The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248), 34 U.S.C. § 20911 et seq., as amended.
- (30) “Specified Offenses Against a Minor” means an offense against a minor that involves any of the following:
- (A) An offense (unless committed by a parent or guardian) involving kidnapping;
  - (B) An offense (unless committed by a parent or guardian) involving false imprisonment;
  - (C) Solicitation to engage in sexual conduct;
  - (D) Use in a sexual performance;
  - (E) Solicitation to practice prostitution;
  - (F) Video voyeurism as described in Section 1801 of Title 18 of the United States Code;
  - (G) Possession, production, or distribution of child pornography;
  - (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct; or
  - (I) Any conduct that by its nature is a sex offense against a minor.
- (31) Student. A “student” includes an intern, extern, and apprentice and is a person who enrolls in or attends either a private or public education institution, including a daycare, childcare facility, preschool, secondary school, trade, or professional school, or an institution of higher education.

- (32) Transient. “Transient” means a person who lacks residence. A transient is subject to the same registration requirements and is also required to verify their address (city, county, township, and street) daily with the GTBPD, even if that address is a bench on a specific street or a tent in a particular location or any such place where the sex offender frequents or stations himself during the day or sleeps at night.
  - (33) GTB Tribal member. “GTB Tribal Member” means a person who is duly enrolled with the GTB Indian tribe pursuant to Article II of the Tribal Constitution.
  - (34) Tier I Sex Offender. A “Tier I sex offender,” or a sex offender designated as Tier I is one that has been convicted of a Tier I sex offense as defined in Section 4.03(a) of this code.
  - (35) Tier II Sex Offender. A “Tier II sex offender,” or a sex offender designated as Tier II is one that has been either convicted of a Tier II sex offense as defined in Section 4.03(b) of this code, or who is subject to the recidivist provisions of 4.03(b)(1).
  - (36) Tier III Sex Offender. A “Tier III sex offender,” or a sex offender designated as Tier III is one that has been either convicted of a Tier III sex offense as defined in Section 4.03(c), or who is subject to the recidivist provisions of 4.03(c)(1) of this code.
  - (37) Tribal Lands. “Tribal Lands” includes “jurisdiction” and means the reservation, trust lands, tribal property owned by the tribal jurisdiction and other commonly known tribal lands within the primary jurisdiction in fee or trust regardless of location.
  - (38) Visitor. Any sex offender who does not live, work or attend classes as a student who enters onto a GTB reservation.
- (b) Covered Offenses. Individuals who reside or are visiting on property within the exterior boundaries of tribal lands, regardless of location; are employed within tribal lands; or who attend school on tribal lands, that have been convicted of any of the following offenses, are subject to the requirements of this code:
- (1) Michigan Offenses, Act 295 of 1994 (as amended):
    - (A) MCL 750.10a. Sexually delinquent person.
    - (B) MCL 750.145a. Accosting, enticing or soliciting child for immoral purposes.
    - (C) MCL 750.145b. Accosting, enticing or soliciting child for immoral purposes; second or subsequent offenses.
    - (D) MCL 750.145c. Child sexually abusive activity or material; offenses; penalties; application of section; affirmative defense; expert testimony; reporting by commercial film or photographic print processors; availability

of evidence to defendants; local ordinances.

- (E) MCL 750.145d. Internet use; restrictions, purpose of committing crime against minor.
  - (F) MCL 750.158. Crime against nature or sodomy; penalty.
  - (G) MCL 750.335a. Indecent exposure.
  - (H) MCL 750.338. Gross indecency; between male persons.
  - (I) MCL 750.338a. Gross indecency; between female persons.
  - (J) MCL 750.338b. Gross indecency; between male and female persons.
  - (K) MCL 750.349b. Unlawful imprisonment.
  - (L) MCL 750.448 Soliciting and accosting.
  - (M) MCL 750.455. Pandering.
  - (N) MCL 750.349. Kidnapping.
  - (O) MCL 750.350. Kidnapping; child under 14.
  - (P) MCL 750.520b. Criminal sexual conduct in first degree.
  - (Q) MCL 750.520c. Criminal sexual conduct in second degree.
  - (R) MCL 750.520d. Criminal sexual conduct in third degree.
  - (S) MCL 750.520e. Criminal sexual conduct in fourth degree.
  - (T) MCL 750.520g. Assault with intent to commit criminal sexual conduct.
  - (U) MCL 750.539j. Surveillance, photographing, etc., of individual clad only in undergarments, genitalia or buttocks of individual, or unclad breasts of female under circumstances in which individual would have reasonable expectation of privacy; distribution, dissemination, or transmission of recording, photograph, or visual image obtained in violation of section; other offenses.
- (2) Tribal offenses. Any tribal offense under a law of a tribal sovereign nation that is substantially similar to the offenses listed in the Michigan Sex Offenders Registration Act, Act 295 of 1994 (as amended).
- (3) Federal Offenses. Any federal offense under a law of the United States specifically enumerated in 34 U.S.C. § 20911 that is substantially similar to the offenses listed

in the Michigan Sex Offenders Registration Act, Act 195 of 1994 (as amended). A conviction for any of the following, and any other offense hereafter included in the definition of “sex offense” at 34 U.S.C. § 20911(5):

- (A) 18 U.S.C. § 1591 (sex trafficking of children);
- (B) 18 U.S.C. § 1801 (video voyeurism of a minor);
- (C) 18 U.S.C. § 2241 (aggravated sexual abuse);
- (D) 18 U.S.C. § 2242 (sexual abuse);
- (E) 18 U.S.C. § 2243 (sexual abuse of a minor or ward);
- (F) 18 U.S.C. § 2244 (abusive sexual contact);
- (G) 18 U.S.C. § 2245 (offenses resulting in death);
- (H) 18 U.S.C. § 2251 (sexual exploitation of children);
- (I) 18 U.S.C. § 2251A (selling or buying of children);
- (J) 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);
- (K) 18 U.S.C. § 2252A (material containing child pornography);
- (L) 18 U.S.C. § 2252B (misleading domain names on the Internet);
- (M) 18 U.S.C. § 2252C (misleading words or digital images on the Internet);
- (N) 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the U.S.);
- (O) 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);
- (P) 18 U.S.C. § 2422 (coercion and enticement of a minor for illegal sexual activity);
- (Q) 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 (Mann Act)];
- (R) 18 U.S.C. § 2424 (failure to file factual statement about an alien individual);
- (S) 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

- (4) 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, or New Zealand that is substantially similar to the offenses listed in the Michigan Sex Offenders Registration Act, Act 295 of 1994 (as amended). A foreign conviction is not a sex offense for the purposes of this code unless it was either:
  - (A) Obtained under the laws of Canada, the United Kingdom, Australia, or New Zealand; or
  - (B) Under the laws of any foreign country, when the United States' State Department, in its country reports on human rights practices and has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial, including ensuring sufficient safeguards for fundamental fairness and due process in that country during the year in which the conviction occurred.
- (5) Offenses Involving Consensual Sexual Conduct. An offense involving consensual sexual conduct is not a sex offense for the purposes of this code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least thirteen (13) years old and the offender was not more than four (4) years older than the victim.
- (6) Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note).
- (7) Juvenile Offenses or Adjudications. The term "convicted" or a variant thereof, used with respect to a sex offense includes adjudicated delinquent as juvenile for that offense, but only if the offender is fourteen (14) years of age or older at the time of the offense and that offense adjudicated was comparable to or more severe than aggravated sexual abuse (as codified in 18 U.S.C. § 2241) or was an attempt or conspiracy to commit such an offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.
- (8) Jurisdiction Offenses. Any sex offense committed in any state, local and tribal jurisdictions, including this tribe that involves:
  - (A) Any type or degree of genital, oral, or anal penetration;
  - (B) Any sexual touching of or sexual contact with a person's body, either directly or through the clothing;
  - (C) Kidnapping of a minor;
  - (D) False imprisonment of a minor;
  - (E) 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;
- (F) Use of a minor in a sexual performance;
  - (G) Solicitation of a minor to practice prostitution;
  - (H) Possession, production, or distribution of child pornography;
  - (I) 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 below eighteen (18) years of age at the time of the offense;
  - (J) Any conduct that by its nature is a sex offense against a minor; or
  - (K) Any federal offenses similar to those outlined in Section 4.02(b)(3):
    - (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).

History: Tribal Act #10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

### § 4.03 - Tiered Offenses

- (a) Tier I Offenses.
  - (1) Sex Offenses. A Tier I offense includes an element involving a sexual act or sexual contact with another or any sex offense, for which a person has been convicted in a state, local, foreign, and/or tribal jurisdiction, or an attempt or conspiracy to commit such an offense that is not a Tier II or Tier III offense.
  - (2) Tribal Offenses. A Tier I offense includes an element involving a sexual act or sexual contact with another or any sex offense, for which a person has been convicted in a state, local, foreign, and/or tribal jurisdiction, or an attempt or

conspiracy to commit such an offense under the tribal code that is not a Tier II or Tier III offense.

- (3) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered a conviction for a Tier I offense:
    - (A) 18 U.S.C. § 2252A (receipt or possession of child pornography);
    - (B) 18 U.S.C. § 2252B (misleading domain names on the Internet);
    - (C) 18 U.S.C. § 2252C (misleading words or digital images on the Internet);
    - (D) 18 U.S.C. § 2424 (failure to file factual statement about an alien individual); and
    - (E) 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).
  - (4) Certain Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 4.03(a)(1), (2), or (3) shall be considered a Tier I offense.
- (b) Tier II Offenses.
- (1) Recidivism and Felonies. Unless otherwise covered by a Tier III offense, any sex offense that is not the first sex offense for which a person has been convicted in a state, local, foreign, and/or tribal jurisdiction, and is an offense punishable by more than one (1) year imprisonment, is considered a Tier II offense.
  - (2) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered a conviction for a Tier II offense:
    - (A) 18 U.S.C. § 1591 (sex trafficking by force, fraud or coercion);
    - (B) 18 U.S.C. § 2252A (production or distribution of material containing child pornography);
    - (C) 18 U.S.C. § 2423(b) (travel with the intent to engage in illicit sexual conduct with a minor); and
    - (D) 18 U.S.C. § 2423(c) (engage in illicit conduct in foreign places).
  - (3) Certain Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 4.03(b)(1), (2), or (3) shall be considered a Tier II offense.



- (c) Tier III Offenses.
- (1) Recidivism and Felonies. Any sex offense that is punishable by more than one (1) year in jail where the offender has at least one (1) prior conviction for a Tier II sex offense, or has previously become a Tier II sex offender, is a Tier III offense.
  - (2) General Offenses. A Tier III offense includes any sex offense for which a person has been convicted in a state, local, foreign, and/or tribal jurisdiction, or an attempt or conspiracy to commit such an offense that involves:
    - (A) Non-parental kidnapping of a minor;
    - (B) A sexual act with another by force or threat;
    - (C) A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate; or
    - (D) Sexual contact with a minor twelve (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.
  - (3) Offenses Involving Minors. A Tier III offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to Section 4.02(b)(4) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography, or an attempt or conspiracy to commit such an offense that involves:
    - (A) The use of minors in prostitution, including solicitations;
    - (B) Enticing a minor to engage in criminal sexual activity;
    - (C) Sexual contact with a minor thirteen (13) years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body;
    - (D) The use of a minor in a sexual performance; or
    - (E) The production or distribution of child pornography.
  - (4) Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered conviction for a Tier III offense:
    - (A) 18 U.S.C. § 1801 (video voyeurism of a minor);
    - (B) 18 U.S.C. § 2241 (aggravated sexual abuse);
    - (C) 18 U.S.C. § 2242 (sexual abuse);

- (D) 18 U.S.C. § 2243 [sexual abuse of a minor or ward where the victim is twelve (12) years of age or younger];
  - (E) 18 U.S.C. § 2244 [abusive sexual contact, victim under thirteen (13)];
  - (F) 18 U.S.C. § 2245 (offenses resulting in death);
  - (G) 18 U.S.C. § 2251 (sexual exploitation of children);
  - (H) 18 U.S.C. § 2251A (selling or buying of children);
  - (I) 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor);
  - (J) 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States);
  - (K) 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity);
  - (L) 18 U.S.C. § 2422(a) (coercion and enticement of a minor for illegal sexual activity); and
  - (M) 18 U.S.C. § 2423(a) (transportation of minors to engage in illicit conduct).
- (5) Certain Military Offenses. Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 note) that is similar to those offenses outlined in Section 4.03(c)(1), (2), or (3) shall be considered a Tier III offense.

History: Tribal Act #10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

#### **§ 4.04 - Registration, Verification and In Person Appearance Requirements**

- (a) General Requirements.
  - (1) Duties. A sex offender covered by this code who is required to register with the Tribe pursuant to Chapter 4 shall provide all of the information detailed in this chapter to the GTBPD, which information is then transmitted to MSP pursuant to the cooperative agreement dated June 25, 2009; and the GTBPD 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 any relevant policies and procedures.
  - (2) Digitization. All information obtained under this code shall be, at a minimum, maintained by the MSP in a digitized format.
  - (3) Electronic Database. A sex offender registry shall be maintained in an electronic

database by the MSP and shall be in a form capable of electronic transmission.

(b) Where Registration Is Required.

- (1) Jurisdiction of Conviction. A sex offender must initially register with the Grand Traverse Band Tribal Court if the sex offender was convicted by the Tribal Court of a covered sex offense, regardless of the sex offender's actual or intended residency.
- (2) Jurisdiction of Incarceration. A sex offender must register with the GTBPD if the sex offender is incarcerated by the Tribe while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.
- (3) Jurisdiction of Residence. A sex offender must register with the GTBPD if the sex offender resides or is homeless or is a transient within tribal lands.
- (4) Jurisdiction of Employment. A sex offender must register with the GTBPD if he or she is employed by the Tribe in any capacity or otherwise is employed within tribal lands.
- (5) Jurisdiction of School Attendance. A sex offender must register with the GTBPD if the sex offender is a student in any capacity within tribal lands. A sex offender at any school within a jurisdiction is required to register with that jurisdiction.
- (6) Jurisdiction of Visitor. Prior to entering tribal lands, a visitor who is completing any sentence for a covered sex offense shall register with the GTBPD. Visitors are not required to register prior to patronizing the tribal gaming establishments or the Eagle Town Market, or to visiting the Tribal Court for a valid purpose.

(c) Timing of Registration.

- (1) Timing. A sex offender required to register with the Tribe under this code shall do so in person and in the following timeframe:
  - (A) If convicted by the GTB for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration.
  - (B) If convicted by the GTB but not incarcerated, no later than twenty-four (24) hours after sentencing for the registration offense.
  - (C) If a visitor has been convicted of a covered offense by the GTB or any other court, the visitor must register within seventy-two (72) hours prior to entry onto tribal lands.
  - (D) For convictions in any other court, including, but not limited to convictions in state, federal, military or foreign courts, a sex offender must appear in person to register with the GTBPD, no later than twenty-four (24) hours of establishing a residence, commencing employment, or becoming a student on

tribal lands.

- (E) If incarcerated in any tribal, state, federal, military or foreign jurisdiction, before release from imprisonment for the registration offense.
- (2) Duties of GTBPD. The GTBPD or its designees shall have policies and procedures in place to ensure the following:
- (A) That any sex offender incarcerated or sentenced by the Tribe for a covered sex offense completes their initial registration with the Tribe;
  - (B) 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;
  - (C) That the sex offender reads, or has read to them, and signs an Acknowledgement Form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement;
  - (D) That the sex offender is registered; and
  - (E) That upon entry of the sex offender's information into the registry, that information is immediately 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.
- (d) Retroactive Registration.
- (1) Retroactive Registration. The GTB shall have in place, policies and procedures to ensure the following three (3) categories of sex offenders are subject to the registration and updating requirements of this code:
- (A) Sex offenders incarcerated or under the supervision of the Tribe, whether for a covered sex offense or other crime.
  - (B) Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the Tribe's laws.
  - (C) Sex offenders reentering the justice system due to conviction for any crime.
- (2) Timing of Recapture. The GTB shall ensure recapture of the sex offenders mentioned in Section 4.04(a)(1) within the following timeframe to be calculated from the date of passage of this code:
- (A) For Tier I sex offenders, one (1) year.
  - (B) For Tier II sex offenders, one hundred eighty (180) days.

- (C) For Tier III sex offenders, ninety (90) days.
- (e) Changes in Information/Keeping Registration Current.
- (1) Jurisdiction of Residency. All sex offenders required to register in this jurisdiction shall, within twenty-four (24) hours, appear in person at the GTBPD to update any changes to their name, primary or secondary residence (including termination of residency), employment, or school attendance. All sex offenders required to register in this jurisdiction shall, within twenty-four (24) hours, inform the GTBPD in person of any changes to their temporary lodging information, vehicle information, Internet identifiers, email addresses, instant message addresses, and any other designations used in Internet communications, postings, or telephone communications or numbers. In the event of a change in temporary lodging, the sex offender and the GTBPD shall, within twenty-four (24) hours, notify the jurisdiction in which the sex offender will be temporarily staying.
  - (2) Jurisdiction of School Attendance. Any sex offender who is a student in any capacity within tribal lands, regardless of location, that changes their school, or otherwise terminates their schooling shall, within twenty-four (24) hours, appear in person at the GTBPD to update that information. The GTBPD shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, is immediately notified of the change.
  - (3) Jurisdiction of Employment. Any sex offender who is employed by the Tribe in any capacity or otherwise is employed within tribal lands, regardless of location, that changes their employment, or otherwise terminates their employment shall, within twenty-four (24) hours, appear in person at the GTBPD to update that information. The GTBPD shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, is immediately notified of the change.
  - (4) Jurisdiction of Visitor. A sex offender must register with the GTBPD if the sex offender is visiting tribal lands while completing any sentence for a covered sex offense.
  - (5) Duties of the GTBPD. With regard to changes in a sex offender's registration information, the GTBPD shall provide immediate notification to the State of Michigan/MSP, who shall notify consistently with the MOA dated June 25, 2009.
    - (A) All jurisdictions where a sex offender intends to reside, work, or attend school.
    - (B) Any jurisdiction where the sex offender is either registered or required to register.
    - (C) 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. The GTBPD shall also ensure this information is immediately updated with the MSP.

(f) Failure to Appear and Register and Absconding.

(1) Failure to Appear and Register. In the event a sex offender who is required to register due to their employment or school attendance status fails to register with the Tribe, as required by this code, the GTBPD shall take all appropriate follow-up measures, including those outlined in Section 4.04(f), and shall first make an effort to determine if the sex offender is actually employed or attending school in lands subject to the Tribe's jurisdiction. The GTBPD shall immediately inform the jurisdiction which provided notification to the Tribe of the sex offender's proposed commencement of residency, employment, or school attendance that the sex offender failed to appear for registration with the Tribe.

(2) Absconded Sex Offender. If the GTBPD receives information that a sex offender has absconded, the GTBPD shall make an effort to determine if the sex offender has actually absconded.

(A) In the event no determination can be made, the GTBPD shall ensure the appropriate law enforcement agency is notified.

(B) If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, the GTBPD shall be informed that the sex offender had failed to appear and register.

(C) If an absconded sex offender cannot be located, then the GTBPD 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) Notify the U.S. Marshals Service;

(iii) Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest;

(iv) Update the NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located; and

(v) Enter the sex offender into the National Crime Information Center Wanted Person File.

(g) Frequency and Duration of Registration Periods.

(1) Frequency. A sex offender who is required to register shall, at a minimum, appear

in person at the GTBPD for purposes of verification and keeping their registration current in accordance with the following time frames:

- (A) For Tier I offenders, once every year for fifteen (15) years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
- (B) For Tier II offenders, once every one hundred eighty (180) days for twenty-five (25) years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
- (C) For Tier III offenders, once every ninety (90) days for the rest of their lives.

(h) Requirements For In Person Appearances and Address Verification.

(1) Requirements. A sex offender who is required to appear “in person” shall comply with the following:

- (A) Photographs. At each in person verification, the sex offender shall permit the GTBPD 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.
- (C) Notification. If any new information or change of information is obtained at an in person verification, the GTBPD shall immediately notify the MSP pursuant to the MOA dated June 25, 2009.

(2) Address Verification. A sex offender who is required to register shall register at the local jurisdiction in person according the following schedule:

- (A) Tier I offenders must verify their address once a year during the month of their birth.
- (B) Tier II offenders must verify their address two (2) times per year based on the schedule below:

<b>Birthday Month</b>	<b>Reporting Months</b>
January	January and July
February	February and August
March	March and September
April	April and October
May	May and November
June	June and December
July	January and July
August	February and August

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<b>Birthday Month</b>	<b>Reporting Months</b>
September	March and September
October	April and October
November	May and November
December	June and December

- (C) Tier III offenders must verify their address four (4) times per year based on the schedule below:

<b>Birthday Month</b>	<b>Reporting Months</b>
January	January, April, July, and October
February	February, May, August, and November
March	March, June, September, and December
April	January, April, July, and October
May	February, May, August, and November
June	March, June, September, and December
July	January, April, July, and October
August	February, May, August, and November
September	March, June, September, and December
October	January, April, July, and October
November	February, May, August, and November
December	March, June, September, and December

- (D) Homeless. A sex offender who is homeless or transient shall verify the address (city, county, township, and street) daily with the GTBPD, even if that address is a temporary abode at the home of a family member or friend or at a shelter or a bench on a specific street or a tent in a particular location or any such place where the sex offender frequents or stations himself during the day or sleeps at night.

(i) **Mandatory Disclosure.**

- (1) A sex offender who volunteers for an organization where volunteers have direct, private and unsupervised contact with minors shall notify the organization of the sex offender's conviction at the time of signing up to volunteer. Such notification must be in writing to GTB or its enterprises. GTB or its enterprises which accepts volunteers must notify volunteers of this disclosure requirement upon application of the volunteer to serve or prior to acceptance of any of the volunteer's service, whichever comes first.
- (2) If GTB or its enterprises, after notification by the sex offender, as provided in Section 4.04(i)(1), accepts the sex offender as a volunteer, GTB or its enterprises must notify the parents or guardians of any minors involved in GTB or its enterprises of the sex offender's criminal record.
- (3) Any person required to register must disclose regardless of the date of conviction.



- (4) If a registered sex offender is currently volunteering for GTB or its enterprises, the sex offender must resign or notify GTB or its enterprises immediately upon receipt of notice.

History: Tribal Act #10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

#### **§ 4.05 - Required Information**

(a) Criminal History.

- (1) Criminal History. The GTBPD shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history:
  - (A) The date of all arrests;
  - (B) The date and place of all convictions, adjudication or acquittal by reason of insanity;
  - (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.

(b) Date of Birth.

- (1) Date of Birth. The GTBPD shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:
  - (A) The sex offender's actual date of birth; and
  - (B) Any other date of birth used by the sex offender.

(c) DNA Sample.

- (1) DNA. If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the GTBPD a sample of his DNA.
- (2) 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 into CODIS.

(d) Driver's Licenses, Identification Cards, Passports, and Immigration Documents.

- (1) Driver's License. The GTBPD shall obtain, and a covered sex offender shall provide, a photocopy of all of the sex offender's valid driver's licenses issued by any jurisdiction.

- (2) Identification Cards. The GTBPD shall obtain, and a covered sex offender shall provide, a photocopy of any identification card, including the sex offender's tribal enrollment card, issued by any jurisdiction.
  - (3) Passports. The GTBPD shall obtain, and a covered sex offender shall provide, a photocopy of any passports used by the sex offender.
  - (4) Immigration Documents. The GTBPD shall obtain, and a covered sex offender shall provide, a photocopy of any and all immigration documents.
- (e) Employment Information.
- (1) Employment. The GTBPD 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 or will be 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.
- (f) Finger and Palm Prints.
- (1) Finger and Palm Prints. The GTBPD shall obtain, and a covered sex offender shall provide, both finger prints and palm prints of the sex offender in a digitized format.
- (g) Internet Identifiers.
- (1) Internet Names. The GTBPD 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.
- (h) Name.
- (1) Name. The GTBPD 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 they are 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.
- (i) Phone Numbers.
- (1) Phone numbers and any other designations used by sex offenders for purposes of routing or self-identification in telephonic communications. The GTBPD 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; and
    - (B) Any and all cellular telephone numbers.
- (j) Picture.
- (1) Photograph. The GTBPD shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender.
  - (2) Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:
    - (A) Every ninety (90) days for Tier III sex offenders;
    - (B) Every one hundred eighty (180) days for Tier II sex offenders; and
    - (C) Every year for Tier I sex offenders.
- (k) Physical Description.
- (1) Physical Description. The GTBPD 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.
- (l) Professional Licensing Information.

- (1) Professional Licenses. The GTBPD 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.
- (m) Residence Address.
- (1) Address. The GTBPD 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, even if that address is a temporary abode, at the home of family members or friends or at a shelter or a bench on a specific street or a tent in a particular location or any such place where the sex offender frequents or stations himself during the day or sleeps at night.
- (n) School.
- (1) School Location. The GTBPD 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, or is employed (with or without compensation), carries on a vocation; and
    - (B) The name of each school at which the sex offender is or will be a student or employed.
- (o) Social Security Number.
- (1) Social Security. The GTBPD 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.
- (p) Temporary Lodging.
- (1) Lodging Information. The GTBPD shall obtain and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for three (3) days or more:

- (A) Identifying information of the temporary lodging locations, including addresses and names;
  - (B) The dates the sex offender will be staying at each temporary lodging location; and
  - (C) Travel Abroad. In the event the sex offender will be traveling outside of the United States for more than three (3) days, the GTBPD shall immediately notify the State of Michigan/MSP, who shall immediately provide this information to INTERPOL consistent with the MOA dated June 25, 2009.
- (q) Offense Information.
- (1) Offense Information. The GTBPD shall obtain and a covered offender shall provide:
    - (A) The text of each provision of law defining the criminal offense(s) for which the sex offender is registered;
    - (B) A brief description of the offense for which the registration is required;
    - (C) The text of each provision of law mentioned in Section (q)(1)(A) shall be cross-linked to the SORNA databases containing the text of relevant sex-related laws for all jurisdictions;
    - (D) Criminal offense history, including a copy of all sex offense judgments, criminal offense dates, age and gender of victim, and probation, parole or other release status and terms and contact information for supervisory group;
    - (E) Documentation of any treatment received or any mental abnormality or personality disorder of the person; and
    - (F) Any other information deemed necessary.
- (r) Vehicle Information.
- (1) Detailed Information. The GTBPD or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned, registered to, 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(s), to include color, make, model, and year; and

- (D) Any permanent or frequent location where any covered vehicle is kept.

History: Tribal Act #10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

**§ 4.06 - Zones of Restriction**

- (a) Prohibition Against Sex Offender Being Present on or Within a Certain Distance of School Building or School Property.
- (1) Unless exempted under Subsection (a)(2), it is unlawful for a person required to register as a sex offender under this code:
- (A) To be present in any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school-related activity when persons under the age of eighteen (18) are present in the building, on the grounds or in the conveyance; or
- (B) To loiter or work within three hundred (300) feet of a school building or real property comprising any school.
- (2) A person required to register as a sex offender who is a parent or guardian of a student attending the school and who complies with Subsection (2)(H) may be present on school property if the parent or guardian is:
- (A) Attending a conference at the school with school personnel to discuss the progress of the sex offender's child academically or socially;
- (B) Participating in child review conferences in which evaluation and placement decisions may be made with respect to the sex offender's child regarding special education services;
- (C) Attending conferences to discuss other student issues concerning the sex offender's child, such as retention and promotion;
- (D) Transporting the sex offender's child to and from school; or
- (E) Present at the school because the presence of the sex offender had been requested by the principal for any other reason relating to the welfare of the child.
- (F) Subsection (1) of this section shall not apply to a sex offender who is legally enrolled in a particular school or is participating in a school-sponsored educational program located at a particular school when the sex offender is present at that school.

- (G) In order to exercise the exemption under Subsection (2)(H), a parent or guardian who is required to register as a sex offender must notify the principal of the school of the sex offender's presence at the school unless the offender:
    - (i) Has written permission to be present from the superintendent or the school board; or
    - (ii) The principal has granted ongoing permission, in writing, for regular visits of a routine nature.
  - (H) If permission is granted by the superintendent or the school board, the superintendent or school board president must inform the principal of the school where the sex offender will be present in the school and the sex offender is responsible for notifying the principal's office upon arrival and upon departure. If the sex offender is to be present in the vicinity of children, the sex offender has the duty to remain under the direct supervision of a school official.
  - (I) Nothing in this section shall be construed to infringe upon the constitutional right of a sex offender to be present in a school building that is used as a polling place for the purpose of voting.
- (b) Prohibition of Offenders Residing Within Three Hundred (300) Feet of a School or Day Care.
- (1) Any person, who has been classified as a sex offender, shall not reside within three hundred feet (300) of any school or day care which is in existence at the time the individual begins to reside at the location.
  - (2) If such sex offender has already established a residence and a school or day care is subsequently built or placed within three hundred (300) feet of such person's residence, then such person shall, prior to one (1) week of the opening of such school, notify the Department of Public Safety where such school is located that he or she is now residing within three hundred (300) feet of such school and shall provide verifiable proof to the Department of Public Safety that he or she resided there prior to the opening of such school.
  - (3) Restrictions and prohibitions in the above subsections do not apply to an offender already residing within a school or day care restricted zone prior to the enactment and effective date of the GTB SORNA Code, or an offender who is incarcerated or is at a facility within the zone, or worked within the student safety zone prior to the effective date and offenders who intermittently or sporadically enter a zone for the purposes of work. All registered sex offenders convicted prior to enactment of the GTB SORNA Code AND still living within a restricted zone may not initiate or maintain contact with minors in the restricted zone.

History: Tribal Act #10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

**§ 4.07 - Public Sex Offender Registry Website**

- (a) Website.
- (1) Website. The GTBPD shall use and maintain a public sex offender registry website.
  - (2) Links. The GTBPD registry website shall include links to sex offender safety and education resources.
  - (3) Instructions. The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.
  - (4) 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.
  - (5) Search Capabilities. The registry website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and (3) zip code and/or geographic radius.
  - (6) Dru Sjodin National Sex Offender Public Website. The Tribe shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.
- (b) Required and Prohibited Information.
- (1) Required Information. The following information shall be made available to the public on the sex offender registry website:
    - (A) Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded;
    - (B) All sex offenses for which the sex offender has been convicted;
    - (C) The sex offense(s) for which the offender is currently registered;
    - (D) The address of the sex offender's employer(s);
    - (E) The name of the sex offender, including all aliases;
    - (F) A current photograph of the sex offender;
    - (G) A physical description of the sex offender;
    - (H) The residential address and, if relevant, a description of a habitual residence



of the sex offender;

- (I) All addresses of schools attended by the sex offender; and
  - (J) The sex offender's vehicle license plate number along with a description of the vehicle.
- (2) Prohibited Information. The following information shall not be available to the public on the sex offender registry website:
- (A) Any arrest that did not result in conviction;
  - (B) The sex offender's social security number;
  - (C) Any travel and immigration documents;
  - (D) The identity of the victim; and
  - (E) Internet identifiers (as defined in 34 U.S.C. § 20911).
- (3) Witness Protection. For sex offenders who are under a witness protection program, the tribal police may honor the request of the United States Marshals 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.

History: Tribal Act #10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

#### **§ 4.08 - Publications and Community Notifications**

- (a) Mandatory Publication and Notification.
- (1) Within twenty-four (24) hours of a sex offender registering or updating their information, the GTBPD shall disclose the name, address or location; most recent photograph, if available; date of photograph; place of employment; address of school attended; vehicle description and license plate numbers; crime for which convicted; date and place of conviction of any registrant; hair color; height; race; sex and age of any registrant; and any other information deemed necessary for the protection of the public to the MSP pursuant to the MOA dated June 25, 2009, and:
    - (A) Each school, public housing agency, and community center in each area in which the sex offender resides, is an employee, or is a student;
    - (B) Social service entities responsible for protecting minors in the child welfare system, and any agency, department, or program within the Tribe that is responsible for criminal investigations, prosecution, child welfare or sex offender supervision functions, including, but not limited to, police whether BIA, tribal, or FBI, tribal prosecutors and tribal probation;

- (C) Volunteer organizations in which contact with minors or other vulnerable individuals might occur;
  - (D) Any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction, and any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction, and any agency, department, or program within the Tribe that is responsible for criminal investigations, prosecution, child welfare or sex offender supervision functions, including, but not limited to, police whether BIA, tribal, or FBI, tribal prosecutors and tribal probation;
  - (E) To the registering authority or any jurisdiction in which a sex offender plans on residing, working, or going to school;
  - (F) Any jurisdiction which notified the GTBPD of an area in which it is the sex offender's intent to reside, work, or go to school on GTB tribal lands who fails to register pursuant to this code; and
  - (G) Any qualified entity pursuant to the National Child Protection Act of 1993, pursuant to Section 5119a of Title 42 of the United States Code.
- (b) Publication to National Sex Offender Registry. Within three (3) business days, the GTBPD shall provide all such information as required to the State of Michigan/MSP, who shall notify consistently with the MOA dated June 25, 2009. For any database that is not required, the GTBPD may, in its discretion, provide information.
- (c) Publication to Other Law Enforcement Agencies. Within three (3) business days, the GTBPD shall produce all registrant information to the appropriate law enforcement agency and probation agency, if appropriate, in each area in which the sex offender resides, is an employee, or is a student. Online access of all registrant information is considered sufficient access.
- (d) Public and Community Notifications.
- (1) The Department of Public Safety may release to any person, entity, or organization, upon a written request, the name, address or location; most recent photograph, if available; date of photograph; place of employment; address of school attended; vehicle description and license plate numbers; crime for which convicted; date and place of conviction of any registrant; hair; eye color; height; race; sex and age of any registrant; and any other information deemed necessary for the protection of the public. Additionally, the department may utilize an Internet web site or other electronic means to release the information. Further:
    - (A) Individuals may obtain, for a fee, a list of registered sex offenders from the GTBPD, by following the provisions and procedure outlined in GTB's Records Ordinance, 2 GTBC § 401.

- (B) The Tribe may, at its discretion, publish names and/or pictures of all registered sex offenders in local media.
- (C) Records maintained pursuant to this chapter shall be open to law enforcement agencies which shall be authorized to release relevant and necessary information regarding sex offenders to the public.
- (D) Information disclosed pursuant to this subsection shall not include information that would identify the victim.
- (E) Any release of information under this section will be accompanied by the following:

**WARNING**

**This information is made available for the purpose of protecting the public. It is not to be used for the purpose of harassing or intimidating anyone. A person who uses registry information to commit a criminal act against another person is subject to arrest and prosecution under the GTB Tribal Code.**

- (2) Law Enforcement Notification. Whenever a sex offender registers or updates his or her information with the tribe, the GTBPD shall:
  - (A) Immediately notify the MSP pursuant to the MOA dated June 25, 2009, as designated by the Attorney General in order that the information may be updated on NSOR or other relevant databases.
  - (B) Immediately notify any agency, department, or program within the tribe that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including, but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors, and tribal probation.
  - (C) Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment.
  - (D) 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) when a sex offender registers or updates registration.
- (3) Community Notification. The GTBPD or its designee shall ensure there is an automated community notification process in place that ensures the following:
  - (A) Upon a sex offender's registration or update of information with the Tribe, the Tribe's public sex offender registry website is immediately updated.
  - (B) The Tribe's public sex offender registry has a function that enables the

general public to request an e-mail notice 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 so that the public can access the public registry for the new information.

History: Tribal Act #10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

#### **§ 4.09 – Immunity**

(a) Immunity and Good Faith.

- (1) No waiver of immunity. Nothing under this chapter shall be construed as a waiver of sovereign immunity for the GTB, its departments, agencies, employees, or agents.
- (2) Good faith. Any government employee acting in good faith under this code shall be immune from any civil liability arising out of such actions.

History: Tribal Act #10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

#### **§ 4.10 - Criminal and Civil Sanctions**

(a) Penalties and Sanctions.

- (1) Criminal penalty. Each violation of a provision of this code by a sex offender who is a Native American shall be considered a crime and subject to a period of incarceration of up to one (1) year and/or a fine of up to five thousand dollars (\$5,000).
- (2) Criminal Sanctions:
  - (A) Failure to register. Any person required to register under this code within the time specified under this code shall be guilty of an offense punishable by up to one (1) year and/or a fine of up to five thousand dollars (\$5,000).
  - (B) Providing false or misleading registration information. Any person required to register under this code who knowingly provides false or misleading information required under Section 4.05 shall be guilty of an offense up to one (1) year and/or a fine of up to five thousand dollars (\$5,000).
  - (C) Failure to update registration information. Any person required to register under this code who fails to update their registration information in violation of Section 4.04(e) shall be guilty of an offense punishable by up to one (1) year and/or a fine of up to five thousand dollars (\$5,000).

- (D) Failure to appear for periodic registration. Any person required to appear for periodic in person verification under Section 4.04(f) and fails to comply, shall be guilty of an offense punishable by up to one (1) year and/or a fine of up to five thousand dollars (\$5,000).
- (E) Violation of school zone of restriction. Any sex offender who violates Section 4.06 is guilty of an offense punishable by one (1) year in jail and/or a five thousand dollar (\$5,000) fine.
- (F) Violation of residency restrictions. Any sex offender who violates Section 4.06(b) is guilty of an offense punishable by up to one (1) year and/or a fine of up to five thousand dollars (\$5,000).
- (G) Hindrance of Sex Offender Registration. A person is guilty of an offense if he or she:
  - (i) Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this code;
  - (ii) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this code; or
  - (iii) Provides information to a law enforcement agency regarding a sex offender which the person knows to be false.
- (H) Misuse of Registration Information.
  - (i) Any person who willfully misuses or alters 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 websites, shall be guilty of an offense punishable by ninety-three (93) days in jail or a five hundred dollar (\$500) fine.
  - (ii) The sale or exchange of sex offender information for profit is prohibited. Any violation of this Subsection (ii) is an offense punishable by ninety-three (93) days in jail or a five hundred dollar (\$500) fine.
- (I) Repeat Offenders. Any second or subsequent violation under this code occurring within the mandatory registration period shall be an offense punishable by one (1) year in jail or a five thousand dollar (\$5,000) fine.
- (J) Civil Penalty. Each violation of a provision of this code by a sex offender who is not a Native American shall 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.

History: Tribal Act #10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

#### **§ 4.11 – Exclusion**

(a) Nonmember Exclusion.

- (1) Any nonmember convicted of a Tier III sex offense shall no longer be entitled to reside on tribal lands pursuant to Tribal Council’s authority vested in GTB Constitution, Article IV, § 1(g), and shall be excluded from tribal lands pursuant to this code. The exclusion order shall contain the following exceptions:
  - (A) To answer a summons or subpoena by the GTB Tribal Court.
  - (B) To be a defendant in any GTB Tribal Court.
  - (C) To attend the funeral service only of immediate family members, which is limited to one (1) hour prior to and one (1) hour post funeral service.
  - (D) To accompany, because of a legal duty, a person or minor who is eligible to receive medical services, including but not limited to Indian Health Services, performed at the Medicine Lodge or other building by the GTB Health Administration.
- (2) Any nonmember sex offender who is excluded from the reservation and, who must return pursuant to an exception listed above, must notify the GTBPD no less than one (1) business day prior to their return to tribal lands and disclose their exception purpose.
- (3) Any nonmember sex offender who is excluded from the reservation and, who must return pursuant to an exception listed above, has the duty to remain under the direct supervision of tribal authorities or an appointed or an accepted escort.

\* Nonmember: “Nonmember” means a person who is not a member of any federally recognized Indian tribe.

(b) Other Tribal Member Exclusion.

- (1) Any other tribal member convicted of a Tier III sex offense shall no longer be entitled to reside on tribal lands pursuant to Tribal Council’s authority vested in GTB Constitution, Article IV, § 1(g), and shall be excluded from tribal lands pursuant to this code. The exclusion order shall contain the following exceptions:
  - (A) To answer a summons or subpoena by the GTB Tribal Court.
  - (B) To be a defendant in any GTB Tribal Court.

- (C) To attend the funeral service only of immediate family members, which is limited to one (1) hour prior to and one (1) hour post funeral service.
  - (D) To receive medical services, including but not limited to Indian Health Services, performed at the Medicine Lodge or other building by the GTB Health Administration.
  - (E) To accompany, because of a legal duty, a person or minor who is eligible to receive medical services, including but not limited to Indian Health Services, performed at the Medicine Lodge or other building by the GTB Health Administration.
- (2) Any other tribal member sex offender who is excluded from the reservation and, who must return pursuant to an exception listed above, must notify the GTBPD no less than one (1) business day prior to their return to tribal lands and disclose their exception purpose.
  - (3) Any other tribal member sex offender who is excluded from the reservation and, who must return pursuant to an exception listed above, has the duty to remain under the direct supervision of tribal authorities or an appointed or an accepted escort.

\* Other tribal member: "Other tribal member" means a person who is duly enrolled or is a member of a federally recognized Indian tribe other than the GTB Indian tribe.

- (c) (Reserved)<sup>4</sup>
- (d) Gaming Exception. The exclusions and requirements listed in Subpart (a) for nonmembers, Subpart (b) for other tribal members and Subpart (c) for GTB Tribal members does not apply to the gaming floors owned and operated by the Grand Traverse Band.

History: Tribal Act # 10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

#### **§ 4.12 - Savings Clause**

If any court of competent jurisdiction finds that any section, subsection, or phrase of this code violates the Constitution or laws of the GTB, such standalone part will be deleted from the statute and, so long as the intent remains intact, the remainder of the statute will take full force and effect.

History: Tribal Act # 10-28.2164, enacted by Tribal Council on July 21, 2010. As amended by Tribal Council motion on October 29, 2014; and by Tribal Council motion on January 31, 2018.

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<sup>4</sup> Editor's Note: Former Subsection (c), GTB Tribal Member Exclusion, was repealed by Tribal Act # 12-30.2350, enacted by Tribal Council on 3-21-2012, retroactively from the date of enactment by Tribal Act #10-28.2164 (7-21-2010).

## ***Chapter 5 - Crime Victims' Rights***

### **§ 501 - Definitions**

- (a) “Crime Victim” means a person directly and proximately harmed as a result of the commission of an offense under the laws of the Grand Traverse Band. In the case of a crime victim who is under eighteen (18) years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim’s estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim’s rights under this chapter, but in no event shall the defendant be named as such guardian or representative.
- (b) “Multidisciplinary Child Abuse Team” means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse.

History: Enacted by Tribal Council motion at a Tribal Council Special Session on May 29, 2019.

### **§ 502 - Rights of Crime Victims**

A crime victim has the following rights:

- (a) The right to be reasonably protected from the accused.
- (b) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (c) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (d) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (e) The reasonable right to confer with the attorney for the government in the case.
- (f) The right to full and timely restitution as provided in law.
- (g) The right to proceedings free from unreasonable delay.
- (h) The right to be treated with fairness and with respect for the victim’s dignity and privacy.
- (i) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
- (j) The right to be informed of the rights under this section and any services offered by GTB.



History: Enacted by Tribal Council motion at a Tribal Council Special Session on May 29, 2019.

### **§ 503 - Rights Afforded**

In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in Section 502. Before making a determination described in Section 502(c), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

History: Enacted by Tribal Council motion at a Tribal Council Special Session on May 29, 2019.

### **§ 504 - Best Efforts to Accord Rights**

- (a) Government. Officers and employees of the Office of the Prosecutor, Public Safety, and other GTB departments and agencies engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in Section 502.
- (b) Advice of Attorney. The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in Section 502.
- (c) Notice. Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

History: Enacted by Tribal Council motion at a Tribal Council Special Session on May 29, 2019.

### **§ 505 - Enforcement and Limitations**

- (a) Rights. The crime victim or the crime victim's lawful representative, and the attorney for the government may assert the rights described in Section 502. A person accused of the crime may not obtain any form of relief under this chapter.
- (b) Multiple Crime Victims. In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in Section 502, the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.
- (c) Motion for Relief and Writ of Mandamus. The rights described in Section 502 shall be asserted in the Tribal Court. The court shall immediately take up and decide any motion asserting a victim's right. If the court denies the relief sought, the movant may petition the GTB Appellate Court for a writ of mandamus. The Appellate Court may issue the writ on

the order of a single judge pursuant to GTB Court Rules. The Appellate Court shall take up and decide such application within seventy-two (72) hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five (5) days for purposes of enforcing this chapter. If the Appellate Court denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

- (d) Error. In any appeal in a criminal case, the government may assert as error the court's denial of any crime victim's right in the proceeding to which the appeal relates.
- (e) Limitation on Relief. In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if:
  - (1) The victim has asserted the right to be heard before or during the Proceeding at issue and such right was denied; and
  - (2) The victim petitions the Appellate Court for a writ of mandamus within ten (10) days.
- (f) No Cause of Action. Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the Grand Traverse Band or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the prosecutor or any officer under his direction.

History: Enacted by Tribal Council motion at a Tribal Council Special Session on May 29, 2019.

#### **§ 506 - Services for Children Who Are Victims or Witnesses**

- (a) Purpose. GTB recognizes that intergenerational trauma is perpetuated when children are victims or witnesses of crimes of violence. In an effort to end the cycle of intergenerational trauma and victimization, GTB supports the nurturing and protecting of children who are victims or witnesses to the greatest extent possible.
- (b) In General. A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with GTB departments, external entities, and state and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the Government shall consult with the multidisciplinary child abuse team as appropriate.
- (c) Role of Multidisciplinary Child Abuse Teams. The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including:
  - (1) Medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

- (2) Telephone consultation services in emergencies and in other situations;
- (3) Medical evaluations related to abuse or neglect;
- (4) Psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;
- (5) Expert medical, psychological, and related professional testimony;
- (6) Case service coordination and assistance, including the location of services available from public and private agencies in the community; and
- (7) Training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.