

Northern Cheyenne Tribe Law and Order Code

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TITLE I

GENERAL PROVISIONS CODE

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TITLE I

GENERAL PROVISIONS CODE

Chapter 1. ESTABLISHING AUTHORITY AND COURTS

1-1-1. Constitutional Authority [*As amended by Ord. DOI 3(98)*]

This Law and Order Code of the Northern Cheyenne Tribe, consisting of this Title and all other Titles hereof (hereinafter "Law and Order Code" or "Code") is adopted pursuant to the authority vested in the Northern Cheyenne Tribal Council under Article IV, Sections 1(h), (i), (k), (m), (o), (p), (q) and (n) of the Constitution of the Northern Cheyenne Tribe.

1-1-2. Prior Inconsistent Ordinances and Resolutions Repealed

Any and all ordinances, resolutions and policies inconsistent with or in conflict with or contrary to the spirit and purpose of the contents of this Code are hereby repealed and have no effect.

1-1-3. Amendments, Modifications, Additions to Any Code [*As amended by Ord. DOI 3(98)*]

The Code may be amended by duly adopted resolutions or ordinances of the Tribal Council. However, as provided in section 1A-19-1 of Title IA (Separation of Powers Code) of this Law and Order Code, Title IA may be amended, repealed or suspended only by two-thirds vote of the Tribal Council. The adoption of Tribal ordinances and resolutions which effect modifications, additions or deletions to this Code shall be codified and incorporated in a manner consistent with the numbering and organization of this Code.

1-1-4. Courts Established [*As amended by Ord. DOI 3(98)*]

There is hereby established the Northern Cheyenne Court, constituting the Judicial Branch of Tribal government, comprised of the Trial Court, Appellate Court, Constitutional Court, and Office of the Court Clerk, as described in Chapter 3 of Title IA of this Code.

The terms "Northern Cheyenne Reservation Judicial System," "Northern Cheyenne Reservation Court," "Reservation Court," and the like, which may at times appear in other Titles of this Law and Order Code, shall be construed as being synonymous with the Northern Cheyenne Court or Judicial Branch, as described in the foregoing provisions of this section 1-1-4.

1-1-5. Availability of Code [*As amended by Ord. DOI 3(98)*]

Copies of this Code and any amendments shall be kept available for public inspection during regular business hours at the office of the Court Clerk.

1-1-6. Civil Rights Guarantees [Added by **Ord. 16(88)**]

The following civil rights are guaranteed to all persons within the exterior boundaries of the Northern Cheyenne Reservation. The various institutions within the exterior boundaries of the [cont'd on p. I-3A]

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Northern Cheyenne Reservation shall not (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances; (2) violate the right of the people to be secure in their persons houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any property for a public use with just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witness in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of twelve (12) months or a fine \$5,000, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Chapter 2. JURISDICTION

1-2-1 Trial Court [*As amended by Ord. DOI 3(98)*]

A. The Trial Court is a trial-level court of general civil jurisdiction, exercising the full reach of the Tribe's lawful civil jurisdiction as described in section 1A-14-1.

B. The Trial Court is also a trial-level court of general criminal jurisdiction, exercising the full reach of the Tribe's lawful criminal jurisdiction as described in section 1A-14-2.

1-2-2 Appellate Court [*As amended by Ord. DOI 3(98)*]

The Appellate Court has exclusive jurisdiction to hear appeals and other authorized requests for appellate review of Trial Court decisions as described in section 1A-5-1.

1-2-3. Constitutional Court [*As amended by Ord. DOI 3(98)*]

- A. The Constitutional Court has exclusive jurisdiction to hear Constitutional Claims that legislative enactments of the Tribal Council are unlawful, as provided in section 1A-6-3.
- B. The Constitutional Court has exclusive authority to confirm the Automatic Removal of Judges as provided in section 1A-17-2, and to hear Complaints for Removal of Judges as provided in section 1A-17-3.
- C. In addition, if explicitly authorized by the Tribal Council, the Constitutional Court may hear other claims, as provided in section 1A-6-11.

Chapter 3. SOVEREIGNTY

1-3-1. Adoption by Reference Not a Waiver of Sovereign Power of the Northern Cheyenne Tribe [*Amended by Ord. DOI 3(98)*]

The adoption of any law, code or other documents by reference into this Code shall in no way constitute a waiver or cession of any sovereign power of the Northern Cheyenne Tribe to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power, but shall result in the law or code thus adopted becoming the law of the Northern Cheyenne Tribe.

1-3-2. Sovereign Immunity [*Amended by Ord. DOI 3(98)*]

Except as may be required by federal statute or regulation or the Constitution and By-Laws of the Northern Cheyenne Tribe, or as explicitly and specifically waived by a resolution or ordinance of the Northern Cheyenne Tribal Council, the Northern Cheyenne Tribe, including all branches, divisions, departments, agencies and other governmental or proprietary instrumentalities of the Tribe (hereinafter "Tribe or its Instrumentalities") shall be immune from suit in any civil action. In addition, the officers, Councilpersons, board members, directors, executives and other employees and agents of the Tribe or its Instrumentalities (hereinafter "Tribal Representatives") shall be immune from suit or any liability arising from the performance of their official duties. No provision of this Law and Order Code shall be construed as waiving any such immunity unless the provision explicitly and specifically sets forth such a waiver.

Chapter 4. LIMITATIONS ON ACTIONS

1-4-1. Civil Actions

Unless otherwise specifically provided in the Code, the following limitations on the bringing

of civil actions will apply:

- A. Any action against the Tribe or its Instrumentalities, or against Tribal Representatives arising from the performance of their official duties, must be commenced within one year of the date the cause of action accrued. [Amended by Ord. DOI 3(98)]
- B. Any other action must be commenced within three years of the date the cause of action accrued, provided, however, that any cause of action based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered or [cont'd on p. I-5]

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reasonably should have discovered the facts constituting the fraud or mistake.

1-4-2. Criminal Actions.

- A. A prosecution for any offense must be commenced within the period specified:

Class A Offenses - 0-5 years

Class B Offenses - 0-2 years

Class C Offenses - 0-1 year

- B. The period of limitations does not run during any period in which the offender is not physically located on the Reservation or when a prosecution is pending in another jurisdiction against the offender for the same conduct.

Chapter 5. PRINCIPLES OF CONSTRUCTION

1-5-1. When Applied.

- A. The following principles of construction will apply to all of the Code unless a different construction is obviously intended:

1. Masculine words shall include the feminine, and singular words shall include the plural, and vice-versa.
2. Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
3. Whenever a term is defined for a specific part of this Code, that definition shall apply to all parts of this Code unless contrary meaning is clearly indicated.
4. This Code shall be construed as a whole to give effect to all its parts in a logical, consistent manner.
5. If any provisions of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Code are declared to be severable.
6. Any typographical errors or omissions shall be ignored whenever the intended meaning of the provision containing the error or omission is otherwise reasonably certain to the Court.
7. Any other issues of construction shall be handled in accordance with generally accepted principles of

construction giving due regard to the underlying principles and purposes of this Code.

Chapter 6. CARE OF BONDS, FINES AND FEES

1-6-1. Deposit and Disposition of Bonds, Fines and Civil Fees [*As amended by Ord. DOI 3(98)*]

- A. All monies collected for fines imposed for the commission of offenses against ordinances passed by the Tribal Council, or imposed under this Code shall be in the nature of an assessment for the support of the Judicial Branch. Such expenses include but are not limited to the payment of fees provided for in this Code or ordinances, to jurors and to witnesses answering subpoenas, to counselors and court officials, and other expenses of the Judicial Branch.
- B. The fines assessed shall be deposited by the Court Clerk with the Tribal Treasurer and shall, by said Treasurer, be deposited in the appropriate account of the Tribe. The Tribal Treasurer shall draw checks from such funds in accordance with the existing budget.
- C. The Tribal Treasurer and the Court Clerk shall keep an accounting of all such deposits and withdrawals.
- D. Complementary provisions regarding Judicial Branch budgeting, fund raising and remittance of revenues are set forth in Chapter 18 of Title IA.

Chapter 7. NORTHERN CHEYENNE COURT BAR ASSOCIATION RULES

1-7-1. General

- A. Lay Counselors and Professional Attorneys shall be deemed officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Court in all matters related to their representative capacity.
- B. Any person appearing as a Lay Counselor or as an Attorney shall be subject to the same ethical obligations of honesty and confidentiality towards his client and the Lay Counselor/Attorney-client testimonial privileges shall apply in appropriate circumstances.
- C. The Northern Cheyenne Tribe shall have no obligation to provide or pay for such Lay Counselors and Professional Attorneys and such obligation shall rest entirely with the person desiring such a counselor or attorney. [*As amended by Ord. DOI 3(98)*]

1-7-2. Right to Be Represented by a Lay Counselor or Professional Attorney.

Any person appearing as a party in any civil or criminal action shall have the right to be represented by a Lay Counselor or Professional Attorney of his own choice and at his own expense; provided, however, that neither the Northern Cheyenne Tribe nor Reservation has an obligation to provide or pay for such a Lay Counselor or Attorney; provided further, that any such Lay Counselor or Attorney appearing before the Courts of the Northern Cheyenne Reservation shall have first obtained admission to practice before such Courts in accordance with the procedures set forth herein.

1-7-3. Eligibility for Admission.

- A. Any person admitted to practice must be of good moral character, be approved by the Reservation Court Bar, in writing, sign and take the oath, pay the Reservation Court Bar Fee, be at least twenty-one years of age, carry and display upon request verification of the admission to the Northern Cheyenne Court Bar, must not have been convicted of a felony or a misdemeanor within one year prior to the date of admission to the Reservation Court Bar.
- B. Any Lay Counselor to practice in the Courts of the Northern Cheyenne Reservation must show completion of a training session in Criminal Law and Procedure, Civil Law and Procedure and must have an understanding of the Appellate Court and Procedure and of legal writing and drafting of appropriate court forms.
- C. Any attorney who is an active member in good standing of the State Bar of Montana, or any attorney certified and eligible to practice before the highest Court of any other state or of the Supreme Court of the United States is eligible to be admitted to practice before the Courts of the Northern Cheyenne Tribe.
- D. Any person not a member of the Northern Cheyenne Tribe requesting admission to practice in the Courts of the Northern Cheyenne Reservation must agree to submit to the jurisdiction of the Court in any contempt proceeding arising out of an appearance before the Courts.

1-7-4. Procedure for Admission.

- A. Any Lay Counselor or Professional Attorney desiring to be admitted to practice before the Northern Cheyenne Courts shall apply for admission by certifying under oath and in writing to the following:
 1. That as Lay Counselor he has completed a training session

in Criminal Law, Civil Law and Procedures, operation of the Appellate Court and Procedure, and has knowledge of legal writing and drafting of appropriate court forms.

2. That as an Attorney he is an active member in good standing of the State Bar of Montana or of the bar of another state or is eligible to practice before the Supreme Court of the United States.
 3. That if admitted to practice before the Northern Cheyenne Courts he will take the required oath as prescribed in this Code for Attorneys and be bound thereby.
 4. That if admitted to practice, the Lay Counselor or Attorney will accept and represent indigent clients when asked by a Judge of the Court to do so.
- B. The Admission Fee of \$50.00 shall be tendered with the application, subject to return if the application is denied.
- C. Upon receipt of an application fee for admission to practice before the Northern Cheyenne Court, a Reservation Court Judge shall review the application and may, but need not, investigate into the truth of the matters contained therein. If satisfied that the applicant meets the qualifications set forth herein, the Court Clerk shall notify such person who may appear in person to take the oath prescribed herein or may subscribe to such oath and forward it to a Judge of the Court.
- D. Upon taking the oath, either in writing or orally, a Judge of the Court shall cause a certificate to be issued, evidencing the admission of the Lay Counselor or Attorney to practice before the Northern Cheyenne Courts.

1-7-5: Disbarment and Discipline.

- A. Whenever it is made to appear to a Judge of the Judicial System that any Lay Counselor or Professional Attorney admitted to practice before the Northern Cheyenne Courts has acted in an unethical or otherwise improper manner while functioning as a Lay Counselor or Attorney, a Judge may order such Lay Counselor or Attorney to appear within ten (10) days and show cause why he should not be suspended from practicing before the Northern Cheyenne Courts.
- B. Any Judge who finds a Lay Counselor or Attorney admitted to practice before the Northern Cheyenne Court to be in contempt of court may, in addition to any other sanction imposed, order the Lay Counselor or Attorney to appear within ten (10) days and show cause why he should not be suspended from practicing before the Northern Cheyenne Courts.

- C. All suspensions from practicing before the Courts of the Northern Cheyenne Reservation shall be for a period as ordered by the Judge.
- D. Any Lay Counselor or Attorney violating the Oath of Lay Counselors and Attorneys shall be subject to disbarment. Disbarment proceedings shall commence with the writing of a complaint against the Lay Counselor or Attorney, including the reasons for disbarment. A Judge of the Northern Cheyenne Court, within ten (10) days of the receipt of such a complaint, shall hold a hearing at which time the Lay Counselor or Attorney involved may present witnesses and a defense of his actions.

1-7-6. Contempt of Court - Appeal.

A Lay Counselor or Professional Attorney held to be in contempt of court can appeal immediately to the Appellate Court for action by the Appellate Judge.

1-7-7. Disbarment - Appeal.

A Lay Counselor or Professional Attorney disbarred from the Northern Cheyenne Courts can appeal to the Northern Cheyenne Appeals Court. There shall be no further appeal to the Tribal Council of the Northern Cheyenne Tribe.

1-7-8. Oath.

Upon the admission to practice as provided herein, a Lay Counselor or Professional Attorney shall take the following oath, either verbally before the Court, or subscribe his signature to such oath if admitted personally appearing:

"I, _____, do solemnly swear:

- (1) "I have read the Northern Cheyenne Code and am familiar with its contents."
- (2) "I will respect and obey the Charter, Constitution and by-laws of the Tribe in all respects."
- (3) "I will abide by the rules established by the Council and the Northern Cheyenne Reservation Court."
- (4) "I will at all times maintain the respect due the Northern Cheyenne Reservation Court and its officers."
- (5) "I will not counsel or speak for any suit or

proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Reservation, unless it be in defense of a person charged with a public offense."

- (6) "I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge or jury by any false statements."
- (7) "I will abstain from all offensive conduct in the Northern Cheyenne Reservation Court."
- (8) "I hereby submit to the jurisdiction and recognize the jurisdiction of the Northern Cheyenne Court in regard to its ability to fine and/or jail my person if found in Contempt of Court."

1-7-9. Admission Fees of Lay Counselors and Attorneys.

Before a Lay Counselor or Professional Attorney shall be admitted to practice before the Northern Cheyenne Court, and as an annual condition to maintaining that privilege, he shall pay a fee of \$50.00, payable prior to taking the oath set forth herein and annually thereafter. Any Lay Counselor or Attorney failing to pay such annual fee within 30 days after the anniversary date of his admission shall forfeit the right to practice before the Northern Cheyenne Courts until formally readmitted.

1-7-10. Waiver of Admission Fees.

The admission fee shall be waived for persons who represent the Northern Cheyenne Tribal Court, the United States, or any State, or any political subdivision of all the above, and for persons who appear without charge to their clients.

1-7-11. Reservation Court Bar Roster.

The Clerks of Court of the Northern Cheyenne Court and Juvenile Court shall maintain a roster of all Lay Counselors and Attorneys admitted to the Northern Cheyenne Court Bar.

Chapter 8. DEFINITIONS

1-8-1. Number and Gender.

As used in this Code, the singular shall include the plural, and the plural shall include the singular, and the masculine shall include the feminine, and the feminine shall include the masculine, except where contrary intent is manifest.

1-8-2. Signature, Written Instrument.

As used in this Code, "signature" shall mean any written signature, or any mark or thumbprint witnessed by the written signature of at least one witness to the act. Wherever this Code shall refer to a "written instrument," that shall be construed to mean an instrument typed, printed, or written out in hand, and signed by the person who shall make it.

1-8-3. Oath.

As used in this Code "oath" shall mean "oath or affirmation," and "sworn" shall mean "sworn by oath or affirmation."

1-8-4. Court Day.

As used in this Code, "Court Day" shall mean any and every day of the week, except Saturday and Sunday and legal holidays, provided, that whenever a legal holiday shall fall on a Monday, the Saturday preceding that Monday shall also be a Court Day.

1-8-5. Counsel and Representative.

As used in this Code, "Counsel" shall mean any person appearing, speaking, or acting for another in any criminal or civil proceeding who shall be paid for his services, and "Representative" shall mean any person who shall appear, speak or act for another in any criminal or civil proceeding who shall not be paid for so doing.

1-8-6. Code.

As used in this Code, "Code" shall mean the Northern Cheyenne Reservation Code.

1-8-7. Contempt.

Civil Contempt is conduct directed at someone other than the Court that is detrimental to the dignity and authority of the Court.

Criminal Contempt is conduct directed at and detrimental to the dignity and authority of the Court.

1-8-8. Council.

As used in this Code, "Council" shall mean the Tribal Council of the Northern Cheyenne Reservation.

1-8-9. Enrolled Member.

As used in this Code, "Enrolled Member" shall mean any person validly and currently listed on the official membership roll of the Northern Cheyenne Tribe of Indians.

1-8-10. Member of Council.

As used in this Code, "Member of Council" shall mean any person eligible to vote at meetings of the Tribal Council.

1-8-11. District.

As used in this Code, "District" shall mean any of the political districts of the Northern Cheyenne Reservation.

1-8-12. Jail, Juvenile Detention Facility, Detoxification Facility, Overnight Facility.

As used in this Code, "Jail", "Juvenile Detention Facility", "Detoxification Facility", and "Overnight Facility" shall mean whatever building or facilities are from time to time appointed and designated for those purposes by the appropriate authorities of the Northern Cheyenne Reservation, and those purposes as set forth in this Code.

1-8-13. Person.

As used in this Code, a "Person" may be a citizen of this or any reservation or any state or territory and includes, but is not limited to, natural persons, corporations, partnerships, trusts, unincorporated business associations and any other organization or entity involved in private or commercial activity.

TITLE IA

SEPARATION OF POWERS CODE

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CHAPTER 1. DEFINITIONS

1.A-1-1

Definitions. When used in this Title, the following terms shall have the following meanings:

- A. "Appellate Court" means the appellate court of the Northern Cheyenne Court established and operating under Chapter 5.
- B. "Appellate Judge" means a judge of the Appellate Court, serving as provided in section 1A-5-2.
- C. "Associate Appellate Judge" means an associate judge of the Appellate Court.
- D. "Associate Trial Judge" means an associate judge of the Trial Court.
- E. "Automatic Removal" means the removal of a Judge because of conviction of a felony, conviction of a Misdemeanor Involving Moral Turpitude, or lack of required qualifications, as confirmed by the Constitutional Court under section 1A-17-2.
- F. "Chapter" means a chapter of this Title.
- G. "Chief Appellate Judge" means the chief judge of the Appellate Court, selected as provided in section 1A-5-3.
- H. "Chief Trial Judge" means the chief judge of the Trial Court, selected as provided in section 1A-4-3.
- I. "Code of Judicial Conduct" means the code of conduct for Judges reaffirmed or adopted under section 1A-15-2.
- J. "Constitutional Claim" means a claim between any parties, whether made in a civil or criminal context, that a resolution, ordinance, code or other legislative enactment of the Tribal Council adopted after the Effective Date of this Title is in whole or in part invalid because it violates: (1) the Tribal Constitution and Bylaws; (2) a referendum adopted under Article VIII of the Tribal Constitution; (3) a Tribal resolution, ordinance or code; or (4) applicable federal law including without limitation the Indian Civil Rights Act.
- K. "Constitutional Court" means the constitutional court of the Northern Cheyenne Court established and operating under Chapter 6.
- L. "Council Enactment" means the resolution, ordinance, code or other legislative enactment of the Tribal Council which is the subject of a Constitutional Claim.

- M. "Court Clerk" means the court clerk in charge of the Office of the Court Clerk, appointed and functioning under Chapter 7.
- N. "Declaratory Judgment" means a final declaration by the Constitutional Court under section 1A-6-4 that a Constitutional Claim is in whole or in part valid or invalid.
- O. "Domestic Relations Code" means Title VIII of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- P. "Effective Date" means the date on which this Title has been enacted by the Tribal Council, signed by the Tribal President, and reviewed by the Secretary of the Interior or his authorized representative. (*Note: This Title was enacted as an ordinance, Ordinance DOI I(98), signed by the President on or about October 6, 1997, and reviewed by BIA on October 27, 1997. The Effective Date of this Title is therefore October 27, 1997.*)
- Q. "en banc" means three Appellate Judges sitting as a panel as provided in section 1A-5-5.
- R. "Executive Branch" means the Tribal President, Vice President, Secretary and Treasurer, and the administrative agencies, departments and other instrumentalities of the Executive Branch.
- S. "Heirship and Probate Code" means Title IX of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- T. "Judge" means any one of the Chief Trial Judge, an Associate Trial Judge, the Chief Appellate Judge, or an Associate Appellate Judge.
- U. "Judge Pro Tem" means a temporary judge appointed and assigned under Chapter 16 to temporarily fill-in for a sitting Judge.
- V. "Judicial Branch" means the Trial Court, Appellate Court, Constitutional Court, and Office of the Court Clerk.
- W. "Judicial Review" means the power of the Constitutional Court to review and declare unlawful legislative actions of the Tribal Council, as provided in Chapter 6.
- X. "Juvenile Code" means Title III of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- Y. "Law and Order Code" means the Tribe's Law and Order Code, consisting of Titles I through X (as amended or supplemented) now or hereafter in force.

- Z. "Misdemeanor Involving Moral Turpitude" means a misdemeanor or gross misdemeanor involving an intentional act or omission which is vile, immoral, or otherwise gravely violative of the moral sentiments or accepted moral standards of the Tribal community. This shall include, by way of example but not limitation, an intentional act or omission involving violence, child abuse, spousal abuse, manufacture or distribution of alcohol, drugs or other mind-altering substance, or theft or other dishonesty.
- AA. "Northern Cheyenne Court" means the Trial Court, Appellate Court and Constitutional Court.
- BB. "Office of the Court Clerk" means the office of the Court Clerk established and operating under Chapter 7.
- CC. "Regular Presidential Election" means the regular Tribal election to be held, in accordance with the Revised Tribal Election Ordinance (as it may be amended), in November 2000 and on the dates set for regular Congressional elections every four years thereafter, for Tribal President, Tribal Vice President, open seats on the Tribal Council, and all Trial Judges.
- DD. "Removal" means Automatic Removal or Removal by Complaint of a Judge under Chapter 17.
- EE. "Removal by Complaint" means removal of a Judge by the Constitutional Court as a result of the filing and processing of a Complaint as provided in section 1A-17-3.
- FF. "section" means a section of this Title.
- GG. "Term of Office" or "Term" means the term of office of a Judge as described in Chapter 9.
- HH. "Trial Court" means the trial court of the Northern Cheyenne Court established and operating under Chapter 4.
- II. "Trial Judge" means a judge of the Trial Court.
- JJ. "Tribal Constitution and Bylaws" means the constitution and bylaws of the Tribe, as amended in 1960 and 1996, and as it may be further amended.
- KK. "Tribal Entity" means any governmental or proprietary branch, division, department, agency or other instrumentality of the Tribe.
- LL. "Tribal Representative" means any officer, councilperson, board member, director, executive, other employee, or agent of the Tribe or any Tribal Entity.

MM. "Tribe" means and "Tribal" refers to the Northern Cheyenne Tribe.

**CHAPTER 2. BASIS, PURPOSE,
LAW AND ORDER CODE, IMPLEMENTATION**

1A-2-1

Constitutional Basis.

A. **Article XI.** Article XI of the Tribal Constitution in its entirety provides:

SEPARATION OF POWERS

Section 1. Three Branches of Tribal Government. The power of the government of the Tribe shall be divided into three distinct branches -- Legislative, Executive and Judicial. No person or entity charged with the exercise of power of one branch shall exercise a power belonging to another branch unless expressly authorized to do so in this Constitution and Bylaws, Tribal law, or applicable federal law.

(a) The Legislative Branch shall consist of the Tribal Council and all committees of the Tribal Council. The Tribal Council shall exercise the legislative power of the Tribe, subject to the right of referendum reserved to the Tribal membership under Article VIII.

(b) The Executive Branch shall consist of the Tribal President, Vice President, Secretary and Treasurer, and all administrative agencies, departments and other instrumentalities of the Executive Branch.

(c) The Judicial Branch shall consist of all courts established by ordinance under Article IV, section 1(i) or any other provision of this Constitution and Bylaws.

B. **Article IV, Section 1(i).** Under Article IV, section 1(i) of the Tribal Constitution, the Tribal Council is empowered to establish the Judicial Branch of Tribal government and define its powers. Specifically, the Council is authorized:

To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior . . . providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.

C. **Judicial Branch a Distinct Branch of Tribal Government.** Under the

above Constitutional provisions: The Judicial Branch is one of the three distinct branches of Tribal government. Once the Judicial Branch is established by the Tribal Council, neither the Legislative Branch nor the Executive Branch may exercise powers granted to the Judicial Branch, except if otherwise provided in the Tribal Constitution and Bylaws, or Tribal or federal law.

1A-2-2 Purpose. The purpose of this Title is to reorganize the Judicial Branch to facilitate implementation of the Tribal Constitutional requirement of separation of powers.

1A-2-3 Relationship to Remainder of Law and Order Code. In any case of inconsistency between a provision of this Title (as it may be amended as provided in section 1A-19-1) and any provision of any other Title of this Law and Order Code or of any other Tribal resolution, ordinance or code (except the Amended Revised Election Ordinance as provided in section 1A-10-5 below), the provision of this Ordinance shall be controlling.

1A-2-4 Implementation Period. To enable orderly implementation of the reorganization of the Judicial Branch under in this Title, there shall be a transition period for the implementation of Chapters 3 through 17 ("Implementation Period"). All involved Tribal governmental personnel shall make best efforts to complete the reorganization of the Judicial Branch by the close of the Implementation Period. It is estimated that the Implementation Period will end no earlier than 180 days after the Effective Date of this Title.

CHAPTER 3. COMPOSITION OF JUDICIAL BRANCH

1A-3-1 Composition. The Judicial Branch shall consist of the:

- Trial Court described in Chapter 4;
- Appellate Court described in Chapter 5;
- Constitutional Court described in Chapter 6; and
- Office of the Court Clerk described in Chapter 7.

CHAPTER 4. TRIAL COURT

1A-4-1 Court of General Jurisdiction. The Trial Court shall be a trial-level court of general civil jurisdiction and criminal jurisdiction, including without limitation jurisdiction over matters arising under the Tribe's Juvenile Code, Domestic Relations Code, and Heirship and Probate Code. The scope of the Trial Court's jurisdiction is set forth in Chapter 14.

1A-4-2 Trial Judges. The Trial Court shall have at least two full-time Trial Judges, including

a Chief Trial Judge and one or more Associate Trial Judges. Each Trial Judge shall:

- A. possess the qualifications applicable to Trial Judges set forth in Chapter 8;
- B. be elected as provided in Chapter 10 (or appointed as permitted by section 1A-10-4 or 1A-12-2);
- C. have a Term of Office as provided in Chapter 9; and
- D. be subject to Removal from office as provided in Chapter 17.

1A-4-3 Selection of Chief Trial Judge. The Tribal President with the concurrence of the Tribal Council shall designate one Trial Judge as the Chief Trial Judge. The designee shall serve as Chief Trial Judge through his or her Term of Office as Trial Judge, provided that the Tribal President with the concurrence of the Tribal Council, in their absolute discretion, may at any time designate another Trial Judge as the Chief Trial Judge.

1A-4-4 Authority of Chief Trial Judge. The Chief Trial Judge shall have overall administrative authority over the Trial Court, including without limitation authority to assign cases among the Trial Judges, assign Judges Pro Tem to Trial Court proceedings as provided in section 1A-16-3, manage the Trial Court calendar, and supervise the Court Clerk.

CHAPTER 5. APPELLATE COURT

1A-5-1 Hears All Appeals. The Appellate Court shall hear all appeals and other authorized requests for appellate review of decisions of the Trial Court.

1A-5-2 Appellate Judges. The Appellate Court shall have at least three part-time Appellate Judges, including a Chief Appellate Judge and at least two Associate Appellate Judges. Each Appellate Judge shall:

- A. possess the qualifications applicable to Appellate Judges set forth in Chapter 8;
- B. be appointed as provided in Chapter 11;
- C. have a Term of Office as provided in Chapter 9;
- D. be subject to Removal from office as provided in Chapter 17; and
- E. not preside over any appeal from Trial Court proceedings where the Appellate Judge decided any material matter in the Trial Court proceedings.

1A-5-3 Selection of Chief Appellate Judge. The Tribal President with the concurrence of

the Tribal Council shall designate one Appellate Judge as the Chief Appellate Judge. The designee will serve as Chief Appellate Judge through his or her Term of Office as Appellate Judge, provided that the Tribal President with the concurrence of the Tribal Council, in their absolute discretion, may at any time designate another Appellate Judge as the Chief Appellate Judge.

1A-5-4 Authority of Chief Appellate Judge. The Chief Appellate Judge shall have overall administrative authority over the Appellate Court and the Constitutional Court, including without limitation authority to assign cases among the Appellate Judges, designate *en banc* Appellate panels, designate Constitutional Court panels, assign Judges Pro Tem to Appellate Court or Constitutional Court proceedings as provided in section 1A-16-3, and manage the calendars of the Appellate Court and the Constitutional Court.

1A-5-5 One Judge Review; En Banc Review. All appeals and other authorized requests for review before the Appellate Court shall be heard and decided by one Appellate Judge. However, *en banc* review (by a panel of three Appellate Judges) of the decision of a single Appellate Judge may be sought and shall be granted if two Appellate Judges, in their absolute discretion, vote in favor of *en banc* review. Requests for *en banc* review must be in writing and filed and served within 30 days of issuance of the single Appellate Judge's decision. Any other party may file and serve a written response to the request within 10 days of its receipt of the request. The Court Clerk shall assure that copies of all requests for *en banc* review and all responses thereto are promptly distributed to each Appellate Judge.

1A-5-6 Review on Record Below. All appeals and other authorized requests for review before the Appellate Court shall be based and decided on the files, records and transcripts of the Trial Court proceedings. No new evidence may be introduced or trial *de novo* conducted in the Appellate Court.

CHAPTER 6. CONSTITUTIONAL COURT

1A-6-1 Judicial Review. The Constitutional Court shall have the exclusive power of Judicial Review -- the power to review and declare unlawful legislative actions of the Tribal Council as provided in this Chapter

1A-6-2 Three-Judge Panel. The Constitutional Court shall consist of three Judges of the Appellate Court, sitting as a panel and acting by majority vote. All claims brought in the Constitutional Court shall be tried to and adjudicated by the panel; there shall be no jury trials in the Constitutional Court.

1A-6-3 Exclusive and Original Jurisdiction Over Constitutional Claims. The Constitutional Court shall have original jurisdiction over, and be the exclusive Tribal judicial forum to adjudicate, any and all claims ("Constitutional Claims") between any parties, whether made in a civil or criminal context, that a resolution, ordinance, code or other legislative enactment of the Tribal Council adopted after the Effective Date

of this Title ("Council Enactment") is in whole or in part invalid because it violates:

- A. the Tribal Constitution and Bylaws;
- B. a referendum adopted under Article VIII of the Tribal Constitution;
- C. a Tribal resolution, ordinance or code; or
- D. applicable federal law including without limitation the Indian Civil Rights Act;

provided that the Constitutional Court may not adjudicate a Constitutional Claim if and to the extent the Council Enactment which is the subject of the Claim has been explicitly designated as final and not subject to review by any court in any controlling source of law described in subsections A - D above.

1A-6-4 Relief. Unless authorized to grant Other Relief as provided in section 1A-6-11, the Constitutional Court shall have authority to issue only one form of relief on a Constitutional Claim -- a declaration that the Claim is in whole or in part valid or invalid ("Declaratory Judgment"), along with such supporting findings of fact, conclusions of law, and/or opinion as the Constitutional Court considers necessary or appropriate.

1A-6-5 Participation of Tribal Council. The Tribal Council, as an entity, shall be made a party-defendant in any Constitutional Court proceedings on a Constitutional Claim, whether the claim is brought directly in the Constitutional Court or is certified to the Court under section 1A-6-9.

1A-6-6 Procedures and Rules. Except to the extent inconsistent with this Chapter 6, Constitutional Claims and Other Claims (other than appeals) authorized under section 1A-6-11, shall be initiated in and adjudicated by the Constitutional Court in accordance with all relevant trial-level rules and procedures, evidentiary standards, and statutes of limitation applicable to trial-level civil actions under the Law and Order Code. In the event of any inconsistency between such provisions of the Law and Order Code and this Chapter, the provisions of this Chapter shall be controlling. The Constitutional Court shall have continuing authority to adopt general or case-specific special procedural rules for its proceedings (including without limitation proceedings on Constitutional Claims certified under section 1A-6-9), to cover matters not addressed by the foregoing provisions of this section 1A-6-6.

1A-6-7 Standing; Case or Controversy. In order to bring a Constitutional Claim, a party must have standing to do so and there must be an actual case or controversy, under recognized legal principles.

1A-6-8 Principles of Judicial Restraint. In adjudicating Constitutional Claims, the Constitutional Court shall observe all established doctrines of judicial restraint, including without limitation the following:

- A. requiring exhaustion of available remedies within the Executive Branch and/or the Legislative Branch;
- B. presuming that the Council Enactment is valid and requiring that its invalidity be clearly and convincingly shown;
- C. deferring to the Tribal Council's judgment on policy matters and political questions;
- D. deferring to determinations of administrative agencies within the Executive Branch in matters within their particular expertise;
- E. avoiding Constitutional issues;
- F. deciding on non-Constitutional grounds;
- G. abstaining from hypothetical or moot questions; and
- H. upholding all valid and severable portions of the enactment or other action of the Tribal Council under challenge.

1A-6-9

Certification of Constitutional Claim by Other Courts. In the event a Constitutional Claim is made in a civil or criminal proceeding between any parties in another Tribal Court or other Tribal adjudicatory body (if any) (together "Other Tribal Adjudicatory Body"), such Other Tribal Adjudicatory Body shall not have jurisdiction to adjudicate the Constitutional Claim, but may certify it to the Constitutional Court for adjudication. Subject to and in accordance with the provisions of this Chapter 6, the Constitutional Court shall have authority to adjudicate and issue a Declaratory Judgment on the Constitutional Claim so certified. Upon so certifying a Constitutional Claim, and pending the issuance of a Declaratory Judgment on it by the Constitutional Court, the Other Tribal Adjudicatory Body may, as it considers appropriate, proceed with the adjudication of any other claim (other than a Constitutional Claim) within its jurisdiction in the proceeding pending before it. In addition, the Constitutional Court shall have authority to adjudicate Constitutional Claims certified to it by any federal, state or tribal court or adjudicatory body. Constitutional Claims shall be certified to the Constitutional Court by execution and delivery of a written instrument generally in the form of the attached Exhibit A. Claims so certified shall be adjudicated in accordance with all rules, procedures and standards set forth, referred to, or authorized in this Chapter for Constitutional Claims initiated in the first instance in the Constitutional Court.

1A-6-10

Limited Waiver of Immunity. With respect to Constitutional Claims, the sovereign immunity of the Tribal Council, as an entity, is hereby waived in the Constitutional Court (and in no other court) solely with respect to Declaratory Judgments on Constitutional Claims brought or certified in strict compliance with this Title. The sovereign immunity of the Tribe, any Tribal Entity, or any Tribal Representative is not

otherwise waived in any respect.

1A-6-11

Other Claims or Relief. In addition to Constitutional Claims, the Tribal Council by resolution, ordinance or code may in its absolute discretion explicitly empower the Constitutional Court to:

- A. adjudicate or hear appeals on other claims brought by or against the Tribe, any Tribal Entity, or any Tribal Representative, or any other claim of import to the Tribe (collectively "Other Claims"); and/or
- B. provide relief other than or in addition to a Declaratory Judgment on a Constitutional Claim or Other Claim ("Other Relief").
- C. Any such resolution, ordinance or code must describe each Other Claim and/or the Other Relief with specificity and must explicitly set forth any necessary limited waiver of Tribal sovereign immunity with respect thereto in the Constitutional Court.

1A-6-12

Removals. The Constitutional Court shall confirm the Automatic Removal of a Judge as provided in section 1A-17-2, and shall hear and decide any Complaint for Removal of a Judge as provided in section 1A-17-3.

1A-6-13

Decisions Binding. All Declaratory Judgments of the Constitutional Court on matters within its jurisdiction:

- A. shall be final, conclusive and binding on the Tribal Council, all other parties to the Constitutional Court proceeding, the Judicial Branch, and any Other Tribal Adjudicatory Body certifying the Constitutional Claim under section 1A-6-9; and
- B. may not be modified, vacated or reversed by the Tribal Council or the Executive Branch.

1A-6-14

Implementation of Declaratory Judgment Vindicating a Constitutional Claim. Upon issuance of a Declaratory Judgment vindicating a Constitutional Claim in whole or in part, the Tribal Council shall bring the Council Enactment at issue into compliance with the Declaratory Judgment and may, in its absolute discretion, explicitly provide other remedial relief to any party. The decision of the Tribal Council with respect to such other remedial relief shall be final and not reviewable by any court. The Executive Branch and all other Tribal Entities and Tribal Representatives shall give full faith and credit to the Declaratory Judgment and take such action as may be necessary to assure that their actions are not inconsistent with the terms of the Declaratory Judgment.

CHAPTER 7. OFFICE OF THE COURT CLERK

CHAPTER 7. OFFICE OF THE COURT CLERK

- 1A-7-1** **Clerk's Office.** There shall be an Office of the Court Clerk serving the entire Northern Cheyenne Court. The Office of the Court Clerk shall be administered by the Court Clerk, subject to the supervision of the Chief Trial Judge.
- 1A-7-2** **Clerk's Duties.** The Court Clerk shall have administrative authority over the Office of the Court Clerk and its staff, and overall responsibility for: maintenance of all court files, exhibits, evidence and records; receipt of all filing fees, fines, and other revenues; preparation and transmission of all records on appeal and transcripts to the Appellate Court; and performance of all other necessary duties and functions of the Office of the Court Clerk.
- 1A-7-3** **Appointment and Term of Clerk.** The Court Clerk shall be nominated by the Chief Trial Judge and appointed by the Tribal President with the concurrence of the Tribal Council. The Court Clerk shall serve for the same four-year Term of Office established for Judges in Chapter 9, and until a successor is appointed and takes office. Upon the death, resignation or removal of a Court Clerk, a successor Clerk shall be appointed who shall serve for the remainder of the former Clerk's term of office.
- 1A-7-4** **Removal.** The Court Clerk may be removed or suspended from office at any time by concurrence of the Chief Trial Judge, Tribal President and Tribal Council, in their absolute discretion.

CHAPTER 8. QUALIFICATIONS OF JUDGES

- 1A-8-1** **Certification of Qualifications.** Before a candidate for the position of Trial Judge is placed on a primary or general election ballot (or appointed under section 1A-10-4 or 1A-12-2), and before a person is appointed to the position of Appellate Judge or appointed to the panel of Judges Pro Tem, the Tribal President must (A) assure that the qualifications of the candidate for appointment have been carefully investigated, and (B) certify in writing that such an investigation has been performed and that the candidate possesses the requisite qualifications.
- 1A-8-2** **Age.** All Judges must be at least 30 years old.
- 1A-8-3** **Tribal Membership.** All Trial Judges must be enrolled members of the Tribe. At least one Appellate Judge must be an enrolled member of the Tribe.
- 1A-8-4** **Education and Bar Membership.** Every Judge must be a high school graduate or hold a G.E.D. certificate or its equivalent. At least two Appellate Judges must have graduated from an accredited law school and be a member of a state bar, which credentials are desirable, but not mandatory, for all other Appellate Judges and all Trial Judges.

- 1A-8-5 **No Felony Conviction.** A Judge must never have been convicted of a felony in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have been vacated.
- 1A-8-6 **No Serious Misdemeanor Conviction Within 10 Years.** Within the 10-year period preceding the date set for the primary election or the date of appointment to office, as the case may be, and at all times thereafter through the end of the Term of Office, a Judge must not have been convicted of a Misdemeanor Involving Moral Turpitude in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have been vacated.
- 1A-8-7 **No Removal Within Three Years.** Within the three-year period preceding (A) the date set for the primary election (and through the date of the general election) or (B) the date of appointment to office, as the case may be, a candidate for Judge must not have been removed as a Judge on a Complaint for Removal under section 1A-17-3.
- 1A-8-8 **Domicile.** All Trial Judges must be domiciled on the Reservation throughout the Term of Office. At least one Appellate Judge must be domiciled within 150 miles of Lane Deer throughout the Term of Office. As used herein, the term "domicile" means the residence in which a person customarily and actually resides during the applicable time period.
- 1A-8-9 **Not a Party to Tribal Court Proceedings.** At the time of filing for election to office or of appointment to office, as the case may be, a candidate for Judge must not be a plaintiff or defendant in any civil or criminal action pending in the Northern Cheyenne Court.
- 1A-8-10 **Legal Knowledge.** All Judges must be familiar with the Tribal Constitution, the Tribal Law and Order Code, civil and criminal procedures, the Indian Civil Rights Act, the Indian Child Welfare Act, and federal Indian law generally.
- 1A-8-11 **Legal Skills.** All Judges must have ability and competence to: conduct efficient and organized proceedings; research and apply applicable law; timely decide or otherwise resolve disputes; and set forth clear and reasoned decisions and orders in writing.
- 1A-8-12 **Deal with Conflict.** All Judges must be able to deal effectively with people in highly emotional, adversarial and confrontational situations.
- 1A-8-13 **Familiarity with Cheyenne Language.** It is desirable, but not mandatory, that all Judges have some familiarity with the Cheyenne language.

CHAPTER 9. JUDGES' TERMS OF OFFICE

- 1A-9-1 **Four-Year Terms.** There shall be a four-year Term of Office for all Judges, ending

with the first Regular Presidential Election occurring after appointment, except that it is projected that the first set of Judges will not take office until approximately late 1997 and will therefore have three-year Terms approximately, ending with the Regular Presidential Election in the year 2000.

1A-9-2

Serve Until Successor Elected or Appointed.

- A. **Trial Judges.** Each Trial Judge shall serve until his or her Term of Office expires and thereafter until the election and swearing-in of his or her successor. The person whose Term has expired may be re-elected to office.
- B. **Appellate Judges.** Each Appellate Judge shall serve until his or her Term of Office expires and thereafter until the appointment and swearing-in of his or her successor or the assignment of a Judge Pro Tem to temporarily fill the position pending the appointment of a successor. The person whose term has expired may be re-appointed to office.

CHAPTER 10. ELECTION OF TRIAL JUDGES

1A-10-1

Primary and General Elections; Filing Fee. All Trial Judges shall be selected through a primary election followed by a general election, both conducted at-large, and otherwise generally conducted on the same conditions and under the same procedures as those applicable to the selection of the Tribal President and Vice President, as more particularly set forth in the **Revised Tribal Election Ordinance** as amended pursuant to section 1A-10-5 below (as it may be further amended) ("Amended Revised Election Ordinance"). All persons filing to run for Trial Judge must pay a non-refundable \$200 filing fee as more particularly described in section 7.a of the Amended Revised Election Ordinance, provided that, for each Regular Presidential Election, the Tribal Council may adjust the filing fee to account for inflation or other factors.

1A-10-2

First Election. As promptly as reasonably possible after the Effective Date of this Title, an at-large primary election followed by an at-large general election shall be held to elect two Trial Judges. Each winner in that election shall have a Term of Office which expires upon the occurrence of the Regular Presidential Election in the year 2000. (*Note: These primary and general elections were held on November 24, 1997, and December 29, 1997, respectively.*)

1A-10-3

Regular Elections. In the Regular Presidential Election in the year 2000, and in the Regular Presidential Election every four years thereafter, there shall be an at-large primary election followed by an at-large general election to fill all Trial Judge positions. The winner in each regular election shall serve a four-year Term of Office.

1A-10-4

Filling Vacancies. If the office of Trial Judge becomes vacant due to death, resignation, removal, or other cause, there shall be an at-large primary election followed by an at-large general election to fill the vacancy for the remainder of the

Term of Office, provided that, if the vacancy in office occurs when there is less than 180 days remaining in the Term of Office, the Tribal Council in its discretion may choose not to hold the election, whereupon the Tribal Council shall appoint a qualified person to the office.

- 1A-10-5 **Amended Revised Election Ordinance.** Contemporaneous with or promptly after the adoption of this Title, the Tribal Council shall prepare and adopt amendments of the Revised Election Ordinance to implement the foregoing provisions of this Chapter 10. (*Note: The Revised Election Ordinance was so amended by Ordinance DOI 2(98), adopted October 22, 1997.*) Thereafter, all elections of Trial Judges shall be conducted under the Revised Election Ordinance as so amended (and as it may be further amended). In the event of any conflict between the foregoing provisions of this Chapter 10 and the provisions of the Revised Election Ordinance, as so amended, the latter shall be controlling.

CHAPTER 11. APPOINTMENT OF APPELLATE JUDGES

- 1A-11-1 **Appointment.** All Appellate Judges shall be appointed by the Tribal President with the concurrence of the Tribal Council.
- 1A-11-2 **Expiration of Term.** Upon expiration of the Term of Office, a successor Appellate Judge shall be appointed for the four-year Term described in section 1A-9-1.
- 1A-11-3 **Death, Resignation or Removal.** Upon the death, resignation or Removal of an Appellate Judge, a successor shall be appointed to fill the vacancy. The appointee shall serve for the remainder of the former Appellate Judge's Term of Office.

CHAPTER 12. ADJUSTMENT OF JUDGESHIPS

- 1A-12-1 **Retained Power to Add Judges or Adjust Their Work Schedules.** In light of the needs of the Northern Cheyenne Court and available Tribal financial resources, the Tribal Council may at any time temporarily or permanently: increase the number of Judges specified in this Title for any Court; and convert any Judgeship specified as a part-time position in this Title to a full-time position (or vice versa). Judges added under this section are referred to in this Chapter as "Added Judges," "Added Trial Judges," or "Added Appellate Judges," as the case may be.
- 1A-12-2 **Added Trial Judges.** If it is intended that an Added Trial Judge will hold office for a term of 180 days or more, the Added Trial Judge shall be selected through a primary election followed by a general election in the manner described in Chapter 10. If, however, it is intended that an Added Trial Judge will hold office for a term less than 180 days, the Tribal Council in its discretion may choose not to hold such election, whereupon the position shall be filled through appointment by the Tribal President with the concurrence of the Tribal Council.
- 1A-12-3 **Added Appellate Judges.** All Added Appellate Judges shall be appointed by the

Tribal President with the concurrence of the Tribal Council.

- 1A-12-4** **Expiration of Term.** In no case may any Added Judge have a term of office which expires after expiration of the four-year Term of Office specified in section 1A-9-1 during which the Added Judge was elected or appointed, plus the additional period described in section 1A-9-2.

CHAPTER 13. OVERSIGHT OF JUDICIAL BRANCH

- 1A-13-1** **Audits, Reports and Removal.** The following mechanisms are intended to enable the Tribal Council, Tribal membership, and Judicial Branch to monitor and take action in light of the capabilities or performance of the Judicial Branch:
- A. **Annual Audits.** The annual Tribal financial audit shall include a financial audit of the Judicial Branch.
 - B. **Annual Reports.** Within 90 days after the close of each fiscal year, the Chief Trial Judge shall present to the Tribal President and Tribal Council a written report on the operations of the Judicial Branch during the preceding fiscal year. The report may also include recommendations for action by the Tribal Council or others with respect to the future operations or needs of the Judicial Branch.
 - C. **Removal Proceedings.** A Judge may be removed for cause through proceedings for Automatic Removal under section 1A-17-2 or Removal by Complaint under section 1A-17-3.

CHAPTER 14. TRIAL AND APPELLATE COURT JURISDICTION

- 1A-14-1** **Civil Jurisdiction.** The Trial Court and Appellate Court shall have and exercise the full reach of the Tribe's lawful civil jurisdiction (except for matters committed to the exclusive jurisdiction of the Constitutional Court). This includes the following so long as not inconsistent with controlling federal statutory or decisional law:
- A. civil jurisdiction over all persons, entities, property, lands, natural resources, environmental interests or values, cultural interests or values, transactions and/or activities located or occurring on the Reservation (collectively "On-Reservation Persons, Matters and/or Interests");
 - B. civil jurisdiction over matters arising or occurring outside the Reservation which have sufficient effect on, or sufficient minimum contacts with, On-Reservation Persons, Matters and/or Interests to legally justify the assertion of such civil jurisdiction;
 - C. civil jurisdiction over matters in which a plaintiff or defendant is a resident or has a place of business on the Reservation; and

- D. civil jurisdiction over all persons, entities, property, lands, natural resources, environmental interests or values, cultural interests or values, transactions and/or activities (collectively "Off-Reservation Persons, Matters and/or Interests") located or occurring on lands located outside the Reservation which are owned in trust or in fee by the Tribe or are controlled by the Tribe ("Off-Reservation Tribal Lands");

1A-14-2 Criminal Jurisdiction. The Trial Court and Appellate Court shall have and exercise the full reach of the Tribe's lawful criminal jurisdiction (except for matters committed to the exclusive jurisdiction of the Constitutional Court) over all offenses committed by Tribal members or other Indians on the Reservation or on Off-Reservation Tribal Lands, and over any other offenses, persons or entities within the Tribe's criminal jurisdiction under applicable law, compact, or consensual arrangement.

1A-14-3 Subject Matter Jurisdiction. Applying appropriate choice of law and jurisdictional rules, the Trial Court and Appellate Court shall hear civil claims and criminal matters within their jurisdiction (as set forth in sections 1A-14-1 and 1A-14-2) arising under:

- A. the Tribal Constitution and Bylaws;
- B. a referendum under Article VIII of the Tribal Constitution;
- C. Tribal codes, ordinances and resolutions;
- D. Tribal decisional law;
- E. Tribal customs and traditions, provided that the content of relevant customs and traditions must be proven and may be rebutted by testimony from qualified persons or the submission of authoritative written materials ;
- F. the Indian Civil Rights Act, Indian Child Welfare Act or other applicable federal law; or
- G. principles of state common law used by the Tribal Court to guide its fashioning of decisional principles under Tribal law not found in applicable existing provisions of the foregoing bodies of Tribal and federal law, provided that, absent federal law to the contrary or lawful consent of the Tribal Council, state law shall not govern or apply to On-Reservation Persons, Matters and/or Interests or Off-Reservation Persons, Matters and/or Interests.

1A-14-4 Sovereign Immunity. Nothing in this Chapter 14 is intended or shall be interpreted to in any respect waive the sovereign immunity of the Tribe, any Tribal Entity or any Tribal Representative.

CHAPTER 15. JUDICIAL TRAINING, CODE OF CONDUCT, COMPENSATION

- 1A-15-1 **Judicial Training.** Subject to the availability of funds, there shall be mandatory training for all Judges, as directed by the Chief Trial Judge for the Trial Judges and by the Chief Appellate Judge for the Appellate Judges.
- A. **Annual Training.** Each Judge will receive training at least annually.
- B. **Subjects.** The training must cover subjects relevant to the Judge's function, including without limitation pre-trial, trial, or appellate procedures, discovery, legal research, legal writing, Tribal law, and federal Indian law.
- C. **Conduct of Training.** The training shall be conducted by authorities in their respective fields.
- 1A-15-2 **Code of Judicial Conduct.** The Tribal Council, in consultation with the Chief Trial Judge and Chief Appellate Judge, shall either reaffirm the Code of Judicial Conduct for the Judicial Branch in force on the Effective Date of this Title ("Current Code"), or adopt an amended or new Code of Judicial Conduct based on American Bar Association or other appropriate models. Until such Tribal Council action, the Current Code shall remain in force.
- 1A-15-3 **Judge's Compensation.** Except for cases where the Tribal Council, acting under section 1A-12-1, converts a full-time Judgeship to a part-time Judgeship, the compensation of a Judge may not be reduced while the Judge is in office, unless the reduction is part of a program which provides for comparable and proportionate reductions in compensation for the President, Vice President and all Tribal Council members.

CHAPTER 16. JUDGES PRO TEM

- 1A-16-1 **Appointment of Panel; Removal of Judge Pro Tem.** The Tribal President with the concurrence of the Tribal Council shall endeavor to appoint and maintain a panel of Judges Pro Tem available to temporarily fill-in for a sitting Judge who is recused, disqualified, or otherwise temporarily unavailable to serve in a particular case or for a discrete period of time. The Tribal President with the concurrence of the Tribal Council, in their absolute discretion, may at any time remove a Judge Pro Tem from the panel, provided that such removal shall not be effective with respect to any Trial Court, Appellate Court or Constitutional Court matter which has been assigned to the Judge Pro Tem unless the removal has been concurred in by the Chief Trial Judge or Chief Appellate Judge making the assignment.
- 1A-16-2 **Qualifications.** To serve as a Judge Pro Tem in a particular Court, one must possess the qualifications set forth in sections 1A-8-2, 1A-8-4 to 1A-8-7, and 1A-8-9 to 1A-8-12 for Judges of that Court, provided that a sitting or recently retired judge of any

federal or state court shall be deemed fully qualified to sit as a Judge Pro Tem in the Trial Court, Appellate Court or Constitutional Court.

1A-16-3 **Assignment.** For the temporary purpose described in section 1A-16-1 above, the Chief Trial Judge may assign a qualified Judge Pro Tem to serve in the Trial Court and the Chief Appellate Judge may assign a qualified Judge Pro Tem to serve in the Appellate Court or Constitutional Court, provided that, in removal proceedings under Chapter 17 directed at an Appellate Judge, only the Chief Trial Judge may assign a Judge Pro Tem to the Constitutional Court as provided in section 1A-17-1.

1A-16-4 **Pro Tem Assignment of Sitting Judges.** If assignment of a Judge Pro Tem is not feasible, for the temporary purpose described in section 1A-16-1 above, the Chief Trial Judge and Chief Appellate Judge may jointly designate (A) any Trial Judge to serve pro tem in the Appellate Court or in the Constitutional Court, or (B) any Appellate Judge to serve in the Trial Court, provided the designee possesses the qualifications for Judge of the Court to which he or she has been assigned as set forth in Chapter 8 and has not previously decided any material matter in the particular case; provided further that, in removal proceedings directed at an Appellate Judge under Chapter 17, only the Chief Trial Judge may assign a Trial Judge to the Constitutional Court as provided in section 1A-17-1.

CHAPTER 17. REMOVAL OF JUDGES

1A-17-1 **Exclusive Method -- Before Constitutional Court.** The following shall be the exclusive procedures and standards for removal of any Judge. As described below, there are two types of removal -- Automatic Removal and Removal by Complaint -- both administered and decided by the Constitutional Court. If the removal is directed at an Appellate Judge ("Respondent"), and if there are fewer than three other available sitting Appellate Judges, the Respondent's seat on the Constitutional Court shall be filled in the removal proceedings by a Trial Judge or a qualified Judge Pro Tem designated by the Chief Trial Judge.

1A-17-2 **Automatic Removal.** A Judge shall forfeit and be removed from office ("Automatic Removal") as provided in this section 1A-17-2;

- A. **Conviction of Felony.** Automatic Removal shall occur if the Judge, while holding his or her current position as Judge, is convicted of any felony in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure, irrespective of whether the conduct on which the conviction is based occurred before or during the Judge's current term of office.
- B. **Conviction of Misdemeanor Involving Moral Turpitude.** Automatic Removal shall occur if the Judge, while holding his or her current position as Judge, is convicted of any misdemeanor or gross misdemeanor in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial,

or other procedure, which the Constitutional Court determines is a Misdemeanor Involving Moral Turpitude, irrespective of whether the conduct on which the conviction is based occurred before or during the Judge's current term of office.

C. **Lack of Qualifications.** Automatic Removal shall occur if the Judge does not possess a qualification for office set forth in this Title, irrespective of whether the lack of qualification arises from events which occurred before or during the Judge's current term of office.

D. **Confirmation by Constitutional Court.** An Automatic Removal shall not take effect until it is confirmed by the Constitutional Court as provided in this subsection D:

1. Upon receiving advice it deems reliable that indicates that a Judge ("Respondent") stands convicted of a felony as described in subsection A above or a Misdemeanor Involving Moral Turpitude as described in subsection B above, or lacks any qualification for office as described in subsection C above, the Constitutional Court shall, as a matter of highest priority, proceed with dispatch to determine whether such ground for Automatic Removal in fact exists, and if it does, to confirm the Automatic Removal of the Respondent, in the following manner. Such proceedings shall not be delayed or suspended because judicial proceedings to reconsider, vacate or appeal a conviction described in subsection A or B are pending.
2. The Constitutional Court shall issue a written notice to the Respondent, Tribal President and Tribal Secretary advising that the Constitutional Court will convene a hearing to determine whether the Automatic Removal of Respondent from office must be confirmed. The notice shall state the date, time and place of the Constitutional Court hearing, and summarize the indicated grounds for Automatic Removal, and shall include a copy of this Title. The hearing shall be held as promptly as possible but no sooner than 10 days from the date of issuance of the written notice.
3. At the hearing, the Respondent shall be accorded an adequate opportunity to be heard on the matter, and may be represented by an attorney or advocate at his or her own expense. Conviction of a felony or a Misdemeanor Involving Moral Turpitude must be evidenced either by a copy of the judgment of conviction certified by the court in which the Respondent was convicted or by Respondent's sworn admission to such conviction. The Constitutional Court may consider any additional factual or legal materials, information or submissions it deems relevant.

4. After considering the materials, information and submissions before it, the Constitutional Court shall decide, as the case may be, whether the Respondent stands convicted of a felony as described in subsection A or a Misdemeanor Involving Moral Turpitude as described in subsection B, or lacks any requisite qualification for office as described in subsection C. If the Court decides that such ground for Automatic Removal in fact exists, it shall be dutibound to immediately confirm Respondent's Automatic Removal from office, effective immediately. The Constitutional Court's decision shall be in writing.
 5. The decision of the Constitutional Court on Automatic Removal shall be final, binding on the Tribe and all branches of Tribal government, and not subject to review in any court.
 6. While Automatic Removal proceedings are pending, the Constitutional Court may suspend or otherwise limit Respondent's status or authority as a Judge.
- E. **Effect of Subsequent Vacation of Conviction.** An Automatic Removal based on a conviction described in subsection A or B, which is confirmed by the Constitutional Court as provided in subsection D, shall not be suspended or reversed because of a subsequent decision rendered in any judicial proceeding to vacate the conviction. However, as provided in sections 1A-17-4.A and B, if the conviction is vacated it will not disqualify Respondent from later serving as a Judge.

1A-17-3

Removal by Complaint. In addition to Automatic Removal under section 1A-17-2, any Judge may be removed from office by complaint ("Removal by Complaint") as provided in this section 1A-17-3:

- A. **Complaint.** Proceedings for Removal by Complaint shall be initiated by a written complaint ("Complaint") seeking removal of a single Judge only ("Respondent"). The Complaint shall specify the grounds for removal, allege the facts supporting such grounds in reasonable detail, and be sworn to and signed by one or more enrolled members of the Tribe who are at least 18 years old ("Complainants"), provided that any Judge, irrespective of tribal membership, may be a Complainant. The Complaint, accompanied by a \$25 filing fee, shall be filed with the Court Clerk ("Filing"), who promptly shall provide a true copy thereof to the Respondent, each member of the Constitutional Court, the Tribal President, and the Tribal Secretary. The Constitutional Court shall have continuing authority to adjust the filing fee to account for inflation or other factors.
- B. **Grounds.** Removal by Complaint may be sought and effected on the ground that the Respondent:

1. has grossly or repeatedly failed to competently perform the duties of office;
 2. while performing the duties of office, has used alcohol, drugs or other mind-altering substance, or engaged in immoral behavior, unethical conduct, or corruption or abuse of power, provided that where such misconduct has resulted in a conviction as described in section 1A-17-2.A or B, the convicted Judge shall be Automatically Removed in the manner described in section 1A-17-2;
 3. suffers from physical or mental incapacity preventing the competent performance of the duties of office, including the loss of essential physical or mental capabilities due to illness, injury, or addiction to alcohol, drugs or other mind-altering substance; or
 4. has grossly or repeatedly violated the Code of Judicial Conduct.
- C. **Withdrawal of Complaint.** At any time prior to the commencement of a hearing under subsection G below, any Complainant may withdraw his or her signature on the Complaint by filing with the Court Clerk a signed and sworn certificate of such withdrawal. If all signatures on a Complaint are so withdrawn, all further proceedings on the Complaint shall terminate. The Court Clerk promptly shall provide true copies of any signature withdrawal(s) to the Respondent, any other Complainant(s), each member of the Constitutional Court, the Tribal President, and the Tribal Secretary
- D. **Review by Tribal Secretary.** Within 7 days after the Filing of the Complaint, the Tribal Secretary shall make best efforts to review the Complaint and any signature withdrawal(s) filed to date, determine the validity and sufficiency of all signatures thereon, and report the results of this review in writing to the Respondent, the Complainant(s), the Court Clerk, each member of the Constitutional Court, and the Tribal President.
- E. **Review by Constitutional Court.** If the report of the Tribal Secretary states that the Complaint is supported by valid signature(s), the Constitutional Court, under such procedures as it considers appropriate, promptly shall review the Complaint and determine: (1) if it meets the formal and procedural requirements of this Ordinance; and (2) if it alleges grounds and sufficient supporting facts which, if proven to the satisfaction of the Court, would justify Removal by Complaint. The Constitutional Court shall make best efforts to report its determinations on items (1) and (2) in writing to the Respondent, Complainant(s), Tribal President and Tribal Secretary within 21 days after the Filing of the Complaint. If the Court reports negatively on either item (1) or (2), the Complaint shall thereupon be deemed dismissed and no further action shall be taken on it. If the Court reports positively on items (1) and (2), the Court shall make best efforts to schedule a hearing on the

Complaint to be commenced within 35 days after the Filing of the Complaint. Pending such a hearing and its decision on the Complaint, the Constitutional Court may suspend or otherwise limit Respondent's status or authority as a Judge.

- F. **Timelines.** On a case-by-case basis, the Constitutional Court may adjust any time period specified in subsection D or E above, as it deems warranted.
- G. **Hearing.** If the Constitutional Court determines to hold a hearing on the Complaint, the hearing shall be conducted as follows:
1. At least 10 days before the hearing, the Court Clerk shall issue a written notice to the Respondent, Complainant(s), Tribal President and Tribal Secretary which states the date, time, place and purpose of the hearing, and includes a copy of this Title.
 2. The hearing shall be conducted in accordance with such procedures and evidentiary standards as the Constitutional Court considers necessary to afford fair and reasonable opportunity to the Complainant(s) and the Respondent to support and refute the Complaint, and to enable the Court to make an informed and fair decision on the Complaint. The Complainants collectively and the Respondent may each be represented by an attorney or advocate at the hearing at their own expense.
 3. The hearing shall be conducted in public and on the record. A verbatim stenographically or electronically recorded transcript of the hearing shall be maintained.
- H. **Decision.** After the hearing, the Constitutional Court shall issue a decision on the Complaint. The decision shall be in writing and shall set forth findings of fact, conclusions as to whether grounds for Removal by Complaint have been established, and the Court's decision with respect to such removal. The Constitutional Court may dismiss the Complaint, or may decide that Respondent shall be removed as Judge, that Respondent's status as Judge shall be suspended for no more than 90 days, or may impose conditions on Respondent's continued status or activities as Judge. The decision of the Constitutional Court shall be final, binding on the Tribe and all branches of Tribal government, and not subject to judicial review in any court.

1A-17-4 Effect of Removal on Future Eligibility for Judge.

- A. **Automatic Removal – Felony.** A Judge Automatically Removed from office due to a felony conviction as provided in section 1A-17-2, shall thereafter not be eligible for election or appointment as a Judge unless the conviction has been vacated and such person possesses all other qualifications for such office

set forth in this Title.

- B. **Automatic Removal -- Misdemeanor Involving Moral Turpitude.** A Judge Automatically Removed from office due to conviction of a Misdemeanor Involving Moral Turpitude as provided in subsection 1A-17-2, shall not be eligible for election or appointment as a Judge during the 10-year period following such conviction, unless the conviction has been vacated and such person possesses all other qualifications for such office set forth in this Title.
- C. **Removal by Complaint.** A person who has been removed as a Judge by Complaint as provided in section 1A-17-3, shall not be eligible for election or appointment as a Judge during the three-year period following such removal.

CHAPTER 18. FUNDING FOR JUDICIAL BRANCH

- 1A-18-1 **Per Regular Tribal Budget.** The Tribal Council shall provide funding for the operations of the Judicial Branch in the regular Tribal budget, after consulting with the Chief Trial Judge, the Chief Appellate Judge, and the Court Clerk about funding needs.
- 1A-18-2 **Independent Fund Raising.** With the prior approval of the Tribal Council, the Judicial Branch may independently raise funds for its operations, provided that funds shall not be sought from parties who have, or reasonably may in the future have, matters in litigation within the Judicial Branch. Any funds so raised shall be remitted to the Tribal Treasurer for administration for the benefit of the Judicial Branch and for accountability.
- 1A-18-3 **Remittance of Court Revenues to Treasurer.** Northern Cheyenne Court filing fees, copying charges and other charges, fines and penalties, and other sums paid to the Judicial Branch, shall be remitted to the Tribal Treasurer for administration for the benefit of the Judicial Branch and for accountability.

CHAPTER 19. AMENDMENT OR REPEAL.

- 1A-19-1 **Two-Thirds Council Vote.** This Title may be amended, repealed or suspended only by affirmative vote of two-thirds of all Tribal Council seats (whether such seats are filled or vacant), i.e., by affirmative vote of 8 Tribal Council members.

* * * * *

4. I understand that, if the Constitutional Court accepts this certification and adjudicates the Constitutional Claim, the adjudication will be conducted in accordance with all rules, procedures and standards set forth, referred to or authorized in Chapter 6 of the Tribe's Separation of Powers Code, which I have reviewed before making this request.

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TITLE II

APPELLATE CODE

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TITLE II

APPELLATE CODE

Chapter 1. GENERAL SECTION

2-1-1. Composition of the Appeals Court [*As amended by Ords. 27(88), 22(89), DOI 3(98)*]

The composition of the Appellate Court is set forth in section 1A-5-2.

2-1-2. Selection Procedure [*As amended by Ords. 27(88), 22(89), DOI 3(98)*]

The Appellate Judges shall be appointed as provided in Chapter 11 of Title IA.

2-1-3. Term of Office [*As amended by Ords. 22(89), DOI 3(98)*]

The Term of Office for Appellate Judges is set forth in Chapter 9 of Title IA.

2-1-4. Compensation [*As amended by Ords. 22(89), DOI 3(98)*]

The compensation for Appellate Judges shall be set by the Tribal Council, provided that once so set any reduction in a sitting Appellate Judge's compensation must comply with section 1A-15-3.

2-1-5. Grounds for Removal [*As amended by Ord. DOI 3(98)*]

Grounds for Automatic Removal of an Appellate Judge are set forth in section 1A-17-2. Grounds for Removal by Complaint are set forth in section 1A-17-3.B.

2-1-6. Procedure for Removal [*As amended by Ords. 22(89); DOI 3(98)*]

Procedures for Automatic Removal and Removal by Complaint of an Appellate Judge are set forth in Chapter 17 of Title IA.

No Appellate Judge shall hear or decide an appeal if that Judge:

- (1) Decided any material matter in the Trial Court proceedings;
- (2) Is related by blood or marriage to the appellant or appellee, if such relationship is in the first degree, such as brother, sister, parent, spouse, child, stepchild, foster child, adopted child, former spouse, grandparent, great grandparent, uncle or aunt (whether by blood or marriage), or a first cousin; or
- (3) Would benefit personally and to a much greater degree than members of the general public of the Northern Cheyenne Reservation from any particular disposition of the appeal; or
- (4) Would otherwise be in a position where his or her impartial judgment might be significantly affected.

An Appellate Judge shall disqualify himself in any appellate case in which he has a substantial interest, or as otherwise provided for above, or where, in that Judge's opinion, it would be otherwise improper to sit on appeal.

A party to an appeal may, in accordance with the above provisions, file an affidavit of prejudice with the Appellate Court stating facts and reasons for the belief that prejudice exists. The affidavit must be filed within five days of the designation of the Appellate Judge to hear the appeal.

If two other Appellate Judges agree prejudice in accordance with the above provisions exists, another Judge will be appointed to hear the case.

A party may file only one such affidavit of prejudice in any case.

Chapter 2. ADMINISTRATION

2-2-1. Administrative Responsibilities [As amended by Ord. DOI 3(98)]

The Chief Appellate Judge, designated as provided in section 1A-5-3, shall have overall administrative authority over the Appellate Court as provided in section 1A-5-4.

2-2-2. Clerk's Duties [As amended by Ord. DOI 3(98)]

The Office of the Court Clerk, administered by the Court Clerk subject to the supervision of the Chief Trial Judge, shall serve the entire Northern Cheyenne Court as provided in sections 1A-7-1 and 1A-7-2.

2-2-3. Court Sessions [As amended by Ord. DOI 3(98)]

The Appellate Court shall convene whenever there is a case to be heard.

Chapter 3. GENERAL PROCEDURES

2-3-1. Who Can Appeal [As amended by Ord. DOI 3(98)]

Any party adversely affected by a decision of the Trial Court in a civil case may appeal that decision. Any party in a criminal case, except the prosecution, may appeal from any final order, commitment, or judgment of the Trial Court. The prosecution in a criminal case may appeal only alleged procedural error.

2-3-2. How to Request an Appeal [As amended by Ord. DOI 3(98)]

An appeal is commenced in a civil case by filing an original and one copy of a Request for Appeal with the Court Clerk within five days of the date of the Trial Court's adverse decision. In a civil case, the party requesting appeal must also file two copies of his brief and a copy of the trial transcript with the Court Clerk within twenty days of requesting an appeal. In criminal cases an appeal must be requested within two days of the decision and briefs are due within ten days.

2-3-3. Clerk's Duties [As amended by Ord. DOI 3(98)]

When a Request for Appeal is received, the Court Clerk will notify the Chief Appellate Judge and opposing parties within three days of the Request. After the briefs and transcript are received, the Clerk will distribute the transcript and one copy of the brief to the Chief Appellate Judge and the other brief to the opposing party within two days. The opposing party's brief, when received, will also be distributed in two days.

2-3-4. Opposing Party's Response [*As amended by Ord. DOI 3(98)*]

In a civil case, the opposing party will have fifteen days from the date the appealing party brief is received to file an opposing brief [*cont'd on p. II-6*]

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and any Request for Cross-Appeal supported by the opposing brief. In a criminal case the opposing brief and any Request for Cross-Appeal must be filed within five days of receiving the appealing party's brief. A party shall have ten days from receipt of a Request for Cross-Appeal to file a responsive brief.

2-3-5. Consequences of Missing Filing Dates [As amended by Ord. DOI 3(98)]

If any party does not file his Request for Appeal within the stated time limits, he loses his opportunity to appeal. If any party does not file his brief within the stated time limits, the case will be decided without that brief.

2-3-6. Filing Fee [As amended by Ord. DOI 3(98)]

The appealing party shall pay a \$20 filing fee at the time the Request for Appeal is filed to the Court Clerk.

2-3-7. Costs [As amended by Ord. DOI 3(98)]

The costs of an appeal rest on the appealing party unless the Trial Court's decision was the result of the Trial Judge's conflict of interest as determined by the Appellate Court; then the opposing party is responsible for the costs of appeal.

2-3-8. Satisfaction of Judgment [As amended by Ord. DOI 3(98)]

All judgments and orders of the Appellate Court shall be enforceable through and by the Trial Court. Upon compliance with and satisfaction of the judgment or order, the Court Clerk shall notify the Chief Appellate Court Judge.

2-3-9 Extension of Time Limits [As amended by Ord. DOI 3(98)]

The Appellate Court, for good cause, may extend any time limit set in this Chapter.

Chapter 4. FULL APPEALS

2-4-1. Who Hears the Appeal [As amended by Ord. DOI 3(98)]

A full appeal is heard by a single Appellate Judge, provided that subsequent *en banc* review by a panel of three Appellate Judges may be sought and granted as provided in section 1A-5-5.

2-4-2. What May be Appealed [*As amended by Ord. DOI 3(98)*]

Any final decision of the Trial Court may be appealed unless the right of appeal is foreclosed by this Law and Order Code or other applicable Tribal or federal law.

2-4-3. Standards on Full Appeal [*As amended by Ord. DOI 3(98)*]

The Appellate Court may decide not to hear an appeal in a civil case if the Request for Appeal is frivolous or the information in the Request is clearly false, as determined by the Appellate Court.

When an appeal is heard, the Appellate Court may affirm, modify, reverse, or remand the Trial Court's decision. There can be a modification or reversal only where there were no facts to support the decision or there was a misapplication of the law.

2-4-4. When Oral Arguments Heard [*As amended by Ord. DOI 3(98)*]

In a civil or criminal case, oral argument shall be held only if ordered by the Appellate Court.

2-4-5. No Majority on the Decision [*As amended by Ord. DOI 3(98)*]

In *en banc* reviews, if no majority is reached on a decision, then the decision rendered by the single Appellate Judge shall stand.

2-4-6. Written Decision [*As amended by Ord. DOI 3(98)*]

The Appellate Court's decision shall be in writing and shall contain the facts and issues of the case, the rules of law relied on, the reasoning of the Court, and the decision.

2-4-7. Time Limits [*As amended by Ord. DOI 3(98)*]

The written decision in a civil or criminal case shall be issued within fifteen days of the later of: the date the last brief is due or the date of oral argument.

Chapter 5. IMMEDIATE APPEALS

2-5-1. Who Hears Immediate Appeals [*As amended by Ord. DOI 3(98)*]

An immediate appeal is heard by a single Appellate Judge, provided that subsequent *en banc* review by a panel of three Appellate Judges may be sought and granted as provided in section 1A-5-5.

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2-5-2. What May be Immediately Appealed [As amended by Ord. DOI 3(98)]

A party may request an immediate appeal in the following circumstances, unless the right to immediate appeal is foreclosed by this Law and Order Code or other applicable Tribal or federal law:

- a. injunctions: Trial Court order prohibiting or allowing a particular action.
- b. mandamus: Trial Court order directing the Tribe or its Instrumentalities or a Tribal Representative, as these terms are defined in section 1-3-2, to perform or refrain from performing a particular act as part of its or his official duties or to restore to a party rights and privileges of which has been illegally deprived; provided the foregoing shall not be construed as a waiver of sovereign immunity under section 1-3-2.
- c. interlocutory: Trial Court order deciding some point before the end of a case that is not a final decision in the case.
- d. habeas corpus: Trial Court order to produce a detained person, justify the detention, and provide any related relief.

2-5-3. Time Limits [As amended by Ord. DOI 3(98)]

The request for an immediate appeal must be made in writing in the Request for Appeal . Within three days of such filing, the Appellate Judge will decide in writing whether the appeal will be processed as an immediate appeal, dismissed or processed as a full appeal. If processed as an immediate appeal, a written decision on the appeal shall be issued as soon as possible, but no later than ten days after the Request for Appeal is filed.

2-5-4. Standards on Immediate Appeal [As amended by Ord. DOI 3(98)]

The Appellate Court on an immediate appeal may affirm, modify, reverse, or remand the Trial Court's order. The order may be modified or reversed only if there was no evidence to support the order.

2-5-5. Notice of Immediate Appeal [As amended by Ord. DOI 3(98)]

The appealing party must notify the opposing parties of the request for an immediate appeal at or prior to the time the Request for Appeal is filed with the Court Clerk or the appeal will not be processed as an immediate appeal.

2-5-6. Submission of Information by Parties [As amended by Ord. DOI 3(98)]

When the appeal is processed as an immediate appeal, all parties shall submit their reasons for having the order reversed or affirmed or modified, in writing and/or orally at a hearing as the Appellate Court requests. Information not submitted by the parties will not be considered by the Appellate Court in reaching a decision.

2-5-7. Written Decision [*As amended by Ord. DOI 3(98)*]

The Appellate Court's decision on an immediate appeal shall be written, stating the type of order appealed, the facts, the rules of law applied, the reasoning and the decision.

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2-5-8. Full Appeal Not Precluded [*As amended by Ord. DOI 3(98)*]

The processing and disposition of an immediate appeal does not preclude a full appeal of the Trial Court's final decision in the case.

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TITLE III

JUVENILE CODE

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TITLE III

JUVENILE CODE

Chapter 1. GENERAL SECTION

3-1-1. Purposes and Construction

The Juvenile Code shall be interpreted and construed to fulfill the following purposes:

- A. To provide for the welfare, care and protection of the Northern Cheyenne Tribe;
- B. To preserve the unity of the family, preferably by separating the child from the parents only when necessary;
- C. To discourage delinquent acts and to protect the community's interest by providing supervision, care and rehabilitation;
- D. To ensure that off-reservation courts will be willing to return tribal children to the reservation [*As amended by Ord. DOI 3(98)*]; and
- E. To preserve and utilize Northern Cheyenne traditional approaches and remedies whenever appropriate and in the best interest of the child.

3-1-2. Definitions

The following definitions shall apply to all Chapters of this Title. [*As amended by Ord. DOI 3(98)*]

- A. Abandon - When a parent or other person responsible for a child's welfare (1) leaves the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or (2) willfully surrenders physical custody and there is no indication of a willingness to assume parental role(s) for a period exceeding two (2) years.
- B. Abused or Neglected Child - A child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent(s) or other person responsible for his welfare and includes, but is not limited to, all definitions of abuse contained in this Code and circumstances concerning basic needs such as food, clothing, shelter, medical attention, adequate hygiene, education, emotional and moral training.
- C. Adjudication - A Court proceeding in which facts supporting the allegations in a petition are determined.

- D. Adult - Any person subject to the jurisdiction of the Northern Cheyenne Tribe who is eighteen (18) years of age or older.
- E. Child -
1. A person under eighteen (18) years of age;
 2. A person eighteen (18) years of age or older when proceedings are commenced in the Court prior to his eighteenth (18th) birthday; [*As amended by Ord. DOI 3(98)*]
 3. A person eighteen (18) years of age or older who is under the continuing jurisdiction of the Court, as a result of a proceeding under this Chapter. [*As amended by Ord. DOI 3(98)*]
- F. Child Custody Proceeding - Any voluntary or involuntary informal or formal Court action not including divorce actions, that may result in the temporary or permanent removal of the child from his or her parent, guardian, or custodian.
- G. Child in Need of Care - A child who:
1. Has no parent(s), guardian, or custodian available and willing to care for him;
 2. Has suffered or is likely to suffer a physical injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily functions;
 3. Has not been provided with adequate food, clothing, shelter, medical care, education, or supervision by his parent(s), guardian, or custodian necessary for his health and welfare;
 4. Has been sexually abused;
 5. Has committed delinquent acts as a result of parental pressure, guidance, or approval; or
 6. Has been emotionally abused or neglected.
- H. Child in Need of Intervention - A child that has engaged in non-criminal, offensive conduct which may have included, but is not limited to, the following types of conduct:
1. Habitual truancy;
 2. Ingesting or inhaling alcoholic beverages, narcotics or any other mind altering substances;

3. Breaking curfew;
 4. Habitual runaway;
 5. Conduct beyond the control of the person responsible for the child;
 6. Habitual subjection to serious physical or psychological injury to himself or to others;
 7. Seriously endangering the health or well-being of himself or others.
- I. Court - The Trial Court of the Northern Cheyenne Court when exercising jurisdiction under this Juvenile Code unless another court is clearly intended. [As amended by Ord. DOI 3(98)]
- J. Court Judge - Any duly appointed or elected Trial Judge of the Northern Cheyenne Court when exercising jurisdiction under this Juvenile Code. [As amended by Ord. DOI 3(98)]
- K. Custodian - A person other than a parent or guardian, to whom legal custody of the child has been given who has the same responsibilities and authority as a guardian except as expressly limited in a custody decree.
- L. Delinquent Child - A child who has committed an act that violates this Law and Order Code and/or would be a crime if committed by an adult, or is a verified fugitive from another jurisdiction. [As amended by Ord. DOI 3(98)]
- M. Dependent Child - A child lacking an adult person responsible for providing the physical, medical, emotional, educational, or supervisory needs of the child, when such lack is likely to result in serious harm to the child as determined by appropriate Northern Cheyenne Social Services personnel, appropriate county welfare department, or other expert appointed by the Court.
- N. Detention - The placement of a minor in a physically restrictive facility.
- O. Detention Facility - Any public or private residential facility which:
1. Includes construction fixtures and administrative policies and procedures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and
 2. Is used primarily for the temporary placement of any juvenile who is accused of having committed an offense, [cont'd on p. III-7]

or any other individual accused of having committed a criminal offense.

3. Secure detention may consist of a locked room within a nonsecure private or public residential facility if such a facility is available.
- P. Diversion - A course of remedial action taken in matters arising under this Title that is designed to avoid formal Court action and is in the best interests of the child involved.
- Q. Domicile - The place considered to be the child's home.
- R. Emergency Removal - The temporary removal of a child from his custodian, guardian, or parent(s) which is reasonably believed necessary to prevent serious and imminent physical or psychological harm to the child and such removal lasts only so long as the conditions for the removal continue to exist.
- S. Emotionally Abused Child - An abused child suffering injury to his psychological functioning as determined by appropriate Northern Cheyenne Social Services personnel, appropriate county welfare department, or other expert appointed by the Court.
- T. Extended Family - Includes any person 18 years of age or older who is related by blood or marriage to the child, or any other person considered to be an extended family member of the child under the customs of the Northern Cheyenne Tribe or a person determined to be most able to look after the best interests of the child.
- U. Guardian - A person other than the child's parent who has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, and is concerned about his general welfare. Except as limited by the court, these duties and responsibilities are those that would ordinarily be exercised by the natural or adoptive parent if no guardian had been appointed.
- V. Guardian Ad Litem - An adult appointed by the Court to represent the best interests of a child in any proceeding to which the child may be a party or the outcome of which affects the child's interests.
- W. ICWA - The Indian Child Welfare Act of 1978, P.L. 95-608.
- X. Indian Custodian - An adult tribal member to whom temporary physical care, custody, and control has been transferred by the parent of such child.
- Y. Least Restrictive Alternative - This term directs the Court to

select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of achieving that objective.

- Z. Nutritionally Abused Child - A child subjected to inadequate or non-nutritional foods as determined by appropriate Northern Cheyenne Social Services personnel, appropriate county welfare department, or other expert appointed by the Court.

- AA. Parent - Includes a biological or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established in the community.

- BB. Probation - A legal status created by the Court whereby the physical custody of the child is unchanged and the child's freedom of movement is not legally restricted but may be subject to minimal, necessary and certain restrictive conditions by the Court for a limited period of time. The conditions of probation shall be specified by the Court.

- CC. Residence - The place where the child is presently living and will continue to live for an indefinite period of time.

- DD. Residual Parental Rights and Duties - Those rights and duties remaining with the parent(s) after legal custody or guardianship, or both have been vested in another person or agency including, but not limited to, the duty to financially support the child, the right to consent to adoption, the right to decide the child's religious affiliation, and the right to reasonable visitations unless restricted by the Court. Where no guardian has been appointed, residual parental rights and duties shall also include the right to consent to marriage, to enlistment in the Armed Forces, and to consent to major medical, surgical or psychiatric treatment.

- EE. Sexually Abused Child - An abused child subjected to obscene or sexual activities.

- FF. Shelter Care - The temporary care of children in physically unrestricting facilities pending court disposition.

3-1-3. Duty to Report Abuse and Neglect.

- A. Basis of Reports - Persons who have a reasonable cause to suspect that a child has been abused or neglected shall serve the Northern Cheyenne Tribes by reporting the abuse or neglect to the Director of the Northern Cheyenne Social Services, or the appropriate county welfare department.

- B. Professionals and officials required to report are:

1. Physicians, residents, interns, or members of a hospital's staff engaged in the admission, examination, care, or treatment of persons;
 2. Nurses, osteopaths, chiropractors, podiatrists, medical examiners, coroners, dentists, optometrists, or any other health or mental health professional;
 3. Religious healers;
 4. School teachers, other school officials, and employees who work during regular school hours;
 5. Social workers, operators or employees of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;
 6. Foster care, residential, or institutional workers; or
 7. Peace officers or other law enforcement officials; or
 8. Attorneys with the express consent of their clients.
- C. No person listed in subsection (B) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.
- D. Other Persons - Any person within the exterior boundaries of the Northern Cheyenne Reservation has a duty to report known or suspected instances of child abuse or neglect. Those persons reporting may remain anonymous except when the court determines the report was made in bad faith.
- E. Immunity from Liability - All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution.
- F. Upon determination by the Court, any person who maliciously uses this reporting procedure may be held in contempt of court and may be subject to appropriate penalties, and/or civil liability as malicious reports shall be deemed bad faith reports under subsection (D).
- G. Penalty for Not Reporting - Any person, official, or institution required to report known or suspected child abuse or neglect or required to perform any other act, who knowingly fails to do so, or who prevents another person from doing so may be civilly liable for the damages caused by such failure or prevention.

3-1-4. Proceedings as Civil in Nature.

- A. Proceedings in juvenile cases shall be regarded as civil proceedings with the Court exercising certain equitable powers. Any disposition under this Code shall not be deemed a conviction of a crime, shall not impose any civil disabilities ordinarily resulting from conviction, nor operate to disqualify any child in any application or appointment to a program or position.
- B. The fact that the proceedings are of a civil nature shall not be interpreted to deprive the child of his rights to counsel at his own expense, to confront accusers, to refuse to incriminate himself, to cross-examine witnesses, and the right to trial by jury.
- C. The disposition of a juvenile matter and evidence given in a hearing in the Court shall not be admissible as evidence against the child in any case or proceeding in other than juvenile proceedings of the Northern Cheyenne Court in order to avoid any stigma that interferes with the child overcoming his problems and becoming a viable adult member of the Tribe.
- D. Juvenile cases under this Code shall be handled separately from the adult cases in the Northern Cheyenne Court.

3-1-5. Due Process of Law.

Due process of law shall be guaranteed at all formal and informal proceedings under this title.

3-1-6. Computation of Time Limits.

The following time periods shall be excluded in computing the time for any proceeding under this Code:

- A. The period of delay resulting from other proceedings concerning the child.
- B. The period of delay resulting from a continuance granted at the request, or with the consent, of the child, child's parent(s), his counsel, or attorney.
- C. The period of delay resulting from the absence or unavailability of the child.
- D. Saturdays, Sundays and legal holidays when the original time limitation is less than seven (7) days.

3-1-7. Notice.

All parties to a formal or informal hearing shall be notified in writing by

an officer of the Court, by a properly drafted and delivered summons of the hearing, and such notice shall be given within a reasonable time before the scheduled hearing, but not less than seventy-two (72) hours before the hearing.

3-1-8. Representation.

The parties shall be informed of their right to representation at their own expense. An appropriate officer or individual shall be available to represent the child. Where the child is not represented the proceedings shall be continued until such representation is obtained.

3-1-9. Evidence and Burdens of Proof.

All findings shall be based upon relevant evidence. Findings shall be supported by clear and convincing evidence. Determinations of delinquency and terminations of parental rights shall be supported by proof beyond a reasonable doubt.

3-1-10. Confidentiality.

- A. Formal and informal hearings both shall be conducted in closed and private chambers except when the child requests an open hearing.
- B. Names of children involved in proceedings under this title shall not be published.
- C. A record of all informal and formal proceedings shall be made and preserved with the Court. All Court records and all law enforcement records and files concerning children under this title, including social, medical and psychological reports shall be kept confidential. These records shall not be open for inspection but except upon Court Order and then only to the following persons or agencies:
 - 1. The child;
 - 2. The child's representative;
 - 3. The child's parent, guardian, or custodian and their representatives;
 - 4. The officers of the court; and
 - 5. Any other person having a legitimate interest in the case and in performance of their duties, as determined by the Court.

3-1-11. Expungement.

When a child who has been the subject of any proceeding before the

Court attains the age of eighteen (18) the Court shall order the destruction of both the Court records and the law enforcement records, except those records dealing with adoptions and parental matters.

Chapter 2. DELINQUENT CHILDREN, CHILDREN IN NEED OF INTERVENTION, AND CHILDREN IN NEED OF CARE

3-2-1. Custody.

- A. A child may be taken into custody by an officer when the officer has a reasonable belief that the child is delinquent or is in need of intervention.
- B. A child shall be taken into custody by a law enforcement officer, a representative of Northern Cheyenne Social Services, or an appropriate welfare official in any case where they have reason to believe the child is in danger of serious and imminent physical or emotional harm.

3-2-2. Custodial Procedure.

The child's parent(s), guardian or custodian shall be notified of the child's custody as soon as possible. The child shall be released to the custody of the parent(s), guardian or custodian unless:

- A. In a delinquency proceeding, such release is impossible;
- B. In a child in need of care proceeding, it is reasonably believed that continued custodial care is necessary because the parent(s), guardian or custodian is unable or unwilling to provide supervision or care, or the child would be placed in danger of serious and imminent harm.

3-2-3. Custodial and Shelter Care Placements.

Whenever a child is taken into custody and not immediately released to his or her parents, guardian, or custodian, the child shall be placed in the least restrictive custodial environment and may be placed as follows:

- A. If the child is taken into custody for committing a delinquent act or is alleged to be in need of intervention, he or she shall be placed in a nonsecure residential shelter on the Reservation. In the following situations, the child may be detained in a secure facility:
 - 1. The alleged offense is a Class A offense;
 - 2. The child is a verified fugitive from another jurisdiction;
 - 3. The child is on conditional release in connection with another delinquency proceeding; or

4. The child has a demonstrable recent record of willful failures to appear at Court proceedings.
- B. If the child is alleged to be in need of care, he or she may be placed:
1. With a responsible member of the child's extended family; or
 2. With a foster family residing on the Reservation approved by the Tribe; or
 3. With a responsible adult residing on the Reservation; or
 4. In a shelter care facility on the Reservation which has been approved by the Tribe and designed to care and supervise such children in need of care, and which meets applicable federal guidelines as determined by the Director of Social Services.

3-2-4. Prohibited Custodial Placements.

- A. Children who are taken into custody for committing a delinquent act who are detained in a secure facility shall not be detained or confined in any institution in which they have sight or sound contact with adult persons incarcerated because such adults have been convicted of a crime or are awaiting trial on criminal charges.
- B. Children taken into custody for committing a delinquent act and eligible for secured detention may be held temporarily in an adult jail or lock-up only where necessary for administrative purposes of identification, processing, transfer to another jurisdiction, transfer to Court officials or transfer to juvenile shelter or detention facilities. Any such detention of children in an adult jail or lock-up shall be limited to the absolute minimum time necessary to complete the administrative purpose, not to exceed six (6) hours, and children shall be separated from having any sight or sound contact with adult offenders.
- C. A child alleged to be in need of care shall not be placed in any adult jail, adult lock-up or any other facility used for the detention of adult offenders. Nor shall the child be placed in any facility used for the detention of delinquent children or children in need of intervention, unless separate facilities are not available. Where placement in the same facility with such juveniles is necessary the child in need of care shall be kept in rooms separate from and not readily accessible to rooms used for the detention of delinquent children or children in need of intervention.

3-2-5. Complaint.

Within two (2) days of taking the child into custody, a complaint shall be filed, stating the reasons that the child should remain in custody.

In child in need of care proceedings, the prosecutor shall take the course of action that is in the best interest of the child. Such action may be, instead of the above, to refer the child, the parent, guardian or custodian to appropriate Social Service agencies and release the child to the custody of the parent, guardian or custodian.

3-2-6. Initial Hearing.

The court shall determine, within 72 hours of the child being taken into custody, whether further custodial care of the child is necessary pending further action on the matter. If the court determines that further custodial care is not necessary, the child shall be released to his or her parents, guardians, or custodians.

3-2-7. Investigation and Informal Conference.

Where the Court has made a preliminary finding that further custodial care of the child is necessary, the Court shall order the designated officials of the Northern Cheyenne Tribe to conduct a preliminary investigation into the matter.

The prosecutor, investigating official, social services representative, parent(s) of the child, and child may hold an informal conference to discuss alternatives to the filing of a petition if the judge determines that:

- A. The admitted facts indicate the child is delinquent, in need of intervention or in need of care;
- B. An informal adjustment would be in the child's best interest; and
- C. The child and the child's parents, guardian, or custodian consent to an informal adjustment with the knowledge that the consent is voluntary.

3-2-8. Disposition Permitted at Informal Conference.

- A. The following dispositions are permissible at the informal conference hearing. All dispositions must be voluntarily agreed to by all parties to the hearing.
 1. Release the child to parent, guardian or adult custodian with no further action;
 2. Release the child to parent, guardian or adult custodian and refer them to appropriate community-based service agencies;

3. Place the child in a Tribally-approved foster home on the Reservation or other home on the Reservation, approved by the Court; or
 4. Place the child with a community-based agency responsible for the care of such children.
- B. In an informal adjustment hearing in a proceeding regarding delinquency or child in need of intervention the following dispositions are permissible, in addition to those in (A) above:
1. Place the child on probation;
 2. Order terms of supervision designed to rehabilitate the child related to the offense, which regulate the child's activities and are within the child's ability to perform;
 3. Accept an offer of restitution if the child makes it voluntarily and restitution is practicable;
 4. Any traditional remedy when appropriate; or
 5. Any combination of the above.
- C. In an informal hearing in a proceeding regarding a child in need of care, the following dispositions are permissible, in addition to those listed in (A) above:
1. Placing the child with a responsible member of the extended family; or
 2. Any combination of the above.
- D. If any person waives a right guaranteed to them by this title, such waiver must be knowing and voluntary and shall be written in the record and signed by the waiving person.

3-2-9. Time Limitation on Informal Disposition.

No informal adjustment disposition period shall exceed six (6) months.

3-2-10. Record.

- A. The prosecutor or other designated official shall see to it that a written record of the informal adjustment conference is made at the time of the hearing and that the record contains the following information:
1. The name, address and birthdate of the child;

2. The names and addresses of all persons present at the hearing;
3. The date and purpose of the hearing;
4. The admitted facts indicating the child is delinquent or in need of intervention or in need of care;
5. All persons' voluntary consents to the hearing;
6. The dispositions agreed to; and
7. The signatures of all persons present at the hearing.

B. Any informal adjustment disposition agreed to must be signed by a Judge and incorporated in an order from the Northern Cheyenne Court.

3-2-11. Proceeding on a Formal Petition.

The prosecutor shall file a petition on behalf of the Northern Cheyenne Tribe charging the child delinquent or in need of intervention when efforts at diversion have been unsuccessful, or alleging the child is abused, neglected or dependent when efforts at diversion have been unsuccessful and formal court action is in the best interests of the child.

3-2-12. Formal Petition Requirements.

The petition shall be specific and shall include the following information:

- A. The basis of the Court's jurisdiction;
- B. The name, address and birthdate of the child;
- C. The present custodial status of the child;
- D. The names and addresses of the child's parent(s), guardian, or custodian and any other relevant persons;
- E. In a delinquency or child in need of intervention proceeding, the offense(s) charged against the child, or in a child in need of care proceeding, the charges being filed under this title;
- F. The facts and circumstances surrounding the offense(s) or charge(s); and
- G. What efforts if any have been made to divert the child from the Court system.

3-2-13. Summons.

A. Within 72 hours of filing of a petition, an officer of the Court shall serve a summons by hand delivery if possible or by certified mail return receipt requested, on

1. The child;
2. The child's representative if appropriate;
3. The parent, guardian, or custodian, and
4. Any other person as the Court directs.

B. The summons shall:

1. Direct the person to whom it is addressed to appear at a scheduled hearing;
2. Give notice of the date, time and place of the scheduled hearing, and the date shall be no longer than 72 hours from service of the summons;
3. Have attached a copy of the petition;
4. Notify the parties of their right to have independent representation at all stages of the proceedings; and
5. Advise the child of his or her right to have representation.

3-2-14. Records and Investigations.

The Court may subpoena the records of Social Service agencies, the Juvenile Department, Health Services and other persons or agencies that possess records relevant to the child's case and are records kept by such agency in the ordinary course of its business. Parties to the hearing may request the Court to subpoena such relevant records on their behalf if by obtaining such records the rights of the child would not be violated.

3-2-15. Time Limitations for Hearing.

The date of the adjudicatory hearing shall be set by the Court and such date shall be within a reasonable time from the filing of the petition, but no later than sixty 60 days. An unreasonable length of time between the filing of the petition and date of the scheduled hearing shall result in the permanent dismissal of the matter.

3-2-16. Adjudicatory Hearing.

A. In a delinquency or child in need of intervention proceeding, the adjudicatory hearing shall be held solely to determine the

guilt or innocence of the child. At minimum, all due process rights as provided in this Title shall apply. Waivers of such rights must be knowing and voluntary and shall be in writing and signed by both the child and his parent(s), guardian or other representative.

- B. In a child in need of care proceeding, the adjudicatory hearing shall be conducted solely to determine whether or not the child is abused, dependent or neglected. The hearing shall be conducted in closed and private chambers. All due process rights provided in this Title shall apply. Waivers of any rights must be in writing and signed by the person waiving such rights.

3-2-17. Dispositional Hearing.

A dispositional hearing shall be conducted as soon as practicable after the conclusion of the adjudicatory hearing. Adequate time between the hearings, not to exceed 15 working days, shall be allowed to permit the Court to consider the dispositional alternatives that are in the best interests of the child.

3-2-18. Rights of the Parties to the Dispositional Hearing.

All those rights provided at the adjudicatory hearing shall be provided at the dispositional hearing. If the dispositional hearing is scheduled for a separate proceeding at a later date than the adjudicatory hearing, the notice and time limitations of this Title shall apply.

3-2-19. Dispositions Permissible.

The Court may order any of the dispositional alternatives permissible under 3-2-7. In addition, where the child has been found delinquent the child may be committed to a secure juvenile detention facility. In addition, where the child has been found in need of care, the Court may order that permanent termination of parental rights proceedings be initiated. The Court shall pursue a course of action that:

- A. Is the least restrictive alternative;
- B. Is designed to rehabilitate the child;
- C. Will maintain the child's ties to the community; and
- D. Is consistent with the interests and safety of the Tribe.

3-2-20. Dispositional Orders

The Court shall set forth the disposition in an order which contains specific time limitations and conditions on the disposition.

- A. In a delinquency or child in need of intervention proceeding,

no order shall be in effect longer than six (6) months or after the child reaches the age of 18 years.

- B. In a child in need of care proceeding, no order shall continue after the child reaches the age of 18 years. All orders are to be reviewed at the discretion of the Court, provided however that all orders must be reviewed at least once every six (6) months. Whenever a child is placed temporarily off the Reservation, the Court shall require the party receiving custody of the child to sign an agreement that the child will be returned to the Reservation upon written order of the Court.

3-2-21. Modification of Orders.

Dispositional orders may be reviewed by the Court at its discretion. Orders may be modified upon a showing of a substantial change of circumstances and when it is in the best interest of the child. The Court shall conduct a hearing in accordance with the due process procedures of this Chapter when a modification involves either a change of custody or an extension on the time the order is to be in effect.

Chapter 3. VOLUNTARY AND INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

3-3-1. Purpose.

The purpose of this section is to provide procedures for the permanent severance of the parent-child relationship. The procedures provided here demonstrate a recognition of the severe consequences of termination. The cancellation of all legal ties between parent and child is viewed as such an extreme measure that the law should insure that all legal and cultural rights of the parent and the child are protected. One measure intended to insure this protection is the separation of the termination proceedings from the adjudication of the child in need of care proceedings and the separation of the termination proceedings from the adoption proceedings.

3-3-2. Initiating Termination Proceedings.

The Court may conduct a hearing to permanently terminate the parental rights of the parent(s) to the child only if it has found:

- A. In a separate, prior adjudicatory hearing, upon proof beyond a reasonable doubt, that the particular parent has abused the child, neglected the child, or left the child dependent, and termination would be in the best interest of the child; or
- B. That the parent(s) voluntarily give written consent before the Court to permanent termination of their parental rights provided however that the Court certifies that it has advised the parent(s) of the seriousness and finality of termination and the parent(s) understood such advice.

3-3-3. Petition.

A proceeding to terminate parental rights may be instituted by the filing of a petition by the prosecutor on behalf of the Tribe, or by the parent(s) of the child.

3-3-4. Petition Requirements.

The petition shall comply with the requirements set out in 3-3-18 of this Title.

3-3-5. Summons Requirements.

The summons shall comply with the requirements set out in 3-2-12 of this Title.

3-3-6. Pre-Termination Investigation.

Prior to the date of the scheduled termination hearing, the Court shall order an investigation to be conducted by an official(s) designated by the President of the Council. Relevant records of Social Service Agencies, Health Service Agencies and from other appropriate persons or agencies, provided such records are kept in the course of the ordinary business of such agency or person, and provided that the use of such records would not result in a violation of the child's rights, may be obtained for the investigation.

3-3-7. Pre-Termination Report.

The official(s) designated shall prepare and present a written report to the Court at least ten (10) days before the termination of parental rights hearing. The report shall contain the opinions of all professionals and others consulted along with recommendation to the Court.

3-3-8. Termination Hearing.

- A. The Court shall conduct a termination hearing within 30 days of receipt of a petition to terminate. The hearing shall be conducted for the purpose of determining whether permanently terminating parental rights is in the best interest of the child and if so found, where the child should be placed upon termination. The Court shall hear evidence and the parties shall have the right to introduce evidence on the matter of proper disposition. The hearing shall be conducted in closed and private chambers.
- B. The Court shall conduct the hearing for the purpose of determining whether parental rights should be terminated based upon a showing of:
 1. Abandonment of the child;

2. Willful and repeated physical injuries which cause or create a substantial risk of death;
 3. Willful and repeated acts of sexual abuse; or
 4. Relinquishment of parental rights acknowledged before the Court.
- C. The Court shall enter a written judgment setting forth the findings, decision, and disposition.

3-3-9. Dispositions Permitted at Termination Hearing.

Appropriate dispositions provided in 3-3-6 and 3-3-15 of this Title shall apply at the Termination Hearing. In addition, the Court may permanently terminate parental rights, and order the initiation of adoption proceedings, provided however, that the Court has found by clear and convincing proof that termination is in the best interest of the child.

3-3-10. Relinquishment of Parental Rights
(Voluntary Termination of Parental Rights).

Parental rights may be relinquished (voluntarily terminated) in accordance with 3-3-2(B), if signed by the parent(s) in the presence and with the approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after the birth of the child. An interpreter shall be provided if the Court deems it necessary to insure the parent(s)' understanding of the seriousness and finality of the termination.

3-3-11. Record.

- A. A record of all hearings and reports made under this Code shall be preserved.
- B. All Court records shall be confidential and shall not be open to inspection to any but those acting on behalf of the best interests of the child as determined by the Court.

3-3-12. Child's Rights.

The termination of parental rights shall not adversely affect the child's rights, privileges and interests as an Indian, nor as a member of the Northern Cheyenne Tribe, including rights of inheritance. Nor shall it affect the child's enrollment status with the Tribe.

Chapter 5. CHILD CUSTODY REFERRALS UNDER THE INDIAN CHILD WELFARE ACT

3-4-1. Purpose.

The purpose of this section is to provide the procedures for implementing the Indian Child Welfare Act of 1978 that will protect the best interests of Northern Cheyenne children and their families involved in custody proceedings. Where Northern Cheyenne children are involved in custody proceedings off the Reservation, an informed and careful decision as to whether the Tribe should petition for a transfer of jurisdiction back to the Reservation is necessary to protect both the child and the Tribe. It is intended that the Tribe will investigate cases referred to it and will petition for transfer when it is in the best interest of the child to do so. The procedures found in this chapter are aimed at producing a thoughtful and wise decision in the matter of transfers, one that is in the best interest of the child and will insure the stability and security of the Northern Cheyenne Tribe.

3-4-2. Authorized Representative of the Tribe.

The Director, Northern Cheyenne Social Services for the Tribe shall be the sole representative of the Tribe for:

- A. Receiving notification of referrals to the Tribe under the ICWA;
- B. Initiating the filing of petitions for the transfer of jurisdiction to the Tribe; and
- C. For providing an intervenor in other Courts where jurisdiction is not transferred to the Tribe.

3-4-3. Receipt of Referral.

- A. The Director, Northern Cheyenne Social Services shall be bound to honor referrals that are sent to him provided in the ICWA. Upon receiving notification of the referral, the Northern Cheyenne Social Services shall make a record of all the following information on the referral:
 1. The source of the referral;
 2. The names and addresses of the child and the parent, guardian or custodian;
 3. The date of the referral; and
 4. The date of the scheduled proceedings in the outside Court.
- B. The Director, Northern Cheyenne Social Services shall

immediately make a written request by registered mail, return receipt requested to the referring Court for the twenty (20) day extension to prepare the case for a transfer decision if such additional time is necessary.

3-4-4. Investigation of Referral.

- A. Immediately upon receipt of the referral the Director of the Northern Cheyenne Social Services shall conduct a thorough investigation into the matter, and shall perform the following duties:
1. Contact tribal enrollment and other appropriate sources to determine the child's membership status with the Tribe;
 2. Investigate and determine whether the child custody referral is one properly referred to the Tribe under the ICWA;
 3. Contact the parent(s), guardian or custodian of the child by registered mail, return receipt requested and notify them of the fact of the referral to the Tribe and the possibility the Tribe will transfer the case to its jurisdiction;
 4. Contact relevant social, medical, legal and other such sources to obtain necessary information on the child's case;
 5. Prepare a case file on the child;
 6. Make a decision as to whether transfer, intervention or taking no action on the case would be in the best interest of the child. This decision should be made with the advice and assistance of two (2) responsible and knowledgeable Tribal members, appointed by the Tribal Council, and the court official designated by the tribal council;
 7. Notify the parent, guardian or custodian, the prosecutor and the Reservation Court of the decision. Notification to the parent, guardian or custodian shall be by registered mail, return receipt requested;
 8. Where the decision is made to transfer the case to the Reservation Court, the Court shall have the authority to veto this decision and decline jurisdiction. Absent the Court's notice, within 3 days, to decline jurisdiction, the Director, Northern Cheyenne Social Services shall file a petition with the referring Court for the transfer of jurisdiction;

9. If the Director, Northern Cheyenne Social Services obtains a decision not to petition for transfer, he shall also notify the parent(s), guardian or custodian and the referring Court of the decision by registered mail, return receipt requested. The Director, Northern Cheyenne Social Services shall also notify them as to whether or not the Tribe will provide an intervenor in the proceedings in the referring Court.
- B. The Director of the Northern Cheyenne Social Services shall complete the above duties within 10 days from receiving the notice of referral, unless he requests the referring Court, in writing by registered mail, for the 20-day extension as provided in the ICWA.
- C. For purposes of the required investigation the Director, Northern Cheyenne Social Services shall request the referring Court to provide all reports and other documents filed with the referring Court concerning the child custody action, as provided in the ICWA.

3-4-5. Tribal Appearance:

- A. The Northern Cheyenne Tribe shall file a formal notice of appearance in every instance that it receives notice of a proceeding under the ICWA. In so doing the Tribe intends to assure its receipt of notice of any further hearings involving a particular child and preserves the right to intervene subsequent to an initial hearing.
- B. When the Tribe receives notice under the ICWA of the temporary removal of a child by any welfare officer in an effort to reunify a family, the tribe will file a formal appearance in accordance with subsection A:
 1. Stating its intent to intervene if the family reconciliation does not occur within ninety (90) days;
 2. Stating the Tribe's desire to receive notice of any subsequent hearing concerning the child;
 3. Stating the intent of the Northern Cheyenne Tribe to issue its own Court Order concerning placement of children of the Northern Cheyenne Tribe; and
 4. Citing the portions of the Northern Cheyenne Code which preserve the due process rights of interested parties in its own Court.
- C. When the Tribe receives notice under the ICWA of the temporary removal of a child for any reason, the Tribe shall

file a formal notice of appearance containing the information set out in subsection (B) with modification of the time limit in (B)(1) which is appropriate to the circumstances of a particular child.

- D. When the Tribe receives notice under the ICWA of the possibility of permanent placement of a child for any reason the Tribe shall file a formal appearance containing the information in subsection (B), deleting the time limit statement in (B)(1) and asserting the right to notice of any change in the placement of the child and requiring a report of the child's residence, school attendance, health condition and other appropriate information as to the child's well being every two (2) years commencing from the date of placement.

3-4-6. Proceeding After Transfer.

Where jurisdiction is properly transferred to the Reservation Court, the procedures set forth in the provisions on children in need of care, or children in need of intervention, shall be followed, whichever is appropriate under the circumstances. In no event shall delinquency proceedings be pursued.

3-4-7. Records.

- A. The Director of the Northern Cheyenne Social Services will make and preserve records of all referrals received and document compliance with all applicable provisions of this Chapter.
- B. These records shall be confidential and shall not be open to inspection except upon an order of the Northern Cheyenne Court.

Chapter 6. ADOPTIONS

3-5-1. Who May be Adopted.

- A. Any person who is within the jurisdiction of the Northern Cheyenne Court may be adopted under this Code.
- B. When a petition has been filed for the adoption of an adult the court may waive the inapplicable procedures under this Code.

3-5-2. Petition Requirements.

Any adult person who wishes to adopt, may file the petition for adoption with the Court in a form prescribed by the Court. It shall be verified under oath before a Judge, by the adoptive parent or parents and shall contain:

- A. The full name, residence, sex of the child and documentary

proof of the date and place of the birth of the child to be adopted;

- B. The full name, residence, sex and occupation of the adoptive parent or parents and documentary proof of their marital status, if appropriate and of their Indian affiliation, if any;
- C. Proof of a court order terminating the parent-child relationship with respect to each living parent of the child;
- D. Proof of parental consent where the adoption is by the voluntary consent of the child's parent(s). Such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding Judge's certificate that the terms and consequences of the consent were fully explained in detail and fully understood by the parent;
- E. An agreement by the adopting parents that it is their desire that the relationship of parent and child be established between them and the child; and
- F. A full description and statement of value of all property owned or possessed by the child.

3-5-3. Consents to Adoption.

- A. Form of Consent: Consents to adoptions where required by this Chapter shall be executed in writing and recorded before a judge of a court of competent jurisdiction, and cannot be given until ten (10) days after birth.
- B. Consent by a Child Aged 12 or Older: The adoption of a child twelve (12) years or older, shall not be granted without the child's consent given in Court, unless the Court finds that his consent is being withheld arbitrarily and capriciously.
- C. Filing of Consents: Written consents shall be attached to the adoption petition. A consent by a guardian of the child shall be accompanied by evidence satisfactory to the Court establishing the guardian's authority to consent to adoption of the child.
- D. Withdrawal of Consent Prior to Entry of Decree: No consent to adoption shall be withdrawn unless authorized by order of the Court after notice and opportunity to be heard is given to the petitioner in the adoption proceedings, and to the person seeking to withdraw consent. The Court shall not grant permission to withdraw consent unless it finds that the best interests of the child will be served by such withdrawal.
- E. Withdrawal of Consent After Order of Adoption: After the

entry of a final decree of adoption the parent or child may withdraw consent thereto only upon the grounds that consent was obtained by fraud or duress and may petition the Court to vacate such decree and return the child to the parent(s), guardian or custodian. No adoption which has been effective for at least one (1) year may be invalidated under these provisions.

3-5-4. Investigation and Report.

Within five (5) days after the filing of a petition for adoption, the Court shall request the assistance of the appropriate tribal personnel to investigate and report in writing to the Court within thirty (30) days as to the child's family history, the suitability of the child for adoption, the reasons for the adoption, the financial ability, moral and physical fitness, and the general background of the adoptive home and of the adoptive parent or parents, and to make recommendations on the proposed adoption.

In the case of an adoption by persons not residing within this Court's jurisdiction, the Court shall request the assistance of the appropriate social services personnel in the jurisdiction which is the home of the prospective adoptive parents, for the above information.

3-5-5. Hearing on Adoption.

- A. Within five (5) days after the written report required by 3-5-4 is filed, the Court shall fix a time for a hearing on the petition for the adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified and shall appear for the purpose of the adoption, unless prior consent has been obtained.
- B. The Judge shall examine all persons appearing separately and, if satisfied as to the following may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period not to exceed six (6) months prior to entering a final decree of adoption:
1. The suitability of the child for adoption;
 2. The financial ability of the adoptive parents;
 3. The moral and physical fitness and responsibility of the adoptive parents; and
 4. That the best interest of the child will be promoted by the adoption.
- C. If the Court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and the

guardian instructed to arrange suitable care for the child, and the Court may request agencies authorized to provide such services to assist in the placement and the care of the child.

3-5-6. Report and Final Decree of Adoption.

- A. If the Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six (6) months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report under the same procedures in 3-5-4, as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child.
- B. In any case where the Court finds that the best interests of the child will not be served by the adoption, a guardian of the child shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request tribal agencies or federal agencies or other agencies authorized to provide such services to assist in the placement and care of the child.
- C. Legal custody for purposes of this code means, subject to any limitations contained in the court order, a relationship embodying the following rights and duties:
 1. The right to physical custody of the child;
 2. The right and duty to protect, train and discipline the child;
 3. The duty to provide the child with food, clothing, shelter, education, and ordinary medical care;
 4. The right to decide where and with whom the child will live; and
 5. The right in an emergency to authorize surgery or other extraordinary care.

3-5-7. Adoption Records.

All records, reports, proceedings, and orders in adoption cases are confidential and permanent records of the Court, and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Court by the adopted person after reaching legal majority, or upon order of the

Court upon good and sufficient cause shown.

3-5-8. Contents of Adoption Order.

- A. The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings.
- B. Within five (5) days after the final decree of adoption has been entered by the Court, the Clerk of Court shall mail the information required in subsection (C) and a certified copy of the final adoption decree to the appropriate officials of the Northern Cheyenne Tribe, the Bureau of Indian Affairs, as regulations require, and the appropriate agency of the State of Montana.
- C. The information filed by the Clerk of Court should advise that the adoption has taken place, giving the full name, sex, birthdate, and names of natural parents and full names of adoptive parent(s) so that a new record of birth in the new name and with the name of the adopting parents is recorded.

3-5-9. Name and Legal Status of Adopted Child.

Minor children adopted by order of Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights of person and property as children or heirs of the person adopting them.

3-5-10. Child's Rights.

Nothing in this Section shall be construed to indicate that the child involved in these proceedings will terminate any of his rights and/or privileges as an enrolled Indian, including rights of inheritance.

Chapter 7. GUARDIANSHIP OF CHILDREN

3-6-1. Guardianship.

- A. A guardian may be appointed for any child who is within the jurisdiction of the Northern Cheyenne Court.
- B. Any adult enrolled member of the Northern Cheyenne Tribe is eligible to be appointed guardian of a child.
- C. The spouse of an adult enrolled member of the Northern Cheyenne Tribe is eligible to be appointed guardian of the natural child of that spouse.

3-6-2. Petition.

- A. Upon the filing of a petition by an interested party, the Court shall determine whether petitioner(s) is fit to serve as guardian of the person and/or property of the child named in the petition.
- B. The petition shall contain the following information:
 - 1. The petitioner(s) full name, age, address, and relationship, if any, to the child; and
 - 2. The name, date, and place of birth of the child; and
 - 3. The name and address of the child's custodian; and
 - 4. The names and addresses of all interested parties, including the child's natural parents.

3-6-3. Social Study.

- A. Upon the filing of a petition for guardianship, the court may order that a social study be made of the petitioner(s), and his or her home, by the prosecutor, a social services representative, or any other suitable person chosen by the Court.
- B. The social study shall consider all facts related to the petitioner(s)' fitness to be appointed guardian of the child, and shall include, but not be limited to, the following factors concerning the petitioner(s) and the members of his or her immediate family with whom he or she lives:
 - 1. General background of the Petitioner(s)' home;
 - 2. Moral fitness;
 - 3. Religious and tribal background;
 - 4. Financial condition;
 - 5. Mental and physical health conditions;
 - 6. Any other facts which the Court finds are relevant to the fitness of the petitioner(s) to serve as guardian of the child.
- C. The Court shall order that a written report of the results of the social study be submitted to the Court within thirty (30) days of the original order.

3-6-4. Notice of Hearing.

- A. After a petition for appointment of a guardian has been filed, the Court shall set a time and place for a hearing.
- B. Notice of the hearing shall be given to:
 - 1. Petitioner(s);
 - 2. The child's custodian, if any;
 - 3. The person who has prepared a social study under section 3-6-3, if the Court has ordered that a study be made;
 - 4. The natural parents of the child; and
 - 5. All relatives and interested parties named in the petition in accordance with section 3-6-2 (B)(4).
- C. Notice shall be given to the natural parents of the child by registered mail. All other persons shall be notified by mail.
- D. All persons notified shall be required to answer in accordance with the Northern Cheyenne Civil Procedure Code, or by personal appearance at the hearing. Failure to answer may be deemed a waiver of any interest in the proceedings.

3-6-5. Hearing on the Petition.

A. Attendance:

- 1. The petitioner(s), the child for whom a guardian is to be appointed, and the natural parents of the child, shall attend the hearing, unless the court orders otherwise;
- 2. The person who has prepared a social study under section 3-6-3, if the Court has ordered that a study be made, shall attend the hearing;
- 3. The Court may require the presence of any other person as it finds necessary.

B. Testimony:

- 1. The hearing shall be as informal as due process and fairness permit;
- 2. The Court shall examine all persons in attendance for the purpose of determining the necessity of the appointment of a guardian for the child, and the fitness and responsibility of the petitioner(s) to serve as guardian of the child.

3-6-6. Letters of Guardianship--Security.

- A. If, after the hearing and consideration of all evidence and social studies, the Court determines that the requirements of this chapter have been met, and that appointment of petitioner(s) as guardian of the child is in the best interest of the child, the Court shall appoint Petitioner(s) guardian of the child.
- B. Security. The Court may order the person appointed guardian to provide security in an amount sufficient to cover any loss or damage which may be caused by improper administration of the child's property by the guardian.
- C. The person appointed guardian shall take an oath to discharge faithfully the duties of his or her office.
- D. After the person appointed guardian has qualified by furnishing any security required of him or her by the Court, by taking the oath, and by fulfilling any other special conditions imposed by the Court, the Court shall issue to him or her letters of guardianship. These letters, issued in the name of the Court and signed by the Court shall be evidence of the guardian's authority to act on behalf of the minor.
- E. The order of appointment of a guardian is to be in effect for the time limit set by the Court, but no order shall continue after the child reaches the age of eighteen (18) years.
- F. The order of appointment of a guardian is to be reviewed at the Court's discretion, but at least every year.

3-6-7. Modification or Termination of Order of Appointment of Guardian.

- A. A modification hearing shall be held in the manner provided for by this section for a hearing on a guardianship petition.
- B. The Court may modify or terminate an order of appointment of guardian upon motion of any interested party.
- C. An order of appointment may be modified or terminated upon a showing that it is no longer appropriate.
- D. Guardianship shall be terminated:
 - 1. Upon the death of the guardian;
 - 2. Upon the conviction of the guardian of a felony under the laws of the United States or any state or territory thereof;

3. Upon a civil commitment of the guardian;
4. Upon a showing that the guardian is unfit to exercise authority over the person of the child, and/or unfit to act in his or her fiduciary capacity on behalf of the child; or
5. Upon the child's eighteenth (18th) birthday.

3-6-8. Guardianship of the Person.

A person named guardian of the child's person shall have physical custody of the child and shall render to the child the same care a natural parent would, including, but not limited to rearing, feeding, clothing, housing, and educating the child in his or her custody.

3-6-9. Guardianship of Property.

A person named guardian of the child's property shall assume possession of the child's property, personal and real, administer said property as profitably as possible, and preserve and maintain said property until the child reaches the age of eighteen (18). The guardian may not alienate or encumber by mortgage the child's interest in real property, nor may he lease, alienate, or encumber any mineral interests the child owns without the approval of the Court. The guardian shall enforce all obligations in favor of the child and shall represent the child in all civil matters. The guardian shall act at all times as a prudent administrator, and shall be personally responsible for all damages resulting from his failure to so act.

3-6-10. Extraordinary Actions.

- A. The guardian shall file a petition setting forth any action affecting the child's interest he proposes with recommendations and reasons.
- B. If the Court finds that the proposed action is in the best interests of the child and if no other party objects within a reasonable time, the Court may enter an order approving the action without additional formality.
- C. If the Court is not persuaded by the petition that the proposed action is in the best interests of the child, the Court may appoint a lawyer or representative to oppose the guardian on behalf of the child.
- D. The Court shall render judgment after a hearing in the matter.

3-6-11. Funds of the Child.

- A. If the child is a member of the Northern Cheyenne Tribe, the Court shall order the appropriate official of the Northern Cheyenne Tribe to retain custody and control of funds in the

child's individual account and to disburse funds from the account to the guardian in a manner and amount to be determined by the Court.

- B. The Court may require that the guardian as a condition to issuance of Letters of Guardianship, set up special bank or investment accounts, in the name of the child, whether or not he or she is an enrolled member of the Northern Cheyenne Tribe.

3-6-12. Final Accounting.

- A. Upon termination of the guardianship, the guardian, or his heirs shall account for all real and personal property of the child received by the guardian at the beginning of the guardianship, received by the guardian during the course of the guardianship, and in the possession of the guardian at the termination of the guardianship.
- B. The accounting shall show the origin of any revenue, the disposition of any assets, and the purpose of all disbursements.
- C. The final accounting shall be presented to the Court in the form of a petition that shall include a list of all interested parties.
- D. Any interested parties, including the child, may oppose the final accounting by answering the guardian's petition in accordance with the Northern Cheyenne Civil Procedures Code.
- E. The Court shall render judgment accepting the final accounting, when it is convinced of the correctness of the accounting.
- F. A judgment of the Court accepting the final accounting does not relieve the guardian of responsibility or liability for breach of fiduciary duty to the child.

TITLE IV
NORTHERN CHEYENNE
RULES OF CIVIL PROCEDURE AND CIVIL CODE

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NORTHERN CHEYENNE

RULES OF CIVIL PROCEDURE AND CIVIL CODE

A. RULES OF CIVIL PROCEDURE

I. GENERAL PROVISIONS

Rule 1: Scope of Rules

A. Scope [*As amended by Ord. DOI 3(98)*]

Except when different rules prescribed in this Law and Order Code specifically apply, these rules shall govern the procedures of the Northern Cheyenne Trial Court (hereinafter the "Court") in all actions, suits and proceedings of a civil nature.

B. Construction

These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

C. One Form of Action

There shall be one form of action known, except in criminal cases, as a "civil action."

Rule 2: Civil Contempt

A. Acts or Failures to Act Which Constitute Contempt of Court

Any person may be charged with Contempt of Court for any of the following reasons:

1. Disorderly, contemptuous or insolent behavior in presence and view of the Court that interrupts proceedings or impairs respect of the Court's authority;
2. Breach of peace, noise, or other disturbance interrupting proceedings;
3. Willful disobedience or resistance to any process of the Court or order issued by the Court;
4. Misbehavior or other willful neglect or violation of duty of an attorney or lay counselor, directed by the Court to perform or refrain from performing some act or service; [*As amended by Ord. DOI 3(98)*]

5. Acting as an officer, spokesman or other official of the Court without authority;
6. Publication of false or grossly inaccurate report of Court proceedings;
7. Requesting a jury trial and failing to appear on the date the jury trial is scheduled; or
8. Any other interference with the process, proceeding, or [cont'd on p. IV-4].

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dignity of the Court or Judge of the Court while performing official duties.

B. Procedures in Contempt

1. A direct contempt is one committed in the presence of the Court or so near as to be summarily adjudged and punished.
2. Any other contempt shall be determined at a hearing by the Court in which the person accused of contempt is given notice and an opportunity to be heard.
3. There will be no jury trials in contempt hearings.

C. Penalty [*As amended by Ord. DOI 3(98)*]

A Trial Judge (hereinafter "Judge") may issue any order necessary to allow the person to purge himself of contempt and may impose a sentence of up to five (5) days imprisonment and/or a fine of up to \$500.00 plus costs, as determined by the Court.

II. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

Rule 3: Commencement of Action - Service of Process

A. Commencement of Action

A civil action is commenced by filing a complaint and serving a copy of such on the defendant(s) as provided herein. The Court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant and a return of service is filed with the Clerk.

B. Service of Process

Service of process shall consist of delivering to the party served a copy of the complaint along with a summons, which advises the defendant that he is required to answer the complaint within 20 days or a default judgment will be entered against him.

1. The summons shall be signed by a Judge or the Clerk, be under the seal of the Court, contain the names of the parties, be directed to the defendant and state the name and address of the plaintiff or his attorney or representative in the action.
2. The return of service shall be endorsed with the name of the person serving and the date, time, and place of service shall be filed with the Clerk.

3. Service may be made on a party by delivering the summons and complaint to the party himself or upon some person of suitable age and discretion over 14 years old at the party's home or principal place of business, or an [cont'd on p. IV-5]

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- officer, managing agent, or partner of a person.
4. If the party cannot be found within the exterior boundaries of the Northern Cheyenne Reservation, service may be had by certified mail with delivery restricted to the party to be served.
 5. Service by publication may be made upon order of the Court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once a week for four weeks and by leaving an extra copy of the complaint or paper with the Court for the party.
 6. Service may be made by any law enforcement officer or other person, not a party, 18 years of age or older.
 7. Service upon a person otherwise subject to the jurisdiction of the Northern Cheyenne Judicial System may be made anywhere in the United States; otherwise, service shall be made within the exterior boundaries of the Northern Cheyenne Reservation.
 8. If a person refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.
 9. All papers required to be filed shall be served as under this rule or, except for the complaint, may be served on the counselor or attorney of a party. Service of all papers except the complaint may be made by mail, first class postage, prepaid and properly addressed.
 10. Enforcement of service of process judgments, warrants and any other exercise of civil authority of County or State, shall first be brought before the Northern Cheyenne Court for review. If justice so warrants, the Court shall order the Northern Cheyenne Police to implement such proceedings.
 11. Service upon a state shall be upon the Secretary of State.
 12. Service upon any branch or agency of the federal government shall be upon the Secretary of State or the head of the agency.

Rule 4: Time

A. Computation.

In computing any period of time set forth herein, the day on which the period is to commence shall not be counted and the last day of the period shall be counted; provided, however, that any time period under 7 days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday, or legal holiday.

B. Enlargement.

The Court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

C. Notice of Motions.

Written motions and notice of hearing thereon other than ones which may be heard ex parte, shall be served not later than 5 days prior to the time specified for hearing.

D. Service by Mail.

Whenever service is accomplished by mail, three days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would not otherwise have been counted.

Rule 5: Pleadings, Motions, Orders.

A. Pleadings.

There shall be a complaint and an answer. Responsive pleadings may be allowed whenever there is a cross-claim or counter-claim. The court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

B. Motions and Orders.

1. Motions. An application to the Court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefor stated, with particularity. A motion and notice of motion shall be set forth together.
2. Orders. An order includes every direction of the Court whether included in a judgment or not.
3. Hearings on Motions and Orders. A motion or hearing on an order shall automatically continue if the Judge before whom it was to be heard is unable to hear it on the day specified and no other Judge is available to hear it.

Rule 6: General Rules of Pleading.

A. Claims for Relief.

A pleading which sets forth a claim for relief shall contain:

1. A short, plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter;

2. A short, plain statement of the claim showing that the pleader is entitled to relief; and
3. A demand for judgment for the relief to which the pleader considers himself entitled. Such claim for relief can be in the alternative or for several types of relief.

B. Defense.

A party shall answer a complaint in simple terms, stating his defense to each claim and shall admit or deny each claim. If the party does not know the veracity of a claim he shall so state and that statement shall have the effect of a denial.

C. General Contents of Claims and Defenses.

Claims and defenses shall be simple, concise and direct.

D. Affirmative Defenses.

Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the Court may treat the pleading as if it had been properly designated if justice so requires. Examples of affirmative defenses include but are not limited to: assumption of the risk, contributory negligence, discharge in bankruptcy, fraud, illegality, payment of debt and completion of contract.

E. Construction of Pleadings.

All pleadings shall be construed so as to do substantial justice.

Rule 7: Form of Pleadings.

A. Caption.

Every pleading shall contain a caption heading: the name of the Court, the title of the action, the Court file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties except the name of the first party on each side may be used on all pleadings except the complaint.

B. Paragraphs.

All claims or defenses shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

C. Paper Used in Pleading.

Insofar as is possible, pleadings and other papers filed in any action shall be typed double spaced, except for matters customarily single spaced, contain at least a 2 inch top margin and 1 inch left side margin, and contain the Court file number on the first page.

Rule 8: Defenses and Objections.

A. When Presented.

A defendant or a party against whom a claim has been made for affirmative relief shall have 20 days from the date of service upon him to answer or respond to the claim.

B. Motions.

Any motions to dismiss or to make the opposing parties' pleadings more definite shall be made within five days of receiving the opposing parties' pleadings and prior to answering a claim. An answer will not be due until ten days after the claimant has complied with the Court's disposition of the motion, or if the Court denies the motion, upon the expiration of the original twenty days from date of service.

Rule 9: Counterclaim or Cross-claim.

A. Counterclaim.

A party against whom a claim is made may assert in his answer any claims he has against the party claiming against him and both claims will be resolved at trial.

B. Cross-claim.

A party against whom a claim is made may assert any claim he has against a co-party and have such claims resolved at trial.

C. Third Party Claim.

A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

Rule 10: Amendment of Pleadings.

A. Amendment Before Trial.

A party may amend his pleadings once before the opposing

party has replied or if no reply is required, not less than 20 days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date be delayed if necessary. Other amendments shall be allowed only upon motion and order of the Court.

B. At Trial.

When issues or evidence not raised in the pleadings are heard at the trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

Rule 11: Parties.

A. Real Party in Interest.

Every action shall be pursued in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

B. Guardian Ad Litem.

When an infant, or insane, or incompetent person who has not had a general guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

C. Joinder of Claims.

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join as many claims as he has against an opposing party or co-party.

D. Joinder of Parties.

To the greatest extent possible all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

Rule 12: Intervention.

A person may intervene and be treated in all respects as a party to an action in cases in which property in which he has an interest may be affected or a question of law or fact common to a claim of his may be litigated.

Rule 13: Substitution of Parties.

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

Rule 14: Discovery.

A. A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within 25 days of receipt of such.

B. Deposition.

A party may take the oral deposition of an adverse party or non-party witness under oath after providing not less than 10 days notice, specifying the time and place where such will occur.

C. Production, Entry, or Inspection.

A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within 25 days reply as to whether or not such will be allowed and, if not, why not.

D. Scope of Discovery.

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney.

E. Protective Order.

A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harrassment, embarrassment, oppression or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.

F. Failure to Make Discovery.

If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense

be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party.

G. Use of Discovery.

Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.

- H. If a witness is unavailable to testify because of incompetence, absence from the jurisdiction by a distance greater than 100 miles unless it appears that such absence was procured by the person offering the deposition, illness, death, or imprisonment, a sworn deposition may be offered in lieu of testimony of the witness who gave the deposition.

Rule 15: Pre-Trial Conference

A. Purpose

A pre-trial conference shall be held at least ten days prior to trial in order to determine the points of law and facts agreed upon by the parties and to determine the remaining issues to be resolved at trial.

B. Who Attends

The Plaintiff(s) and defendant(s) or their counsel if they have one are required to attend. Failure to appear at a scheduled pre-trial conference may result in a charge of contempt of Court. Other persons may attend with the advance consent of the Judge conducting the pre-trial conference only if their presence will further the purpose stated above.

C. Conduct of Conference

No record or transcript of the conference shall be made except for the Order and Memorandum of Pre-Trial Conference. No statements made at the Conference by any person shall be used at trial except for voluntary agreements reached between the parties on points of law and facts as recorded in the Order and Memorandum of Pre-Trial Conference. The judge may also set a trial date and set deadlines for motions to be filed and argued, for depositions and discovery to be completed and for delivering a list of witnesses to be subpoenaed.

D. Disposition by Order and Memorandum of Pre-Trial Conference

The Order and Memorandum of Pre-Trial Conference shall include:

1. Trial date.
2. Whether or not a jury will be called.
3. List of witnesses to be subpoenaed.
4. Agreements and orders regarding depositions, discovery and motions.
5. Agreements regarding points of law and facts.
6. Remaining issues to be resolved at trial.

This Order shall supercede pleadings for the purpose of framing issues for trial.

III. TRIAL

Rule 16: Jury Trials

A. When Allowed [*As amended by Ord. DOI 3(98)*]

A party may request a trial by jury in all civil actions involving a claim or claims exceeding \$500 except domestic relations cases, cases involving adoptions, probate, minors, incompetence, hearings on court orders, contempt, or cases in the Appellate Court or Constitutional Court. The request for jury trial shall be filed, along with a fee of \$10.00, no less than 25 days prior to the scheduled date of trial.

B. Issues Triable

Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues he wants tried to the jury, and any other party may specify, not less than 5 days before the date scheduled for trial, any other issues he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.

C. Designation by Judge

1. A Judge may, upon his own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether or not the parties have requested such.
2. A Judge may, upon motion of any party or upon his own motion, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order [*cont'd on p. IV-13*]

that no jury trial be held on such issues.

3. A Judge may hear and decide an issue without a jury if either party to the issue fails to appear at trial, regardless of any request made for a jury trial on such issue. [*As amended by Ord. DOI 3(98)*]

Rule 17: Assigning Cases for Trial

A. Assignment of Judge and Date [*As amended by Ord. DOI 3(98)*]

The Chief Trial Judge shall designate the Judge who will hear a case. The designated Judge shall assign a trial date for the earliest reasonable time.

B. Postponement

Upon motion of a party and the showing of good cause, the Court may in its discretion postpone a trial or proceeding upon such terms as it deems just, including the payment of any costs occasioned by such postponement.

Rule 18: Dismissal of Actions

A. Voluntary Dismissal

Prior to the responsive pleadings of a party against whom a claim has been made or motion to dismiss or for summary judgment on such claim, the party making the claim may file a notice of dismissal and his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss his own claim and the Court shall do so either with or without prejudice as is just and proper given the stage of the proceedings. However, if a cross-claim or counterclaim has been filed against the moving party, the Judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can pursue his claim independently without undue additional hardship.

B. Involuntary Dismissal

A party against whom a claim has been made may move the Court to dismiss the claim of the adverse party upon any of the following grounds:

1. Failure of the adverse party to pursue prosecution of his claim;
2. Failure of the adverse party to comply substantially with these rules;
3. Failure of the adverse party to comply with an order of

- the Court that affects the party's case;
4. At the close of the presentation of the other party's evidence and without prejudicing his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented; or
 5. Whenever dismissal appears proper based upon a failure to prove a claim, such dismissal shall be deemed an adjudication of the merits of the issue dismissed--unless

the Court shall, for good cause shown, order otherwise. The Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

- C. The Court may order a party moving to dismiss his own claim to pay the cost of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of cost in other circumstances where such is deemed appropriate.

Rule 19: Consolidation: Separate Trials.

A. Consolidation.

The Court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.

B. Separate Trials.

The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

Rule 20: Evidence.

A. Form and Admissibility.

At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the Northern Cheyenne Rules of Evidence shall be admissible.

B. Examination and Cross Examination.

1. A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.
2. A party may call any person to be a witness and examine any witness so called on any matter relevant to the

action. A party may impeach his own witness.

3. Cross examination shall be limited to the general scope of direct examination, provided, however, that full examination of all witnesses may be allowed on cross examination to assure complete development of all relevant facts.

C. Physical Evidence.

Written documents and other physical evidence shall be received upon being identified, authenticated, and a showing of relevance to the action.

D. Official Documents.

Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by an affidavit identifying such thing and stating that it is a true and correct representation of what it purports to be.

E. Record of Excluded Evidence.

In an action tried to a jury, excluded evidence may, upon request, be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the Judge may receive such excluded testimony into the record.

Rule 21: Subpoenas.

A. Issuance.

Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided elsewhere in this Code.

B. Failure to Appear.

A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of Court and/or the Court may order his arrest for the offense of Failure to Obey a Lawful Order of the Court.

C. Subpoena Unnecessary.

A person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in

attendance upon a subpoena.

Rule 22: Jurors.

A. Number of Jurors; Alternate.

There shall be six jurors chosen to hear a case plus the Court may allow one additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen, he shall be treated as a regular juror in all respects unless dismissed by direction of the Court prior to the jury's deliberations.

B. Examination of Jurors.

The Court shall permit the parties or their attorneys to conduct the examination of prospective jurors and may itself examine the jurors.

C. Challenges.

- (1) A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.
- (2) Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three peremptory challenges.
- (3) Challenges for cause shall be made against a potential juror on the grounds that he is not entitled or qualified to be a juror, he is familiar with the case or has formed an opinion regarding the case, or if for any other reason it appears likely or reasonably possible that a juror will not be able to render a fair, impartial verdict. The Judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

D. Eligibility for Jury Duty.

Each year the Court Administrator or his designee shall randomly choose a list containing the names and addresses of at least 50 but not more than 75 eligible jurors. Any resident of the Northern Cheyenne Reservation between the ages of 18 and 70 who has not been convicted within one year of a felony or misdemeanor under this Code shall be eligible to be a juror. Judges, police officers, and other officers and employees of the Court shall not be eligible to be jurors while thus employed.

E. Trial Juries.

The Clerk shall subpoena not less than twelve persons from the list of eligible jurors to appear and be available as jurors whenever a jury trial is scheduled in a civil or criminal matter.

The selection from the list of eligible jurors shall be by lot or some means of random, impartial selection.

F. Power to Excuse Jurors.

The Judge assigned to hear a case shall have the power to excuse a person subpoenaed to appear as a juror on account of sickness, disability, extreme hardship or other good cause shown upon the request to be excused by the persons subpoenaed.

G. Compensation of Jurors.

Each juror who is called and reports for jury duty or who serves on a jury shall be entitled to receive such fees for daily services and/or mileage, if any, as established by the Rules of Court.

H. Discharge of Juror.

If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his duty, the alternate juror shall take his place; if there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the Judge shall order a temporary delay in trial for such time as is necessary to impanel a new jury.

I. View of Jury.

The Court may, for good cause shown, allow the jury to view the property or place of occurrence of a disputed or otherwise relevant event.

J. Separation of the Jury.

Any time prior to their verdict when the jurors are allowed to leave the courtroom, the Judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.

K. Deliberation.

Once the case is submitted to it, the jury shall retire to deliberate in private under the charge of an officer of the Court who will refrain from communicating with them except to inquire whether they have reached a verdict, and he shall prevent others from improperly communicating with the jury.

L. Things Taken by Jury.

The jury may take with them when deliberating any of the following:

1. The Court's instructions;
2. Papers or things received in evidence as exhibits;
3. Notes taken by the jurors themselves, but not notes taken by a non-juror.

M. Additional Instructions.

If after the jury retires there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, such to be given on the record after notice to the parties or their counsel.

N. No Verdict.

If the jury is discharged before rendering its verdict or for any reason prevented from giving a verdict, the action shall be retried.

O. Declaration of the Verdict.

When all or at least five of the six jury members agree on a verdict, they shall so inform the officer who shall notify the Court. The jury shall be conducted into the courtroom and the clerk shall call the jury roll; the verdict shall be given in writing to the Clerk and then read by the Clerk to the Court; inquiry shall be made by the Court to the jury foreman as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed. If the verdict is read or recorded incorrectly by the clerk or foreman, the jury shall retire to correct the verdict.

Rule 23: Special Verdicts and Interrogatories.

The Court may require the jury to return its verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

Rule 24: Instructions to the Jury: Arguments.

A. Instructions.

At the close of the evidence or at such earlier time as the

Court may direct, any party may file written requested instructions for the Court to give to the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear objections and rule on them out of hearing of the jury.

B. Arguments.

Final arguments for the parties shall be made after the jury has been instructed. The Court shall not comment on the evidence of the case.

Rule 25: Motions for Directed Verdict and for Judgment Notwithstanding the Verdict.

Motion For a Directed Verdict.

A party who has made a motion for a directed verdict which has been denied or not granted, may within 10 days after entry of judgment move to have the verdict and any judgment entered thereon set aside and entered according to his motion for directed verdict; or if there has been no verdict, the party may so move within 10 days after the jury has been discharged. A motion for a new trial may be made in the alternative. The Court shall enter judgment or make any orders consistent with his decision on the motions.

Rule 26: Findings by the Court.

In cases tried without a jury, except in cases where a party defaults, fails to appear or otherwise waives his right to a hearing, findings of fact and conclusions of law shall be made by the Court in support of all final judgments. Upon its own motion or the motion of any party within 10 days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly.

IV. POST-TRIAL

Rule 27: Judgment; Cost.

A. Definition.

A judgment includes any final order from which an appeal is available and no special form of judgment is required.

B. Judgment on Multiple Claims.

When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court's specific finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period

commence to run.

C. Demand for Judgment

1. Generally. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.
2. Judgment by Default. A judgment by default shall not be different in kind, or exceed in amount, that specifically prayed for in the claim for relief.

D. Cost [As amended by **Ord. DOI 3(98)**]

Unless the court shall otherwise direct, the Court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the Court a verified memorandum of his costs and necessary disbursements within five days of the entry of judgment and serve a copy of such on the opposing party, and if such are not objected to within 10 days, they shall be deemed to be a part of and included in the judgment rendered. The Appellate Court may award costs in a like manner.

E. Attorney's Fees

The Court shall not award attorney's fees in a case unless such have been specifically provided for by contract or agreement made by the parties to the dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only, or that there was no reasonable expectation of success on the part of the affirmatively claiming party. In any action, except by the tribe, against the bond of any officer or employee, if judgment shall be against the plaintiff the Court shall award a reasonable attorney's fee against such plaintiff and in favor of the defendant or defendants.

Rule 28: Default

A. Entry of Default

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, his default may be entered by the Clerk and judgment by default granted.

B. Judgment by Default.

Judgment by default may be entered by the Clerk if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served on the reservation. Otherwise, judgment by default can be entered only by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim. No judgment by default shall be entered against the Northern Cheyenne Tribe.

C. Setting Aside Default.

The Court may, for good cause shown, set aside either an entry of default or a default judgment, if the good cause is presented to the Court within thirty (30) days after the entry of default is granted.

Rule 29: Summary Judgment.

Any time within twenty (20) days after commencement of an action, any party may move the Court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than 10 days prior to the hearing on said motion, may be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties at least two days prior to the hearing.

Rule 30: Entry of Judgment.

A. Judgment.

Judgment upon verdict of jury shall be signed by the Clerk and filed. All other judgments shall be signed by the Judge and filed with the Clerk.

B. Effectiveness; Recordation.

A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The Clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket.

C. Death of a Party.

If a party dies after a verdict or decision has been reached upon any issue of fact before judgment, a judgment may nevertheless be entered thereon.

D. Satisfaction of Judgment.

A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or his attorney of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction. A Judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The Clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket.

E. Effect of Satisfaction; Limitation.

A judgment satisfied in whole, with such act being entered in the judgment docket, shall cease to operate as such. A partial satisfied judgment or unsatisfied judgment shall continue in effect for eight years. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of eight years and will extend the period of limitations for one additional eight year period.

Rule 31: New Trials: Amendments of Judgment.

A. Grounds; Time.

Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than 10 days after the entry of judgment, for any of the following grounds:

1. Error or irregularity which prevented any party from receiving a fair trial;
2. Misconduct of the jury or jury members;
3. Accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at the trial;
4. Damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice;
5. Insufficiency of the evidence to justify the verdict or other decision, or that it is contrary to the law; or
6. Error in law.

B. Harmless Error.

A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not affect substantial justice.

C. Support for Motion.

Parties may include memoranda or affidavits in support of their

motions to which reply memoranda and affidavits shall be allowed if desired.

D. Court Initiative.

The Court may, on its own initiative, not later than 10 days after entry of judgment, order a new trial on any grounds assertable by a party to the action, and shall specify the reasons for so ordering.

E. Motion to Alter or Amend Judgment.

A motion to alter or amend a judgment shall be served not later than 10 days after entry of the judgment.

Rule 32: Relief from Judgment or Order.

A. Clerical Mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time by its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the court of appeals, and thereafter while the appeal is pending with leave of the court of appeals.

B. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

On motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 31 (A); (3) fraud, misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a determination in equity that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. This rule does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the Court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by independent action.

Rule 33: Harmless Error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 34: Stay of the Proceeding to Enforce a Judgment.

A. Stay Upon Entry of Judgment.

Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the Court at its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

B. Stay on Motion for New Trial or for Judgment.

In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment, or a motion for relief from a judgment order, or a motion for judgment in accordance with a motion for a directed verdict, or a motion for amendment to the findings of fact or for additional findings.

C. Injunction Pending Appeal.

When an appeal is taken from an interlocutory or final judgment granting, dissolving or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant a temporary injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of parties.

D. Stay Upon Appeal.

When an appeal is taken the appellant may obtain a stay by giving bond in an amount set by the Court, unless such a stay is otherwise prohibited by law or these rules. The bond may be given within 10 days after the time of filing the notice of appeal. The stay is effective when the bond is approved and received by the Court.

E. Stay in Favor of the Tribe, or Agency Thereof.

When an appeal is taken by the Tribe, or an officer or agency

of the Tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

F. Power of the Appellate Court Not Limited [As amended by **Ord. DOI 3(98)**]

The provisions in this rule do not limit any power of the Appellate Court to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of any appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

G. Stay of Judgment Upon Multiple Claims

When a Court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 27(B), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

H. Waiver of Undertaking

In all cases, the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules a deposit in Court in the amount of such undertaking, or such lesser amount as the Court may order, is equivalent to the filing of the undertaking.

Rule 35: Injunctions

A. Preliminary Injunction Notice

No preliminary injunction shall be issued without notice to the adverse party.

B. Temporary Restraining Order; Notice; Rehearing; Duration

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; and shall be filed forthwith in the Clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms

within such time after entry, not to exceed 15 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for like period, or unless the party against whom the order is directed consents that it may be extended for a longer period. Under no circumstances shall the Court allow more than one extension of a temporary restraining order.

The reasons for the extension shall be entered on record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matter of the same character; and when the motion comes on for a hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On 2 days notice to the party, as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

C. Security.

Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Northern Cheyenne Tribe, or of an officer, or agency, of either; nor shall it be required of a married person in a suit against the other party to the marriage.

A surety upon a bond or undertaking pursuant to this title submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion as the Court prescribes and may be served on the Clerk of Court who shall forthwith mail copies to the persons giving the security if their addresses are known.

D. Form and Scope of Injunction or Restraining Order; Service.

Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants,

employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

E. Grounds for Injunction.

An injunction may be granted:

1. When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in enjoining the commission or continuance of some act complained of; either for a limited period or perpetually;
2. When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;
3. When it appears during the litigation that either party is doing, or threatens, or is procuring or suffering to be done, some act in the violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;
4. In all other cases where an injunction would be proper in equity.

Rule 36: Extraordinary Writs.

A. Grounds for Relief.

Where no other plain, speedy, and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which may be granted for any one of the following grounds:

1. Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office;
2. Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion;
3. Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specifically enjoins as a duty resulting from an office, trust or station or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board or person; or
4. Where the relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

B. Habeas Corpus.

Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the complaint the Court shall, unless it appears from such complaint or the showing of the plaintiff that he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the Court at a time and place therein specified, at which time the Court shall proceed in a summary manner to hear the matter and render judgment accordingly. If the writ is not issued, the Court shall state its reason therefor in writing and file the same with the complaint, and shall deliver a copy thereof to the plaintiff. If the defendant cannot be found, or if he does not have such person in custody, the writ (and any other process issued) may be served upon any one having such person in custody, in the manner and with the same effect as if he had been made defendant in the action.

The defendant shall appear at the proper time and place with the person designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly and unequivocally whether he then has, or at any time has had the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred, the defendant must state the fact, and to whom, and when, the transfer was made, and the reason or authority therefor. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or defendant, if enough is stated to show the meaning and intent thereof.

The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the Court may place such person in the custody of such individual or individuals as may be deemed proper.

C. Habeas Corpus; Decision.

In each case, the Court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case. If the Court finds in favor of the complainant, it shall enter an appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to rearraignment, retrial, custody, bail, or discharge as the Court may deem just and proper in the case.

Rule 37: Execution of Judgments.

A. Time.

After entry of a judgment against a party or after final resolution of an appeal for which a stay of judgment had been ordered, the judgment creditor may petition the Court for a writ of execution to enforce his judgment. If five years have passed since a judgment was entered, and no writ of execution has been issued, the Court may issue a writ of execution only if just and sufficient reasons are given for failure to obtain a writ in the previous five years.

B. Property Subject to Writ of Execution.

All wages, money, goods, chattels, or other property, both real and personal are subject to a Writ of Execution under this Rule. All property not exempt under Section (C) of this rule as well as all property seized and held under attachment in an action are subject to execution. Only property belonging to the judgment debtor is subject to execution.

C. Exemptions.

The following property is exempt from execution, except as otherwise specifically provided when selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon after levy and before sale as the existence of the levy becomes known to him:

1. The income of the judgment debtor, regardless of when it became payable, for work performed during the preceding 30 days, or otherwise earned or inured to his benefit within the 30-day period; the 30-day period shall be reckoned back from the date of the levy, but the exemption may not exceed \$350 if he is the head of a family, and the amount of \$200 if he is not the head of a family; the amount of the exemption shall be computed after deductions and payments, required by law or court order, so as to assure the judgment debtor the receipt of the first \$350 per month if he is the head of a family or \$200 if he is not the head of a family, when it appears by the debtor's affidavit or otherwise that the income is necessary for his use or for the use of his family which is supported in whole or in part by his income;
2. Books, pictures, and musical instruments belonging to the judgment debtor not to exceed \$300 in value;
3. Necessary wearing apparel belonging to the judgment debtor for the use of himself or his family; watches or jewelry not to exceed \$200 in value;
4. The tools, implements, apparatus, motor vehicles, books, office furniture, business files, animals, laboratory, and

any other article necessary to enable any person to carry on the trade, occupation, or profession by which that person habitually earns his living to the value of \$2,500, including sufficient quantity of food to support the animals, if any, for six months;

5. The following property belonging to the judgment debtor and in actual use or kept for use by and for his family: animals, household goods, furniture, and utensils to the value of \$1,200, including food sufficient to support the animals, if any, for six months, and provisions actually provided for family use and necessary for the support of that person and family for six months;
6. All property of a public or municipal corporation;
7. No article of property mentioned in this section is exempt from execution issued on a judgment recovered for its price, and, in the event the article of property has been sold or exchanged for other property, the proceeds of the sale or the article for which it was exchanged is not exempt from execution.

D. Procedure for Identification.

After petitioning the Court for a writ of execution, the judgment creditor shall, if possible, identify property of the judgment debtor of value to satisfy the judgment. Such identification shall be made in a sworn affidavit, and shall not include exempt property.

The Court shall then order the judgment debtor to appear and identify under oath all of his exempt and non-exempt property, or at least property subject to the action. If a judgment debtor claims certain property is exempt, he must provide information to support his claim. Failure of the judgment debtor to appear and provide information shall be deemed a contempt of Court, and unless other interested parties (e.g., spouse, children, parents) come forward with information, no property of the judgment debtor will be held as exempt from execution. The judgment debtor must appear before the Court within five working days of the order to appear, unless the Court is given good reasons for his failure to appear.

The Court may issue a writ of execution solely upon the affidavit of the judgment creditor, if some evidence is present to show that the property in fact belongs to the judgment debtor.

E. Substance of Writs.

Writs of execution may be against the property of the judgment debtor, another against his person, and a third for the delivery of the possession of real or personal property, including damages for withholding the property. Upon determination of

what property is available for execution, the Court shall issue the necessary writ(s) and order the Northern Cheyenne Police Department to carry out the orders in the writ; specifically, to seize as much non-exempt property belonging to the judgment debtor as reasonably appears necessary to pay the judgment amount. All writs shall direct the Police Department to proceed substantially as follows:

1. If the writ is against the property of the judgment debtor, it shall require the Northern Cheyenne Police to seize as much personal property as necessary to satisfy the debt. If inadequate personal property is available the Court may inform the B.I.A. and/or Tribal officials of the debtor's debt, and require forfeiture of all non-exempt wages and/or money on account for the debtor, and/or judgment money, and/or per capita payments from the Tribe. Such liens on non-exempt property may extend only to interests belonging to the judgment debtor, and may be placed in the name of the debtor with the specific agency forfeiting funds for as long a time as is necessary to satisfy the debt owed. All forfeited money shall be turned over to the Court Clerk for payment to the judgment creditor.

Real property in the name of the judgment debtor may be seized also if it appears the judgment will not be satisfied from other resources within one year.

If personal or real property is seized, the Court shall assign a minimum reasonable value to the property for the purposes of beginning bidding at an auction sale. Notice of an auction sale shall be published in a locally read newspaper at least (3) times in three weeks, and shall be posted in three conspicuous public places on the reservation for at least three weeks before the sale. The auction sale of seized property shall be conducted by the Northern Cheyenne Police Department. If the minimum price or more is not offered, property shall be held and notice of another sale shall be given. The Court shall re-evaluate the minimum reasonable value.

All money received at auction sales shall be turned over to the Court Clerk for payment to the judgment creditor. The Court Clerk shall keep records of all money received, and after a judgment is satisfied, any money remaining will be returned to the judgment debtor. Strict records must be kept to avoid sale of property unnecessarily. The person conducting the sale shall give all purchasers a certificate of sale, and shall file a report with the Court, reciting the details of all sales.

2. If the writ is against real or personal property in the hands of the judgment debtor's personal representatives,

- heirs, devisees, legatees, tenants, or trustees, it shall require forfeiture of the property for sale as set out in section one (1) above. If consent of the judgment debtor is determined to be necessary for release of property, real or personal, the writ shall order the judgment debtor to transfer all property as needed. Refusal of such order shall be deemed contempt of court, and all necessary action may be taken to enforce the order.
3. If the writ is against the person of an absconding judgment debtor, it shall require the Northern Cheyenne Police to arrest the debtor and commit him to jail until he pays the judgment, with interest, or is discharged according to law. If the writ is against the person of any judgment debtor and the application for the writ is made under oath, upon probable cause, and describing the things to be seized as in a warrant, the officer may search and seize valuables from that debtor.
 4. If the writ is for the delivery of the possession of real or personal property, it shall require the Northern Cheyenne Police to deliver the possession of the property, describing it, to the party entitled to it, and may at the same time require the Northern Cheyenne Police to satisfy any costs, charges, damages, rents, or profits recovered by that judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was recovered to be specified in the writ, if a delivery cannot be had; and, if sufficient personal property cannot be found, then out of the real property as provided in (1) of this section.
 5. All writs must identify the judgment debtor, the amount of the judgment owed, the right of the debtor to exempt certain property, and the right of the debtor to appeal the judgment if he/she has not already done so. The Court may also affix interest at 8% of amounts still owing, and provide for writs of execution to collect such interest.
 6. When garnishing wages as set out in section one (1) above, employers must pay non-exempt wages to the Court Clerk each month up to the amount of the judgment, or be held in contempt of court. Avoidance of this duty shall be allowed only if good reasons are shown.

In addition to the exemptions set out in Section (C) of this rule, taxes and other legitimate withholdings may be withheld prior to payment pursuant a Court ordered writ of execution.

Writs of execution shall be enforceable against all individuals working on the reservation, including Tribal and U.S. Government employees. All writs issued for the garnishment of wages shall continue as liens against subsequent earnings until a judgment is satisfied, or until the employment relationship involved is terminated.

F. Redemption from Sale

At any time within six (6) months after the sale under this Rule, the judgment debtor may redeem his property, personal or real, from the purchaser thereof or from any subsequent successors in interest, by paying the amount such purchaser or successor paid for the property plus eight (8) percent interest, plus any expense actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

G. Judgment Debtor's Property Owned with Another

1. If an individual judgment debtor owns property jointly with another, a judgment creditor may obtain a writ of execution and force a sale of the debtor's interest, provided the property is not exempt under this Rule. An individual who jointly owns property with a judgment debtor shall have the right to meet the highest bid at an auction sale, and thereby obtain the judgment debtor's interest.
2. A partner's right in specific partnership property is exempt except on a claim against the partnership. If partnership property is attached for a partnership debt the partners or any of them or the representatives of a deceased partner may not claim an exemption for that property under this rule.

Rule 38: Appeal [As amended by **Ord. DOI 3(98)**]

A. Appellate Court

All appeals provided for by this Code or ordinances shall be heard by the Appellate Court of the Northern Cheyenne Court.

B. Right to Appeal

Any party who is aggrieved by any final order, commitment or judgment of the lower Trial Court may appeal in the manner prescribed by Chapters 3, 4 and 5 of Title II and this Rule.

C. Bond on Appeal

At the time of filing the Request for Appeal, the appellant shall also file cash or a bond in an amount set by the lower Trial Court sufficient to guarantee performance of the judgment if such performance is stayed on appeal plus, in any event, an amount sufficient to guarantee payment of such costs or interest as the Appellate Court may award.

D. Stay Pending Appeal

In any case in which an appeal is perfected as required by this

Rule, the appellant may petition the lower Trial Court for an order staying the order, commitment or judgment rendered conditioned upon execution of a bond to guarantee performance of the judgment, order or commitment. A stay shall be granted in all cases in which it is requested unless manifest injustice would result therefrom.

E. Clerk

The Court Clerk shall also serve as the Clerk of the Appellate Court. The Clerk shall prepare, certify and file with the Appellate Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the Appellate Court in which shall be recorded each stage of the proceeding on each case appealed.

B. CIVIL CODE

I. GENERAL PROVISIONS

4-1-1 State of Montana Requests for Authority on the Northern Cheyenne Reservation [*As amended by Ord. DOI 3(98)*]

Before the Northern Cheyenne Court shall honor any County of Montana, State of Montana, or any other jurisdiction's service of process, arrest, extradition, judgment, execution upon a judgment or order, the Northern Cheyenne Trial Court shall set a hearing to determine the validity of any of the above-requested exercises of authority. After such a hearing, the Trial Court shall, in writing, either deny or authorize the request. If authorized by the Trial Court the Northern Cheyenne Reservation Police Department shall serve the process, make the arrest requested, process the extradition, execute the judgment, and help to enforce the various orders.

4-1-2 Trespass by Non-Indians [*As amended by Ord. DOI 3(98)*]

Before any non-Indian trespasses or travels over, upon or across Northern Cheyenne Tribal land, he shall obtain, in person at Lane Deer, Montana, a Trespass Permit from the Northern Cheyenne Trial Court.

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Failure to obtain such a permit shall lead to such individual's arrest and detention until the offender can be turned over to the appropriate Federal authorities for prosecution and punishment according to Federal Law and/or excluded from the reservation.

II. EXPULSION AND EXCLUSION OF NON-MEMBERS FROM THE NORTHERN CHEYENNE INDIAN RESERVATION

4-2-1 Who May be Excluded

Any non-member of the Northern Cheyenne Tribe, except persons authorized by federal law to be present on Tribal land and owners of non-trust land on the Reservation, may be excluded from the Northern Cheyenne Reservation.

4-2-2 Grounds for Exclusion

Non-members may be excluded for commission of one or more of the following acts within the Northern Cheyenne Reservation:

- A. Violation of any Northern Cheyenne Tribal Council ordinance.
- B. Unauthorized prospecting, measuring or studying of the Northern Cheyenne Reservation.
- C. Entering an area of the Northern Cheyenne Reservation in violation of any order of the Northern Cheyenne Tribal Council designating such area as closed because of a fire hazard or for any other reason.
- D. Use, possession, or sale of any drug, narcotic drug or controlled substance as defined by the state Uniform Controlled Substances Act.
- E. Defrauding any enrolled member of just compensation for his labor or service of any nature done at the request of the non-member.
- F. Any act causing physical loss or damage of any nature to tribal property or property of any enrolled member.

4-2-3 Notice of Proposed Exclusion

A judge of the Northern Cheyenne Court shall cause notice to be served personally or by registered mail upon any non-member whenever the Reservation Prosecutor petitions the Court for exclusion of the non-member. The notice shall state the reason for the proposed exclusion and shall name a time and place where the non-member may appear before the Northern Cheyenne Court to show cause why he should not be excluded from the Northern Cheyenne Reservation. The hearing shall be not less than ten (10) days after service of the notice or mailing of the

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arguments, evidence and witnesses concerning legal and factual allegations.

(C) The right to question witnesses during hearings.

(D) The right to be represented by a responsible person and/or legal representative at his/her own expense.

(E) The right to remain silent.

(F) The right to have the evidence presented against him/her judicially reviewed to be sufficient to meet the general rules of evidence applicable in civil matters and as set forth in this code.

(G) The right to review and copy relevant documents on file with the court concerning the pending case.

(H) The right to be examined by another professional person of his/her choice, at their own expense, or as such can be arranged within budgetary limitations.

(I) The right to appeal final orders of the court.

(K) The right to be informed of these rights before or immediately after being detained.

2.8 Severability

Should any section, paragraph, sentence, clause or phrase of this chapter be found to be unlawful or otherwise invalid for any reason, the remainder hereof shall not be affected thereby.

2.9 Right of Appeal

The subject of an action provided for hereunder shall have the right to appeal as provided for in the general rule civil and appellate procedure of the Northern Cheyenne Reservation Code; provided, such an individual shall have the further right to pursue an appeal from a final order of commitment at any time while remaining in custody.

II. EXPULSION AND EXCLUSION OF NON-MEMBERS FROM THE NORTHERN CHEYENNE INDIAN RESERVATION

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4-2-2 Grounds for Exclusion

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- A. Violation of any Northern Cheyenne Tribal Council ordinance:
- B. Unauthorized prospecting, measuring or studying of the Northern Cheyenne Reservation.
- C. Entering an area of the Northern Cheyenne Reservation in violation of any order of the Northern Cheyenne Tribal Council designating such area as closed because of a fire hazard or for any other reason.
- D. Use, possession, or sale of any drug, narcotic drug or controlled substance as defined by the State Uniform Controlled Substance Act.
- E. Defrauding any enrolled member of just compensation for his labor or service or any nature done at the request of the non-member.
- F. Any action causing physical loss or damage of any nature to tribal property or property of any enrolled member.

4-2-3 Notice of Proposed Exclusion [As amended by **Ord. DOI 3(98)**]

A Trial Judge of the Northern Cheyenne Court shall cause notice to be served personally or by registered mail upon any non-member whenever the Reservation Prosecutor petitions the Court for exclusion of the non-member. The notice shall state the reason for the proposed exclusion and shall name a time and place where the non-member may appear before a Trial Judge to show cause why he should not be excluded from the Northern Cheyenne Reservation. The hearing shall be not less than ten (10) days after service of the notice or mailing of the notice, whichever is later, provided that if the Judge shall have reasonable cause to believe an emergency exists, and the notice so states, the hearing may be held after twenty-four hours from the time of service or mailing, whichever is later.

4-2-4 Hearing on Exclusion Before Northern Cheyenne Court [As amended by *Ord. DOI 3(98)*]

After notice to the non-member proposed for exclusion, a Trial Judge shall hold a hearing to decide whether the non-member shall be excluded from the Northern Cheyenne Reservation. The non-member shall be given an opportunity to present his defense at such hearing and may be represented by counsel. After the hearing, or after the time set for the hearing, if after notice the non-member does not appear, the Trial Judge may order him excluded from the Northern Cheyenne [*cont'd on p. IV-51*]

Reservation, or may permit him to remain upon the Reservation on such conditions as the Trial Judge sees fit to impose. All orders of exclusion shall remain in force until revoked by the Northern Cheyenne Court unless the order specifically provides otherwise.

4-2-5 Appellate Proceedings [As amended by Ord. DOI 3(98)]

Appeals from any exclusion shall be to the Appellate Court.

4-2-6 Proceedings for Enforcement of Orders of Exclusion [As amended by Ord. DOI 3(98)]

If any non-member ordered excluded by the Northern Cheyenne Court does not promptly obey the order, the Trial Judge shall refer the case to the Northern Cheyenne Reservation police, who shall promptly escort the person excluded to the nearest Reservation boundary.

4-2-7 Physical Removal [As amended by Ord. DOI 3(98)]

In cases involving immediate danger to life, health, morals, or property and where any delay would result in irreparable damage, a Trial Judge may order any Northern Cheyenne law enforcement officers to remove a non-member and any property of such non-member from the Northern Cheyenne Reservation, either before or after the non-member has been ordered excluded by the Northern Cheyenne Court as provided in 4-2-4. The officer executing the order shall use only so much force as is necessary to effect the removal. If service of the notice provided for in 4-2-3 has not already been made on the non-member, the Trial Judge shall cause the officer to serve the notice upon the non-member at the time of removal, or he shall cause the notice to be served as soon after removal as possible.

In all cases where the non-member has not already been ordered excluded by the Northern Cheyenne Court, the Trial Judge shall notify the non-member of a place on the Reservation boundary where he may re-enter in the company of a Northern Cheyenne law enforcement officer for the purpose of attending the hearing before the Northern Cheyenne Court. The order shall command the officer to accompany the non-member while he is on the Reservation coming to and leaving his hearing.

4-2-8 Separability

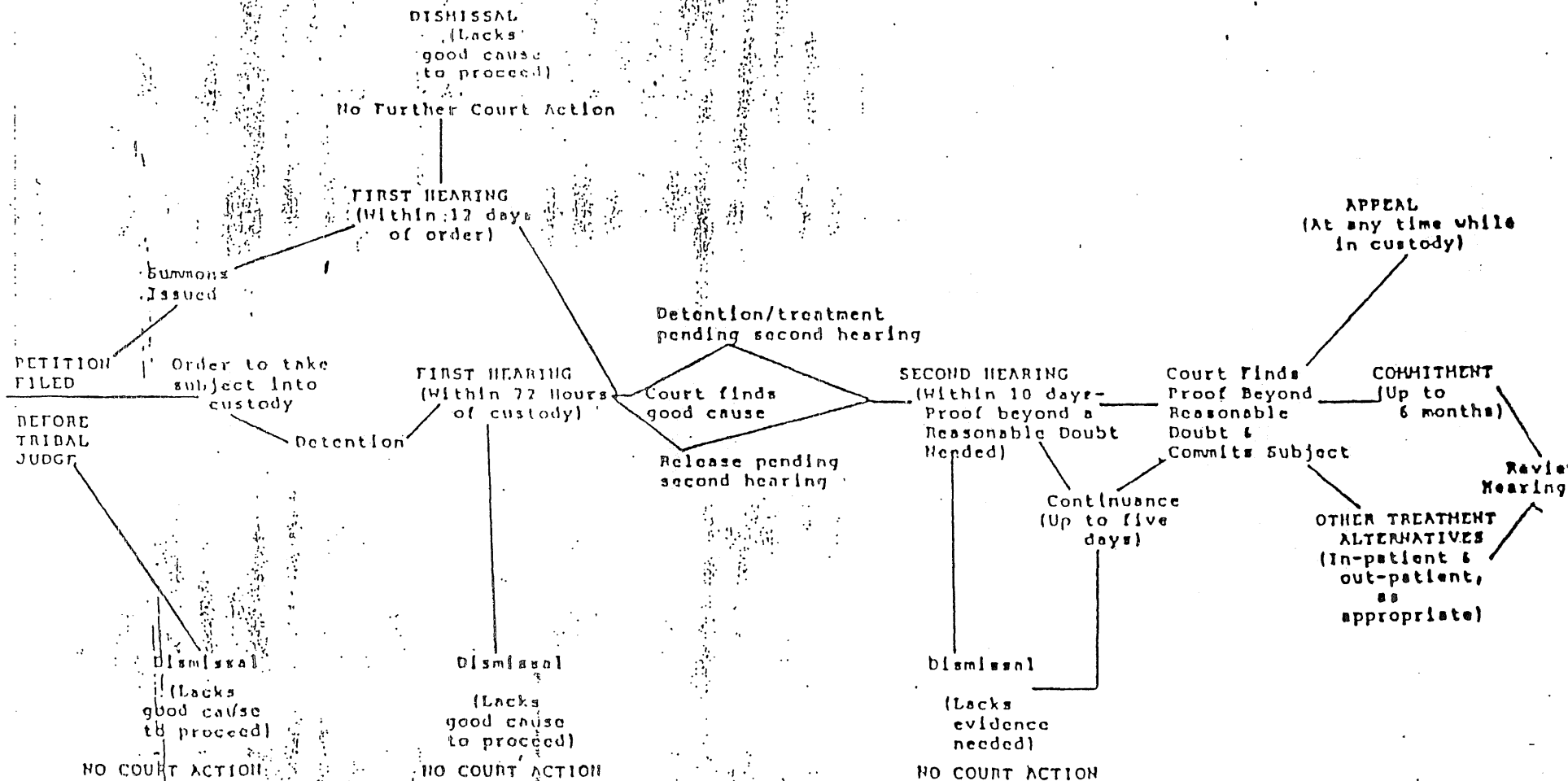
If any provision of sections 4-1-1 through 4-2-7, or their application to any person or circumstances is held invalid, the remainder of these sections, or the application of the provision to other persons or circumstances is not affected.

4-1-3 COMMITMENTS

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COMMITMENT-----Alcohol and/or Drug Dependency



I. ALCOHOL/CHEMICAL DEPENDENCY COMMITMENT

1.1. STATEMENT OF POLICY

It is the policy of the Northern Cheyenne Tribal Council to recognize chemical dependency as a severe social problem, daily affecting the lives of numerous Tribal members. The Northern Cheyenne Tribal Council (hereinafter "Tribal Council") hereby officially recognizes that Alcoholism, as well as developed dependencies on other drugs and chemicals are progressive diseases which can eventually lead to the death of the afflicted individual. Further, such diseases are a key factor in the majority of crimes on the Reservation, as well as being a major factor in many domestic problems on the Reservation. It is the stated goal of the Tribal Council to seek recognition and solution of the problem throughout the Reservation, and by this Ordinance to provide a means to intervene in the lives of those individuals suffering from these dependencies.

1.2 DEFINITIONS

(1) Alcoholic. A person who has a history of chronic, excessive consumption of alcoholic beverages and as a result of such, loses powers of self-control, judgement or discretion in caring for fundamental personal needs, or the ability to conduct social relations. A rebuttable presumption shall be created that an individual is an alcoholic in any proceeding if any of the following exists:

(A) Such person has previously been adjudicated as needing treatment, and substantial evidence exists that such individual has returned to regular consumption of alcohol.

(B) Substantial evidence exists that an individual has been consuming alcohol, without break, for three (3) days or more.

(C) Substantial evidence exists to demonstrate that an individual, during the course of consuming alcohol, has suffered a "blackout", or fails to remember a period of time during which he/she was intoxicated but otherwise coherent.

(D) Such person has been convicted of two or more crimes, during which he/she was under the influence of alcohol, as can be evidenced by the submission of a signed affidavit by the investigating officer in such case and/or the fact that being under the influence of alcohol was an element of the offense.

(E) Such person has been diagnosed as such by competent medical personnel, after observation that he/she exhibits the following pattern of pathological alcohol use: need for daily use of alcohol for adequate functioning; inability to cut down or stop drinking; repeated efforts to control or reduce excess drinking by "going on the wagon" (periods of temporary abstinence) or restricting drinking to certain times of the day; binges (remaining intoxicated throughout the day for at least two-days); occasional consumption of a fifth of spirits (or its equivalent in wine or beer); amnesic periods for events

occurring while intoxicated (blackouts); continuation of drinking despite a serious physical disorder that the individual knows is exacerbated by alcohol use; drinking of non-beverage alcohol (e.g. Lysol, vanilla extract, etc.), with one or more of said symptoms coinciding with social or occupational functioning impairment due to alcohol use, such as violence while intoxicated, absence from work, loss of job, legal difficulties (e.g. arrest for intoxicated behavior, traffic accidents while intoxicated), arguments or difficulties with family or friends because of excessive alcohol use, with an overall duration of disturbance within said areas of at least one (1) month.

(2) Chemically Dependent Person. A person who has a history of chronic excessive use of drugs or chemicals, and as a result of such drug or chemical use, regularly and for significant periods of time, loses powers of self-control, judgement or discretion in caring for fundamental personal needs or the ability to conduct social relations. Such definition may be applied to a person who is believed to be suffering from a combined dependency on alcohol and any other drug.

1.3 STANDARDS FOR COMMITMENT

An individual, subject to the jurisdiction of the Northern Cheyenne Tribal Court, believed to be an Alcoholic and/or a Chemically Dependent Person, may be committed to a Detoxification Center or other appropriate treatment facility, as appears necessary, when an appropriate verified petition is filed in the Reservation Court, alleging that such person is an Alcoholic and/or a Chemically Dependent Person. In addition to such allegation, the following must be set forth in the petition:

- (1) The name, address and current location of the subject of the petition, to the best of Petitioner's knowledge;
- (2) The name, address and next-of-kin of the subject of the petition;
- (3) If different from No. 2, the name, address and relationship to the subject, of the Petitioner;
- (4) Facts alleged in support of the petition to demonstrate that the subject falls within the definition of an Alcoholic or a Chemically Dependent Person, as is defined in this Ordinance;
- (5) Facts alleged in support of the petition to demonstrate that the subject has threatened, attempted, or inflicted physical harm on him/herself or another and unless committed is likely to inflict physical harm on him/herself or another OR is incapacitated by alcohol;
- (6) Facts showing that the subject has refused to subject him/herself to a medical examination and/or chemical evaluation within the immediately preceding ten (10) days to determine the effect of the alleged alcohol and/or chemical dependency, OR attach a signed statement, dated within ten (10) days of the date of the petition, from a licensed physician or licensed chemical dependency counselor, setting forth facts in support of the petition. All such statements from licensed

physicians or counselors must be either notarized by a Notary Public or Clerk of Court, or such individual must have previously taken an oath before the court to serve as an officer of the court in such capacity.

(7) Identify the appropriate treatment and/or facility to properly deal with the problem of the subject; and

(8) Verification of the truth of such facts by Petitioner.

1.4 WHO MAY FILE PETITION.

Anyone with sufficient knowledge of an individual's circumstances to properly allege the facts required to be set forth in the petition by this code may file a petition naming an individual, provided, such person has at least some first-hand knowledge of the subject of a petition.

1.5 COURT PROCEEDINGS.

(1) All petitions provided for herein shall be signed in front of a Reservation Judge, and shall be considered civil proceedings with no record of jail time served, even if a subject is held in a jail facility, for lack of a sufficiently secure facility.

(2) All court proceedings provided for herein shall be recorded by a court reporter, or an appropriate audio and/or video device.

(3) All treatment placements ordered by the court shall be made to the least restrictive environment then available to properly treat the condition of the subject then before the court. All orders directing treatment shall direct that if during the course of ordered treatment, an appropriate less restrictive placement opportunity becomes available, that the court shall be informed of such, and if possible, the subject transferred to such program.

(4) Proceedings Initiated Ex Parte.

(A) Upon the filing of an appropriate verified petition, if the court finds the danger to the health and safety of the subject of such petition, or another, to be substantial, he/she may make such finding in writing, direct law enforcement officials to take the subject to appear before the court and show cause why such detention should not be continued.

(B) Upon being taken into custody, said subject shall be served with a copy of the petition, a statement of his/her rights, and a copy of the order to take him/her into custody.

(C) If possible, said subject shall be immediately brought before a judge of the Reservation Court and given an opportunity to challenge the petition. In no even shall a subject be in custody longer than 72 hours before being given an opportunity to appear before a judge and challenge the proceeding.

(D) When taken into custody, a subject shall be held in a facility with sufficient security to properly restrain him/her from leaving while providing for the medical needs of such individual. Such facility shall be the least restrictive environment available, which will ensure his/her continued presence. A jail facility shall be used only as a last alternative, when other facilities are full, and/or insufficient to maintain a defendant's continued presence.

(E) If a petition has been filed without the attachment of a statement from a licensed physician or counselor, the court shall make every effort to have the subject evaluated and/or examined by such, before the initial hearing provided for above; provided, that such efforts shall not toll the requirement to conduct a show cause hearing within 72 hours of taking a subject into custody. If not effected prior to such hearing, an evaluation from a licensed physician or counselor shall be ordered and submitted prior to the court conducting the second hearing provided for herein.

(F) At the initial show cause hearing provided for herein, the subject shall have an opportunity to challenge the allegations set forth in the petition. Petitioner(s) shall be present, and if possible the licensed physician and/or chemical dependency counselor who has examined or evaluated the subject shall be present also. Should the subject be physically unable to appear, the court, upon entering a finding of such in open court, may postpone said hearing until such time as he/she can be present; provided, orders to take such individual into custody shall continue until such hearing. Such continuance shall not extend beyond the second hearing provided for in this code, and may be consolidated with the second hearing, if such becomes necessary, as long as the court formally reviews the evidence before it at a properly noticed hearing.

(G) If after an initial show cause hearing the presiding judge finds that there is good cause to maintain the subject in treatment, he may order that such person be maintained in treatment for up to ten (10) days. Within said ten (10) days, a second hearing shall be scheduled for the court to formally review the evidence to determine whether further treatment is necessary and whether to adjudge an individual as in need of such. At the second hearing, the standard of proof necessary to support a finding that further court-ordered treatment is necessary shall be proof beyond a reasonable doubt.

(H) Upon entering a finding that further court-ordered treatment is necessary after the second hearing, a subject may be ordered to treatment for a period not to exceed six (6) months. Such an order must be supported by evidence and/or reports to the court from a licensed, qualified chemical dependency counselor and/or a physician, that such is necessary and proper to treat the condition of the subject.

(I) Should the court find that the record lacks sufficient evidence to meet the proof beyond a reasonable doubt standard, it may either dismiss the action, or if it is reasonably believed that such proof exists and a continuance would effect the presentation of such evidence, may continue the hearing for a period no longer than five (5) days. The subject of the petition shall be released during such continuance, unless the court is convinced that said subject will not return for further proceedings or will be a danger to him/herself or others.

(5) Proceedings Initiated After Notice.

(A) If the court, after reviewing a filed verified petition, determines that the issuance of an ex parte order taking the subject into custody is inappropriate, a summons may be issued demanding the presence of the subject at a hearing, or if it is found that good cause is lacking, the petition may be dismissed. Failure to appear or otherwise respond after the receipt of a summons may be treated as contempt of court.

(B) When a summons is deemed appropriate, it shall direct the subject to appear at a show cause hearing to be set within twelve (12) days of the filing of the petition, to determine whether further action is necessary. A copy of the petition, along with a statement of the subject's rights shall accompany the summons, and be personally served thereon by a police officer or authorized process server, or if such cannot be effected, by certified mail.

(C) At the initial show cause hearing, provided for herein, the subject shall have an opportunity to challenge the allegations set forth in the petition. Petitioner(s) shall be present, and if possible the licensed physician and/or chemical dependency counselor who has examined or evaluated the subject shall be present also. Should the subject be physically unable to appear, the court, upon entering a finding of such in open court, may postpone said hearing until such time as he/she can be present; provided, orders to take such individual into custody, if any, shall continue until such hearing. Such continuance shall not extend beyond the second hearing, provided for in this code, and may be consolidated with the second hearing, if such becomes necessary, as long as the court formally reviews the evidence before it at a properly noticed hearing.

(D) If after an initial show cause hearing the presiding judge finds that there is good cause to maintain the subject in treatment, he may order that such person be maintained in treatment for up to ten (10) days. Within said ten (10) days, a second hearing shall be scheduled for the court to formally review the evidence to determine whether further treatment is necessary and whether to adjudge an individual as in need of such. At the second hearing, the standard of proof necessary to support a finding that further court-ordered treatment is necessary shall be proof beyond a reasonable doubt.

(E) Upon entering a finding that further court-ordered treatment is necessary after the second hearing, a subject may be ordered to treatment for a period not to exceed six (6) months. Such an order must be supported by evidence and/or reports to the court from a licensed, qualified chemical dependency counselor and/or a physician that such is necessary and proper to treat the condition of the subject. The court may order treatment beyond the six (6) month period, provided that the standard of proof required at the second hearing is met at each subsequent hearing, and hearings on such individual are held at least every six (6) months.

(F) Should the court find that the record lacks sufficient evidence to meet the proof beyond a reasonable doubt standard, it may either dismiss the action, or if it is reasonably believed that such proof exists and a continuance would effect the presentation of such evidence, may continue the hearing for a period no longer than five (5) days. The

subject of the petition shall be released during such continuance, unless the court is convinced that said subject will not return for further proceedings or is a danger to him/herself or others.

(6) The time limits provided for herein after the initial show cause hearing may be specifically waived in writing by the subject of a petition, or his/her authorized representative.

(7) Voluntary Proceedings. An individual may voluntarily submit him/herself to treatment hereunder by either voluntarily enrolling in an appropriate treatment facility, or if desiring to so attend under court order, may petition the court pursuant the terms hereof, invoking the procedures set forth above.

(8) In addition to other rights reserved to a subject, such individual may move the court to hold additional hearings or to postpone hearings as such may be necessary to prepare and/or present relevant evidence on their condition.

1.6 EMERGENCY COMMITMENT.

(1) If the petitioning process described above is not reasonably available, a licensed physician or peace officer may detain an individual who appears to be intoxicated or incapacitated by the use of any drug and appears to be a danger to him/herself or the public. Such individual shall be held in the least restrictive environment necessary to protect him/her and/or the public. If the only alternative available is jail, said person shall be held only until said person is no longer creating a risk to him/herself or others or an appropriate court order for detention is obtained, whichever exists first. If detained under this procedure, an individual shall be immediately informed of the reasons for such detention, and immediately provided a copy of his rights under this ordinance.

(2) When such an individual is detained, the initiating physician or peace officer shall cause a petition, as is set forth above, to be filed with the Tribal Court on the next regular court day, unless such individual is released prior thereto. Such physician or peace officer, in either event, shall file a written report describing their action, with the Tribal Court, the next regular court day following the detention of an individual. The court shall keep a file on such individual, to monitor possible evidence of significant problems.

(3) A physician or peace officer, acting within the scope of the authority set forth herein, shall not be personally liable for his/her actions.

1.7 PROCEDURAL RIGHTS.

(1) The subject of a petition under this Title shall be guaranteed the following rights in addition to and in recognition of rights guaranteed by applicable federal and reservation law.

(A) The right to reasonable advance notice of hearing, except as specifically provided for herein.

(B) The right to be present at all hearings, and to offer relevant arguments, evidence and witnesses concerning legal and factual allegations.

(C) The right to question witnesses during hearings.

(D) The right to be represented by a responsible person and/or a legal representative at his/her own expense.

(E) The right to remain silent.

(F) The right to have the evidence presented against him/her judicially reviewed to be sufficient to meet the general rules of evidence applicable in civil matters and as set forth in this code.

(G) The right to review and copy relevant documents on file with the court concerning the pending case.

(H) The right to be examined by another professional person of his/her choice, at their own expense, or as such can be arranged within budgetary limitations.

(I) The right to appeal final orders of the court.

(J) The right to refuse medication within twenty-four (24) hours preceding hearings, unless a professional person determines that said subject will harm him/herself, others or property.

(K) The right to be informed of these rights before or immediately after being detained.

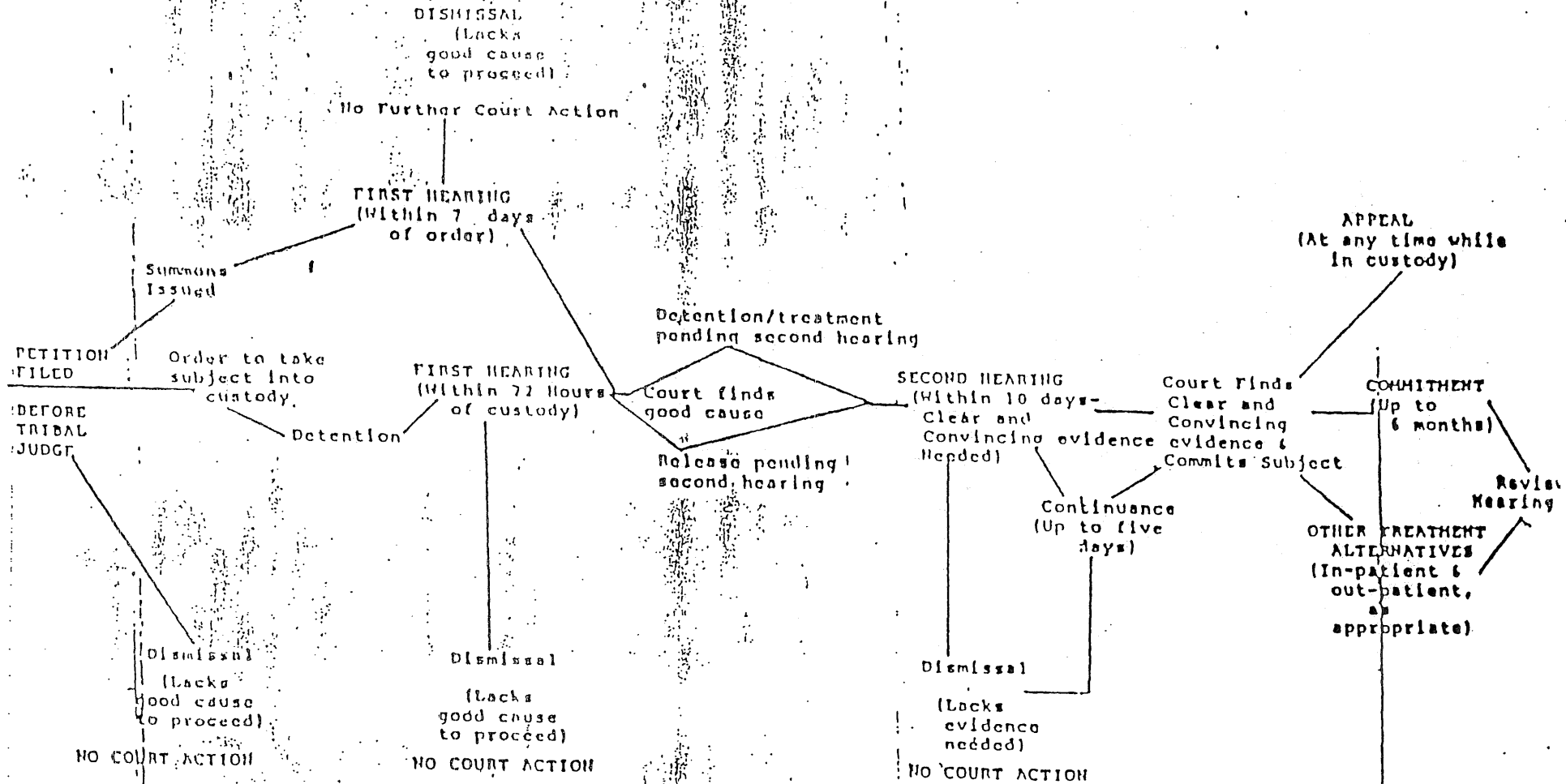
1.8 SEVERABILITY

Should any section, paragraph, sentence, clause or phrase of this chapter be found to be unlawful or otherwise invalid for any reason, the remainder hereof shall not be affected thereby.

1.9 RIGHT OF APPEAL

The subject of an action provided for hereunder shall have the right to appeal as provided for in the general rules of civil and appellate procedure of the Tribal Ordinance; provided, such an individual shall have the further right to pursue an appeal from a final order of commitment at any time while remaining in custody.

COMMITMENT --- Seriously Mentally Ill



II. MENTAL COMMITMENT

2.1 STATEMENT OF POLICY

It is the policy of the Northern Cheyenne Tribal Council to recognize mental illness and mental health problems as significant concerns adversely affecting the lives of those suffering from such, as well as numerous members of their family and community. In addressing such problems, it is herein recognized that procedures are needed to effectively, humanely provide treatment alternatives to such individuals, while protecting rights to due process, equal protection and freedom. In construing the provisions of this process, the court shall carefully weigh the public's right to be safe and free from inappropriate conduct, with the individual rights as guaranteed in the Indian Civil Rights Act and other applicable federal and tribal laws.

2.2 DEFINITIONS

(1) "Friend of Respondent". Such an individual is a competent person, appointed by the court, who is at least somewhat familiar with the subject of a petition, has no potential conflict of interests in looking out for the interests of the subject, and is willing and able to assume responsibility for advising and communicating with the subject. Such person, when appointed by the court, shall not be civilly liable for any actions taken or omitted in the performance of such service, provided they act in good faith within the scope of their appointment.

(2) "Professional Person" means a medical doctor, licensed mental health professional or other individual licensed by a responsible agency to evaluate the mental condition of individuals.

(3) "Seriously Mentally Ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health.

2.3 STANDARDS FOR COMMITMENT

An individual, subject to the jurisdiction of the Northern Cheyenne Reservation Court, believed to be seriously mentally ill, may be committed to an appropriate treatment facility as appears necessary, when an appropriate verified petition is filed in the Northern Cheyenne Reservation Court, alleging that such person is seriously mentally ill. In addition to such allegation, the following must be set forth in the petition:

(1) The name, address and current location of the subject of the petition, to the best of Petitioner's knowledge;

(2) The name, address and next-of-kin of the subject of the petition;

(3) If different from No. 2, the name, address and relationship to the subject, of the Petitioner;

(4) Facts alleged in support of the petition to demonstrate that

the subject falls within the definition of a seriously mentally ill person, as is defined in this Ordinance.

(5) Facts alleged in support of the petition to demonstrate that the subject has threatened, attempted, or inflicted physical harm on him/herself or another or said condition has deprived the person of the ability to protect his/her life and health, and unless committed is likely to inflict physical harm on him/herself or another;

(6) Facts showing that the subject has refused to subject him/herself to a medical examination and/or psychological evaluation within the immediately preceding ten (10) days to determine the effect of the alleged serious mental illness, OR attach a signed statement, dated within ten (10) days of the date of the petition, from a Professional Person setting forth facts in support of the petition. All such statements from Professional Persons must be either notarized by a Notary Public or Clerk of Court, or such individual must have previously taken an oath before the court to serve as an officer of the court in such capacity.

(7) Identify the appropriate treatment and/or facility to properly deal with the problem of the subject; and

(8) Verification of the truth of such facts by Petitioner.

2.4 WHO MAY FILE PETITION.

Anyone with sufficient knowledge of an individual's circumstances to properly allege the facts required to be set forth in the petition by this ordinance may file a petition naming an individual, provided, such person has at least some first-hand knowledge of the subject of a petition. The Tribal Prosecutor shall provide assistance, as necessary, in the preparation of such petitions, and in the presentation of evidence to the court at required hearings.

2.5 COURT PROCEEDINGS.

(1) All petitions provided for herein shall be signed in front of a Reservation Judge, and shall be considered civil proceedings with no record of jail time served, even if a subject is held in a jail facility, for lack of a sufficiently secure facility.

(2) All court proceedings provided for herein shall be recorded by a court reporter, or an appropriate audio and/or video device.

(3) All treatment placements ordered by the court shall be made to the least restrictive environment then available to properly treat the condition of the subject then before the court. All orders directing treatment shall direct that if during the course of ordered treatment, an appropriate, less restrictive placement opportunity becomes available, that the court shall be informed of such, and if possible, the subject transferred to such program

(4) Proceedings Initiated Ex Parte.

(A) Upon the filing of an appropriate verified petition, if the court finds the danger to the health and safety of the subject of such petition, or another, to be substantial, he/she may make such finding in writing, direct law enforcement officials to take the subject of a petition into custody, and set forth a time for said subject to appear before the court and show cause why such detention should not be continued.

(B) Upon being taken into custody, said subject shall be served with a copy of the petition, a statement of his/her rights, and a copy of the order to take him/her into custody.

(C) If possible, said subject shall be immediately brought before a judge of the Tribal Court and given an opportunity to challenge the petition. In no event shall a subject be in custody longer than 72 hours before being given an opportunity to appear before a judge and challenge the proceeding.

(D) When taken into custody, a subject shall be held in a facility with sufficient security to properly restrain him/her from leaving, while providing for the medical needs of such individual. Such facility shall be the least restrictive environment available, which will ensure his/her continued presence. A jail facility shall be used only as a last alternative when other facilities are full, and/or insufficient to maintain a defendant's continued presence.

(E) If a petition has been filed without the attachment of a statement from a Professional Person, the court shall make every effort to have the subject evaluated and/or examined by such, before the initial hearing provided for above; provided, that such efforts shall not toll the requirement to conduct a show cause hearing within 72 hours of taking a subject into custody. If not effected prior to such hearing, an evaluation from a Professional Person shall be ordered and submitted prior to the court conducting the second hearing provided for herein.

(F) At the initial show cause hearing, provided for herein, the subject shall have an opportunity to challenge the allegations set forth in the petition. The court shall locate and appoint a "Friend of Respondent", who will assist, without remuneration unless such is available, the subject of a petition in challenging or contradicting the allegations of a petition. The subject of a petition may, in addition to the Friend of Respondent appointed by the court, secure, at his/her own expense, the services of a legal representative. Petitioner(s) shall be present, and if possible the Professional Person who has examined or evaluated the subject shall be present also. Should the subject be physically unable to appear, the court, upon entering a finding of such in open court, may postpone said hearing until such time as he/she can be present; provided, orders to take such individual into custody shall continue until such hearing. Such continuance shall not extend beyond the second hearing provided for in this ordinance, and may be consolidated with the second hearing, if such becomes necessary, as long as the court formally reviews the evidence before it at a properly noticed hearing.

(G) If after an initial show cause hearing the presiding judge finds that there is good cause to detain the subject in treatment/evaluation, he may order that such person be detained in treatment/evaluation for up to ten (10) calendar days. Within said ten (10) days, a second hearing shall be scheduled for the court to formally review the evidence to determine whether further treatment is necessary and whether to adjudge an individual as in need of such. At the second hearing, a finding that evidence in support of a finding that an individual is seriously mentally ill shall be supported by evidence meeting a "clear and convincing" standard of proof.

(H) Upon entering a finding that further court-ordered treatment is necessary after the second hearing, a subject may be ordered to treatment for a period not to exceed six (6) months. Such an order must be supported by evidence and/or reports to the court from a Professional Person that such is necessary and proper to treat the condition of the subject.

(I) Should the court find that the record lacks sufficient evidence to meet the clear and convincing evidence standard, it may either dismiss the action, or if it is reasonably believed that such proof exists and a continuance would effect the presentation of such evidence, may continue the hearing for a period no longer than five (5) days. The subject of the petition shall be released during such continuance, unless the court is convinced that said subject will not return for further proceedings or will be a danger to him/herself or others.

(5) Proceedings Initiated After Notice.

(A) If the court, after reviewing a filed verified petition, determines that the issuance of an ex parte order taking the subject into custody is inappropriate, may issue a summons demanding the presence of the subject at a hearing, or if it is found that good cause is lacking, the petition may be dismissed. Failure to appear or otherwise respond after the receipt of a summons may be treated as contempt of court.

(B) When a summons is deemed appropriate, it shall direct the subject to appear at a show cause hearing to be set within seven (7) days of the filing of the petition, to determine whether further action is necessary. A copy of the petition, along with a statement of the subject's rights shall accompany the summons, and be personally served thereon by a police officer or authorized process server, or if such cannot be effected, by certified mail.

(C) At the initial show cause hearing, provided for herein, the subject shall have an opportunity to challenge the allegations set forth in the petition. The court shall locate and appoint a "Friend of Respondent", who will assist, without remuneration unless such is available, the subject of a petition in challenging or contradicting the allegations of a petition. The subject of a petition may, in addition to the Friend of Respondent appointed by the court, secure, at his/her own expense, the services of a legal representative.

Petitioner(s) shall be present, and if possible the Professional Person who has examined or evaluated the subject shall be present also. Should the subject be physically unable to appear, the court, upon entering a finding of such in open court, may postpone said hearing until such time as he/she can be present; provided, orders to take such individual into custody, if any, shall continue until such hearing. Such continuance shall not extend beyond the second hearing provided for in this code, and may be consolidated with the second hearing, if such becomes necessary, as long as the court formally reviews the evidence before it at a properly noticed hearing.

(D) If after an initial show cause hearing the presiding judge finds that there is good cause to detain the subject in treatment/evaluation, he may order that such person be detained in treatment/evaluation for up to ten calendar (10) days. Within said ten (10) days, a second hearing shall be scheduled for the court to formally review the evidence to determine whether further treatment is necessary and whether to adjudge an individual as in need of such. At the second hearing, the standard of proof necessary to support a finding that further court-ordered treatment is necessary shall be a "clear and convincing" evidence standard.

(F) Upon entering a finding that further court-ordered treatment is necessary after the second hearing, a subject may be ordered to treatment for a period not to exceed six (6) months. Such an order must be supported by evidence and/or reports to the court from a Professional Person that such is necessary and proper to treat the condition of the subject. The court may order treatment beyond the six (6) month period, provided that the standard of proof required at the second hearing is met at each subsequent hearing, and hearings on such individual are held at least every six (6) months.

(G) Should the court find that the record lacks sufficient evidence to meet the clear and convincing evidence standard, it may either dismiss the action, or if it is reasonably believed that such proof exists and a continuance would effect the presentation of such evidence, may continue the hearing for a period no longer than five (5) days. The subject of the petition shall be released during such continuance, unless the court is convinced that said subject will not return for further proceedings or will be a danger to him/herself or others.

(6) The time limits provided for herein after the initial show cause hearing may be specifically waived in writing by the subject of a petition or his/her authorized representative, provided the court is convinced that said individual is capable of understanding the effects of such waiver.

(7) Voluntary Proceedings. An individual may voluntarily submit him/herself to treatment hereunder by either voluntarily enrolling in an appropriate treatment facility, or if desiring to so attend under court order, may petition the court pursuant the terms hereof, invoking the procedures set forth above.

(8) In addition to other rights reserved to a subject, such individual may move the court to hold additional hearings or to postpone hearings

as such may be necessary to prepare and/or present relevant evidence on their condition.

2.6 EMERGENCY COMMITMENT.

(1) If the petitioning process described above is not reasonably available, a licensed physician or peace officer may detain an individual who appears to be seriously mentally ill, as defined herein, and appears to be a danger to him/herself or the public. Such individual shall be held in the least restrictive environment necessary to protect him/her and/or the public. If the only alternative available is jail, said person shall be held only until said person is no longer creating a risk to him/herself or others or an appropriate court order for detention is obtained, whichever exists first.

(2) When such an individual is detained, the initiating physician or peace officer shall cause a petition, as is set forth above, to be filed with the Tribal Court on the next regular court day, unless such individual is released prior thereto. Such physician or peace officer, in either event, shall file a written report describing their action, with the Reservation Court, on the next regular court day following the detention of an individual. The court shall keep a file on such individual, to monitor possible evidence of significant problems.

(3) A physician or peace officer, acting within the scope of the authority set forth herein, shall not be personally liable for his/her actions.

2.7 PROCEDURAL RIGHTS.

(1) The subject of a petition under this Title shall be guaranteed the following rights in addition to and in recognition of rights guaranteed by applicable federal and Reservation law:

(A) The right to reasonable advance notice of hearings, except specifically provided for herein.

(B) The right to be present at all hearings, and to offer relevant arguments, evidence and witnesses concerning legal and factual allegations.

(C) The right to question witnesses during hearings.

(D) The right to be represented by a responsible person and/or a legal representative at his/her own expense.

(E) The right to remain silent.

(F) The right to have the evidence presented against him/her judicially reviewed to be sufficient to meet the general rules of evidence applicable in civil matters and as set forth in this code.

(G) The right to review and copy relevant documents on file with the court concerning the pending case.

(H) The right to be examined by another professional person of his/her choice, at their own expense, or as such can be arranged within budgetary limitations.

(I) The right to appeal final orders of the court.

(J) The right to refuse medication within twenty-four (24) hours preceeding hearings, unless a professional person determines that said subject will harm him/herself, others or property.

(K) The right to be informed of these rights before or immediately after being detained.

2.8 SEVERABILITY

Should any section, paragraph, sentence, clause or phrase of this chapter be found to be unlawful or otherwise invalid for any reason, the remainder hereof shall not be affected thereby.

2.9 RIGHT OF APPEAL

The subject of an action provided for hereunder shall have the right to appeal as provided for in the general rules of civil and appellate procedure of the Northern Cheyenne Reservation Code: provided, such an individual shall have the further right to pursue an appeal from a final order of commitment at any time while remaining in custody.

End of Missing Section

4-1-3

TITLE IX

HEIRSHIP AND PROBATE CODE

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TITLE IX

HEIRSHIP AND PROBATE CODE

I. GENERAL SECTION

9-1-1. Adoption of Heirship and Probate Code.

This Code shall be known as the Northern Cheyenne Heirship and Probate Code. This Code shall supercede any contradictory sections or ordinances.

9-1-2. Purposes - Liberal Construction.

- A. This Code shall be liberally construed and applied to promote its underlying purposes and policies.
- B. The underlying purposes and policies of this Code are to:
 - 1. Discover and make effective the intent of a decedent in distribution of his property;
 - 2. Promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;
 - 3. Facilitate the power of the Northern Cheyenne Tribal Reservation to prescribe the manner of descent and distribution of the property of its members.

9-1-3. Jurisdiction.

The Northern Cheyenne Tribal Reservation has the inherent power to prescribe the manner of descent and distribution of the property of its members. The Court shall have jurisdiction over personal property of any person who is a resident and dies on the Reservation. The Court shall have the power to appoint conservators and representatives for minors and incompetents, determine the validity of wills, and to probate estates and wills.

9-1-4. General Definitions.

Subject to additional definitions contained in subsequent sections which are applicable to specific sections, the following definitions apply:

- A. Application - a written request for an order of appointment.
- B. Child - includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

- C. Claims - in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
- D. Conservator - means a person who is appointed by a court to manage the estate of a protected person.
- E. Devise - when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.
- F. Devisee - means any person designated in a will to receive a devise.
- G. Disability - cause for a protective order or appointment of a conservator when:
1. A minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or when funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds; or
 2. A person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, incarceration, detention by a foreign power, or disappearance.
- H. Distributee - any person who has received property of a decedent from his personal representative other than as a creditor or purchaser.
- I. Estate - includes the property of the decedent, or other person whose affairs are subject to the code.
- J. Fiduciary - includes personal representative, guardian, and conservator.
- K. Formal Proceedings - means those conducted before a judge with notice to interested persons.
- L. Guardian - a person who has qualified as a guardian of a minor

or incapacitated person pursuant to testamentary or court appointment. This term does not include a person who is merely a guardian ad litem.

- M. Heirs - those persons, including the surviving spouse, who are entitled under intestate succession to the property of a decedent.
- N. Incapacitated Person - any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment.
- O. Interested Person - includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined by the particular purpose of and matter involved in any proceeding.
- P. Intestate Estate - any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed by this code so long as that part of the estate is non-trust and non-restricted real property, or personal property of a tribal member.
- Q. Issue - of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.
- R. Minor - a person who is under eighteen (18) years of age.
- S. Mortgage - any conveyance, agreement, or arrangement in which property is used as security.
- T. Parent - includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question.
- U. Personal Representative - includes executor, administrator, successor, personal representative, and persons who perform

substantially the same function under the law governing their status.

- V. Petition - a written request to the court for an order after notice.
- W. Property - non-trust and non-restricted real property and personal property or any interest therein.
- X. Protected Person - a minor or other person for whom a conservator has been appointed or other protective order has been made.
- Y. Protective Proceedings - a proceeding to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise incompetent or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.
- AA. Testacy Proceedings - a proceeding to establish a will or determine intestacy.
- BB. Ward - a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.
- CC. Will - includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

9-1-5 Petition for Testacy Proceeding [*As amended by Ord. DOI 3(98)*]

When any member of the tribe dies leaving property subject to the jurisdiction of the Northern Cheyenne Court, any person claiming to be an heir or devisee of the decedent, or the tribe itself, may file a petition in the Trial Court (hereinafter "Court") for the purposes of:

- A. Invoking testacy proceedings to determine intestacy of the decedent's estate, or to establish the validity of the decedent's will; and
- B. Commencement of all necessary determinations resulting in the settlement of the decedent's estate, including petitions and appointment of special administrator, guardians, or personal representative.

9-1-6 Public Notice of Hearing [*As amended by Ord. DOI 3(98)*]

Within ten (10) working days after the Petition for Testacy proceedings is filed, the Court Clerk shall give notice of the date, time, and place of the hearing, and the business to be conducted in accordance with the Northern Cheyenne Civil Procedure Code.

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9-1-7. Service of Notice on Interested Parties.

A copy of the notice of Hearing shall be served at least ten (10) days before the date of hearing on each known claimant, presumptive heir, and other interested parties in the manner provided for in the Northern Cheyenne Civil Procedure Code.

9-1-8. Proof of Service of Notice of Hearing.

Proof of service required in Section 9-1-7 shall be filed by the Clerk of Court. Proof of service shall comply with the requirements set forth in the Northern Cheyenne Civil Procedure Code.

9-1-9. Waiver of Notice.

A person, including a guardian, conservator, or other fiduciary, may waive notice by a writing signed by him, or his attorney, and filed with the Clerk of Court.

9-1-10. When Orders or Notice Binding One Binds Another-Representation.

- A. In formal proceedings involving estates of decedents, minors, protected persons, incapacitated persons, unborn or unascertained persons are bound by orders of the Court so long as notice is properly given to:
1. Personal representative;
 2. A person with identical interests;
 3. A parent of a minor; or
 4. Guardian or other representative of a ward.
- B. Subsection (A) applies only to the extent that there is no conflict of interest between the person receiving orders or notice and the person bound by the order or notice.

9-1-11. Effect of Divorce, Annulment, or Separation Decree.

- A. A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.
- B. The following persons are estopped from claiming a marriage to a decedent:

1. A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is recognized as valid, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or subsequently live together as man and wife;
2. A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or
3. A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

9-1-12. Homicide - Effect on Intestate Succession, Wills, Joint Assets, Life Insurance, and Beneficiary Designations.

- A. A surviving spouse, heir, devisee, or creditor who purposely and knowingly kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.
- B. Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.
- C. A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.
- D. Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.
- E. A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

- F. This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

9-1-13. Duty and Liability of Will Custodian.

Every custodian of a will must deliver the will to the Tribal Court or to a personal representative named in the will within twenty (20) days after receipt of information that the maker of the will has died. Any such custodian who fails to do so may be liable for monetary damages sustained by a person injured as a result of such failure.

9-1-14. Grounds of Will Contest - Hearing.

- A. If anyone appears to contest the will, he must file written grounds or opposition to the probate and serve a copy on the individual petitioning for the probate and other interested parties within thirty (30) days after the admission of the will to probate. Issues which may be considered by the Court are:
1. The competency of the decedent to make the will;
 2. Whether the will resulted from duress, menace, fraud, or undue influence;
 3. Whether the will is legal in form and properly executed; and
 4. Any questions substantially affecting the validity of the will.
- B. A hearing shall be held to resolve a will contest. If the Court decides the will is invalid, the probate will be voided at that time and the personal representative will be relieved of his duties. The personal representative shall not be liable for any act done in good faith previous to such voiding.

9-1-15. Testacy Hearing.

- A. The Court shall determine the validity or invalidity of any purported will(s), and whether or not the decedent's estate or any part of the decedent's estate is an intestate estate.
- B. Based upon this determination, the Court may also make the following appointments so long as all notice requirements are

met indicating such appointments would be considered:

1. Receive petition and/or upon the Court's own motion, appoint a special administrator;
 2. Receive petition(s) for appointment of a personal representative to probate a valid will, or administer an interstate estate and make an appointment; and
 3. Appoint guardian to represent the interest of a minor, incapacitated, or disabled person who has an interest in the estate.
- C. The Court may elect to set a date for another hearing to make any necessary appointments, including those set out in subsection (B).

9-1-16. Exemptions

- A. Certain property shall be exempt from claims of all interested parties including creditors. Exempt property shall be:
1. The dwelling of the decedent valued up to \$5,000.00; and
 2. Articles protected under the Historical Protection ordinance at the time of death of the decedent.
- B. Nothing in this exemption shall be interpreted to affect the claims of secured creditors.

9-1-17 Rights of Adopted Child

Except as otherwise provided in a decree of adoption, a tribal member adopted by someone not a tribal member, retains all inheritance rights derived from his biological parents.

II. INTESTATE SUCCESSION

9-2-1. Intestate Estate.

Any part of the estate of decedent not effectively disposed of by his will passes as prescribed in the following sections.

9-2-2. Succession Without Probate.

Absent creditor claims, real property or contested cases, the title of the decedent's property shall automatically vest in the person who has possession.

9-2-3. Who May Initiate Probate Proceedings.

Any person claiming interest in the decedent's property may file a

petition in the court for the purpose of settling the decedent's estate. Persons claiming interest include creditors and persons not in possession of claimed property.

9-2-4. Priority of Settlement.

In settling the decedent's estate, the court shall first pay creditor claims subject to the exempt property provisions.

9-2-5. Order of Succession.

The court will determine, using the intentions of the decedent as the guide, what portion of decedent's estate each claimant, other than a creditor, should have. The court will also consider the needs of those dependent upon the decedent. The court may refer to Montana Code Annotated 72-2-201 through 72-2-212 for guidance.

9-2-6. Intentions of Decedent.

The intentions of the decedent will be determined from testimony of people who knew the decedent.

III. PROBATE

9-3-1. Who May Make a Will.

Any person eighteen (18) or more years of age who is of sound mind may make a will.

9-3-2. Written Instruments - Wills.

- A. When any member of the Northern Cheyenne Tribe dies leaving a will disposing of property, other than allotment or other trust property subject to the jurisdiction of the United States, the Northern Cheyenne Court shall:
 - 1. Give notice and full opportunity to appear in court to all interested parties at a hearing petitioned under 9-1-5;
 - 2. Determine the validity or invalidity of the will;
 - 3. Resolve which will is controlling when more than one will is presented for probate and a conflict results.
- B. If the Court finds there is a valid will, distribution of the decedent's property shall comply with the terms of the will under the Probate Section of this Code.
- C. If the Court finds the will invalid, determination of heirs and distribution will proceed under the Intestate Succession Section of this Code.

9-3-3. Execution of a Will - Validity.

Except as provided for holographic wills, and writings within 9-3-4, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgement of the signature of the will.

9-3-4. Holograph Will.

- A. A will which does not comply with 9-3-3 is valid as a holographic will, whether or not witnessed, if the signature and material provisions are in the handwriting of the testator.
- B. A holographic will may be valid even if immaterial parts or introductory wording are printed, typed, or stamped so long as the printed, typed or stamped portion could be deleted and the handwritten portion would still evidence the testator's intent in devising his property.

9-3-5. Self-Proved Will.

- A. Any will may be simultaneously executed, attested, and made self-proved by acknowledgement thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under this Code and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19____, being first duly sworn, and do hereby declare to the undersigned authority that I sign and execute as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signed and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our

knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

NORTHERN CHEYENNE INDIAN RESERVATION

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 19____.

(Signed) _____
(Title)

- B. An attested will may at any time subsequent to its execution be made self-proved by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under this Code where the acknowledgement occurs and is evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

NORTHERN CHEYENNE INDIAN RESERVATION

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he signed willingly or directed another to sign for him and that he executed it as his free and voluntary act for the purposes therein expressed and that each of the witnesses, in the presence and hearing of the testator, signed the will as witnesses and that to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses this _____ day of _____, 19____.

(Signed) _____

(SEAL)

(Title)

9-3-6. Who May Witness - Effect of Witness by Beneficiary.

- A. Any person generally competent to be a witness may act as a witness to a will.
- B. A will is not invalid because the will is signed by an interested witness.
- C. All beneficial devises made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witnesses to the same, but a mere claim on the estate of the testator does not prevent his creditors from being competent witnesses to his will.
- D. If a witness to whom any beneficial devise void under Subsection (C) is made would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will.

9-3-7. Incorporation by Reference.

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

9-3-8. Separate Writing Identifying Disposition of Tangible Personal Property.

- A. Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities and property used in trade or business.
- B. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty.
- C. The writing may be:

1. Referred to as one to be in existence at the time of the testator's death;
2. Prepared before or after the execution of the will;
3. Altered by the testator after its preparation; or
4. A writing which has no significance apart from its effect upon the dispositions made by the will.

9-3-9. Revocation by Writing or Act.

A will or any part thereof is revoked:

- A. By a subsequent will which revokes the prior will or part expressly or by inconsistency; or
- B. By being burned, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

9-3-10. Omitted Spouse.

If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

9-3-11. Pretermitted Child.

- A. If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:
 1. It appears from the will that the omission was intentional;
 2. When the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child, or
 3. The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

- B. If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

IV. APPOINTMENT OF PERSONAL REPRESENTATIVE. SPECIAL ADMINISTRATOR - DUTIES

9-4-1. Appointments.

- A. Upon notice of a decedent's death whose estate will be settled under the jurisdiction of the Northern Cheyenne Court, the Court may, upon petition or by its own motion, appoint a Special Administrator who shall serve until a Personal Representative is appointed. If a Personal Representative is not petitioned for and appointed, the Special Administrator may be named as a Personal Representative until the decedent's estate is settled.
- B. A Personal Representative may be petitioned for when the decedent died leaving a valid will, or when an intestate estate is involved.

9-4-2. Special Administrator.

When any member of the Northern Cheyenne Tribe or any other person domiciled on the Northern Cheyenne Reservation dies, owning at the time of his death property other than allotment or other trust property subject to the jurisdiction of the United States, the Court may, on its own motion, at the request of any member of the Northern Cheyenne Tribe named in the decedent's will, or any other interested party, appoint a Special Administrator.

9-4-3. Qualification of Special Administrator.

The Special Administrator shall be any legally competent adult tribal member.

9-4-4. Purpose of Appointing Special Administrator.

The purpose of appointing a temporary Special Administrator is to take charge of the decedent's estate immediately so that the property will not be lost, wasted or depreciated in value.

9-4-5. Personal Representative.

When any resident of the Northern Cheyenne Reservation dies leaving a valid will, or an intestate estate, with or without naming a personal representative, and owning at the time of death property other than allotment or other trust property subject to the jurisdiction of the United

States, the Court shall, at the request of any member of the Northern Cheyenne Tribe, or any other interested party, appoint a Personal Representative.

9-4-6. Qualifications of Personal Representative.

The Personal Representative shall be a legally competent adult.

9-4-7. Purpose of Personal Representative.

The purpose of appointing a Personal Representative is to have one person with the responsibility and authority to settle the decedent's estate in accord with the decedent's will and/or applicable provisions of this Code.

9-4-8. Petition for Appointment of Special Administrator, Personal Representative.

- in
- A. A petition for appointment of a Special Administrator must be writing, signed by the applicant, state facts essential to give jurisdiction of the case, and when known to the applicant, the names, ages, and addresses of the heirs of the decedent and the names and addresses of other interested parties, and filed with the Clerk of Court.
 - B. In addition to the requirements of subsection (A), an applicant for Personal Representative shall also state his knowledge or belief that the decedent died intestate or left a valid will, give the reasons for his knowledge or belief, and state which priority categories under 9-4-9 he asserts as authorizing his appointment.

9-4-9. Priorities in Appointment of Special Administrator, Personal Representative.

- A. Special Administrator. Priority shall be given by the Court to a tribal member who is not related to the decedent, and is not an heir or named beneficiary of the decedent.
- B. Personal Representative. Priorities in the Court's appointment of a qualified Personal Representative are:
 - 1. The person named in the decedent's will as Personal Representative unless:
 - a. Another person petitions the Court showing the named Personal Representative is incompetent or otherwise disabled; or
 - b. The named Personal Representative refused to undertake the duties of Personal Representative in settlement of the decedent's estate.

2. If under subsection (B) a named Personal Representative is not available the priorities of appointment are:
 - a. The surviving spouse or his designee;
 - b. A lineal descendent;
 - c. A parent;
 - d. A collateral descendent;
 - e. A creditor in respect to property in the decedent's estate which is under the jurisdiction of the Tribal Court; or
 - f. Others.

9-4-10. Duties of Special Administrator, Personal Representative.

A. The duties of Special Administrator and Personal Representative are:

1. Inventory and Appraisal:

a. Within thirty (30) days of appointment, make and return upon oath to the Court, a complete inventory of all of the property of the estate under the jurisdiction of the Court, including any claims against the property, and an appraisal of the value of each item listed in the inventory.

b. The Special Administrator or Personal Representative may request the Court to appoint an appraiser.

c. If, after the filing of the inventory and appraisal, any property is found which was not included in the previous inventory and appraisal, the property shall be appraised and added to the inventory and appraisal required under subsection (A)(1) within ten (10) days of its discovery.

2. A Special Administrator, after an inventory and appraisal is completed and accepted by the Court, shall deliver any property of the estate in his possession and a copy of the inventory and appraisal accepted by the Court to a Court-Appointed Personal Representative. Except, in the event that the Court reappoints the temporary Special Administrator as a Personal Representative, he shall fulfill the duties of that office until discharged by the Court in the manner provided for in this Code.

B. Duties of Personal Representative:

1. Receive any property and/or inventory and appraisal of the estate from a Special Administrator and issue him a receipt.

2. Bond: The Court may appoint without a bond, but may later require the Administrator or Representative to file a bond in the amount deemed reasonable in relation to the assets of the estate. When such a bond is required, it shall be obtained through a surety company, or two reliable members of the tribe who reside within the boundaries of the Northern Cheyenne Reservation, who execute an agreement in writing which is approved and accepted by the Court and filed with the Clerk of Court.

3. Notice to Creditors: Immediately after appointment, the appointee shall cause to be posted in public places in three (3) communities on the Northern Cheyenne Reservation, and published in the tribal newspaper, or if there is none, in a newspaper of general circulation on or adjacent to the Northern Cheyenne Reservation, a notice that he has been appointed as the Special Administrator or Personal Representative in either an intestate or probate proceeding. Such notice shall require all creditors and all persons having claims against the deceased or the estate to serve such claims upon the person giving notice and to also file them with the Clerk of Court within sixty (60) days from the publishing of the notice. The notice shall be posted for a period of four (4) consecutive weeks, such posting and publishing to be concurrent. A copy of the notice posted and proof of publication shall be filed with the Clerk of Court.

4. Notice of Acceptance or Rejection of Claim:

a. The appointee shall examine each claim filed and notify the claimant in writing whether he will recommend its acceptance or rejection within thirty (30) days of the expiration of the period for filing of claims against the estate. If the claim is rejected or not approved within thirty (30) days after the expiration of the period for filing claims, the claimant may begin legal action to establish his claims. Such action must be commenced within thirty (30) days of notice of rejection or within sixty (60) days after filing the claim.

b. All claims shall be preferred in the following order:

(1) Expenses of administration;

- (2) Expenses of last illness and burial;
- (3) Any amount due the Northern Cheyenne Tribe;
- (4) All other claims.

The appointee shall file copies of the notices of rejection or acceptance of claims with the Clerk of Court.

5. **Petition for Determination of Takers and Distribution of Estate:** As soon as reasonably possible after the inventory, appraisal, and acceptance or rejection of claims are computed, the appointee shall petition the Court for the determination of takers and distribution of the estate. This petition shall include the names of all claimants entitled to payment, the names of claimants whose claims were rejected, the names of each heir or devisee and, a statement of their share of the estate, and such other information as may be necessary to assist the Court in the distribution of the estate.

6. **Final Report:** Within thirty (30) days after the Court's determination of takers and distribution of the estate, the appointee shall file his report with the Court showing he has fully discharged his duties and shall file receipts or other proof of delivery of all property of the decedent and the making of all payments ordered by the Court. This report constitutes the appointee's request for discharge upon settlement of the estate.

7. **Other Duties Assigned by the Court:** At the time of appointment of a Special Administrator or Personal Representative, the Court may assign duties in addition to those listed in this Code. Such additional duties shall be reasonable in light of the complexity of the particular estate before the Court. The additional duties and the reason(s) for the assignment of additional duties will be noted in the Court's Order of Appointment.

9-4-11. Distribution, Settlement, Discharge.

Upon receipt of the Special Administrator's or Personal Representative's final report and the Court's finding that all duties have been faithfully completed, the Court shall enter an order closing the estate and discharging the Special Administrator or Personal Representative.

9-4-12. Mismanagement - Limitations on Actions.

A. A Special Administrator or Personal Representative and the surety on his bond may be liable to any person who suffers

monetary loss or damage as a result of mismanagement of the estate.

B. An action under Subsection (A) must be commenced within two (2) years from the date of the final order closing the estate.

9-4-13. Compensation.

A Special Administrator, Personal Representative, or Appraiser may be compensated from the assets and income of the estate in an amount determined by the Court as being fair and reasonable taking into consideration the complexities of the settlement of the estate and the value of the estate.

TITLE V

RULES OF CRIMINAL PROCEDURE CODE

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RULES OF CRIMINAL PROCEDURE CODE

I. SCOPE, PURPOSE AND CONSTRUCTION

Rule 1: Scope, Purpose and Construction

- A. These rules shall govern the procedure in the Trial Court of the Northern Cheyenne Court (hereinafter "Court") for all cases involving criminal proceedings. [*As amended by Ord. DOI 3(98)*]
- B. These rules are intended to provide for a fair trial and the just determination of every criminal proceeding before the Court. All rules shall be interpreted to provide simplicity and fairness in application, while eliminating unjustifiable expense and delay.
- C. Federal and State rules may be used as guidelines, where appropriate.
- D. The Northern Cheyenne Tribal Council hereby authorizes the Bureau of Indian Affairs to use and enforce this Criminal Procedure Code. [*As amended by Ord. DOI 3(98)*]

II. PROCEEDINGS BEFORE TRIAL

Rule 2: Commencement of Criminal Proceedings

A. Complaint [*As amended by Ord. DOI 3(98)*]

Criminal proceedings shall be commenced by the Northern Cheyenne Tribal Prosecutor (hereinafter "Prosecutor") filing a written complaint with the Court. A complaint is the written statement of the essential facts constituting the offense charged. No complaint shall be accepted for filing unless it satisfies the requirements of Rule 2(B). However, minor omissions or errors in the complaint will not be grounds for dismissal of the case unless significant prejudice against the defendant is shown.

B. Contents of the Complaint

1. Affidavit(s) or sworn statement(s) made by a complaining witness stating the name of the person accused, if known, or a description of the accused, adequate for identification and the time, place and description of the actions leading to the complaint.
2. The name(s) and code designation(s) of the offenses complained of. If the facts show more than one offense took place, each offense shall be stated separately. Offenses may be charged using the language of the Code.

Rule 3: Use of Complaint — Summons or Warrant

A. Review of Complaint [*As amended by Ord. DOI 3(98)*]

1. The Prosecutor will review all complaints filed to determine if sufficient merit exists to submit the complaint to a Judge for appropriate action.
2. If sufficient merit appears to exist from examination of the complaint and complainant, the Prosecutor will sign the complaint, and submit it to a Judge with recommendations for a summons or warrant. If sufficient merit is not apparent, the complaint will be brought to the attention of Reservation police with suggestions for investigation, if any. Complainants should be notified of actions taken, where possible.
3. When a complaint is submitted for the review of a Judge, a summons or arrest warrant must be issued unless the Judge feels probable cause does not exist for such action. If a summons or warrant is not issued, the complaint must be returned immediately to the prosecutor for further investigation.

B. Summons [*As amended by Ord. DOI 3(98)*]

1. The Judge may issue a summons when in his discretion arrest does appear necessary. The summons shall name the defendant, the offense charged, and order the defendant to appear before a Judge within five (5) days. The summons shall also inform the defendant a warrant of arrest will be issued if he fails to appear within five (5) days.
2. Service of Summons. The summons, along with a copy of the complaint, shall be served by an authorized law officer. Service will be valid if the papers are delivered within the Court's jurisdiction to the defendant personally. Once served, the officer shall note the date, time and place of service on a copy of the summons, which will be filed with the records of the case.

C. Arrest With a Warrant

1. Issuance. Where the Judge finds that arrest is essential, or a summons cannot be served he shall issue a warrant for arrest of the defendant named in the complaint. The warrant shall name the defendant, or contain a description by which the defendant can be

identified with reasonable certainty, state the offense charged, and be signed by the Judge. [*As amended by Ord. DOI 3(98)*]

2. Use of Arrest Warrant. A Reservation law enforcement officer shall use the warrant to take the defendant into custody. The officer shall have the warrant in his possession at the time of arrest, but if this is not possible, arrests can be made, as long as the defendant is informed of the charge(s) against him, and as soon as possible receives a copy of the warrant.
3. Jurisdiction Limits. A warrant for arrest will be valid only within the jurisdiction of the Court, unless it is used in conformance with the extradition procedures set forth in this Code. [*As amended by Ord. DOI 3(98)*]
4. Time of Arrest. If the offense charged is a Class A or B offense, the arrest may be made at any time of the day or night; if it is a Class C offense, the arrest pursuant to a warrant cannot be made between the hours of 9:00 p.m. and 8:00 a.m. unless such is specifically authorized by the issuing Judge.

Rule 4: Extradition

- A. A warrant of arrest issued by any other jurisdiction for any person found within the exterior boundaries of the Northern Cheyenne Reservation shall be presented to a Northern Cheyenne Court Trial Judge prior to the person being taken into custody. [*As amended by Ord. DOI 3(98)*]

If the Judge, after reviewing the date, charge, and identity of the person named is satisfied as to the warrant's validity, then he shall also issue an arrest warrant. The person named will then be taken into custody by the Northern Cheyenne law enforcement officials and with the assistance of the other authorities involved, if requested, and held at Northern Cheyenne jail pending a removal hearing. [*As amended by Ord. DOI 3(98)*]

- B. As soon as possible a removal hearing will be held. If the Judge determines that the person in custody and before the Court is the same person charged in the warrant and that there is probable cause that such person committed the offense charged in the warrant, a removal order shall be issued and the person promptly turned over to the custody of the appropriate authorities. [*As amended by Ord. DOI 3(98)*]
- C. The person arrested may execute a waiver of removal hearing after being informed of all his rights including a right to such hearing. If the waiver is executed, the person shall be promptly turned over to the custody of the appropriate authorities.

... to allow extradition by federal authorities and any other jurisdiction that allows extradition by the Northern Cheyenne Reservation.

Rule 5: Arrest Without a Warrant.

A. Authority to Arrest Without a Warrant.

A Reservation Police officer may arrest someone without a warrant or knowledge of an outstanding complaint, if the officer has reasonable cause to believe that such person has committed:

1. A class A or B offense; or
2. A class C offense, and the officer has witnessed the offense, or has reasonable cause to believe that such person:
 - a. Will not be apprehended unless immediately arrested; or
 - b. May cause injury to himself or others or damage property unless immediately arrested.

B. Reasonable Cause.

Reasonable cause exists under this Rule where the officer has substantial objective basis for believing that the person to be arrested has committed a crime. In determining whether reasonable cause exists to justify an arrest without a warrant, an officer may take into account all information which a prudent officer would judge relevant to the likelihood that a crime has been committed and that the person to be arrested has committed it.

C. Citation Procedure

The police department and Judges of the Northern Cheyenne Reservation have the authority to develop and implement a citation procedure where arrests made by police officers for some crimes can be processed to conclusion with citations only.

Rule 6: Arrest Procedures.

- A. When arresting or attempting to arrest an individual, all Reservation Police officers must:
 1. Inform the person that he is under arrest;
 2. Identify himself as a Reservation Police officer;

3. Where possible, inform the person of the reason(s) for the arrest;
4. Where possible, show the warrant for arrest if such exists; and
5. Inform the arrested person of his right to remain silent, his right to have counsel present during questioning, and that anything he says could be used against him at trial.

B. When arresting or attempting to arrest an individual, all Reservation police officers may: [*As amended by Ord. DOI 3(98)*]

1. Use reasonable force and use all necessary means to effect the arrest of a person who either flees or forcibly resists after being informed of the officer's identity and his intent to arrest.
2. Search the person along with areas within his immediate reach, removing and putting into evidence all contraband or weapons discovered.
3. When in fresh pursuit, continue in such fresh pursuit and arrest upon apprehension of the person pursued, even if apprehension occurs outside the territorial boundaries of the Northern Cheyenne Reservation. All persons so arrested may be returned to the Northern Cheyenne Reservation by the arresting officer if the arrest occurs in the State of Montana. Otherwise, the arrested person will be turned over to local police officials pending extradition proceedings.

Rule 7: Search and Seizure, Warrant

A. Authority [*As amended by Ord. DOI 3(98)*]

A search warrant authorized under this rule may be issued by a Judge on request of a Reservation police officer, or the Prosecutor.

B. Issuance and Contents

1. Requests for a search warrant must be accompanied by a signed, notarized affidavit(s) or an oral statement made under oath from someone, to be transcribed and signed by the maker, setting forth information showing that probable cause exists to believe that stolen property, property which constitutes evidence of the commission of a crime, or property the possession of which constitutes a crime is in the possession of a named individual or located on specifically described premises.

2. If the Judge believes probable cause exists to issue a warrant, he shall sign the warrant, describing the person and/or place to be searched, and describing the property to be seized. The Chief Trial Judge will designate one Trial Judge to be contacted for search warrants when the Court is not in session. [*As amended by Ord. DOI 3(98)*]

C. Service and Return [*As amended by Ord. DOI 3(98)*]

1. A search warrant, once issued must be served by Reservation police officers between the hours of 7:00 a.m. and 11:00 p.m. unless specific reasonable circumstances exist to serve it at other hours, and such circumstances are stated in the warrant. All search warrants will be void 48 hours after issuance, unless specific reasons are present and stated in the warrant to extend this time period. In no situation shall the warrant be good after 10 days.
2. The officer taking property under a warrant shall give the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. All property seized shall be taken to the Reservation police station, inventoried and listed on a copy of the search warrant. The officer seizing the property shall file a report with the Court describing the property, and the events surrounding the seizure.

Rule 8: Search and Seizure

- A. No law enforcement officer will search or seize any property without a warrant nor shall any property seized be admitted into evidence unless:
1. The officer has probable cause to believe that the person in possession of such property is engaged in the commission of an offense;
 2. The search is incidental to a lawful arrest, is reasonably related to the offense for which the person is taken into custody, and is limited to the person or areas within his immediate reach; or
 3. The officer has probable cause to believe that the person has in his possession contraband or fruits of the crime, and taking the time to get a search warrant would endanger the officer's life, or seriously risk the destruction of the evidence.

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Rule 9: Arraignment

A. Appearance Before the Court

Every person arrested and in custody shall be arraigned at the next regularly scheduled session of the Court, or within 72 hours, whichever occurs first. All others will appear before the Court as arranged. The Court may, in its discretion, provide for temporary commitment of persons who, for reasons beyond their control, are unable to appear in Court at the scheduled session or within the 72 hours period.

B. Procedure at Arraignment

Arraignments shall be conducted in open Court, and shall include:

1. Reading the complaint to the accused, and providing him with a copy of the complaint if he has not received one.
2. Explaining to the defendant the substance of the charges and the language of the law establishing the offense and fixing the penalty.
3. If the defendant is a non-Indian, the Court shall explain his right to assert a lack of personal jurisdiction of the Court over the defendant in a criminal action. If the defendant affirmatively elects to waive personal jurisdiction, the action shall proceed as if the defendant were an Indian. If the non-Indian defendant does not affirmatively waive the lack of personal jurisdiction, the action shall become a civil action to exclude the defendant from the Reservation. The Prosecutor shall prosecute such civil action in the name of the Northern Cheyenne Tribe and the action shall be conducted pursuant to sections 4-2-1 to 4-2-8 of Title IV. The defendant may assert or waive lack of jurisdiction at any time prior to the start of trial. [*As amended by Ord. DOI 3(98)*]
4. Advising the defendant of his right to counsel at his expense, and the right to have counsel present before entering a plea or making any statement.
5. Asking the defendant to plead guilty or not guilty to the charges.
6. If the defendant pleads guilty, the Judge must address the defendant personally as set forth in Rule 11, to determine if the plea is made voluntarily and with understanding. If satisfied with the defendant's responses, the Judge may then sentence the defendant. In the Court's discretion, a future date may be set for sentencing. The defendant will be eligible for bail if a future date is set for [*cont'd on p. V-10*]

sentencing, or if no bail, he will be credited for time served until sentencing, when sentenced.

7. If the defendant requests counsel, arraignment will be postponed until he has had time to confer with counsel. Postponement shall not exceed one working day.
8. If the defendant is silent, the Court will enter a plea of not guilty for him.

Rule 10: Commitment.

- A. No person shall be detained or jailed under this Law and Order Code for a longer period than 72 hours unless there has been issued a commitment order bearing the signature of a Judge of the Northern Cheyenne Reservation Court.
- B. Pending investigation of charges or pending trial, a temporary commitment order shall be issued.
- C. A final commitment order shall be issued for persons jailed as a result of a sentence of the Northern Cheyenne Reservation Court.

Rule 11: Pleas.

A. Alternatives.

A defendant may plead guilty or not guilty. If the defendant is silent, the Court shall enter a plea of not guilty on behalf of the defendant.

B. Insuring Guilty Plea Voluntary.

1. The Judge shall not accept a plea of guilty without first talking to the defendant personally in open Court to determine that the plea is voluntary and is not the result of force or threats or of promises, apart from any plea arrangements which may have been entered into between the Tribal prosecutor and the defendant. The Judge must explain and determine that the defendant understands the following:
 - a. The nature of the charges to which the plea is offered and the possible penalty should he plead guilty;
 - b. That the defendant has a right to be represented at his own expense;
 - c. That he has a right to have a jury trial if he could potentially be imprisoned;

- d. That he has a right to compel witnesses to testify, to be confronted by the witnesses against him, and to cross-examine witnesses against him;
 - e. That he has a right to testify or to not testify since he has a right not to be compelled to incriminate himself; and
 - f. That if he pleads guilty, there will not be a trial; and in effect, he has waived his right to a trial, and further that any statement he makes either to the Judge or anyone else concerning the offense charged, can be used against him in that proceeding or in any future prosecution.
2. If a defendant pleads guilty and the Judge considers the plea to be made involuntarily and/or without full understanding of the charge, the Judge shall reject the plea of guilty, and enter a plea of not guilty for the defendant.

3. Plea Agreement Procedure

- a. The Prosecutor and counsel for defendant or the defendant may engage in discussions in an attempt to reach an agreement that, upon entering a plea of guilty to a charged offense or to a lesser or related offense, or to assisting in the apprehension of other criminals, the Prosecutor will do any of the following:
[As amended by **Ord. DOI 3(98)**]
 - (1) Move for dismissal of other charges or all charges;
 - (2) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding on the Judge; or
 - (3) Agree that a specific sentence is the appropriate disposition of the case.
- b. The Judge shall not participate in any discussions, but if a plea or agreement has been reached, the Judge shall on the record require the disclosure of the agreement in open Court or, on a showing of good cause, in chambers at the time the plea is offered. Thereupon the Court may accept or reject the agreement or may defer a decision as to the acceptance or rejection until there has been an [cont'd on p. V-12]

opportunity to consider a presentence report if any is to be made.

- c. Acceptance of a Plea Agreement. If the Judge accepts the plea agreement, the Judge shall inform the defendant that the Judge will embody in the judgment and sentence the disposition provided for in the plea agreement.
- d. Rejection of a Plea Agreement. If the Judge rejects the plea agreement, the Judge shall, on the record, inform the defendant and the Prosecutor of this fact, advise the defendant personally in open Court or on showing of good cause, in chambers, that the Court is not bound by the plea agreement, afford the defendant an opportunity to then withdraw his plea and advise the defendant that if he persists in his guilty plea the disposition of the case may be less favorable to the defendant than contemplated by the plea agreement. [As amended by Ord. DOI 3(98)]
- e. Time of Plea Agreement Procedure. Except for good cause shown, the Judge shall be notified of the plea agreement at the time of arraignment or as soon thereafter as possible, but in all cases prior to trial. [As amended by Ord. DOI 3(98)]
- f. Inadmissibility of Pleas, Offers of Pleas and Related Statements. Any evidence of a plea of guilty, later withdrawn, or of statements made in connection therewith, is not admissible in any other criminal proceeding or in any civil case against the defendant who made the plea or offer. However, evidence of a statement made in connection with or relevant to a plea of guilty, later withdrawn, or a plea of no contest to the offense charged or any other offense is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and on the record, and in the presence of an advocate.

- 4. Determining Accuracy of Plea. The Judge shall not enter a judgment on a tendered plea of guilty without first making an inquiry to satisfy himself that there is factual basis for the plea.

Rule 12: Bail: Release from Custody.

- A. Right to Bail.

Except as herein provided, all persons arrested for offenses under this Law and Order Code and incarcerated shall be given

the opportunity to make bail and be released pending their trial or appeal.

B. Bail Without Judge.

A bail schedule for Class B and C offenses shall be adopted by the Court and a defendant may obtain release from jail at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged; provided, however, that if the arresting officer or complaining witness shall certify to the jailer, or if the jailer shall certify based on his own observations, that the defendant is at the time he is brought to the jail unconscious or in an intoxicated or apparently intoxicated condition, or for any reason does not appear to be in a conscious and sober condition, such defendant shall not be allowed to post bail according to the bail schedule for eight (8) hours. The defendant shall be informed by the jailer of his right to make bail at the appropriate time.

C. Bail With Judge.

At the arraignment or other appropriate time, the Judge shall set bail at an amount, not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at trial or at such time as his appearance is necessary. A defendant may at arraignment request that any bail posted under the bail schedule be reduced or that he be released as under (D) below.

D. Release Without Bail.

The Judge may at his discretion release the defendant on his own recognizance, if it appears substantially certain, considering all relevant factors, that the defendant will appear at the appointed time.

E. Form of Bail.

The required bail may be tendered in the form of cash, or a bail bond executed by two or more reliable persons as sureties subject to the jurisdiction of the Court in the form which the Court shall by rule direct.

F. Forfeit of Bond.

In the event the defendant fails to appear as required, the Court will forfeit any cash deposited or order the sureties of the bail bond to pay the designated amount to the Court. The liability of the sureties may be enforced by order of the Court without the necessity of an independent action or judgment.

G. Discretion of Court.

The Court may order the forfeiture of bail for non-appearance set aside if it appears that justice does not require the enforcement of the forfeiture.

H. Denial of Bail.

The Court may deny release on bail pending trial or appeal when a Class A offense is charged and it appears reasonably certain that the defendant will pose a serious threat to the safety and well being of the Reservation and its residents if released.

I. Time for Release on Bail.

The right to be released on bail as provided herein shall not accrue until charges under this Law and Order Code shall have been filed. Persons incarcerated in the Reservation jail for violation of federal or state laws shall be subject to be released on bail by the jurisdiction under whose authority the arrest was made according to the provisions of the laws under which their arrest was made. A person arrested for violation of federal law shall not be entitled to be released on bail until the prosecution of such charges has been declined by the United States Attorney, plus a reasonable time thereafter, not to exceed thirty-six (36) hours after receipt of notification of such declination, in which charges for violation of this Law and Order Code, if any, may be filed.

- J. After conviction at trial, and with an appeal pending, bail may be continued or allowed by the Judge to run until the final determination of the case.

Rule 13: Joinder of Offenses and Defendants.

A. Joinder of Offenses.

1. Two or more offenses may be charged in the same complaint and tried together if:
 - a. The offenses charged are the same;
 - b. Different offenses are charged, but they arise out of the same act or transaction; or
 - c. All of the offenses charged are connected in a common scheme or plan.

B. Joinder of Defendants.

- i. Two or more defendants may be charged in the same

complaint and tried together if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of such defendants need not be charged on each count.

2. Two or more defendants can be tried together by separate complaint if the defendants were involved in the same series of acts or transactions that constitute the offense(s) charged.

C. Severance of Trials [*As amended by Ord. DOI 3(98)*]

If it appears that a defendant is prejudiced by a joinder of offenses or other defendants for trial together, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Prosecutor to deliver to the Court for inspection in chambers, any statements made by a defendant which the Prosecutor intends to introduce in evidence at trial.

Rule 14: Discovery [*As amended by Ord. DOI 3(98)*]

- A. The police or Prosecutor shall, upon request, permit the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control or reasonably obtainable by the police or prosecution. The police and prosecution shall make similarly available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendant.

B. Notice of Alibi Defense

The defendant or his attorney shall reveal by written notice to the Court at least five (5) working days before trial the names of any witnesses upon whom the defense intends to rely to provide an alibi defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the Judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

Rule 15: Motions and Hearings

A. Motions Defined

An application to the Court for an order shall be by motion.

A motion other than one made at trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit and/or a memorandum of points and authorities.

B. Motions raising defenses and objections may be made as follows:

1. Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.
2. Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own motion at any stage of the proceeding.
3. Such motions shall be made in writing and filed with the Court at least five (5) business days before the day set for trial. Such motions will be argued before the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the Judge and not by the jury.
4. If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the Judge shall alter the proceedings or enter judgment as is appropriate in light of the decision.

C. Preliminary Hearings.

If pre-trial motions are filed in any criminal proceeding, the Court shall hold a preliminary hearing for argument on such motions. All pre-trial motions shall be heard not more than ten (10) days after all motions and responses are filed.

Rule 16: Trial by Jury.

A. Right.

Nothing in these rules of procedure shall be construed to obstruct or deny the right of a defendant subject to imprisonment to have a trial by jury.

B. Jury Request.

Unless a trial by jury is specifically requested by a defendant,

all criminal actions shall be tried by the Court.

C. Procedure.

If a defendant in a criminal proceeding desires to be tried by a jury, he must either request a jury trial at his arraignment, or file a written request for a trial by jury not less than ten (10) days prior to trial.

Rule 17: Dismissal.

- A. The prosecutor may dismiss a case in the absence of probable cause after a complaint has been initiated.
- B. If there is an unreasonable and unnecessary delay in bringing a defendant to trial the Court may, on motion of the defendant or its own motion, dismiss the complaint.

Rule 18: Service and Filing of Papers.

- A. Written motions, written notices and similar papers shall be served on each party in the manner provided for in civil actions.
- B. All papers required to be served shall also be filed with the Court.

Rule 19: Subpoena.

- A. A subpoena is an order of Court issued by the Clerk of the Court. It shall contain the name of the Court, the title of the case, and shall command each person to whom it is directed to attend and give testimony or produce for use at trial evidence, at the time and place specified therein. The Clerk may issue subpoenas upon the request of the prosecutor or the defendant.
- B. A subpoena may be served by any police officer or court employee or any person over the age of 18 years who is not a party. Service shall be accomplished by handing a copy of the subpoena to the person named therein. No fees or mileage allowance need be tendered with service. The individual serving the subpoena shall file a return of service notice with the Clerk of Court on which is noted the date, time, and place of service as well as the name of the person performing such service.
- C. A subpoena may be served any place within the territorial jurisdiction of the Northern Cheyenne Reservation Court.
- D. Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of Court and prosecution thereof may proceed upon the order of the Court. No

contempt shall be prosecuted unless a return of service notice has been filed with the Court Clerk per subsection (B) of this rule, as proof of service. [As amended by Ord. DOI 3(98)]

Rule 20: Assignment of Cases for Trial

- A. The Chief Trial Judge and Court Clerk shall provide for the placing of criminal proceedings on the Court calendar with as little delay as is reasonable possible. [As amended by **Ord. DOI 3(98)**]
- B. The Northern Cheyenne Court shall schedule criminal trials no less frequently than 11 days per month.
- C. The Court may for good cause shown by either party direct that a trial be postponed to the next or some succeeding month. However, if the prosecution, for good cause shown, requests and is granted a delay, and if the defendant is incarcerated not having made bail, the defendant shall be released on his own recognizance pending the rescheduled trial.

Rule 21: Pre-Trial Conference

A. Purpose

A pre-trial conference shall be held at least ten days prior to trial in order to determine the points of law and facts agreed upon by the parties.

B. Who Attends [As amended by Ord. DOI 3(98)]

The defendant or his counsel, if he has one, and the Prosecutor are required to attend. Failure to appear at a scheduled pre-trial conference may result in a charge of contempt of Court. Other persons may attend with the advance consent of the Judge conducting the pre-trial conference only if their presence will further the purpose stated above.

C. Conduct of Conferences

No record or transcript of the conference shall be made except for the Order and Memorandum of Pre-Trial Conference. No statements made at the conference by any person shall be used at trial except for voluntary agreements reached between the parties on points of law and facts as recorded in the Order and Memorandum of Pre-Trial Conference. The Judge may also set a trial date and set deadlines for motions to be filed and argued, for depositions and discovery to be completed and for delivering a list of witnesses to be subpoenaed.

D. Disposition by Order and Memorandum of Pre-Trial Conference

The Order and Memorandum of Pre-Trial Conference shall include:

1. Trial date.
2. Whether or not a jury will be called.
3. List of witnesses to be subpoenaed.
4. Agreements and orders regarding depositions, discovery and motions.
5. Agreements regarding points of law and facts.
6. Remaining issues to be resolved at trial.

This Order shall supercede pleadings for the purpose of framing issues for trial.

III. TRIAL

Rule 22: Rights of Defendant in Criminal Cases.

- A. In all criminal prosecutions, the defendant shall have the following rights:
1. The right to be present throughout the proceeding and to defend himself in person, by lay counsel or professional attorney at his own expense.
 2. The right to know the nature and cause of the charge and to receive a copy of the complaint.
 3. The right to meet the witnesses against him face to face.
 4. The right to compulsory process to obtain the testimony of witnesses and physical evidence in his behalf.
 5. The right to a speedy public trial and by an impartial jury if a prison sentence is possible under this code upon conviction.
 6. The right not to testify. The failure of the defendant to testify shall not be construed against him or be commented upon by the prosecution.

Rule 23: Jury Trials.

1. A defendant may request a trial by jury per Rule 16 in all cases where he faces potential imprisonment, except in a contempt proceeding.

2. Rule 22 on jurors in the Rules of Civil Procedure is hereby incorporated by reference.

Rule 24: Trial By Judge.

In cases tried without a jury, the Judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be in the form of a written decision.

Rule 25: Affidavit of Bias and Prejudice of a Judge--Judge Disability.

A. Affidavits.

Upon the filing of an affidavit of bias and prejudice setting forth satisfactory proof of facts establishing, that by reasons of bias or prejudice of the Judge to whom the case is assigned, the defendant cannot have a fair trial, the Judge shall disqualify himself. Any person who abuses this privilege, by filing affidavits of bias and prejudice without basis in fact, shall be in contempt of Court.

Rule 26: Proceedings at Trial.

A. Complaint.

The Clerk shall read the complaint and state the defendant's plea.

B. Motions.

The Court shall accept any pretrial motions for ruling by the Court. All arguments shall be made outside the hearing of the jury in a trial by jury.

C. Opening Statements.

The opening statements shall be made by the prosecutor followed by the defendant or his lay counsel or professional attorney. The prosecutor may waive an opening statement and the defendant may waive an opening statement or reserve the right to make an opening statement after the prosecution has rested its case.

D. Evidence.

Evidence shall be presented in support of the charge, and the defendant, lay counsel or professional attorney shall have the right to cross-examine any witnesses called by the prosecution.

E. Testimony.

The testimony of witnesses shall be taken orally in open Court, but upon motion of the prosecutor, the defense witnesses may be sequestered or excluded until called upon to testify. Testimony can also be given as evidence by properly executed affidavits, depositions or written interrogatories. Physical evidence shall be introduced and admitted only after a proper foundation has been laid as to its relevancy.

F. Motion For Judgment of Acquittal.

The defendant may make a motion for judgment of not guilty or directed verdict acquittal at the close of the evidence offered by the prosecution. If the evidence is not sufficient to support a conviction of the offense charged (beyond a reasonable doubt), the Court shall order the entry of judgment of (not guilty or a directed verdict of) acquittal of the offense charged.

G. Court's Motion for Acquittal.

The Court may also enter judgment of not guilty on its own motion after the evidence on either side is closed, and shall do so if the evidence is not sufficient to support a conviction of the offense charged beyond a reasonable doubt.

H. Defense.

After the prosecution has rested its case, the defense shall have the burden to proceed with the defense and evidence in support thereof, and the prosecution shall have the right to cross-examine any witnesses called by the defense.

I. Rebuttal Testimony.

The parties may then offer rebutting testimony-only on matters relating to direct testimony, except that the Court may, in the interest of justice, permit the introduction of newly discovered evidence.

J. Closing Arguments.

The prosecution and the defense may then present final arguments in the case, the prosecution having the right to open and close.

K. Instructions.

1. At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury

on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the instructions or omission therefrom unless he objects before the jury retires to consider its verdict, stating specifically the matter to which he objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing or if necessary out of the presence of the jury.

2. In every criminal case the Judge shall instruct the jury that the defendant is presumed to be innocent, that the burden of proof rests on the prosecution, that the evidence must show beyond a reasonable doubt that the defendant has committed the crime charged, and that if the defendant did not testify, his silence shall not be considered as evidence that he is guilty.

Rule 27: Rules of Evidence.

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the Northern Cheyenne Rules of Evidence.

Rule 28: Expert Witnesses and Interpreters.

- A. Either party may call expert witnesses of his own selection and each bears the cost of such.
- B. The Court may appoint an interpreter of its own selection and each party may provide his own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.
- C. The trial Judge or clerk may act as interpreter with the consent of all parties.

Rule 29: Verdict.

Upon the completion of the closing arguments, and after receipt of any instructions, the Judge or jury, as the case may be, shall render its verdict.

A. Verdict by Judge.

The Judge shall render a verdict of guilty if he believes the defendant to be guilty beyond a reasonable doubt. If some

doubt remains, a verdict of not guilty shall be entered. The Judge shall have the option of rendering a verdict immediately after closing arguments or taking the case under advisement and ruling on it at a later time.

B. Verdict by Jury.

A guilty verdict shall be returned in a jury trial only when a majority of the jury finds that the defendant is guilty beyond a reasonable doubt.

C. Mistrial.

If after repeated efforts, a jury is unable to reach a verdict, the Judge shall dismiss the jury and declare a mistrial. If a mistrial is entered, the defendant may be brought up on the same charge(s) again.

D. Several Defendants.

If there are two or more defendants, the Judge or jury may at any time in his/its deliberations, return a verdict or verdicts with respect to a defendant or defendants as to whom he or it has decided. If the jury cannot agree with respect to each defendant, the defendant or defendants as to whom it cannot agree may be tried again, as after a mistrial.

E. Lesser Included Offense.

The Judge or jury may find the defendant(s) guilty of a lesser included offense instead of the offense he is formally charged with. The lesser included offense does not have to be formally charged, as long as it is proven with the same proof used to show the charged offense.

F. Verdict of Not Guilty.

If a verdict of not guilty is rendered, judgment shall be entered into the record immediately and the defendant shall be immediately released from custody.

G. Verdict of Guilty.

If a verdict of guilty is rendered, the Judge shall so advise the defendant in open Court, either sentence the defendant or set a date for sentencing, and enter a judgment of guilty in the Court's records.

Rule 30: Motions of Trial.

Either party may make motions throughout the course of the trial, all of which shall be oral unless otherwise directed by the Judge. Both parties shall have the opportunity to state their respective positions on any

motion made. The motions which can be made shall include but are not limited to the following:

A. Motion for Exclusion of Witnesses.

A motion to exclude all witnesses who have not yet testified may be made by either party or done by the Court on its own initiative prior to the time any witness has testified to insure that the testimony of witness is his own independent recollection of the facts and that he does not adopt the testimony of a prior witness. It shall be within the discretion of the Court to grant or deny a motion to exclude witnesses made by either party.

B. Motion to Exclude Evidence.

A motion to exclude evidence may be made during the course of a trial when an opposing party introduces evidence that is inadmissible under these rules.

C. Motion for Judicial Notice.

Either party may, during the presentation of its case, move the Court to take judicial notice of matters which by their nature are not properly the subject of testimony or which are universally regarded as established by common notoriety. Granting or denying the motion shall be within the discretion of the Court.

D. Motion for Mistrial.

A motion for a mistrial can be made at any time during the trial and can be granted in the Court's discretion. A party may make a motion for a mistrial when any action by any person has the effect of prejudicing the outcome of the trial to the point that such prejudice could only be overcome by holding a new trial.

E. Motion for a New Trial.

The defendant may make a motion for a new trial after a verdict of guilty has been rendered against him. The motion must specifically allege the errors made by the Court during the trial which form the basis for the motion. The motion shall be granted or denied as justice dictates.

F. Motion for a Directed Verdict.

1. At the close of the prosecution's case, the defense may move that the Court direct a verdict of not guilty. Defendant's motion shall be granted only if the prosecution has failed to present a prima facie case.

2. Either party may make a motion for a directed verdict at the close of the defendant's case. A directed verdict of not guilty can be made when the prosecution failed to present a prima facie case and a directed verdict of guilty can be made if the Court finds as a matter of law that no adequate defense was presented.

IV. POST-TRIAL

Rule 31: Judgments

A judgment of guilty shall set forth the plea, the verdict or findings, the adjudication, and sentence when imposed. If the defendant(s) is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered immediately, and the defendant(s) released. All judgments shall be signed by the presiding Judge and entered into the record by the Court Clerk.

Rule 32: Sentencing

- A. Sentence shall be imposed without unreasonable delay as provided in this Law and Order Code. Pending sentence, the Court may commit the defendant(s) to jail or continue or alter bail. Before imposing sentence, the Judge shall afford counsel an opportunity to speak on behalf of the defendant and shall ask the defendant if he wishes to speak on his own behalf to present any information which might lessen his punishment.
- B. A motion to withdraw a plea of guilty shall be made only before the defendant(s) is sentenced. However, to correct manifest injustice, the Judge may set aside the judgment of guilty and permit the defendant(s) to withdraw his plea.

Rule 33: Kinds of Punishments

- A. All persons convicted of any offense may be sentenced to imprisonment, fine, work, or a combination of these punishments. However, no section of this Code shall prohibit the Judge from imposing any sentence deemed more appropriate than imprisonment, fines, or work, under the circumstances of a particular case. Sentences may include, but are not limited to: Commitment to a rehabilitation or alcoholism program; work for the benefit of the Northern Cheyenne reservation or restitution. [As amended by **Ord. 34(89)**]
- B. Non-Indians who are found guilty of an offense and who did not waive lack of personal jurisdiction in a criminal action shall be excluded from the Northern Cheyenne Reservation for a period not to exceed three times the length of time for [cont'd on p. V-26]

which such person could be held liable for the offense, if found guilty of a Class A offense. If found guilty of a Class A offense the non-Indian may be excluded from the Northern Cheyenne Reservation for a period not to exceed 100 years.

Rule 34: Payment of Fines

Fines shall be paid in cash, or in commodities or other personal property of the required value as may be directed by the Judge. When in the Judge's discretion the defendant has demonstrated an inability to pay a fine immediately, but appears to have the resources to pay over a period of time, the Judge may allow the fine to be paid in monthly installments, not to exceed nine months from judgment.

The methods available for collecting a civil judgment shall be available to collect any unpaid money upon order of the Court following a failure to make any required payment.

If fined and unable to pay the fine, the person fined has the option to serve the fine at a rate of \$20.00 per day if served in jail or \$40.00 per day of work, when the work will be Court authorized and police department assigned, on work-program projects that involve cleaning or building up the Northern Cheyenne Reservation. [As amended by Ord. 34(89)]

Rule 35: Restitution

- A. In addition to any other punishment, the Judge may require an offender who has inflicted injury upon the person or property of any individual or entity to make restitution or to compensate the party injured, through the surrender of property, the payment of money damages, or the performance of any other act for the benefit of the injured party, within reason.
- B. To require restitution and to fix the amount of all damages, the Court shall begin with a presumption that the defendant is responsible for all damages since he was convicted of the offense causing such damages. The Court shall hold a hearing to receive evidence as to the amount of the damages incurred, and to receive the defendant's rebutting evidence, if any. If the injured party desires, restitution from the defendant shall be rendered to the Court, and then given to the injured party, to avoid contact between the two parties. [As amended by Ord. DOI 3(98)]

Rule 36: Factors in Determining Punishments

In determining the character and duration of the punishment to be imposed, the Judge shall consider.

- A. Punishments under Northern Cheyenne Reservation Custom for similar offenses, as established by expert testimony introduced pursuant to the Northern Cheyenne Rules of Evidence;
- B. The sentences fixed in this Code for Class B and C offenses are maximum sentences, to be imposed only in extreme circumstances;

- C. Whether the offense(s) was malicious or willful;
- D. Whether the convicted person has made restitution, paid damages, or shown a willingness to make amends;
- E. The previous record and conduct of the convicted person; and
- F. The financial resources and needs of the convicted person and his dependents, and such other factors, allowable at law, as the Judge finds appropriate to consider.

Upon conviction, the Judge may require the Prosecutor to present evidence, as necessary, on the above factors in open Court, with the defendant present and allowed to rebut or cross-examine all witnesses. [*As amended by Ord. DOI 3(98)*]

Rule 37: Habitual Offenders [*As amended by Ord. 34(89)*]

Any person convicted three (3) times for the same offense in one year, or five (5) times for any Class A or Class B offense in one year, shall be considered a habitual offender. The judgment against such person shall designate him a habitual offender, punishment received shall be the maximum allowable under the offense unless good cause is shown for leniency, and the offender shall not be eligible for suspension of sentence, probation, parole or commutation of sentence.

Rule 38: New Trial

The Court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If trial was by the Court without jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one month after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within such further time as the Court may fix during the seven-day period.

Rule 39: Suspension of Sentences - Probation

- A. Where sentence has been imposed upon any person who has not previously been convicted of any felony, nor classified as a habitual offender, the Judge may, in his discretion, suspend the sentence imposed and allow the offender his freedom on probation upon his signing a pledge of good conduct during the period of the sentence and upon the terms of probation outlined by the Court. No suspension of restitution ordered will be allowed.

The commission of any offense set forth in this Law and Order Code will be a violation of probation. In addition, a presiding Judge may require a person on probation to meet such terms and conditions as are just and appropriate, taking into consideration the prior criminal record of the defendant, his background, character, financial condition, family obligations, and any other pertinent circumstances.

C. Violation of Condition of Probation [As amended by **Ord. DOI 3(98)**]

Any person who violates his probation pledge shall be required to serve the original sentence plus an additional one-half of such original sentence, as punishment for the offense of violation the probation. Violations of conditions of probation shall be brought before a Judge in open Court at a formal hearing, to decide if a violation took place, and the results thereof.

Rule 40: Deferred Sentences

- A. Where a sentence has been imposed, the Judge may, in his discretion, defer the imposition of the sentence and impose any reasonable restrictions or conditions during the period of deferred imposition. The restrictions or conditions include but are not limited to those listed in Rule 33 of this Code.
- B. The Judge may, in his discretion, revoke the suspension after giving the offender a hearing prior to the revocation. [As amended by Ord. DOI 3(98)]
- C. Where the Court has deferred the imposition of a sentence and the time period of the deferment has expired, upon motion of the Court, the defendant or the defendant's representative, the Court may allow the defendant to withdraw his plea of guilty or may strike the guilty verdict from the record and order that the charge(s) be dismissed.

Rule 41: Parole [As amended by Ord. DOI 3(98)]

- A. Any person, not designated a habitual offender, sentenced by a Judge, who has without misconduct served one-half the sentence imposed by such Judge, shall be eligible for parole.
- B. Anyone desiring parole, may apply to any Judge. Such Judge will review the circumstances of the potential parolee, and determine whether he has served one-half of his sentence, is not guilty of any misconduct, and is not a habitual offender. If all requirements are not met, the prisoner may be released on parole for the remainder of his [cont'd on p. V-29]

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sentence, subject only to the terms and conditions he has, in writing, agreed to comply with.

C. Violations

Any parolee who violates any provision of his parole shall be apprehended and confined to serve the remainder of the original sentence without diminishment for time the person was free on parole.

Rule 42: Commutation of Sentence

If a presiding Judge is satisfied that justice will best be served by reducing a sentence, the Judge may at any time reduce any sentence imposed upon a person, upon a showing of proof that during the period of the sentence the person served without misconduct and did satisfactory work.

Rule 43: Appeal

A. Notice to Defendant

After imposing sentence in a case which has gone to trial on a plea of not guilty, the Judge shall advise the defendant of his right to appeal.

B. The defendant has the right to appeal from the following:

1. A final judgment of conviction;
2. From an order made, after judgment, affecting his substantial rights.

C. The prosecution has the right to appeal from the following:

1. A judgment of dismissal in favor of the defendant upon motion to dismiss based on any procedural irregularity occurring before trial;
2. An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;
3. An order of the Court directing the jury to find for the defendant;
4. An order made after judgment affecting the substantial rights of the prosecution. [*As amended by Ord. DOI 3(98)*]

Rule 44: Stay of Judgment and Keler Pending Review

- A. A sentence of imprisonment may be stayed if an appeal is taken and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his sentence in the matter under appeal.
- B. A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirements for paying such.
- C. An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.
- D. All other punishment orders rendered pursuant to judgment may be stayed pending appeal, subject only to a cash bond the Judge may require to insure performance and/or the presence of the appellant.

V. GENERAL PROVISIONS

Rule 45: Medical Examinations and Care

- A. At the discretion of a Judge, any person whom the Judge believes to be in need of the care of a medical and/or psychiatric facility, may be referred to such facility for care and treatment. [As amended by Ord. DOI 3(98)]
- B. At the recommendation of any qualified physician of the United States Public Health Service, the Judge may order any person to submit to appropriate medical and/or psychiatric treatment.
- C. In the event neither the Tribe, Reservation, nor the Federal Government has appropriate facilities for treatment, the Judge may request the State District Court for commitment to an appropriate state institution.

Rule 46: Criminal Contempt [As amended by Ord. DOI 3(98)]

- A. Any person may be charged with contempt of court for any of the following reasons:
 - 1. Disorderly, contemptuous or insolent behavior in the presence and view of any Court of the Northern Cheyenne Court that interrupts proceedings or impairs respect of the Court's authority.
 - 2. Breach of peace, noise, or other disturbance interrupting proceedings in such Court.

3. Willful disobedience or resistance to any process or order issued by such Court.
4. Acting as an officer, spokesman or other official of such Court without authority.
5. Publication of false or grossly inaccurate report of Court proceedings.
6. Requesting a jury trial and failing to appear on the date the jury trial is scheduled.
7. Any other interference with the process, proceeding, or dignity of such Court or judge of such Court while performing official duties.

B. Procedures in Contempt

1. A direct contempt is one committed in the presence of such Court or so near as to be disruptive of Court proceedings and may be summarily adjudged and punished.
2. Any other contempt shall be determined at a hearing by the Trial Court in which the person accused of contempt is given notice and an opportunity to be heard.
3. There will be no jury trials in contempt hearings.

C. Penalty

A Trial Judge may issue any order necessary to allow the person to purge himself of contempt and may impose a sentence of five (5) days imprisonment and a fine of up to \$500.00, plus costs, as determined by the Court.

Rule 47: Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders.

Rule 48: Construing Rules of Criminal Procedure

These rules shall be construed together to reach a fair conclusion in all cases. However, if one or more specific sections are found to be invalid for any reason, the remaining rules shall still have the full force of law.

TITLE VI

RULES OF EVIDENCE CODE

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TITLE VI

RULES OF EVIDENCE CODE

I. GENERAL

1. Scope, Purpose, and Construction: These rules govern all proceedings in all courts of the Northern Cheyenne Reservation. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained.

2. Tribal Custom and Tradition: Custom and tradition may be used as evidence. Any conflicting procedural rule shall be superseded by the specific presentation of custom and tradition. When procedural rules are superseded in accordance with this section, the custom and tradition and reasons for its use shall be included in the Findings of Fact and Conclusions of Law prepared by the court. Reservation custom and tradition shall be established by testimony or affidavit of an expert or by the judge. An expert is an elder or other person recognized by the community as knowledgeable in custom and tradition.

3. Law and Fact Distinction: All questions of law, including but not limited to admissibility of testimony and exhibits, construction of statutes and other writings, shall be decided by the Court. Questions of fact shall be decided by the jury, in a jury trial, or by the presiding judge, if there is no jury.

4. Admissible Evidence: Only relevant evidence is admissible, unless otherwise provided by these rules, or other tribal laws. Relevant evidence means evidence making the existence of any fact consequential to the outcome of the proceeding more or less probable than it would be without the evidence, including evidence on the credibility of a witness or hearsay declarant.

5. Definitions:

A. Direct Evidence: That which proves the fact in dispute directly, without an inference or presumption, and which in itself, if true conclusively establishes that fact. For example, if the fact in dispute is the existence of an agreement, the testimony of a witness who was present and witnessed the making of it is direct evidence.

B. Indirect Evidence: That which tends to establish the fact in dispute by proving another fact and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence. For example, a witness proves an admission of the party to the fact in dispute. This proves a fact from which the fact in dispute is inferred.

C. Inference: A deduction the jury makes from the facts proved, without an express direction of the law to that effect. An inference must be founded on a fact legally proved and on such a deduction from that fact as is warranted by a consideration of the

usual propensities or passions of persons, the particular propensities or passions of the person whose act is in question, and the course of nature.

D. Presumption: An assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action or proceeding. The trier of fact must find the assumed fact in accordance with the presumption unless the presumption is overcome by a preponderance of evidence to the contrary. If presumptions are inconsistent the court shall apply the presumption that is founded upon weightier considerations of public policy. If those considerations are of equal weight, the court shall disregard both presumptions.

6. Burden of Proof: The burden of proof lies on the party who presents evidence to demonstrate that such evidence is admissible.

7. Instructions to Jury on Evaluation of Evidence: The jury is to be instructed by the court on all proper occasions:

- A. That evaluating the effect of evidence is not arbitrary but is to be exercised in accordance with these rules;
- B. That a witness false in one part of his testimony is to be distrusted in others;
- C. That an accomplice's testimony shall be viewed with distrust; and
- D. That a fact may be found contrary to the declarations of a number of non-convincing witnesses, if that fact is in accordance with a lesser number of witnesses, a presumption, or other evidence satisfactory to their minds. Instructions shall also include that if less satisfactory evidence is offered when it appears the party could have produced more satisfactory evidence, the offered evidence should be viewed with distrust.

8. Illegally Obtained Evidence: Evidence obtained under any condition or circumstance that would violate any law of the Northern Cheyenne Reservation shall be inadmissible in any court.

9. Objections: Unless otherwise provided for in these rules, all violations of these rules at trial must be objected to at the time of the violation, or the right to object to the violation is lost, and such violation shall not be heard on appeal.

10. Presentation and Foundation: Each party, when presenting evidence, must first show in open court, through the use of a witness, the reliability of the evidence, and the relevance of the evidence unless shown to be substantially reliable and relevant to the case.

11. Presentation of Witnesses: Each party, when calling a witness, must first show in open court, who the witness is, the witnesses' ability to provide

information, and the relevancy of the information to be given. Before the presenting party continues, the opposing party may then object, and if the court grants its permission, attack the ability, credentials or relevancy using direct examination of the witness not identified, demonstrating a lack of ability or credentials to testify to relevant matters, or failing to provide relevant information.

II. JUDICIAL NOTICE

12. Evidence Subject to Judicial Notice: The Court shall take judicial notice of federal acts, statutes, and treaties, statutes of every state, and constitutional guarantees and protections, duly enacted ordinances and governmental regulations of every other reservation and other jurisdiction of the United States at the request of a party or on its own motion. The Court may take judicial notice of any fact that is either generally known within the territorial jurisdiction of the Court, or capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned, if the fact to be judicially noticed is one not subject to reasonable dispute.

13. Procedure for Judicial Notice: The party requesting judicial notice shall furnish the Court and the adverse party with a copy of the law, act, or other statement the party wishes the Court to notice and a brief written statement of the relevancy of that law, act or statement.

14. Jury Instruction on Judicial Notice: The Court shall direct the jury to find as relevant any fact judicially noticed.

III. HEARSAY

15. Definition: Hearsay is an oral or written statement or nonverbal conduct intended as a statement, made out of court by a person who is not presently testifying, with such statement being offered to prove the truth of the matter asserted.

16. Rule: Hearsay is inadmissible as evidence except as stated elsewhere in these rules.

17. Evidence not covered by the Hearsay rule:

A. Prior statements of a witness in any or all of a transcript or deposition from a prior proceeding may be used against any party who was present or represented at the taking of such prior testimony, or who had due notice in accordance with any of the following provisions:

1. The party against whom the prior testimony is presently offered was a party to the former proceeding and was afforded an opportunity to cross-examine the witness in that proceeding and the issue upon which the prior testimony is presently offered is related to the same subject matter as that in the prior case.

2. The transcript or deposition of a party or of anyone who at the time of taking such testimony, was an officer, director, managing agent, or partner of a public or private corporation, partnership, or association which is a party, may be used by any party for any purpose.
- B. The transcript or deposition of a witness, whether or not a party, may be used by any party for any purpose if:
1. The Court finds that the witness is dead;
 2. The Court finds that the witness is not on the reservation (unless the absence was procured by the party offering the evidence);
 3. The Court finds that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;
 4. The party offering the evidence has been unable to procure the attendance of the witness by subpoena; or
 5. Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.
- C. Where, in the Court's opinion, the questioned evidence is deserving, needed, and otherwise admissible, and the party presenting such evidence has given notice such that the other party has had fair opportunity to exercise discovery, the evidence will be allowed.

IV. PRIVILEGE

18. Claim of Privilege: The objection that information is privileged must be made by or on behalf of the person seeking to have such information excluded from being presented as evidence. If both privileged and non-privileged information is contained in the evidence, the court may, on a party's request, exercise the privileged matter and allow presentation of the remaining information.

19. Waiver of Privilege: A person having privilege under these rules may be found by the judge to have waived the claim of privilege by voluntarily disclosing or consenting to disclosure of any part of the privileged matter unless the disclosure itself is privileged. A disclosure under compulsion or made without the opportunity to claim the privilege is not sufficient to waive the claim.

20. Definition of Incrimination: A matter will incriminate a person within the meaning of these rules if it constitutes or forms an essential part of, or taken in connection with other matter already disclosed, is a basis for a

reasonable inference that a crime has been committed.

21. Self-Incrimination: Every natural person has a privilege to refuse to disclose in court proceedings or to a public official of the Tribe or any governmental agency or division, any matter that will incriminate him. He cannot be compelled in a criminal action to be a witness against himself. Except, a defendant in a criminal case who takes the stand to testify in his own behalf may be required to give testimony against himself. Such testimony shall be limited to the charge on trial.

22. Advocate-Client Privilege: An advocate shall not disclose any communication that is relevant to the outcome of the proceeding made by the client without the client's consent. Advice given in the course of professional employment is privileged and cannot be disclosed without the client's consent. An advocate means any person authorized, or reasonably believed by the client to be authorized to act as the client's legal representative before any Reservation, State, or Federal Court. No person has this privilege if the court finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the client to commit or to plan to commit a crime or a civil offense.

23. Spousal Privilege: One spouse cannot be examined during or after the marriage for or against the other as to any fact, circumstance or activity involving the other spouse during marriage, without the other's consent. Neither spouse has this privilege in a civil action or proceeding by one against the other, any case involving abuse of a child by either spouse, or a criminal action or proceeding for a crime committed by one spouse against the other, (or someone in the immediate family/extended family).

24. Clergy-Penitent Privilege: Any confession made to a clergyman or priest in his professional character in the course of discipline practiced by the church to which he belongs cannot be disclosed without the penitent's consent.

25. Physician-Patient Privilege:

A. Any information acquired in attending a patient which was necessary to enable a physician, surgeon, or other regular practitioner of the healing art, to prescribe or act for the patient is privileged and cannot be disclosed without the consent of the patient.

B. No person has this privilege if the court finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the services of the physician, surgeon, or regular practitioner of the healing art were sought or obtained to enable or aid anyone to commit or plan to commit a crime or civil offense, or to escape detection or apprehension after the commission of a crime or civil offense.

26. Public Officer: A public officer cannot be examined as to official information communicated to him in an official confidence, when public interest would suffer by the disclosure unless the non-disclosure would result

in substantial injustice.

V. WITNESSES

27. Calling Witnesses: Each party shall have the right to call all witnesses necessary to prove evidence allowable under these rules. Each party may request the court to issue subpoenas whenever necessary.

28. Qualifications: Every person is competent to be a witness except as otherwise provided in these rules. A person shall be disqualified if the court finds that the witness is incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him or the witness is incapable of understanding the duty of a witness to tell the truth. A non-expert witness may only testify from personal knowledge.

29. Interpreter: Where needed, the court shall procure and appoint a disinterested person who is capable of understanding and interpreting the language or expressions of the witness to act as an interpreter, with the interpreter subject to the provisions of these rules.

30. Oath: Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

31. Judge as Witness: The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve this as an appealable error.

32. Juror as Witness: A member of the jury shall not be called to testify as a witness before the jury in the trial of the case in which he is sitting as a juror. But, a juror may testify, and an affidavit or evidence of any kind be received, as to any matter or statement concerning only the following questions, whether occurring during the course of the jury's deliberations or not: (a) whether prejudicial information was improperly brought to the jury's attention; (b) whether outside influence was brought to bear on any juror; or (c) whether any juror has been induced to assent to any general or special verdict, or finding on any question submitted to them by the court, by a resort to the determination of chance.

33. Advocate as Witness: When an advocate is a witness for his client upon any trial, except as to merely formal matters, such as the attestation or custody of an instrument or the like, he shall not further participate in such trial.

34. Exclusion of Witnesses: The court on its own motion may, or a party with a showing of good cause may request, that witnesses be excluded so that they cannot hear the testimony of other witnesses. A party who is a natural person, or an officer or employee of a party, which is not a natural person designated as its representative by its advocate, or a person whose presence is shown by a party to be essential to the presentation of his cause, shall not be

excluded for any reason.

35. Calling and Interrogation of Witnesses by the Court: The court may call witnesses and all parties are entitled to cross-examine these witnesses. The court may interrogate witnesses, provided that in trials before a jury, the court's questions are cautiously guarded so as not to constitute express or implied comment.

36. Expert Witnesses: If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may present opinion testimony within his field of expertise.

37. Opinion Testimony by a Non-Expert Witness: A non-expert witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness and helpful to a clear understanding of his testimony or the determination of a fact issue.

38. Authentication of Writing: A writing offered in evidence as authentic is admissible, if sufficient evidence has been introduced to sustain a finding of its authenticity or the judge finds that the writing; (a) is at least thirty (30) years old at the time it is so offered; and (b) is in such condition as to create no suspicion concerning its authenticity; and (c) at the time of its discovery was in a place in which such a document, if authentic, would be likely to be found. In order to prove the terms or contents of a writing or document, the writing or document itself must be produced or its unavailability shown before any other evidence will be received to prove the terms or contents of such writing or document.



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**



IN REPLY REFER TO:
Executive Direction

MAY 23 2016

Llevando Fisher, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Fisher:

This is in reference to Northern Cheyenne Tribal Ordinance No. DOI-012 (2016) enacted by the Council on May 2, 2016 and received in this office on May 13, 2016.

Ordinance No. DOI-012 (2016) –amending Ordinance No. DOI-011 (2016) and Title VII, Section 7-11-11-8 of the Law and Order Code.

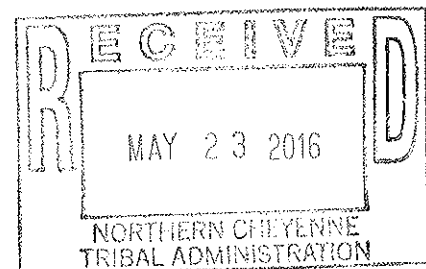
Ordinance No. DOI-012 (2016) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i), (m) and (r) of the Northern Cheyenne Tribe's Amended Constitution and Bylaws.

Pursuant to Article IV, Section 4 of the Northern Cheyenne Tribe's Amended Constitution the Superintendent has authority to respond to said ordinance. All necessary copies of this ordinance have been retained for our files.

Sincerely,

Superintendent

Enclosure



**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-012 (2016)

**AMENDING ORDINANCE NO. DOI-011 (2016) AND TITLE VII,
SECTION 7-11-11-8 OF THE LAW AND ORDER CODE**

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe, organized and operating under the Tribe's Amended Constitution and Bylaws approved by the Secretary of the Interior on May 31, 1996;

WHEREAS, under Article IV, Section 1(i) of the Constitution, the Tribal Council is empowered to promulgate and enforce ordinances governing the conduct of members of the Tribe or other persons within the Tribe's jurisdiction, provide for the maintenance of law and order, and establish the Tribe's judicial system and define its powers;

WHEREAS, the Northern Cheyenne Reservation is experiencing a tremendous problem with illegal drugs and associated criminal activity that threatens the health, welfare, comfort and safety of the Tribe and its members, including recent events within the Reservation that endangered the lives and property of Tribal members and Tribal businesses;

WHEREAS, on April 7, 2016, the Tribal Council adopted Ordinance No. DOI-011 (2016), which amended several existing sections of Title VII of the Northern Cheyenne Law and Order Code to strengthen the Tribe's ability to keep the peace and protect the public with regards to drug and traffic offenses;

WHEREAS, Title VII, Section 7-11-11-8 of the Law and Order Code has made driving while intoxicated (DWI) an offense punishable by the Tribe since it was enacted in 1989;

WHEREAS, Ordinance No. DOI-011 (2016) updated Title VII, Section 7-11-11-8 in several respects to increase the effectiveness of the law in preventing DWI-related accidents and offenses;

WHEREAS, certain changes are now required to Ordinance No. DOI-011 (2016) and Title VII, Section 7-11-11-8 in order to effectively embody the Tribe's intent to strengthen the Law and Order Code and protect the health, welfare, comfort and safety of the Tribal community;

THEREFORE BE IT ORDAINED AS FOLLOWS:

Title VII, Section 7-11-11-8 as amended by Ordinance No. DOI-011 (2016) is hereby replaced with the following:

7-11-11-8. Driving While Under the Influence of Alcohol or Drugs


- A. A person who is under the influence of alcohol or a controlled substance under Schedules I, II or III of the Federal Controlled Substances Act while driving or in physical control of a motor vehicle to a degree which renders him/her

incapable of safely driving, or has an alcohol concentration of 0.08 or more by weight, or any detectable level of a controlled substance in the person's body, is guilty of driving under the influence.


- B. In any prosecution for a violation of Section 7-11-11-8(A), the presence of intoxicating liquor or drugs may be shown by chemical analysis of the defendant's bodily substances using an intoxilyzer or similar breath alcohol testing device, or a blood or urine test. In addition to the results of chemical analysis, other competent evidence may be introduced on the question of whether the defendant was under the influence of intoxicating liquor or drugs.
1. If there was at the time of the test an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.
 2. If there was at the time of the test an alcohol concentration in excess of 0.04 by less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.
 3. If there was at the time of the test an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol.
 4. Regardless of the result of chemical analysis of the person's bodily substances for alcohol, this section does not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs or a combination of alcohol and drugs.
 5. A person may not be found in violation of this section based solely upon the detectable presence of a controlled substance in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a controlled substance while driving or in actual physical control of a motor vehicle.
- C. Chemical analysis of a person's blood, breath or urine for the purpose of determining any measured amount or detected presence of alcohol or controlled substance in the person's body shall be administered at the direction of the arresting officer having reasonable grounds to believe that the person was in violation of Section 7-11-11-8(A).
- D. If the person under arrest refuses upon the request of a police officer to submit to chemical analysis under this section, such person shall be presumed to be in violation of Section 7-11-11-8(A). The presumption is rebuttable.
- E. Driving under the influence is a Class A offense.

CERTIFICATION

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 8 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions, this 2nd day of May 2016.


Llevando Fisher, President
Northern Cheyenne Tribe

ATTEST:


Melissa Lonebear, Secretary
Northern Cheyenne Tribe

NOTED:



SUPERINTENDENT

MAY 23 2016

TITLE VII

OFFENSE CODE

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TITLE VII
OFFENSES CODE

Chapter 1. GENERAL PROVISIONS

7-1-1. Scope, Purpose and Construction.

- A. Scope. This chapter is not exhaustive of the offenses which are punishable and shall not be construed as inconsistent with or as limiting authority to arrest, try, convict, sentence and carry out sentences for violations of any other section of this Code or of any ordinance or resolution of the Northern Cheyenne Tribal Council.
- B. Purpose. The purposes of this chapter and of any other provisions of this code are:
1. To proscribe conduct that is clearly dangerous to the lives, safety, welfare, and good order of the Northern Cheyenne Reservation;
 2. To provide a series of reasonable punishments; and
 3. To redress wrongs for violations of the laws governing the Northern Cheyenne Reservation.
- C. Construction.
1. Each provision in this chapter of the Code and of any other penal provision of this Code shall be construed to give maximum effect to the purposes expressed in subsection (B) of this section.
 2. The punishments authorized by this Code are not intended to be solely retributive or vindictive, but are intended to promote the purposes expressed in subsection (B) of this section.
 3. Wherever possible, the court shall impose that sentence most conducive to redressing any damage or loss sustained as a result of the violation or offense committed.
- D. Enforcement.

The Northern Cheyenne Tribal Council authorizes the Bureau of Indian Affairs the authority to enforce this Code and the offenses in this Code.

7-1-2. Multiple Prosecutions and Double Jeopardy.

- A. Prosecution of Multiple Offenses. When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted and sentenced for each such offense.
- B. Limitation. Except as provided below, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal offense.
- C. Separate Trials. Upon application of any party and if justice so requires, the Court may order that separate trials be held for two or more offenses based on the same conduct or arising from the same criminal offense.
- D. Double Jeopardy. If a defendant has been prosecuted in the Northern Cheyenne Courts for one or more offense arising out of the same conduct as the original prosecution, a subsequent prosecution in the Northern Cheyenne Courts for the same or a different offense arising out of the same conduct is barred.

7-1-3. Burden of Proof.

- A. Burden of Presumption of Innocence.
 - 1. A defendant in a criminal proceeding is presumed to be innocent until each element of the offense against him is proven beyond a reasonable doubt. In the absence of such proof the defendant shall be acquitted.
 - 2. By "Element of the offense" is meant:
 - a. The conduct, attendant circumstances or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; plus
 - b. The culpable mental state required.
- B. Negating Defenses. The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either side, or unless the defense is an affirmative defense and the defendant has presented evidence of such.

7-1-4. Principals and Accessories.

- A. This code makes no distinction between principals and accessories in criminal prosecutions.
- B. Any person who shall cause another to commit or who shall otherwise advise or assist another to commit any offense under

the laws of the Northern Cheyenne Reservation shall be guilty as if he had actually committed the offense.

7-1-5. Entrapment.

- A. A public law enforcement officer or official or a person acting in cooperation with such an official perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting an offense by either:
1. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
 2. Employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.
- B. The defense afforded by this section shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.
- C. Except as provided in subsection (B) of this section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the Court and not by the jury. Evidence of past offenses shall be admissible only if the defendant takes the stand in his own defense.

7-1-6. Liability.

- A. Acts and Omissions to Act:
1. The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which he or she is physically capable of performing.
 2. Possession is an act within the meaning of this section if there was knowing control of the thing possessed for a sufficient time to be able to terminate control.
- B. Culpability. A person is not guilty of an offense unless he acted purposely, knowingly, negligently, or recklessly as required with respect to each material element of the offense.

C. Corporations and Unincorporated Associations:

1. A person is legally accountable for any conduct he performs or causes to be performed in the name of a corporation or unincorporated association or in its behalf to the same extent as if it were performed in his own name or behalf.
2. Whenever a duty to act is imposed by law upon a corporation or unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.
3. When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the class involved.

7-1-7. Classification of Offenses and Sentences

- A. Offenses are designated as Class A offenses, Class B offenses and Class C offenses with maximum fines and imprisonment as follows:

Class A: Fine not to exceed \$5,000.00 and a term of imprisonment not to exceed 1 year.

Class B: Fine not to exceed \$1,000.00 and a term of imprisonment not to exceed 6 months.

Class C: Fine not to exceed \$200.00. [As amended by Ord. 34(89)]

- B. Any offense for which no penalty or sentence is specified or which is not specifically designated a class of offenses shall be treated, for the purpose of imposing punishment, as a Class C offense.

7-1-8. Definitions

- A. Mental States:

1. Purposely - A person acts purposely with respect to a result or to conduct described in this Code defining an offense if it is his conscious objective or desire to engage in the conduct or to cause that result.

2. Knowingly - A person acts knowingly with respect to a circumstance or to conduct described in this Code defining an offense if he is aware of his conduct or that the [cont'd on p. VII-10]

circumstance exists. A person acts knowingly with respect to the result of conduct described in this Code defining an offense if he is aware or believes that it is highly probable that such result will be caused by his conduct.

3. Recklessly - A person acts recklessly with respect to a circumstance or to conduct described in this Code defining an offense if he is aware of a risk created by the circumstance or by the conduct and disregards the risk. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.
4. Negligently - A person acts negligently with respect to a result or to a circumstance described in this Code defining an offense when he consciously disregards a risk of which he should be aware that the result will occur or that the circumstance exists. This risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

B. Voluntary and Involuntary Acts:

1. Involuntary act - An "involuntary act" means any act which is:
 - a. A reflex or convulsion;
 - b. A bodily movement during unconsciousness or sleep;
 - c. Conduct during hypnosis or resulting from hypnotic suggestion; or
 - d. A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.
2. Voluntary act - A voluntary act includes any bodily movement, and form of communication, and where relevant, any failure or omission to take action, that is not involuntary.

C. Harm - means disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

D. Property - means anything of value. Property includes but is not limited to:

1. Real estate;
2. Money;
3. Commercial instruments;
4. Admission or transportation tickets;
5. Written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;
6. Things growing on, affixed to, or found on land and things which are part of or affixed to any building;
7. Electricity, gas, and water;
8. Birds, animals, and fish which ordinarily are kept in a state of confinement;
9. Food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof; and
10. Any other articles, materials, devices, substance, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement.

E. Sexual contact - means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

F. Sexual intercourse - means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or the anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

G. Weapon - means any instrument, article, or substance which regardless of its primary function, is readily capable of being used to produce death or bodily injury.

Chapter 2. DEFENSES AND JUSTIFICATIONS

7-2-1. Justification.

Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justified and is an affirmative defense provided that the harm or evil sought to be avoided by such conduct is no greater than that sought to be prevented by the law defining the offense charged and the actor did not recklessly or negligently bring about the situation requiring his conduct. The fact that conduct is justifiable as specified in this Code does not abolish or impair any civil right or remedy which might arise from such conduct.

7-2-2. Duress.

It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist and the actor did not recklessly or negligently place himself in a situation in which it was probable he would be subjected to duress.

7-2-3. Ignorance or Mistake.

Ignorance or mistake as to a matter of fact or law is a defense if:

- A. The ignorance or mistake negate the intent, knowledge, belief, recklessness, or negligence required to establish a material element of the offense; or
- B. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

7-2-4. Public Duty.

Conduct is justified and an affirmative defense when it is required or authorized by law.

7-2-5. Protection of Self, Property, or Other Person.

The use of reasonable force upon or toward another person is justified and an affirmative defense when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself or a third person against the use of unlawful force by another person or to prevent or terminate an unlawful entry or other trespass upon land or the unlawful carrying away of tangible movable property.

7-2-6. Mental Disease.

A person is not responsible for criminal conduct, and it is an affirmative defense, if at the time of such conduct, as a result of mental disease or

defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

7-2-7. Use of Force.

A. Force in Defense of Persons.

1. A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such force is necessary to defend himself or a third person against such other's imminent use of unlawful force; however, a person is justified in using force which is necessary to prevent bodily injury only if he reasonably believes that such force is necessary to prevent death or serious bodily injury to himself or a third person.

2. A person is not justified in using force under the circumstances specified in subsection (A) (1) of this section if he:

a. Initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant;

b. Is attempting to commit, committing, or fleeing after the commission of an offense; or

c. Was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force.

B. Force in Arrest. A police officer is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

C. Force in Defense of Habitation. A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his place of habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:

1. The entry is attempted or made in a violent and tumultuous manner and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling or

person therein and that the force is necessary to prevent the assault or offer of personal violence; or

2. He reasonably believes that the entry is made or attempted for the purpose of committing a Class A offense or other offense involving threat of bodily injury therein and that such force is necessary to prevent the commission of such offense.

D. Force in Defense of Property. A person is not justified in using force in defense of property unless force is necessary to prevent or terminate immediate irreparable harm. The amount of force that may be used is only that which is reasonably necessary to prevent the harm and can never be force likely to cause death or serious bodily injury.

7-2-8. Intoxication Not a Defense.

A. Except as provided in subsection (D) of this section, intoxication of the actor is not a defense unless it negates an element of the offense.

B. When recklessness establishes an element of the offense, and the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial and does not constitute a defense.

C. Intoxication does not, in itself, constitute a mental disease as that term is used in this Code.

D. Intoxication which is (a) not self-induced, or (b) the result of intoxication excessive in degree given the amount of intoxicant, to which the actor does not know he is susceptible, is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its wrongfulness or to conform his conduct to the requirements of the law.

Chapter 3. INCHOATE OFFENSES

7-3-1. Solicitation. A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

7-3-2. Conspiracy.

A. A person commits the offense of conspiracy when, with the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such an agreement has been committed by him

or by a co-conspirator.

- B. It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:
 - 1. Has not been prosecuted or convicted;
 - 2. Has been convicted of a different offense;
 - 3. Is not amenable to justice;
 - 4. Has been acquitted; or
 - 5. Lacked the capacity to commit the offense.
- C. A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

7-3-3. Criminal Attempt.

- A. Any person who purposely, knowingly, negligently or recklessly engages in any conduct which would reasonably result in the commission of any offense, if not for some unforeseen or intervening circumstance that prevents the actual commission of the offense, shall be guilty of an attempt to commit that offense.
- B. Criminal attempt to commit any offense shall be an offense of the same class as the substantive offense attempted.
- C. A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.
- D. Proof of the completed offense does not bar conviction for the attempt.

Chapter 4. OFFENSES AGAINST THE PERSON

7-4-1. Criminal Homicide.

- A. A person commits the offense of criminal homicide if he purposely, knowingly, or negligently causes the death of another human being.
- B. Criminal Homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide.
 - 1. Criminal Homicide constitutes Deliberate Homicide if:

- a. It is committed purposely or knowingly; or
 - b. It is committed while the offender is engaged in or is an accomplice in the commission of an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use of or threat of physical force or violence against any individual.
2. Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.
 3. Criminal homicide constitutes negligent homicide when it is committed negligently.
- C. Criminal homicide is a Class A offense, and if the offense is found to have been committed purposely or knowingly, no suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration shall be imposed.

7-4-2. Assault and Related Offenses.

A. Assault:

1. A person commits the offense of assault if he:
 - a. Purposely or knowingly causes bodily injury to another;
 - b. Negligently causes bodily injury to another with a weapon;
 - c. Purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or;
 - d. Purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or knowledge that reasonable apprehension would be caused shall be present in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

2. Assault is a Class B offense.

B. Aggravated Assault:

1. A person commits the offense of aggravated assault if he purposely or knowingly causes:

- a. Serious bodily injury to another;
- b. Bodily injury to another with a weapon; or
- c. Reasonable apprehension of serious bodily injury in another by use of a weapon;

2. Aggravated assault is a Class A offense.

7-4-3. Intimidation.

A. A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

1. Inflict physical harm on the person threatened or any other person or on property;
2. Subject any person to physical confinement or restraint;
3. Commit any criminal offense;
4. Accuse any person of an offense;
5. Expose any person to hatred, contempt, or ridicule; or
6. Take action as a public official against anyone or anything, withhold official action, or cause such action or withholding.

B. A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

C. Intimidation is a Class B offense.

7-4-4. Mistreating Prisoners.

A. A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

1. Assaults or otherwise injures a prisoner;

2. Intimidates, threatens, endangers, or withholds reasonable necessities from a prisoner with the purpose to obtain a confession from him or for any other purpose; or
 3. Violates any civil right of a prisoner.
- B. A person convicted of mistreating a prisoner(s) shall be removed from office or employment.
- C. Mistreating prisoners is a Class C offense.

7-4-5. Kidnapping.

- A. A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.
- B. Unlawful Restraint. A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains or causes to be restrained another so as to interfere substantially with his liberty.
- C. Kidnapping is a Class A offense.

7-4-6. Custodial Interference.

- A. A person, whether a parent or other person, is guilty of custodial interference if:
1. Without good cause, he takes, entices, conceals, or detains a child under the age of 16 from his parent, guardian or other lawful custodian:
 - a. Knowing he has no legal right to do so; and
 - b. With intent to hold the child for a period substantially longer than any visitation or custody period previously awarded by a court of competent jurisdiction;
 2. Having actual physical custody of a child under the age of 16 years pursuant to a judicial award of a court of competent jurisdiction which had given another person visitation or custody rights, and without good cause, he detains or conceals the child with intent to deprive the other person of his lawful visitation or custody rights; or
 3. Without good cause he takes, entices or detains an incompetent or other person who has been committed by authority of law to the custody of another person or institution from the other person or institution, knowing

he has no legal right to do so.

B. Custodial Interference is a Class A offense:

7-4-7. Sexual Offenses.

A. Rape:

1. A male person who has sexual intercourse with a female is guilty of rape if:
 - a. He compels her to submit by force or by the threat of death, serious bodily injury, extreme pain, or kidnapping to be inflicted on her or anyone else;
 - b. He compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution;
 - c. He has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance;
 - d. He knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct;
 - e. The female is unconscious or he knows that she is unaware that a sexual act is being committed upon her or that she submits because she falsely supposes that he is her husband; or
 - f. The female is under the age of 16 years.
2. Sexual intercourse includes intercourse as defined in 7-1-8 (F) with some penetration, however slight; emission is not required.
3. Rape is a Class A offense.

B. Deviate Sexual Intercourse:

1. A person is guilty of deviate sexual intercourse if he engages in deviate sexual intercourse, or causes another to engage in deviate sexual intercourse and if:
 - a. He compels the other person to participate by force or by the threat of death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone;

- b. He compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution;
- c. He has substantially impaired the other person's power to appraise or control his conduct by administering or employing without his knowledge drugs, intoxicants or other means for the purpose of preventing resistance;
- d. He knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct or he knows that the other person is unconscious or submits because he is unaware that a sexual act is being committed on him; or
- e. The other person is under the age of 16 years of age.

2. Deviate sexual intercourse is a Class A offense.

C. Indecent Exposure:

1. A person is guilty of indecent exposure if, for the purpose of arousing or gratifying sexual desire of himself or of any other person other than his spouse, he exposes his genitals.
2. Indecent exposure is a Class C offense.

D. Sexual Assault: [*As amended by Ord. 10(92)*]

1. A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.
2. Sexual Assault is a Class B offense.

E. Aggravated Sexual Assault: [*Added by Ord. 10(92)*]

1. A person commits the offense of Aggravated Sexual Assault if he knowingly subjects another person to any sexual contact without consent; and
 - a. the victim is sixteen (16) years of age or younger and the offender is three (3) or more years older than the victim; or
 - b. the offender inflicts bodily injury upon anyone in the course of committing the sexual assault. "Bodily injury" shall mean physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

2. Aggravated Sexual Assault is a Class A offense.
3. An offender convicted of Aggravated Sexual Assault shall be required to serve a mandatory minimum jail sentence of at least ninety (90) days and shall be fined not less than \$500.00. An offender convicted of Aggravated Sexual Assault, second offense, shall be required to serve a mandatory minimum jail sentence of at least six (6) months and shall be fined not less than \$1,000.00. An offender convicted of any subsequent offenses of Aggravated Sexual Assault shall be required to serve a mandatory minimum jail sentence of one (1) year and shall be fined \$5,000.00. The mandatory minimum sentences under this provision may not be suspended or deferred. This provision shall not limit the authority of a sentencing judge to impose a more severe sentence for first or second offenders, up to the maximum allowed by law.

F. Provisions Applicable to Sexual Offenses: [Added by **Ord. 10(92)**]

1. A prosecution for a Class A sexual offense may be commenced within seven (7) years after the victim reaches the age of eighteen (18) years old if the victim was less than eighteen (18) years old at the time the offense occurred.
2. A person fourteen (14) years of age or younger does not have the legal capacity to consent.
3. No evidence concerning the sexual conduct of the victim is admissible in prosecutions involving a sexual offense except evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.
4. Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim. Force, fear, or threat alone is sufficient to show lack of consent; resistance by the victim is not required.
5. A civil action for recovery of damages for injuries suffered by a minor as a result of a sexual offense must be commenced not later than seven (7) years after the victim reaches the age of eighteen (18).
6. Any person convicted of a Class A Sexual Offense in Tribal Court and/or any person residing on the reservation who is convicted of a Felony Sexual Offense in any other jurisdiction, shall be required to register in writing with the local reservation law enforcement agency as a convicted sexual offender. Public notice of a person's conviction of a Class A Sexual Offense in Tribal Court, or a Felony Sexual Offense in any other jurisdiction shall be published in a weekly

newspaper of general circulation for two (2) consecutive weeks; and posted at the Tribal Office, Tribal Court, Police Department, and in all post offices on or near the reservation.

7. Any person convicted of a Class A Sexual Offense in Tribal Court shall be required to obtain both a chemical dependency evaluation and a sexual offender evaluation, and comply with the recommendations thereof. Copies of such evaluations shall be filed with the Court within ninety (90) days of the date of conviction.
8. In the interest of protecting the community, the Court may order a convicted offender to comply with any reasonable condition of sentence, including but not limited to any of the following:
 - a. Restrictions against types of employment involving access to children, elderly or other classes of vulnerable potential victims.
 - b. Restrictions from being physically present on or near schools, playgrounds, day care centers, elderly residential facilities, and other specific locations.
 - c. Prohibition against the use of alcoholic beverages, illegal drugs, and other chemical substances; and being present in business establishments where alcoholic beverages are the chief item of sale.
 - d. Payment of the cost of any counseling and/or treatment that the victim may require.

7-4-8. Prostitution

- A. A person is guilty of prostitution if, that person practices prostitution or knowingly keeps, maintains, rents, leases, any house, room, tent, or other place for the purpose of prostitution. [*cont'd on p. VII-21*]

B. Prostitution is engaging in or agreeing or offering to engage in sexual intercourse with another person for compensation.

C. Prostitution is a Class B offense.

7-4-9 Venereal Disease

A. A person is guilty of the offense of transmitting a venereal disease if he knowingly infects another with venereal disease.

B. The Tribal Court shall have the authority to order and compel the medical examination and treatment of any person charged with the violation of this section or found afflicted with any communicable disease.

C. Transmitting a venereal disease is a Class C offense.

Chapter 5. OFFENSES AGAINST THE FAMILY

7-5-1. Bigamy

A. A person is guilty of bigamy if, knowing that he has a husband or wife or knowing that the other person has a husband or wife, he purports to marry another person.

B. It shall be a defense if the defendant proves by a preponderance of the evidence that he reasonably believed that he and the other person were eligible to marry.

C. Bigamy is a Class B offense.

7-5-2. Incest

A. A person is guilty of incest if he knowingly marries or cohabits or has sexual intercourse or sexual contact with a person he knows to be an ancestor or descendant, brother, sister, aunt, uncle, nephew, niece, or first cousin, any of which are of the whole or half blood, without regard to legitimacy, adoption or step-parent/step-child relationship, while such relationship exists.

B. Incest is a Class A offense.

1. A person is guilty of criminal nonsupport if, without just cause, he fails to provide for the support of his spouse, child under the age of 18 years, or other dependent when such persons or any of them are in circumstances of need.
2. "Child" includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.
3. In a prosecution under this section, it is no defense that the person to be supported received necessary support from a source other than the defendant.
4. Criminal nonsupport is a Class B offense.

B. Endangering the Welfare of a Child:

1. A person is guilty of endangering the welfare of a child if he is a parent, guardian, or other person supervising the welfare of a child under 18 years of age and he knowingly endangers the child's welfare by violating a duty of care, protection or support or by intentionally leaving or abandoning a child without care or by neglecting to care for a child in any manner which threatens serious harm to the physical, emotional or mental well-being of the child.
2. Endangering the welfare of a child is a Class B offense.

7-5-4. Failure to Send Children to School.

Any person who shall, without good cause, neglect or refuse to send a child under his care, between the ages of six and eighteen years, to school unless that child has graduated from high school, shall be guilty of this offense. Failure to send children to school is a Class C offense.

7-5-5. Truancy.

Any person between the ages of six and eighteen years of age, who shall, without good cause, neglect or refuse to attend school shall be deemed guilty of an offense. The Judge may, in his discretion, hear and determine the case in private and in an informal manner, and, if the accused is found to be guilty, may in lieu of sentence, place such truant for a designated period under the supervision of a responsible person selected by him or may take such other action as he may deem advisable in the circumstances. Truancy is a Class C offense.

7-5-6. Contributing to the Delinquency of a Minor.

- A. A person commits the offense of contributing to the delinquency of a minor if he knowingly:
 1. Sells or gives explosives to a child under the age of

and, if the accused is found to be guilty, may in lieu of sentence, place such truant for a designated period under the supervision of a responsible person selected by him or may take such other action as he may deem advisable in the circumstances. Truancy is a Class C offense.

7-5-6. Contributing to the Delinquency of a Minor

- A. A person commits the offense of contributing to the delinquency of a minor if he knowingly:
1. Sells or gives explosives to a child under the age of majority except as authorized under proper tribal ordinances;
 2. Sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;
 3. Sells or gives alcoholic beverages to a person under 18 years of age; or
 4. Being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.
- B. Contributing to the delinquency of a minor is a Class B offense.

7-5-7 Elderly Protection [Amended by Ords. 14(88), 18(89)]

- A. A person who purposely, knowingly or negligently exploits or abuses or neglects any elderly person shall be prosecuted for a violation of this Ordinance.
- B. **Elderly Protection is a Class B offense.**
- C. Definition:
1. "Exploits" means to use the money or property of an elderly person for one's own advantage by means of duress, menace, fraud, or undue behavior.
 2. "Abuses" means to inflict physical or mental injury or to deprive an elderly person of food, shelter, clothing or services necessary to maintain the health of the elderly person.
 3. "Neglect" means the failure of a guardian, employee of any public facility, or any other person legally responsible for an elderly person's welfare, by failing to provide food, shelter, clothing, or services necessary to maintain the health of the elderly person.
 4. "Elderly person" is a person who is at least 60 years of age.

A. Any person who purposefully, knowingly, recklessly, or negligently abuses their spouse, family member, or household member shall be prosecuted for committing the offense of domestic abuse.

B. Definitions:

1. "Domestic abuse" is defined as causing physical harm, bodily injury, assault or inflicting fear of imminent harm, bodily injury or assault.
2. "Spouse" means a person with whom the victim is currently living or who has lived with the victim in the past, regardless of whether they are or were married, or, a person with whom the victim has a child in common, regardless of whether they were married or had lived together.
3. "Family member" or "household member" means a spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

C. Penalties:

Conviction of domestic abuse is a Class A offense. A person convicted of a first offense for domestic abuse shall be jailed for not less than 30 days and fined not less than \$500.00. A person convicted a second time for domestic abuse shall be jailed for not less than 90 days and fined not less than \$1,000.00. A person convicted for the third or subsequent times shall be jailed for not less than 180 days and fined not less than \$2,000.00. Restitution to the victim shall be ordered by the Judge when appropriate. Twenty-five sessions of mandatory counseling shall be ordered by the Judge in all convictions. This mandatory counseling shall include education on violence and learning non-violent behavior. This counseling may be ordered for up to one year by the Judge with progress reports to be made no less than monthly. If alcohol or drugs were involved in the offense, a chemical dependency evaluation and complete cooperation with recommendations for treatment shall be ordered by the Judge.

D. Other Provisions:

1. **Mandatory Arrest.** A police officer shall immediately arrest, without having to obtain an arrest warrant, and take into custody any person whom the officer has probable cause to believe has committed the crime of domestic abuse. The victim need not sign a complaint. The officer shall make the arrest even though an arrest may be against the expressed wishes of the victim.

An officer, under this section, is not required to arrest both parties when he/she believes that parties have assaulted one another. The officer shall arrest the person whom he/she believes to have been the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider (1) the intent to protect the victims of domestic abuse under this section; (2) the comparative extent of injuries inflicted, or serious threats creating fear of physical injury; and (3) the history of domestic abuse between the persons involved.

2. **Filing a Complaint.** The police officer making the arrest for domestic abuse shall sign the complaint and include a detailed report of the circumstance of the arrest and any available statements from witnesses or victims. The victim may be utilized in a prosecution as a witness, if the victim is willing. Otherwise, the arresting officer shall testify as the prime witness in the prosecution. Any spousal privilege not to testify as a husband and wife shall not apply in domestic abuse prosecution.
3. **Victim's Rights.** The victim of domestic abuse shall be informed by the arresting police officer of the local abode shelter, and shall see that the victim contact is made with that shelter; and shall inform the victim that a restraining order is available against the abuser, that an order can be obtained ordering the abuser from the household, school or business of the victim, that an order can be obtained awarding temporary custody of minor children to the victim; and that the abuser can be ordered to pay support to the victim and minor children regardless if the victim is male or female.
4. **Reports.** In cases where a police officer is called to a scene in which domestic abuse is suspected, but in the discretion of the police officer, no arrest is made by the officer, the officer shall write and file a written report explaining the reason for not making an arrest.
5. **Holding Time and Bail.** Any person arrested for domestic abuse shall be held without bail for not less than 24 hours and more than 36 hours mandatory cooling off period. No bail schedule shall be set until the time period expires. Bail put forth cannot be forfeited in lieu of court appearance. Appearance at court before a Judge is mandatory.
6. **Education of Public Officials.** All Judges, prosecutors, and police officers, shall be trained to implement this section with at least one eight hour initial session given by a domestic abuse specialist. In addition, all personnel shall have a minimum of four hours of refresher and update training in domestic abuse each year.

Chapter 6. OFFENSES AGAINST PROPERTY

7-6-1 Arson

- A. A person is guilty of arson if he starts a fire or causes an explosion with the purpose of:
1. Destroying a building or occupied structure of another; or
 2. Destroying or damaging any property whether his own or that of another to collect insurance for such loss.
- B. Definitions:
1. The term "Occupied Structure" includes a trailer, sleeping car, airplane or vehicle, structure or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present.
 2. Property is that of another, for the purpose of this section, if anyone other than the actor has a possessory or proprietary interest therein. If a building or structure is divided into separate occupied units, any unit not occupied by the actor is an occupied structure of another.
- C. Arson is a Class A offense.

7-6-2. Reckless Burning [*Amended by Ord. 7(90)*]

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- A.1 It shall be a criminal offense for any person who kindles a fire in or near any forest, timber, rangeland or other inflammable material upon land within the exterior boundaries of the Northern Cheyenne Reservation and then leaves said fire without totally extinguishing the same, or permits or suffers said fire to spread beyond his control, or leaves or suffers said fire to burn unattended. Such person shall be made to make complete restitution including resource loss, suppression and rehabilitation costs. Agricultural burning (weeds, stubble field, irrigation ditches, etc.) in excess of one (1) acre will require a burning permit. Recreational fires (i.e., camp fires) and residential fires (burn barrels, trash piles, etc.) will be excluded from this section if conducted under safe burning conditions. Traditional fires (seat lodges, sundances, etc.) will be excluded from this section at all times.
- A.2 The Tribal President shall have the authority to ban all fires (agricultural, recreational, residential, traditional, etc.) and to ban the sale and use of fireworks during high fire danger conditions.
- A.3 A burning permit shall be valid for a maximum of one (1) year, expiring December 31, and shall be issued by the Bureau of Indian Affairs and/or Tribal Forestry and shall constitute authority to burn as described in this section.
- B. Reckless burning is a Class B offense.

7-6-3 Criminal Mischief

- A. A person is guilty of criminal mischief if he:
1. Purposely or knowingly damages or destroys the livestock, domestic animals, or other property of another;
 2. Purposely or knowingly tampers with the property of another and thereby recklessly endangers human life, or recklessly causes substantial interruption or impairment of any public service.
- B. Criminal mischief is a Class B offense.

7-6-4 Burglary

- A. A person is guilty of burglary if he enters or remains unlawfully in a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit an offense therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to a prosecution for burglary that the building or structure was abandoned.

B. Definitions:

1. An "occupied structure" is any structure, vehicle, or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.
2. "Enter" means an intrusion of any part of the body, or intrusion of any physical object under control of the actor.

C. Burglary is a Class A offense.

D. A person may not be convicted of both burglary and the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense if such offense was a Class C offense; he may be convicted of

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both or all of such other offenses that are Class A or B offenses.

7-6-5. Burglary of a Vehicle.

- A. A person is guilty of burglary of a vehicle if he unlawfully enters any vehicle with intent to commit an offense therein.
- B. Burglary of a vehicle is a Class A offense.

7-6-6. Aggravated Trespass.

- A. A person is guilty of aggravated trespass if he enters or remains unlawfully on trust or non-trust property on which he is not otherwise privileged to enter or remain and:
 - 1. Accomplishes such entry by an act of force or violence or the use of key or similar device which provides entry and which device the actor is not authorized or privileged to use for such purpose;
 - 2. Intends to cause or causes annoyance or injury to any person thereon or damage to any property thereon;
 - 3. Intends to commit or commits an offense thereon; or
 - 4. Is reckless as to whether his presence will cause fear for the safety of another.
- B. Aggravated Trespass is a Class B offense.

7-6-7. Simple Trespass.

- A. A person is guilty of simple trespass if, knowing his entry or presence is unlawful, he enters or remains on property, trust or non-trust, as to which notice against entry is given by:
 - 1. Personal communication to the actor by the owner or someone with authority to act for the owner;
 - 2. Fencing or other enclosure obviously designed to exclude intruders; or
 - 3. Posting of signs reasonably likely to come to the attention of intruders.
- B. It is an affirmative defense to simple trespass that:
 - 1. The property was open to the public when the actor entered or remained and he had not been informed that he should leave or not enter; or

2. The actor's conduct did not substantially interfere with the owner's use of the property and the actor left the property when asked to do so.

C. Simple trespass is a Class C offense.

7-6-8. Robbery.

A. A person is guilty of robbery if, in the course of committing a theft, he:

1. Inflicts serious bodily injury upon another;
2. Threatens another with, or purposely puts him in fear of immediate serious bodily injury; or
3. Commits or threatens to commit a Class A or Class B offense.

B. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit a theft or in flight after the attempt or commission of a theft.

C. Robbery is a Class A offense.

7-6-9. Theft and Related Offenses.

A. Consolidation of Theft Offenses; General Provisions:

1. Conduct denominated in this part of the Code constitutes a single offense embracing the separate offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this part of the Code, notwithstanding that a different manner is charged in the complaint, subject only to the power of the Court to ensure a fair trial by granting a continuance or the appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.
2. It is an affirmative defense to prosecution for theft that the actor:
 - a. Acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or
 - b. Obtained or exercised control over the property or service honestly and reasonably believing that the owner if present would have consented.

3. It is no defense that:

- a. The theft was from the actor's spouse, except that misappropriation of household and personal effects or other property normally accessible to both spouses, is theft only if it occurs after the parties have stopped living together; or
- b. The actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe upon.

4. Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.

B. Punishment of Theft Offenses:

1. Theft of property or service as provided in this part shall be punishable as follows:

- a. If the value of the property or services involved is more than \$500.00, the offense shall be a Class A offense;
- b. If the value of the property or services involved is \$100.00 or more but less than \$500.00, the offense shall be a Class B offense; or
- c. If the value of the property or services involved is less than \$100.00, the offense shall be a Class C offense.

2. If no evidence as to the value of the property or services involved is presented and the value of such is not obvious without presentation of such evidence, and if it otherwise is proven that a theft offense has been committed, the offense shall be a Class C offense.

C. Theft of Property:

A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

D. Theft by Deception:

1. A person is guilty of theft if he obtains or exercises unauthorized control over the property of another by deception and with a purpose to deprive him thereof.

2. Deception occurs when a person:

- a. Creates or reinforces a false impression, including false impression as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
 - b. Prevents another from acquiring information which would affect his judgment of a transaction;
 - c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
 - d. Fails to disclose a lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid or is or is not a matter of official record.
3. The term "deceive" does not, however, include matters having no pecuniary significance, or mere puffing or statements unlikely to deceive ordinary persons in the group addressed.

E. Theft by Extortion:

1. A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.
2. Extortion occurs when a person threatens to:
 - a. Inflict bodily injury on anyone or commit any other criminal offense;
 - b. Accuse anyone of a criminal offense;
 - c. Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation;
 - d. Take or withhold action as an official, or cause an official to take or withhold action;
 - e. Bring about or continue a strike, boycott or other

collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act;

f. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

g. Inflict any other harm which would not benefit the actor but which would substantially harm any other person with respect to the person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

3. It is an affirmative defense to prosecution based on subsection (2) that the property obtained by threat of action, exposure, lawsuit or other official action is compensation for property or lawful services.

F. Theft of Property Lost, Mislaid or Delivered by Mistake:

1. A person is guilty of theft if he comes into control or possession of property of another that he knows or reasonably suspects has been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with purpose to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it.

G. Receiving Stolen Property:

1. A person is guilty of theft if he receives, retains or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.

2. The requisite knowledge or belief is presumed in the case of person who:

a. Is found in possession or control of other property stolen on a separate occasion;

b. Has received stolen property in another transaction within the year preceding the transaction charge; or

c. Being a dealer in property of the sort received, acquires it for a consideration which he knows or should know is far below its reasonable value.

3. As used in this section "receives" means acquiring possession, control or title, or lending on the security of the property; "dealer" means a person in the business of buying or selling goods.

H. Theft of Services:

1. A person is guilty of theft if:
 - a. He obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefor; or
 - b. Having control over the disposition of services of others to which he is not entitled, he diverts such services to his own benefit or to the benefit of another not entitled thereto.
2. Where compensation for service is ordinarily paid immediately upon the rendering of such service, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to the intent to pay.
3. "Services" includes, but is not limited to a labor, professional service, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admissions to a place for which a charge for admission is made, the use of vehicles or other moveable or real property.

I. Theft by Failure to make Required Disposition of Funds Received.

1. A person is guilty of theft if he obtains property from anyone, or personal services from an employee, upon agreement, or subject to a known legal obligation to make a specified payment or other disposition to a third person, whether from the property or its proceeds or from his own property in an equivalent amount, and if he deals with the property as his own and fails to make the required payment or disposition.
2. It is no defense that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.
3. An officer or employee of the Tribe, another government, or of a financial institution is presumed:

- a. To know of any legal obligation relevant to his liability under this section; and
- b. To have dealt with the property as his own if he fails to pay or discount upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

7-6-10. Forgery.

- A. A person is guilty of forgery if, he with intent to defraud, falsely signs, executes, or alters any written instrument.
- B. Forgery is a Class B offense.

7-6-11. Unauthorized Use of Vehicle.

- A. A person is guilty of unauthorized use of vehicle if he operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner.
- B. Unauthorized Use of Vehicle is a Class B offense.

Chapter 7. OFFENSES AGAINST PUBLIC ORDER

7-7-1. Violence to a Policeman or Judge.

- A. A person is guilty of violence to a policeman or judge if, he shall willfully or knowingly, by force or violence, render physical abuse to a tribal policeman or a Judge of the Northern Cheyenne Court or to the property of such policeman, judge or Tribal property under the control of the policeman or judge.
- B. Violence to a policeman or judge is a Class A offense.
- C. It is a defense to this offense that the defendant did not know the person was a police officer or a judge or did not know that the property named belonged to a police officer or judge. Such defense does not prevent prosecution for assault or malicious mischief.

7-7-2. Resisting Arrest.

- A. A person is guilty of resisting arrest if he uses force or violence for the purpose of preventing a law enforcement officer from effecting an arrest or detention of himself or of any other person.
- B. Resisting lawful arrest is a Class B offense.

7-7-3. Carrying a Concealed Weapon.

- A. A person is guilty of carrying a concealed weapon if, he shall go about in a public place armed with a dangerous weapon concealed upon his person, unless he has a signed permit by a Judge of the Northern Cheyenne Tribal Court. The weapon so carried may be confiscated by the court.
- B. Carrying a concealed weapon is a Class B offense.

7-7-4. Firing of a Firearms Offense.

- A. A person is guilty of firing of a firearms offense if he:
 - 1. Knowingly or willfully shoots or fires off a gun, pistol or any firearm within the limits of any town, community, village or any private enclosure which contains a dwelling house, or shoots from any vehicle, or shoots across any roadway on the Northern Cheyenne Reservation.
- B. Firing of a firearms offense is a Class B offense.

7-7-5. Breach of the Peace or Disorderly Conduct.

- A. A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:
 - 1. Quarreling, challenging to fight, or fighting;
 - 2. Making loud or unusual noises;
 - 3. Using threatening, profane, or abusive language;
 - 4. Discharging firearms;
 - 5. Rendering vehicular or pedestrian traffic impassable;
 - 6. Rendering the free ingress or egress to public or private place impassable;
 - 7. Disturbing or disrupting any lawful assembly or public meeting;
 - 8. Transmitting a false report or warning of a fire, impending explosion, or other catastrophe in such a place that its occurrence would endanger human life; or
 - 9. Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.
- B. Disorderly conduct is a Class C offense.

7-7-6. Maintaining a Public Nuisance.

- A. A person is guilty of maintaining a public nuisance if, he acts in such a manner or creates a situation which may be adjudicated a general nuisance, or permits his property to fall into a condition as to injure or endanger the safety, health, comfort or property of his neighbors.
- B. Maintaining a public nuisance is a Class C offense.

7-7-7. Refusing to Aid an Officer.

- A. A person is guilty of refusing to aid an officer if, he neglects or refuses, without good cause, when called upon by a tribal police officer or an officer of the Bureau of Indian Affairs, to assist in the arrest of any person charged with or convicted of any offense, or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement.
- B. Refusing to aid an officer is a Class C offense.

7-7-8. Escape.

- A. A person is guilty of escape if that person, being lawfully arrested and in custody, for any offense, escapes, or if he permits or assists, or attempts to permit or assist another person to escape from lawful custody.
- B. Escape is a Class C offense.

7-7-9. Curfew.

- A. Every unmarried person under the age of 18 years shall be subject to curfew regulations throughout the Northern Cheyenne Reservation. From June 1 to September 1, the curfew shall be at 11:00 p.m. and from September 2 to May 31, the curfew shall be at 10:00 p.m. Parents or guardians of children under the age of 18 years are responsible for curfew regulations. Exceptions are permitted if the child is under the immediate supervision of an adult, parent or guardian, during meetings and public gatherings, or is attending authorized school functions or other supervised functions without such supervision.
- B. This is a Class C offense for any person whose children fail to obey curfew regulations.

7-7-10. Sanitation and Public Health.

- A. A person is guilty of a sanitation and public health offense if he violates any rules or regulations enforced by the Department of Public Health, or United States Public Health Service

Division of Indian Health, as adopted by Tribal Council ordinances, or any Indian group, organization, or committee for tribal celebrations or gatherings, or fails to properly dispose of all body wastes, garbage, trash and other waste materials or litter.

- B. The sanitation and public health offense is a Class B offense.
- C. The Judge of the Tribal Court may, in his discretion, take any action deemed necessary under the circumstances to safeguard the health or well-being of any community, family or person.

7-7-11. Cruelty to Animals.

- A. A person is guilty of cruelty to animals if, he shall torture or cruelly mistreat any animal.
- B. Cruelty to animals is a Class C offense.

7-7-12. Desecration of Flags.

- A. Definitions. In this section "flag" means anything which is or purports to be the official flag of the United States, the United States Shield, the United States Coat of Arms and the Northern Cheyenne Reservation Flag.
- B. A person is guilty of desecration of flags if he purposely or knowingly publicly mutilates, defiles, or casts contempt upon the flag as defined in this section.
- C. Desecration of a flag is a Class C offense.

7-7-13. Itinerant Vendors Offense.

- A. A person is guilty of itinerant vendors offense if he fails to pay \$25.00 for a license to do business within the boundaries of the Northern Cheyenne Reservation. An offender shall be fined \$25.00 a day for each day he does business within the boundaries of the Northern Cheyenne Reservation without a license.
- B. The fee shall be deposited in the civil fees account so designated.
- C. The license shall state the following:

_____ is an itinerant vendor and has paid the sum of:
\$ _____ for _____ days to do business within the boundaries of
the Northern Cheyenne Reservation. This license is valid until:
_____, 19____, _____ o'clock ____m.
- D. The license must be accompanied with a receipt and signed by

E. Itinerant vendors offense is a Class B offense.

7-7-14 Littering [Amended by **Ord. 17(90)**]

A. A person is guilty of littering if he:

1. Throws, dumps, or places upon any roadway, upon the land or property of another, or upon Tribal land or property, garbage, junk, trash, debris, refuse, or any substance of any nature whatsoever which mars the appearance or detracts from the cleanliness of an area; or
2. Stores or keeps any unserviceable vehicle, appliance or implement within any town or village, unless he has a permit from the Northern Cheyenne Land Committee to maintain a junkyard.
3. Allows any abandoned building to remain on land he owns or controls within any town or village, unless he has a permit from the Northern Cheyenne Land Committee allowing him to maintain an abandoned building.

B. Littering is a Class B offense.

7-7-15. Putting Refuse on Highway

- A. No person shall throw or deposit upon any highway any glass bottles, glass, nails, tacks, wire, cans, paper or any other substance likely to injure any person, animal or vehicle upon such a highway.
- B. Any person removing a wrecked or damaged vehicle from a highway on the reservation shall remove any glass or injurious substance dropped upon the highway from such vehicle.
- C. Conviction under this section is a Class C offense.

7-7-16. Failure to Heed Police Emergency Lights and Attempting to Elude

- A. A person commits the offense of failure to heed police emergency lights if the operator does not stop for police officers in the performance of their duties.
- B. A person commits the offense of attempting to elude police officer if the operator of a vehicle operates any vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a police officer who is lawfully in pursuit.
- C. Conviction under this section is a Class C offense.

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7-8-1. Bribery in Official Matters.

- A. A person is guilty of bribery in official matters if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
 - 1. Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal or governmental officer or employee, or as an official of a party or faction or as a voter;
 - 2. Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or
 - 3. Any benefit as consideration for a violation of a known duty as a Tribal or governmental officer or employee or party official.
- B. It is not a defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.
- C. Bribery in official matters is a Class B offense.

7-8-2. Retaliation for Past Official Action.

- A. A person is guilty of retaliation for past official action if he harms any person by any unlawful act in retaliation for anything done lawfully by another person in his capacity as a public servant.
- B. Retaliation for past official action is a Class B offense.

7-8-3. Official Misconduct.

- A. A person is guilty of official misconduct if:
 - 1. Being a public servant, and with intent to benefit himself or another person or harm another person, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a nondiscretionary duty imposed on him by law or clearly inherent in the nature of his office; or
 - 2. Being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public

servant, which information has not been made public, he:

- a. Acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or
- b. Speculates or wagers on the basis of such action or information; or knowingly aids another to do any of the foregoing.

B. Official misconduct is a Class B offense.

7-8-4. Falsification in Official Matters.

A. Perjury:

1. A person is guilty of perjury if, in judicial proceedings in any Court of the Northern Cheyenne Reservation, he falsely swears or interprets, or makes a sworn statement or affidavit, knowing the same to be untrue.
2. Perjury is a Class A offense.

B. Tampering with Witnesses:

1. A person is guilty of tampering with witnesses if:
 - a. Believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:
 - (1) Testify or inform falsely;
 - (2) Withhold any testimony, information, document or thing;
 - (3) Avoid legal process summoning him to testify or supply evidence; or
 - (4) Absent himself from any proceeding or investigation to which he has been legally summoned;
 - b. He harms another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or
 - c. He solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in this section.

2. Tampering with a witness is a Class A offense.

C. Tampering with Evidence:

1. A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:
 - a. Alters, destroys, conceals or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or
 - b. Makes, presents or uses any record, document, or thing knowing it to be false and with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.
2. Tampering with evidence is a Class B offense.

D. Welfare Offense:

1. A person is guilty of a welfare offense if he:
 - a. Gives false information to another for the purpose of obtaining or retaining welfare benefits;
 - b. Knowingly fails to correct misinformation which enables him to obtain or retain welfare benefits;
 - c. Continues to accept and use for his own benefit or the benefit of another, welfare benefits to which he knows he is not entitled to;
 - d. Uses or expends money or commodities granted him as a welfare benefit in an improper manner or in a manner which does not proportionately benefit each of those persons intended to benefit by the grant; or
 - e. He knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto.
2. Welfare offense is a Class B offense.

Chapter 9. DRUG AND ALCOHOL RELATED OFFENSES

7-9-1. Abuse of Psychotoxic Solvents.

- A. A person is guilty of abuse of psychotoxic solvents if:
 1. For the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or for dulling of his brain or nervous system, he purposely:

- a. Smells or inhales the fumes of any psychotoxic chemical solvent; or
 - b. Possesses, purchases, or attempts to possess or purchase any psychotoxic chemical solvent for the purpose described in subsection (1) of this section; or
2. Knowingly or believing that the purchaser or another intends to use a psychotoxic chemical solvent in violation of this section, he sells or offers to sell any psychotoxic chemical solvent.
- B. This section shall not apply to the inhalation of anesthesia for medical or dental purposes.
- C. As used in this section, "psychotoxic chemical solvents" include any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ether, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.
- D. Abuse of psychotoxic chemical solvents is a Class C offense.

7-9-2. Drug Abuse.

- A. A person is guilty of drug abuse if he:
1. Possesses, sells, trades, transports, gives away or manufactures an article or substance which contains any quantity of a substance classified as belonging in Schedule I of the Federal Controlled Substances Act, except peyote in the Native American Church; or
 2. Sells, barter, plants, cultivates, produces, gives away, or possesses marijuana; or
 3. Violates any provision of the Federal Controlled Substance Act.

B. "Marijuana" includes all parts of the plant cannabis sativa L., whether growing or not; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plants, fiber produced from such stalks, oil or cake made from the seeds of such plant, or any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake except the resin extracted therefrom.

C. Drug Abuse is a Class A offense.

7-9-3. Possession of Liquor.

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly possesses, or transports any beer, ale, wine, whiskey or any other beverage which produces alcoholic intoxication, and such alcoholic beverage is intended for his or her personal use.

B. Rehabilitation. At the discretion of the court, any person found guilty of violating this section, and found to be addicted to alcohol, may be ordered to receive rehabilitative treatment.

C. Possession of liquor is is a Class C offense.

7-9-4. Manufacture or Delivery of Liquor.

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly manufactures, delivers, or possesses, with intent to deliver, any beer, ale, wine, whiskey, or any other beverage which produces alcoholic intoxication.

B. Deliver or delivery means the actual or constructive transfer of possession of any alcoholic beverage as described above, with or without consideration, whether or not there is an agency relationship.

C. Presumption. The possession of 12 or more bottles of beverages with an alcohol content of 10% or greater, or the possession of 24 or more bottles or cans of beverages with an alcohol content of less than 10% shall give rise to the rebuttable presumption that the person possessed such quantity of alcoholic beverages intending to deliver the same.

D. Manufacture or delivery of liquor is a Class A offense.

7-9-5. Exceptions.

Sections 7-9-3 and 7-9-4 do not apply to intoxicating liquor being transported through the Northern Cheyenne Jurisdiction

7-9-6. Intoxication [Added by **Ord. 11(88)**]

- A. A person who is found under the influence of intoxicating liquor within the exterior boundaries of the Northern Cheyenne Reservation shall be charged with a violation of this section.
- B. Intoxication is a Class C offense, but the maximum fine for any intoxication conviction is \$20.00. The bond shall also be set at \$20.00. [As amended by **Ord. 84(89)**]

Chapter 10. LIVESTOCK OFFENSES

7-10-1. Livestock Offenses

- A. A person is guilty of a livestock offense if he commits any of the following offenses:
 - 1. Knowingly or negligently permits his livestock to graze or trespass on the property or permit of another or of the Tribe its... without the permission to do so;
 - 2. Knowingly or negligently refuses to sell, dispose of, or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock;
 - 3. Knowingly or negligently fails to treat or dispose of a sick animal where there is a substantial danger of infecting other livestock;
 - 4. Fails to dip, inoculate or otherwise treat livestock in the manner which the Northern Cheyenne Tribal Council or its designated representative shall direct;
 - 5. Makes a false report of livestock owned; or
 - 6. Purposely obstructs or interferes with a livestock roundup.
- B. Livestock found to be in violation of this section may be impounded at the time an arrest is made, and may be impounded without prior notice to the owner if a Court so orders, upon receipt of evidence that such animals are grazing upon the property or permit of another on the Reservation and that immediate action is necessary to protect such interests from harm. Impounded animals for trespass shall be assessed at \$1.00 per head for damages per day and at \$1.00 per head per day for forage consumed by said impounded animals, the charges being payable to the entity whose forage was consumed. Where animals are impounded with or without ownership known and are not claimed or the owner refuses to pay the impoundment and

trespass assessments within ten (10) days of the impoundment, the Northern Cheyenne Court shall arrange for transportation to and sale of the animals at a public livestock market. The costs of the roundup, impoundment and sale will be immediately deducted and paid from the receipts of the sale of the animals. The owner of the animals who has refused to pay the charges against the animals will be delivered the balance remaining from the sale of the impounded animals [*cont'd on p. VII-42*]

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less costs and charges. All unbranded animals that are sold and the money taken in will be returned to the Tribal Council treasurer.

C. Livestock offenses are a Class A Offense.

7-10-2. Barrier Offense.

A. It shall be unlawful for any person to cut, move, alter or destroy a barrier, fence, boundary marker, gate or other divisional marker without prior consent of the owner. Any person violating this section will be required to pay and make restitution for all damages done the owner by way of the fence or barrier or marker being destroyed and may be fined and/or jailed as is herein provided.

B. Barrier offenses are Class B offenses.

7-10-3. Gate Offense.

A. A person is guilty of gate offense if he opens and does not close any previously closed gate which crosses any roadway.

B. Gate offense is a Class C offense.

7-10-4. Misbranding.

A. A person is to be charged with misbranding if he purposely, knowingly or negligently brands or alters any brand or mark on any livestock belonging to another person.

B. Misbranding is a Class A offense.

7-10-5. Buffalo and Elk Herd Offense.

A. A person is guilty of a Buffalo or Elk Herd offense if he unlawfully kills, harasses, disturbs, or chases buffalo or elk owned by the Northern Cheyenne Tribe for any purpose or for any reason not connected with official and proper Tribal Council sanctioned management and control.

B. Buffalo or Elk Herd offense is a Class A offense.

7-10-6. Hunting or Fishing by Using Artificial Light.

A. A person is guilty of hunting or fishing by using artificial light if he hunts, takes, pursues, shoots, kills or harasses any game animal or animals or game bird or birds or fish by the aid or use of artificial lights such as automobile lights, spotlights or any other type of lighting apparatus or device.

B. Hunting or fishing by using artificial light is a Class B offense.

Chapter 11. TRAFFIC OFFENSES

7-11-1. GENERAL PROVISIONS

7-11-1-1. Purpose.

The purpose of the Northern Cheyenne Traffic Code is to implement safeguards for persons living within and passing through the Northern Cheyenne Reservation while driving any motorized vehicle. The code will give authority and responsibility to the Northern Cheyenne Police Department and other law enforcement agencies recognized by the Northern Cheyenne Tribe and Reservation to enforce the Northern Cheyenne Traffic Code.

7-11-2-2. Definitions.

- 1) Motor vehicle shall mean every vehicle propelled by its own power and designed primarily to transport persons or property upon Federal, State and Tribal highways.
- 2) Tribe shall mean the Northern Cheyenne Tribe.
- 3) Motorcycle shall mean a motor vehicle having not more than three wheels in contact with the ground. The term does not include a tractor or a bicycle.
- 4) Bicycle shall mean every device propelled by human power having two tandem wheels upon which any person may ride and which shall not be considered a motorized vehicle.
- 5) Truck shall mean every motor vehicle designed, used or maintained primarily for the transportation of property.
- 6) Road tractor shall mean every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any thereon either independently or any part of the weight of a vehicle or load so drawn.
- 7) Pole trailer means every vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach pole or by being boomed or otherwise secured to the towing vehicle.
- 8) Bus shall mean every motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons.
- 9) School bus shall mean every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.
- 10) Police vehicle shall mean any vehicle used in the service of the

Northern Cheyenne Police Department or any law enforcement agency.

- 11) Authorized emergency vehicle shall mean emergency service vehicles of the Northern Cheyenne Reservation or of the state, county or municipal agencies.
- 12) Highways shall mean the entire width between the boundary lines of every publicly-maintained way when any part thereof is open to the use of the public for the purpose of vehicular travel.
- 13) Street shall mean the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel.
- 14) Intersection shall mean the area embraced within the prolongation or connection of the lateral curb lines or if non-curbed then the lateral boundary lines of the roadways of two highways which join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty (30) feet or more apart, then crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty (30) feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.
- 15) Chief of Police shall mean the Chief of Police for the Northern Cheyenne Police Department.
- 16) Police Officer shall mean every officer of the Northern Cheyenne Police Department or police officers authorized by the Northern Cheyenne Tribe to direct or regulate traffic or to make arrests for violations of traffic regulations.
- 17) Highway Patrolman shall mean every state officer authorized to direct or regulate traffic on state highways or to make arrests for violation of traffic violations on state highways that are so maintained by the state of Montana.
- 18) Local authorities shall mean the Northern Cheyenne Tribal Council which has the authority to enact laws relating to traffic under the constitution and laws of the Northern Cheyenne Tribe but not contrary to federal law.
- 19) Pedestrian shall mean every person or any person afoot.
- 20) Driver shall mean every person who drives or is in actual physical control of a vehicle.
- 21) Owner shall mean the person who holds the legal title to a vehicle.

- 22) Operator shall mean a person who is in actual physical control of a motor vehicle.
- 23) Traffic means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using any highways for purposes of travel.
- 24) Traffic-control signal means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.
- 25) Official traffic control devices shall mean all signs, signals, markings and devices not inconsistent with this title, placed or erected by the authority of the Northern Cheyenne Tribal Council or official having jurisdiction, for the purposes of regulating, warning or guiding traffic.
- 26) Safety zone shall mean the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all time while set apart as a safety zone.
- 27) Stop means complete cessation from movement when required.
- 28) Right-of-way shall mean the privilege of the immediate use of the roadway.
- 29) Suspension shall mean that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of such suspension.
- 30) Registration shall mean a registration certificate or certificates and registration plates issued under the laws of the State of Montana pertaining to the registration of motor-vehicles.
- 31) Certificate of ownership shall mean the certificate issued by the division of motor vehicles of the State of Montana to the transferee upon a transfer of ownership of a motor vehicle.

7-11-2. POWERS OF LOCAL AUTHORITIES

7-11-2-1. Powers of Local Authorities to Regulate Traffic.

The local authorities have the following traffic regulation powers:

- 1) Regulating the standing or parking of vehicles.
- 2) Regulating the traffic by means of police officers or traffic-control devices.

- 3) Regulating or prohibiting processions or assemblages on the highways.
- 4) Designating particular highways as one-way highways and requiring that all vehicles thereon move in one specific direction.
- 5) Regulating the speed of vehicles in public parks.
- 6) Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same, designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections.
- 7) Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee.
- 8) Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections.
- 9) Altering the speed limits not contrary to Federal law.
- 10) Regulating the driving of vehicles by any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle within the limits of any town or community or highway within the boundaries of the Northern Cheyenne Reservation.
- 11) Regulating or prohibiting any person who is under the influence of intoxicating liquor from driving or being in actual physical control of any vehicle within the limits of any town or community or highway within the boundaries of the Northern Cheyenne Reservation.
- 12) Regulating or prohibiting the driving of vehicles by any person in willful or wanton disregard for the safety of persons or property within the limits of any town or community or highway within the boundaries of the Northern Cheyenne Reservation.
- 13) Enacting as ordinances any and all other provisions or laws regulating traffic, pedestrians, vehicles, and operators thereof, not in conflict with Federal regulations and to enforce the same within their jurisdiction.

7-11-3. ENFORCEMENT BY THE NORTHERN CHEYENNE POLICE
DEPARTMENT AND OTHERS AUTHORIZED BY THE
NORTHERN CHEYENNE TRIBAL COUNCIL

7-11-3-1. Enforcement.

The Northern Cheyenne Police Department shall enforce the Northern

Cheyenne Traffic Code. The Northern Cheyenne Tribal Council may also authorize other law enforcement agencies, at its discretion, enforcement of these ordinances.

7-11-3-2. Training of Police Officers.

The Northern Cheyenne Police Department shall provide such training as required to qualify those officers to competently perform their duties under this code and shall adopt such rules as required and necessary for qualification. The officers shall not make arrests until they have successfully completed such training as required by the Northern Cheyenne Police Department.

7-11-3-3. Official Attire Required for Making Arrests.

Qualified officers may make arrests throughout the Northern Cheyenne Reservation only when dressed in official uniform and displaying the official badge authorized by the Northern Cheyenne Police Department. Authorized officers may not carry firearms unless officially attired.

7-11-3-4. Identification Badge and Uniform

Officers of the Northern Cheyenne Police Department engaged in the enforcement of the civil code shall wear and prominently display an identification badge. The department may authorize the uniform dress for officers engaged in such enforcement.

7-11-3-5. Power to Inspect Vehicle Registration, Receipts and Other Documents.

Officers may, when officially dressed, make reasonable inspection of vehicle registration receipts and other documents required to be carried in or for a vehicle traveling on the public highways of Montana through the Northern Cheyenne Reservation and other highways on the Northern Cheyenne Reservation.

7-11-3-6. Cooperation with Other Agencies.

The Northern Cheyenne Police Department shall when at all possible cooperate with other law enforcement agencies.

7-11-3-7. Duty Upon Making an Arrest - Power to Fix and Accept Bail

Officers making an arrest, shall deliver to the offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to appear before the Northern Cheyenne Court. The bonded officer may accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the notice. If the officer accepts bail, he shall give a signed receipt to the offender setting forth the amount received. The officer shall deliver the bail money to the Police Department for deposit into an appropriate account. The bail/bond

monies shall be counted after each officer shift for justification. After filing of the complaint, and appearance of the defendant, the Judge of the Court shall assume jurisdiction and may set further appearance bond.

7-11-4. REMOVAL AND SALE OF ABANDONED VEHICLES

7-11-4-1. Taking Vehicle into Custody.

- A. The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of forty-eight (48) hours or more on a highway within the Northern Cheyenne Reservation, or for a period of five (5) days or more on any town or community street on the Reservation or on private property or the Northern Cheyenne Tribal property:
 1. The Northern Cheyenne Police Department if the vehicle is upon the right-of-way of any public highway or Reservation maintained highway or roadway.
 2. Other law enforcement agencies recognized by the Northern Cheyenne Tribal Council.
- B. The Northern Cheyenne Police Department or other law enforcement agency recognized by the Tribal Council may use its own equipment or personnel approved by the Chief of Police and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for those purposes. The cost is to be made up by the registered owner before release of such vehicle or the vehicle may be sold at a sale so designated by the Chief of Police.
- C. At the request of the owner in lawful possession or control of the private property, the Chief of Police may remove the vehicle and hold it. The vehicle is not to be released until storage costs are paid at the rate of \$2.00 per day plus any other charges against it.

7-11-4-2. Notice to Owner.

- A. The Chief of Police shall secure a complete description of the vehicle to include: year, make, model, serial number and license number if available, any costs incurred to that date in the removal, preservation and the custody of the vehicle and any available information concerning its ownership.
- B. The Chief of Police shall make reasonable efforts to ascertain the name and address of the owner and lienholder, if any, or person entitled to possession, to notify them of the location of the vehicle.
- C. If the vehicle is registered in the office of the division of

motor vehicles of the State of Montana, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the division of motor vehicles of the State of Montana, return receipt requested and postage prepaid thereon, is mailed at least thirty (30) days before the vehicle is sold as hereinafter provided.

- D. If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements prescribed for notice by certified or registered mail.

7-11-4-3. Reclaiming Vehicle.

The owner, lienholder or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the Chief of Police satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation and custody of the vehicle. He shall not be required to pay storage charges for a period longer than ninety (90) days.

7-11-4-4. Sale of Vehicle not Reclaimed.

- A. If a vehicle is not reclaimed within 30 days after notification by registered or certified mail or prescribed publication, the Chief of Police shall sell it at public auction.
- B. After any vehicle has been sold, the former owner or person entitled to possession has no further claim, right, title or interest in or to the vehicle.

7-11-4-5. Certificate of Sale.

- A. When any vehicle has been sold, the Chief of Police at the time of the payment of the purchase price shall execute a certificate of sale in duplicate. He shall deliver the original certificate to the purchaser and retain the copy.
- B. The certificate shall contain the name and address of the purchaser, the date of the sale, the consideration paid, and a stipulation that no warranty is made as to the condition or title of the vehicle.

7-11-4-6. Certificate of Ownership.

It shall be up to the purchaser of the vehicle so bought to file with the

Division of Motor Vehicles of the State of Montana for issuance of a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of fees required by the Division of Motor Vehicles, State of Montana.

7-11-4-7. Transmitting Return of Sale and Balance of Proceeds.

- A. When any vehicle is sold as provided in 10-4-4 the Chief of Police shall transmit to the Northern Cheyenne Tribal Council Treasurer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.
- B. With the return of the sale, the Chief of Police shall transmit to the Northern Cheyenne Tribal Council Treasurer the balance of the proceeds of the sale after deducting the costs of the custody of the vehicle.
- C. Upon receipt of the return of sale and such balance the Northern Cheyenne Tribal Council Treasurer shall file the return in his office and deposit the balance in the police budget.

7-11-4-8. Penalty.

Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$25.00 or more than \$300.00 or by imprisonment for not less than 5 days or more than 90 days or by both fine and imprisonment.

7-11-5. JURISDICTION OF MINORS

7-11-5-1. Unlawful Operation by Minor - Jurisdiction of Court
- Penalties.

- A. The Northern Cheyenne Court shall have original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of 18 years.
- B. Whenever, after a hearing before the court, it shall be found that a child under the age of 18 years has unlawfully operated a motor vehicle, the court may:
 - 1. Impose a fine, not to exceed \$50.00 provided such child shall not be imprisoned;
 - 2. Revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court; and

3. Order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding 60 days, as shall be fixed by the court. However, if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded.

C. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

7-11-5-2. Summons - Issuing to Minor

Whenever any child under the age of 18 years of age unlawfully operates a motor vehicle in the presence of a police officer, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to appear before the Northern Cheyenne Court and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the Judge.

7-11-5-3. Penalties.

Whenever the court shall be informed that a child has unlawfully operated a motor vehicle said child shall be required to appear before the Court and the Court shall, after hearing and investigation, take action as provided in this Code, or may dismiss the proceeding if it be found and determined that it is for the best interest of the child to do so.

7-11-6. DISPOSITION OF FINES

7-11-6-1. Northern Cheyenne Police Department-Disposition of Fines and Forfeitures.

A. All fines and forfeitures collected in the Court from persons apprehended or arrested by police officers for violations of the laws and regulations relating to the use of State and Tribal highways on the Northern Cheyenne Reservation and the operation of vehicles thereon must be deposited in the appropriate account. A separate account shall be established for traffic fines and forfeitures.

B. At the time of payment of any such fine or forfeitures, there shall be filed with the Clerk of the Court and the Northern

Cheyenne Tribal Council Treasurer, a complete statement showing the total of the fines and forfeitures received or incurred, which statement shall give the title of the Court and cause and be subscribed to by the person or officer making the payments.

- C. Traffic fines and forfeitures shall be used in the purchase of docket books, printing of citation books for officers, receipt books and the maintenance of police vehicles (gas, vehicle repairs, tune-ups, oil change).

7-11-6-2. Disposition of Traffic Fines Collected from Juveniles

All fines collected by the Court from persons under the age of eighteen (18) years of age as a result of traffic summonses for unlawful operation of motor vehicles issued by the Police Department shall be deposited in a separate account.

- A. Juvenile fines collected shall be used in part for mileage for the prosecutors and probation officers.
- B. Juvenile fines collected shall be used for printing for the police department and the Court.

[Secs. 7-11-7, -8, -9 repealed by **Ord. 7(89)**. Therefore, no p. VII-53.]

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7-11-10-1. Accident Involving Damage to Vehicle

- A. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to and in every event shall remain at the scene of such accident. Every stop shall be made without obstructing traffic more than is necessary.
- B. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor and shall be punished by a fine upon conviction of \$20.00.

7-11-10-2. Duty to Give Information and Render Aid

- A. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and the registration number of the vehicle he is driving and upon request and if available exhibit his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such persons to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary if such carrying is requested by the injured person.
- B. Any person failing to stop or comply with said requirements under such circumstances may be fined \$20.00.

7-11-10-3. Accidents Involving Death or Personal Injuries

- A. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements above. Every such stop shall be made without [cont'd on p. VII-55]

obstructing traffic more than is necessary.

- B. Any person failing to stop or to comply with said requirements under such circumstances may be imprisoned for not less than 30 days or more than 6 months or by a fine of not less than \$100.00 or more than \$500.00 or both.

7-11-10-4. Accident Reports to the Police.

- A. The persons involved in an accident shall report such accident or accidents to the Northern Cheyenne Police or other law enforcement agencies having such jurisdiction on the Northern Cheyenne Reservation.
- B. A person failing to report as required above may be fined in an amount up to \$50.00 dollars or imprisoned for a period not to exceed ninety (90) days or both.

7-11-10-5. Leaving the Scene of an Accident.

Any person involved in an accident or who witnessed an accident and who leaves such accident without reporting the said accident to the police may be fined not less than \$300.00 or imprisoned for a period of not less than ninety (90) days or both.

7-11-11. ENFORCEMENT - PENALTIES

7-11-11-1. Charging Violations.

In every charge of a violation of any speed regulation the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven and the speed applicable within the district or at the location.

7-11-11-2. Use of Radar - Evidence Admissible.

The speed of any motor vehicle may be measured by the use of radio microwaves or other electrical device. The results of such measurements shall be accepted as evidence of the speed of such motor vehicle in tribal court or other legal proceedings where the speed of the motor vehicle is at issue.

7-11-11-3. Arrest Without a Warrant in Radar Cases.

- A. The driver of any such motor vehicle may be arrested without a warrant under this section provided the arresting officer is in uniform or displays his badge of authority and has either:
 - 1. Observed the recording of the speed of the vehicle by radio microwaves or other electrical device; or

2. Received, from the officer who has observed the speed of the vehicle recorded by the radio microwaves or other electrical device, a radio message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded.

B. The arrest without warrant of any such driver must be made immediately after such observation or radio message and as a result of uninterrupted pursuit.

7-11-11-4. Erection of Signs

A. No operator of a motor vehicle may be arrested under speeding regulations unless signs have been placed at a conspicuous place upon a highway or street or townsite or community within the boundaries of the Northern Cheyenne Reservation.

B. The Northern Cheyenne Police Department shall erect and maintain appropriate signs giving such notice of such use.

7-11-11-5. Officers or Highway Patrolmen Authorized to Remove Illegally Stopped Vehicles

Whenever any police officer or highway patrolman finds a vehicle standing upon a highway in violation of any of the traffic laws of the Northern Cheyenne Tribal Council, such officer or highway patrolman is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same to a position off the paved or main-traveled part of such highway.

7-11-11-6. Injury to or Removal of Sign Marker, a Misdemeanor-Penalty

A. No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or signal or any inscription, shield or signals thereon or any part thereof.

B. Violation of this section is a Class C offense.

7-11-11-7. Speeding [Amended by Ord. 7(91)]

A. Any person who purposely, or negligently drives any car, truck or pickup within any town or village at a speed greater than 25 m.p.h., or who drives at a speed in excess of the speed limit posted at any particular location, or who drives upon any public roadway or highway at a speed greater than 65 m.p.h., shall be prosecuted for speeding. The Police shall post all needed speed limit signs. Notice that radar is being used shall be posted where appropriate.

- B. Starting one day before the Annual July 4th Pow-wow and ending the day after the Pow-wow of each year, a 35 m.p.h. speed limit shall be vigorously enforced by the Northern Cheyenne Police Department on the paved road between Lame Deer and the Northern Cheyenne Pow-wow complex. Violators of this speed limit will be issued a warning for their first violation and shall be fined \$5.00 for each violation thereafter.
- C. A citation procedure shall be utilized by the Police Department so each person who is stopped has the option to pay a bond at the time the Police stop is initially made or they may elect to go to court and appear before the reservation Judge to await a hearing on the speeding violation. The Police will install 35 m.p.h. signs before this Ordinance is to be used by the Police Department.
- D. Speeding is a Class C offense.

7-11-11-8. Driving While Intoxicated [*Amended by Ord. 34(89)*]

A person will be charged with a violation of this section if while driving or in physical control of any motorized vehicle, the person is under the influence of liquor. Any person arrested for this offense shall be given an opportunity to have his breath analyzed with a Breathalyzer. The concentration of alcohol as shown by the Breathalyzer shall give rise to the following presumptions:

- A. If there was at the time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.
- B. If there was at the time an alcohol concentration in excess of 0.05 or less than 0.10, that fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining guilt or innocence.
- C. If there was at the time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence of alcohol.
- D. Any person who refuses to take the Breathalyzer shall not be forced to do so, but if refused it shall be taken as a presumption of guilt. Driving while intoxicated is a Class A offense. It is a bondable offense and the bond cannot be forfeited. Any person prosecuted under this section must answer and appear in Court and shall be required to attend and complete a driving while intoxicated Court mandated school, to be taken on the Northern Cheyenne Reservation, the costs of the Court school to be paid by the person who is sentenced to attend the DUI school.

7-11-11-9. Reckless Driving

- A. A person is guilty of a reckless driving offense if he:

1. Drives any motorized vehicle in a knowing, willful or wanton disregard for his safety or the safety of others or property; or

B. Reckless driving is a Class B offense.

7-11-11-10. Failure to Yield to an Emergency Vehicle

A. Upon the immediate approach of an authorized emergency vehicle making an audible or visual signal, the driver of every other vehicle shall immediately yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway or roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a Northern Cheyenne Police Officer. For the purposes of this subsection, the term "authorized emergency vehicle" shall mean vehicles of any fire department, the Northern Cheyenne Police Department and such ambulances and other emergency vehicle designated or authorized as such.

B. All persons in operational control of a motor vehicle upon a highway or roadway shall comply with any lawful order of a Northern Cheyenne Police Officer to bring his motor vehicle to a stop, to drive to the edge or curb or the highway or roadway, or to otherwise alter or control the movement or position of his motor vehicle.

C. Any person convicted of willfully failing or refusing to comply

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with any provision of this ordinance shall be guilty of a Class B offense.

7-11-11-11. Passing School Buses [*As amended by* **Ord. 34(89)**]

Any motorized vehicle which passes any school bus with its flashing red lights and stop sign extended and which is either loading or unloading school children shall be confiscated and impounded by the Police department and that vehicle shall not be released until the owner of that vehicle pays all towing charges and a fine of not less than \$200.00 but not more than \$1,000.00 and serves a jail term not to exceed six (6) months.

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TITLE VIII

DOMESTIC RELATIONS CODE

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TITLE VIII

DOMESTIC RELATIONS CODE

Chapter 1. MARRIAGE

8-1-1 Short Title

This Code may be cited as the Northern Cheyenne Uniform Marriage and Divorce Act.

8-1-2 Purpose

This act shall be liberally construed and applied to promote its underlying purposes, which are to:

- A. Provide adequate procedures for the solemnization or declaration and registration of marriage;
- B. Strengthen and preserve the integrity of marriage and safeguard family relationships;
- C. Promote the amicable settlement of disputes that have arisen between parties to a marriage;
- D. Mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;
- E. Make reasonable provision for spouses and minor children during and after litigation; and
- F. Make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

8-1-3 Application of the Northern Cheyenne Code of Civil Procedure

- A. The Northern Cheyenne Code of Civil Procedure applies to all proceedings under this Code unless otherwise provided in this Code.
- B. A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In Re The Marriage of _____ and _____." A custody or support proceeding shall be entitled "In Re The Custody or Support of _____."
- C. The initial pleading in all proceedings under this Code shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in

other matters under this Code shall be denominated as provided in the Civil Procedure Code.

8-1-4 Uniformity of Application and Construction

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among those reservations and states which enact it.

8-1-5 Formalities

Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage license, solemnized or declared and registered as provided in this act is valid in the Northern Cheyenne Reservation. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of the Northern Cheyenne Reservation.

8-1-6 Form of Application, License, Certificate, and Consent [As amended by Ord. DOI 3(98)]

A. The Trial Court (hereinafter "Court") of the Northern Cheyenne Court shall prescribe the form for an application for a marriage license, which shall include the following information:

1. Name, sex, address, date and place of birth of each party to the proposed marriage;
2. If either party has previously married, his name and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;
3. Name and address of the parents or guardian of each party;
4. Whether the parties are related to each other, if so, their relationship;
5. Name and date of birth of any child, of whom both parties are parents, born prior to the making of the application unless their parental rights and the parent and child relationship with respect to the child have been terminated.
6. Each applicant must provide a medical certificate from a qualified physician who is licensed to practice medicine or any other person authorized by law to make such a medical certificate, which certificate shall state that the applicant has been given such an examination, including a standard serological test, which shall consist of a test for rubella immunity and syphilis, made not more than twenty (20) days before the date of issuance of the license; and

that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

- B. The Court shall provide the forms for the marriage license, the marriage certificate, and the consent to marriage, or the declaration of marriage.

8-1-7 License to Marry [As amended by Ord. DOI 3(98)]

When a marriage application has been completed and signed by both parties to a prospective marriage, and at least one (1) party has appeared before the Court Clerk, the Clerk shall issue a license to marry.

8-1-8 Effective Date of License

A license to marry becomes effective throughout the Northern Cheyenne Reservation three (3) days after the date of issuance, unless the Court orders that the license is effective when issued, and expires one hundred eighty (180) days after it becomes effective.

8-1-9 Judicial Approval

- A. Any person eighteen (18) years or older is eligible to apply for a license to marry. In addition, the Court may order the Court Clerk to issue a marriage license and a marriage certificate form to a party aged sixteen (16) or seventeen (17) years who has no parent capable of consenting to his marriage or has the consent of both parents, or of the parent having the actual care, custody, and control, or of his guardian. The Court may require both parties to participate in a reasonable period of marriage counseling with a designated person as a condition of the order for issuance of marriage license and a marriage certificate form. [As amended by Ord. DOI 3(98)]
- B. A marriage license and a marriage certificate form may be issued under this section only if the Court finds that the underaged party is capable of assuming the responsibilities of marriage and that marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.
- C. The Court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

8-1-10 Solemnization and Registration

- A. A marriage may be solemnized by a Judge of the Northern Cheyenne Court, by a public official whose powers include [cont'd on p. VIII-7]

solemnization, by a Justice of the Peace, or in accordance with any mode of solemnization recognized by any religious denomination, Reservation government or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the Clerk of Court.

- B. If a party to the marriage is unable to be present at the solemnization he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the Court for an order permitting the marriage to be solemnized by proxy.
- C. Upon receipt of the marriage certificate, the Clerk of Court shall register the marriage.
- D. The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it if either party to the marriage believed him to be so qualified. No particular form of solemnization is required so long as both parties declare in the presence of the person solemnizing the marriage that they take each other as husband and wife.

8-1-11 Existing Marriages

- A. All marriages performed other than as provided for in this Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Northern Cheyenne Reservation.
- B. All marriages performed on the Reservation prior to the effective date of this Code, including those perfected according to Reservation custom, are valid for all purposes under this code.

8-1-12 Declaration of Marriage without Solemnization

- A. A person desiring to consummate a marriage by written declaration without the solemnization provided for in 8-1-10 must, prior to executing the declaration, meet all other provisions of the Northern Cheyenne Domestic Relations Code, and a certificate attesting to this shall be attached to the declaration and shall be filed by the Clerk of Court when the contract is executed on the Northern Cheyenne Reservation. A declaration of marriage must contain the following:
 - 1. The names, ages, and residence of the parties;

2. The fact of marriage;
 3. The name of the father and maiden name of the mother of both parties and addresses of each;
 4. A statement that both parties are legally competent to enter into the marriage contract.
- B. The declaration must be signed by the parties and attested by at least two witnesses and formally acknowledged before a Judge of the Northern Cheyenne Court. [As amended by **Ord. DOI 3(98)**]

8-1-13 Declaration — Acknowledged and Recorded [As amended by Ord. DOI 3(98)]

The written declaration of marriage shall be filed by the Court Clerk and shall serve and be processed as an official record of the marriage of the parties so long as all pertinent provisions of this Code are met.

8-1-14 Validity of Common Law Marriage

Common law marriages are not invalidated by this Code.

8-1-15 Prohibited Marriages

- A. The following marriages are prohibited:
1. A marriage entered into prior to the dissolution of an earlier marriage of one or more of the parties.
 2. Marriages between parents and children, between brothers and sisters of the one-half as well as the whole blood, and between uncles and nieces, or aunts and nephews, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.
 3. All marriages between first cousins.
- B. Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.
- C. Children born of a prohibited marriage are legitimate.

8-1-16 Declaration of Invalidity

- A. The Court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:
1. A party lacked capacity to consent to marriage because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a [cont'd on p. VIII-9]

marriage by force or duress, or by fraud involving the essentials of marriage;

2. A party lacked the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was entered into, the other party did not know of the incapacity;
 3. A party was under the age of sixteen (16) or was age sixteen (16) or seventeen (17) and did not have the consent of his parents or guardian or judicial approval; or
 4. The marriage is prohibited.
- B. A declaration of invalidity may be sought by either party, the legal spouse in case of a bigamous marriage, the Tribal Prosecutor, or a child of either party, at any time prior to the death of one of the parties. [As amended by Ord. DOI 3(98)]
- C. Children born of a marriage declared invalid are legitimate.
- D. In no event may a declaration of invalidity be sought after the death of either party to the marriage.
- E. A marriage declared invalid under this Code shall be found invalid as of the date of the marriage, except the Court may determine that a nonretroactive decree better serves the interest of all of the parties under the circumstances. The provisions of the Code relating to property disposition, maintenance, support and child custody on dissolution of marriage are applicable to decrees of invalidity.

8-1-17 Putative Spouse

Any person who has cohabited with another to whom he is not legally married and had a good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he was not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse. If there is a legal spouse or other putative spouse the Court shall apportion property, maintenance, and support rights among the parties as appropriate under the circumstances.

Chapter 2. DISSOLUTION OF MARRIAGE, SEPARATION, DISPOSITION OF PROPERTY, CHILD SUPPORT, MAINTENANCE

8-2-1 Dissolution of Marriage — Separation

- A. The Court shall enter a decree of dissolution of marriage when:
1. The Court determines that one of the parties, at the time the action is commenced, has been domiciled within the

Northern Cheyenne Reservation for 90 days;

2. The Court finds that the marriage is irretrievably broken, and these findings are supported by evidence; and
 3. The Court has made determinations concerning child custody and support, maintenance of either spouse, and disposition of property, or set a date for a separate hearing to complete such matters.
- B. If a party requests a decree of separation rather than a decree of dissolution of marriage the Court shall grant the decree in that form unless the other objects.

8-2-2 Procedure - Commencement-Pleadings-Abolition of Existing Defenses

- A. The certified petition in a proceeding for dissolution of marriage or separation shall allege the marriage is irretrievably broken and shall set forth:
1. The age, occupation, and residence of each party and his length of residence within the Reservation;
 2. The date of the marriage and the place at which it was registered;
 3. Facts which place jurisdiction in the Court under the Northern Cheyenne Civil Procedure Code and section 8-2-1;
 4. A statement that the marriage is irretrievably broken under 8-2-1;
 5. The names, ages, and addresses of all living children of the marriage and whether or not the wife is pregnant;
 6. Any arrangements as to support, custody and visitation, and maintenance; and
 7. The relief sought.
- B. Either or both parties to the marriage may initiate the proceeding.
- C. If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Northern Cheyenne Civil Procedure Code, and may, within twenty (20) days of receiving the service, file a response. No decree shall be entered until twenty (20) days after the date of service.
- D. Previously existing defenses to divorce and separation, including

but not limited to connivance, collusion, recrimination, insanity, and lapse of time are abolished.

- E. The Court may join additional parties to gather information in order to exercise its authority to implement this Code.

8-2-3 Temporary Order to Temporary Injunction

- A. In a proceeding for dissolution of marriage or separation, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- B. Either as a part of the motion for temporary maintenance or support, or by a separate motion accompanied by an affidavit as a factual basis for the motion, either party may request the Court to issue a temporary injunction which:
 - 1. Restrains any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and if so restrained, requiring him to notify the moving party of any extraordinary expenditures made after the order is issued;
 - 2. Enjoins a party from molesting or disturbing the peace of the other party, a child, or any other person, concerned in the proceeding;
 - 3. Excludes a party from the family home or from the home of one of the parties upon the showing that physical or emotional harm would otherwise result;
 - 4. Enjoins a party from removing a child from the jurisdiction of the court; or
 - 5. Provides other injunctive relief under the circumstances.
- C. The Court may issue a temporary injunction without requiring notice to the other party if it determines that irreparable injury will result to the moving party if the injunction is not issued immediately.
- D. A response may be filed within twenty (20) days after service or at a time specified in the temporary injunction.
- E. On the basis of the facts alleged in accordance with this section, the Court may issue a temporary maintenance or support order, or a temporary injunction in amounts and on terms just and proper in the circumstances.

F. A temporary order or temporary injunction:

1. Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings on the proceedings;
2. May be revoked or modified before final decree on a showing by sworn affidavit of the facts necessary to revocation or modification of a final decree under this Code;
3. Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

8-2-4 Irretrievable Breakdown

- A. If both of the parties have stated under oath, affirmation, by petition or otherwise that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the Court shall determine whether the marriage is irretrievably broken.
- B. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken the Court shall consider all relevant factors as to the prospect for reconciliation and shall:
 1. Determine whether the marriage is irretrievably broken; or
 2. Continue the matter for further hearing no earlier than thirty (30) days nor more than sixty (60) days from the date that the denial of irretrievable breakdown is received. The Court may suggest to the parties that they seek counseling. At the further hearing date the Court shall make a finding of whether or not the marriage is irretrievably broken.
- C. A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

8-2-5 Separation Agreement

- A. To promote amicable settlement of disputes between parties the parties may enter into a written separation agreement containing provisions for disposition of property, support, custody and visitation of their children, and maintenance.
- B. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the Court unless it finds that due to the economic circumstances of the parties or any relevant

circumstances that the separation agreement is unconscionable.

- C. If the Court finds the separation agreement is appropriate under all of the circumstances:
1. Its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them, except when the agreement itself provides to the contrary;
 2. If the agreement provides that its terms shall be set forth in the final decree, the decree shall identify the agreement, and incorporate its terms in the final decree, stating that the terms are appropriate under all of the circumstances.
- D. Terms of the agreement set forth in the decree are viewed as a contract and are enforceable by all remedies available for enforcement of a judgment, including contempt of court.
- E. If the Court finds that the separation agreement is not appropriate under all of the circumstances it may request the parties to submit a revised agreement or make orders for the disposition of property, maintenance, and support.
- F. Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement expressly states that preference.

8-2-6 Disposition of Property

- A. In a proceeding for a dissolution of marriage, separation, or disposition of property following a decree of dissolution of marriage or separation the Court, without regard to marital misconduct, shall apportion between the parties all property and assets belonging to either or both regardless of how or when the property or assets were acquired or whether the title is in the name of the husband, wife, or both. In making the apportionment the Court shall consider:
1. The duration of the marriage;
 2. Antenuptial agreements, if any, of the parties;
 3. The age, health, occupation, amount and source of income, skills and employability, liabilities and needs of each of the parties;
 4. Child custody provisions; and child support provisions;
 5. Whether or not the apportionment is in lieu of or in

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addition to maintenance;

6. The contribution or dissipation of value of the respective estates; and
 7. The contribution of a spouse as a homemaker or to the family unit.
- B. The Court may protect and promote the best interest of a child by setting aside a portion of the property or assets or either, or both parties in a separate fund or trust for the support, maintenance, educational, and general welfare of any minor, dependent, or incompetent children of the parties.

8-2-7 Maintenance

- A. In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following a final decree in a dissolution of marriage the Court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:
1. Lacks sufficient property to provide for his reasonable needs; and
 2. Is unable to support himself through appropriate employment or is a custodian of a child whose condition or circumstances make it appropriate that the custodian not seek employment outside the home.
- B. The maintenance order shall be in an amount and for a period of time that the Court deems just, without regard to marital misconduct, after considering all relevant facts including:
1. The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that child's custodian;
 2. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
 3. The standard of living established during the marriage;
 4. The duration of the marriage;
 5. The age, and the physical and emotional condition of the spouse seeking maintenance; and
 6. The ability of the spouse from whom maintenance is

sought to meet his needs while meeting those of the spouse seeking maintenance.

8-2-8 Child Support

In a proceeding for dissolution of marriage, separation, maintenance or child support, the Court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, and after considering all relevant circumstances.

8-2-9 Representation of the Child

The Court may, upon its own motion or the motion of an interested person, appoint an attorney or lay representative authorized to practice before the Court to represent the interest of a minor child. The Court shall enter an order for expenses and fees in favor of the child's attorney or lay representative. The order shall be made against either or both parents except when one or both of the parties is indigent.

8-2-10 Payment of Maintenance or Support to the Court

- A. Upon its own motion or upon the motion of either party, the Court may order at any time that the maintenance or support payments shall be paid to the Clerk of Court as trustee for the remittance to the person entitled to receive the payments.
- B. The Clerk of Court shall maintain records showing the amount of the payments, the date payments are required to be made, the date payments are received by the Court, and the date of the distribution of the payment to the person entitled to receive the payments, and the names and addresses of the parties affected by the order.
- C. The parties subject to the order shall inform the Clerk of Court of any change of address or other condition which may affect the administration of the order.

8-2-11 Assignments

The Court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on an employer, trustee, or other payer of the funds two (2) weeks after the service upon him of notice that it has been made. The payer shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment, and shall transmit the payment to the person specified in the order. The payer may deduct from each payment a sum not exceeding one dollar (\$1.00) as reimbursement for cost. An employer shall not discharge or otherwise discipline an employee as the result of a wage or salary assignment authorized by Court order.

8-2-12 Cost -- Attorney's Fees

The Court, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this Code and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The Court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

8-2-13 Decree

- A. A decree of dissolution of marriage or separation is final when entered, subject to the right of appeal. Appeal from the decree of dissolution which does not challenge the finding that the marriage is irretrievably broken does not delay the finality of the provisions of the decree which dissolves the marriage beyond the time for appealing from that provision. Either party may remarry pending appeal.
- B. No sooner than six (6) months after entry of a decree of separation, the Court on motion of either party shall convert a separation to a decree of dissolution of marriage.
- C. The Clerk of Court shall give notice of the entry of the decree of dissolution or separation to the appropriate official where the marriage is registered with the request that he enter the fact of dissolution in the appropriate record.
- D. Upon request by a wife whose marriage is dissolved or declared invalid, the Court shall order her maiden name or a former name restored.

8-2-14 Independence of Provisions of Decree or Temporary Order

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party as to payments for support or maintenance or to permit visitation is not suspended; but he may move the Court to grant an appropriate order.

8-2-15 Modification and Termination of Provisions for Maintenance, Support, and Property Disposition

- A. Except as otherwise provided in this Code, the provisions of any decree concerning maintenance or support may be modified by a Court only as to installments accruing subsequent to the motion for modification and either:
 - 1. Upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

2. Upon written consent of the parties. The provisions as to property disposition may not be revoked or modified by the Court except:
 - a. Upon written consent of the parties; or
 - b. If the Court finds the existence of conditions that justify a reopening of a judgment under the Northern Cheyenne Reservation Code.
- B. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.
- C. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child, but not by the death of the parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment to the extent that the Court determines is appropriate in the circumstances.

Chapter 3 CHILD CUSTODY

8-3-1 Jurisdiction - Commencement of Proceedings.

- A. The Northern Cheyenne Reservation Court has jurisdiction to make a child custody determination by initial or modification decree if:
 1. The Northern Cheyenne Reservation:
 - a. Is the home of the child at the time of commencement of the proceedings in Reservation Court; or
 - b. Has been the child's home within six (6) months before commencement of proceedings and the child is absent from this home because of his removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live within the Northern Cheyenne Reservation;
 2. It is in the best interest of the child that the Court assumes jurisdiction because:
 - a. The child and his parents or the child and at least one contestant have a significant connection with the Northern Cheyenne Reservation; and

- b. There is substantial evidence concerning the child's present or future care, protection, training, and personal relationships available to the Court;
 3. The child is physically present within the Reservation; and:
 - a. Has been abandoned; or
 - b. It is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or
 4. No state or other tribal government has jurisdiction under provisions substantially in accord with this Code, or another state or reservation has declined to exercise jurisdiction on the grounds that the Northern Cheyenne Reservation is the more appropriate forum to determine custody of the child.
- B. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody in the Northern Cheyenne Court.
- C. A child custody proceeding is commenced in the Court:
 1. By a parent filing a petition for
 - a. Dissolution or legal separation; or
 - b. Custody of the child; or
 2. By a person other than a parent, but only if he is not in the physical custody of one of his parents.
- D. Notice of the child custody proceeding shall be given to the child's parents, guardian, custodian, those persons having physical custody of the child, and all other parties who may appear, be heard and file pleadings. Upon showing of good cause, the Court may permit intervention of other interested parties.

8-3-2 Best Interest of the Child

The Court shall determine custody in accordance with the best interest of the child; relevant factors include but are not limited to:

- A. The wishes of the child's parents;
- B. The wishes of the child as to his custodian;

- C. The interaction and relationship of the child with his parent or parents, his siblings, his extended family, and any other person who may significantly affect the child's best interest;
- D. The child's adjustment to his home, school and community;
- E. The mental and physical health of all individuals involved;
- F. Whether or not the child has been incorporated into the home of one of the parents.

8-3-3 Temporary Orders

- A. A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in this Code. The Court may award temporary custody after a hearing determining the best interests of the child, or, if there is no objection, solely upon the basis of the affidavits.
- B. If a proceeding for dissolution of marriage or a legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Court finds that circumstances of the parents and the best interest of the child require that a custody decree be issued.
- C. If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

8-3-4 Interviews

- A. The Court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The Court may permit counsel to be present at the interview. The Court shall make a record of the interview and make that record part of the record of the entire proceeding.
- B. The Court may seek the advice of professional personnel, whether or not employed by the Court on a regular basis. The advice given shall be in writing and made available by the Court to counsel upon request. The counsel may examine as a witness any professional personnel consulted by the Court.

8-3-5 Investigations and Reports

- A. In contested custody proceedings, if a parent or child's custodian so requests, the Court may order an investigation and report concerning custodial arrangements of the child. The investigation and report may be made by the Northern

Cheyenne Social Services or the appropriate county welfare department.

- B. The investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the Court the investigator may refer the child to professional personnel for evaluation and advice as to the best interest of the child. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child without obtaining the consent of the parent or the child's custodian, except the child must consent if he has reached the age of sixteen (16) unless the Court determines that he lacks the mental capacity to consent. The investigator's report may be received as evidence at the custody hearing.
- C. The Court shall mail the investigator's report to counsel and to any party with a substantial interest in the outcome of the proceedings who is not represented by counsel, at least ten (10) days prior to the hearing. The investigator shall make available to counsel and the appropriate parties not represented by counsel, the investigator's file of underlying data, and reports, complete text of diagnostic information, and the names and addresses of all persons who the investigator has consulted. Any party to the proceeding may call the investigator and any person who he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

8-3-6 Hearings

- A. The Court may order one of the parties or both of the parties to pay the travel costs and other necessary expenses incurred by any person whose presence at the hearing the Court deems necessary to determine the best interest of the child.
- B. The Court shall determine questions of law and fact without a jury. If it determines that a public hearing will be detrimental to the child's best interest the Court may exclude the public from a custody hearing admitting only persons who have a direct and legitimate interest in the particular case or legitimate educational or research interest in the work of the court.
- C. When the Court determines the child's welfare is best protected by keeping the records of interviews, reports, investigations, or testimony confidential in a custody proceeding the Court may make an order sealing the record.

8-3-7. Parental Visitation

- A. A parent not granted custody of the child is entitled to

reasonable visitation rights unless after a hearing the Court determines that visitation would endanger the child's physical, mental, moral, or emotional health.

- B. The Court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child. The Court shall not restrict a parent's visitation rights unless it determines that the visitation would seriously endanger the child's physical, mental, moral, or emotional health.

8-3-8 Grandparent - Extended Family - Former Custodian - Visitation

Visitation rights may be granted to a child's grandparents, a former custodian, or extended family members when the Court finds such visitation to be in the best interest of the child.

8-3-9 Determination of Custody upon Death of Custodial Parent

- A. Upon the death of a parent granted custody of a child the child becomes a ward of the Northern Cheyenne Reservation. The Northern Cheyenne Court may award physical custody to any of the following:
 - 1. The noncustodial natural parent;
 - 2. The surviving spouse of the deceased custodial parent;
 - 3. A person nominated by the will of the deceased custodial parent;
 - 4. Any person nominated by the child if the child is at least twelve (12) years old;
 - 5. Any other person if that person has actual physical control over the child;
 - 6. Any other party whom, upon showing of good cause, the court permits to intervene as an interested party.
- B. The noncustodial parent shall be a party in any proceeding brought under this section.
- C. Upon the death of a parent granted custody of a child, any of the parties listed in subsection (A) may request a custody hearing and seek custody of the child.

8-3-10 Award of Joint or Separate Custody

In custody disputes involving both parents of a minor child, custody shall be awarded to the following according to the best interests of the child; and the Court may require the submission to the Court of a plan for the

implementation of the custody order:

- A. To either parent. In making an award to either parent, the Court shall consider, along with the factors set out in 8-3-2, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex or tribal status.
- B. To both parents jointly pursuant to 8-3-11.

8-3-11 Joint Custody - Modification - Consultation with Professionals

- A. Upon application of both parents for joint custody the Court shall consider whether or not joint custody is in the best interests of the minor child. If the Court declines to award joint custody it shall state in its decision the reasons for denial of joint custody.
- B. For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the residency of the child shall be shared by the parents in such a way as to assure the child frequent and continuing (but not necessarily equal) contact with both parents.
- C. Any order for joint custody may be modified to terminate the joint custody.
- D. The court may direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody, with the consent of both parties.

8-3-12 Access to Records by Noncustodial Parent

Access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent because such parent is not the child's custodial parent.

8-3-13 Judicial Supervision

- A. Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the Court, after a hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

- B. If both parents or all contestants agree to the order, or if the Court finds the absence of the order would cause a risk that the child's physical health would be endangered or his emotional development significantly impaired, the Court may order the Northern Cheyenne Social Services or the appropriate county welfare department to exercise continuing supervision over the case to assure that the custodial and/or visitation terms of the decree are carried out.

8-3-14 Modification

- A. No motion to modify a custody decree may be made earlier than two (2) years after its date unless the Court permits it to be made on the basis of affidavits that there is reason to believe that the child's present environment may endanger seriously his physical, mental, moral or emotional health.
- B. The Court shall not modify a prior custody decree unless it finds upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that modification is necessary to serve the best interests of the child. In applying these standards, the Court shall retain the custodian appointed under the prior decree unless:
1. The custodian agrees to the modification;
 2. The child has been integrated into the family of the petitioner with consent of the custodian; or
 3. The child's present environment endangers his physical, mental, moral or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to the child.
- C. Attorney fees and costs shall be assessed against the party seeking modification if the Court finds that the modification action is vexatious and constitutes harassment.

8-3-15 Affidavit Practice

A party seeking a temporary custody order or modification of a custody decree shall file an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit to other parties to the proceeding who may file opposing affidavits. The Court shall deny the motion unless it finds an adequate cause for hearing the motion as established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

8-3-16 Application

- A. This Code applies to all proceedings commenced on or after the date of its approval by the Secretary of the Interior.
- B. This act applies to all pending actions and proceedings prior to its effective date on which a judgment has not been entered. Pending actions for dissolution of marriage or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this Code shall be in compliance with the Code.
- C. This Code applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Code.
- D. In any action or proceeding in which an appeal was pending or a new hearing was ordered prior to the effective date of this Code, the provisions in effect at the time of the order sustaining the appeal or the new hearing govern the appeal, the new hearing, and any subsequent hearing or appeal.

Chapter 4. CHILD CUSTODY JURISDICTION

8-4-1 Purpose --Construction

- A. The general purposes of this section are to:
 - 1. Avoid jurisdictional confusion with courts of other tribes and states in matters of child custody which have in the past resulted in the shifting of children from place to place with harmful effects on their well being;
 - 2. Promote cooperation with courts of other tribes and states to the end that an appropriate forum will be provided as it serves the best interest of the child;
 - 3. Discourage, as much as possible continuing controversies over child custody and encourage a stable home environment and secure family relationships for the child;
 - 4. Deter abductions and other unilateral removals of children undertaken to obtain custody awards;
 - 5. Avoid relitigation of custody decisions of this court, other tribal courts and state courts in so far as is feasible;
 - 6. Promote and expand the exchange of information and other forms of mutual assistance between this court, and

other tribal courts and state courts concerned with the same child.

- B. This Code section does not constitute waiver of any provisions of the Indian Child Welfare Act.
- C. This Code section will not be construed as a waiver of any jurisdiction of the Northern Cheyenne Tribal Court.
- D. Provisions of this Code section apply only to child custody jurisdiction and shall be applied to serve the best interest of the child.

8-4-2 Definitions

- A. Contestant - a person, including a parent, who claims a right to custody or visitation rights with respect to a child.
- B. Custody Determination - a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.
- C. Custody Proceeding - a proceeding in which a custody determination is one of several issues, such as an action for dissolution of marriage or legal separation. A custody proceeding may include issues of adoption and guardianship concerning a tribal member. A custody proceeding does not include issues such as dependent, abused, neglected, abandoned delinquent children or children in need of care.
- D. Decree or Custody Decree - a child custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.
- E. Home Place - the place where the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent for at least six (6) consecutive months and in the case of a child less than six (6) months old the place where the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six (6) month or other period.
- F. Initial Decree - the first custody decree concerning a particular child.
- G. Modification Decree - a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

- H. Physical Custody - actual possession and control of a child.
- I. Person Acting as a Parent - a person other than a parent who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

8-4-3 Notice and Opportunity to be Heard

Before making a decree under this section, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside the exterior boundaries of the Northern Cheyenne Reservation, notice and opportunity to be heard shall be given pursuant to the Northern Cheyenne Civil Procedure Code.

8-4-4 Simultaneous Proceedings in Other Courts

- A. Subject to the limitations in 8-4-1 the Northern Cheyenne Court may not exercise its jurisdiction under this section if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another tribe or of a state exercising jurisdiction in conformity with this Code unless the proceeding is stayed by the other court because the Northern Cheyenne Court is a more appropriate forum, or the other court has taken no action for a period in excess of one (1) year, or for other reasons relating to the best interest of the child.
- B. Before hearing the petition in a custody proceeding, the Northern Cheyenne Court shall examine the pleadings and other information supplied by the parties and shall consult the child custody registry established under this Code concerning the pendency of proceedings with respect to the child in other courts. If the Court has reason to believe that proceedings may be pending in another court, it shall direct an inquiry to that court administrator or other appropriate personnel.
- C. If the Court is informed during the course of its proceeding that a proceeding concerning the custody of the child was pending in another court before the Northern Cheyenne Court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that information be exchanged. If a custody decree has been made in the Northern Cheyenne Court before being informed of a pending proceeding in another court, it shall immediately inform that court of the fact. If the Northern Cheyenne Court is informed that a proceeding was commenced in another tribal court or in a state court after it assumed jurisdiction, it shall inform the other court to the end that the issues may be litigated in the more appropriate forum.

8-4-5 Inconvenient Forum

- A. When the Northern Cheyenne Court has jurisdiction under this section to make an initial or modification decree it may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that another tribal court or a state court is a more appropriate forum.
- B. A finding of inconvenient forum may be made upon the Court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.
- C. In determining if it is an inconvenient forum, the Court shall consider if it is in the best interest of the child that another tribal court or state court assume jurisdiction. For this purpose it may take into account the following factors, among others:
 - 1. If another location is or recently was the child's home place;
 - 2. If another court has a closer connection with the child and one or more of the contestants;
 - 3. If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another court;
 - 4. If the parties have agreed on another forum which is no less appropriate; and
 - 5. If the exercise of jurisdiction by the Court would contravene any of the purposes stated in 8-4-1.
- D. Before determining whether to decline or retain jurisdiction, the Court may communicate with another court and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to parties.
- E. If the Court finds that it is an inconvenient forum and that another court is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named court or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

- F. The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.
- G. Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact.
- H. Any communication received from another court informing this Court of a finding of inconvenient forum because this court is the more appropriate forum shall be filed in the custody registry of the Court. Upon assuming jurisdiction, the Court shall inform the original court of this fact.

8-4-6 Jurisdiction Declined by Reason of Conduct

- A. If the petitioner for an initial decree has wrongfully taken the child from another reservation or state or has engaged in similar reprehensible conduct, the Court may decline to exercise jurisdiction if this is just and proper under the circumstances.
- B. Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another court if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody, or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another tribal court or state court, the Court may decline to exercise its jurisdiction if this is just and proper under the circumstances.
- C. In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

8-4-7 Information Under Oath to be Submitted to the Court

- A. Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:
 - 1. He has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody

- of the same child in this or any other court;
2. He has information of any custody proceeding concerning the child pending in another court; and
 3. He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.
- B. If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the Court. The Court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the Court's jurisdiction and the disposition of the case.
- C. Each party has a continuing duty to inform the Court of any custody proceeding concerning the child in this or any other location of which he obtained information during this proceeding.

8-4-8 Additional Parties

If the Court learns from information furnished by the parties under 8-4-7 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside the Northern Cheyenne Reservation he shall be served with process or otherwise notified in accordance with the Northern Cheyenne Civil Procedure Code.

8-4-9 Appearance of Parties and Child

- A. The Court may order any party to the proceeding who is inside this reservation to appear personally before the Court. If that party has physical custody of the child, the Court may order that he appear personally with the child.
- B. If a party to the proceeding whose presence is desired by the Court is outside this reservation with or without the child, the Court may order that the notice given under the Northern Cheyenne Civil Procedure Code include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.
- C. If a party to the proceeding who is outside this reservation is directed to appear under subsection (B) of this section or desires to appear personally before the Court with or without the child, the Court may require another party to pay to the

Clerk of the Court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

8-4-10 Legal Effect of Custody Decree

A custody decree rendered by the Northern Cheyenne Court under proper jurisdiction binds all parties who have been served on the reservation or notified in accordance with 8-4-3 or who have submitted to the jurisdiction of the Court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Code.

8-4-11 Recognition of Off-Reservation Custody Decrees

The Northern Cheyenne Court shall recognize and enforce an initial or modification decree of a court which assumed jurisdiction under statutory provisions substantially in accord with this Code which was made under factual circumstances meeting the standards of this Code, so long as this decree has not been modified, except when the other tribal or state court has refused to recognize decrees of the Northern Cheyenne Court.

8-4-12 Modification of Custody Decree of Another Court

- A. If another tribal court or a state court has made a custody decree, the Northern Cheyenne Court may not modify that decree unless it appears to the court that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this code or has declined to assume jurisdiction to modify the decree and the Northern Cheyenne Court has jurisdiction.
- B. If the Northern Cheyenne Court is authorized under subsection (A) of this section and 8-4-1 to modify a custody decree of another court it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it.

8-4-13 Filing and Enforcement of Custody Decree of Another Court

- A. A certified copy of a custody decree of another tribal court or a state court may be filed in the office of the Clerk of Court. The Clerk shall treat the decree in the same manner as a custody decree of the Northern Cheyenne Court. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by the Northern Cheyenne Court.
- B. A person violating a custody decree of another court, which

has been filed with the Northern Cheyenne Court, which makes it necessary to enforce the decree in the Northern Cheyenne Court may be required to pay necessary travel and other expenses, including attorney's fees, incurred by the party entitled to the custody or his witnesses.

8-4-14 Registry of Custody Decrees and Proceedings of Other Courts

The Clerk of the Northern Cheyenne Court shall maintain a registry in which he shall enter the following:

- A. Certified copies of custody decrees of other courts received for filing;
- B. Communications as to the pendency of custody proceedings in other courts;
- C. Communications concerning a finding of inconvenient forum by another court; and
- D. Other communications or documents concerning custody proceedings in another court which may affect the jurisdiction determinations of the Northern Cheyenne Court or the disposition to be made by it in a custody proceeding.

8-4-15 Certified Copies of Custody Decree

The Clerk of the Northern Cheyenne Court, at the request of the court of a state or of another tribal court or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

8-4-16 Taking Testimony Off-Reservation

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in a location off of the Northern Cheyenne Reservation. The court on its own motion may direct that the testimony of a person be taken off of the reservation and may prescribe the manner in which and the terms upon which the testimony shall be taken.

8-4-17 Hearings and Studies Off-Reservation -- Orders to Appear

- A. The Northern Cheyenne Court may request the appropriate court of another tribe or of a state to hold a hearing or appoint a special master to hold a hearing to adduce evidence to order a party to produce or give evidence under procedures of that court, or to have social studies made with respect to the custody of a child involved in proceedings pending in the Northern Cheyenne Court; and to forward to the Northern Cheyenne Court certified copies of the transcript of the record

of the hearing, the evidence otherwise adduced, or of any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or if necessary, ordered paid by the Northern Cheyenne Reservation.

- B. The Court may request the appropriate court of another tribe or a state court to order a party to custody proceedings pending in the Northern Cheyenne Court to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

8-4-18 Assistance to Other Courts

- A. Upon request of another tribal court or of a state court which is competent to hear custody matters the Northern Cheyenne Court may order a resident of the Northern Cheyenne Reservation to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available under the Northern Cheyenne Codes or may request social studies to be made for use in a custody proceeding in another tribal court or a state court. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the Clerk of the Court to the requesting court. The Court may condition compliance with the request upon assurance by another court that necessary expenses will be advanced or reimbursed.
- B. A resident of the Northern Cheyenne Reservation may voluntarily give his testimony or statement in the Northern Cheyenne Court for use in a custody proceeding off of the Northern Cheyenne Reservation.
- C. Upon request of the court of another tribe or of a state court the Northern Cheyenne Court may order a person in residence on the Northern Cheyenne Reservation to appear with the child in a custody proceeding off of the Reservation. The Court may condition compliance with the request upon assurance by the other court that travel and other necessary expenses will be advanced or reimbursed.

8-4-19 Preservation of Documents for Use in Other Courts

In any custody proceedings in the Northern Cheyenne Court the Court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents. Upon appropriate request of another tribal court or of a state court, the Court shall forward to the other court certified copies of any or all of such documents.

8-4-20 Request for Records of Another Court

If a custody decree has been rendered in another court concerning a child involved in a custody proceeding pending in the Northern Cheyenne Court, the Court upon taking jurisdiction of the case shall request of the other court a certified copy of the transcript of any court record and other documents mentioned in 8-4-19.

8-4-21 Priority

A custody proceeding which raises a question of the existence or exercise of jurisdiction under this Code shall be given calendar priority and handled expeditiously.

AMERICAN BAR ASSOCIATION

CODE OF JUDICIAL CONDUCT *

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

- A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not accept anything of value from a party to a proceeding, a lawyer, or a person who is likely to be a party to a proceeding, except as a character witness.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford him a privilege against testifying in response to an official summons.

It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women, and others, that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined by a mere examination of an organization's current membership rolls but rather depends upon the history of the organization's selection of members and other relevant factors. Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination.¹

* The Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association on August 16, 1972. ©Copyright 1972, American Bar Association. Reprinted with permission.

1. This paragraph was added on August 7, 1984, by the American Bar Association House of Delegates meeting in Chicago.

CANON 3

A Judge Should Perform the Duties
of His Office Impartially and
Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

- (1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge should maintain order and decorum in proceedings before him.
- (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

Commentary

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

- (4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a pro-

ceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

Commentary

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite him to file a brief *amicus curiae*.

- (5) A judge should dispose promptly of the business of the court.

Commentary

Prompt disposition of the court's business requires a judge to devote adequate time to his duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

- (6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary

"Court personnel" does not include the lawyers in a proceeding before a judge. The

CODE OF JUDICIAL CONDUCT

conduct of lawyers is governed by DR7-107 of the *Code of Professional Responsibility*.

- (7) A judge should prohibit broadcasting, televising, recording or photographing in courtrooms and areas immediately adjacent thereto during sessions of court, or recesses between sessions, except that under rules prescribed by a supervising appellate court or other appropriate authority, a judge may authorize broadcasting, televising, recording and photographing of judicial proceedings in courtrooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.¹

B. Administrative Responsibilities.

- (1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.
- (2) A judge should require his staff and court officers, subject to his direction and control to observe the standards of fidelity and diligence that apply to him.
- (3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Commentary

Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

- (4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

Commentary

Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. Disqualification.

- (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:
- (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it.

¹ As amended August 11, 1992, American Bar Association House of Delegates, San Francisco, per Report 107.

Commentary

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

- (c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- (d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) is acting as a lawyer in the proceeding;

Commentary

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "his impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require his disqualification.

- (iii) is known by the judge to have an interest that could be substantially affected by the

outcome of the proceeding;

- (iv) is to the judge's knowledge likely to be a material witness in the proceeding;
- (2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.
- (3) For the purposes of this section:
 - (a) the degree of relationship is calculated according to the civil law system;

Commentary

According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if his or his spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding, but would not disqualify if a cousin were a party or lawyer proceeding.

- (b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
- (c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:
 - (i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

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- (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
- (iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Commentary

This procedure is designed to minimize the chance that a party or lawyer will feel

coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

- A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.
- C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of

the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extra-judicial activities are governed by Canon 5.

CANON 5

A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

- A. **Avocational Activities.** A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

Commentary

Complete separation of a judge from extra-judicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

- B. **Civic and Charitable Activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged

In adversary proceedings in any court.

Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

- (2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

- (3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary

A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

C. Financial Activities.

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with law-

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ner as he reports compensation in Canon 6C.

Commentary

This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary

Canon 3 requires a judge to disqualify himself in any proceeding in which he has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his judicial duties; Canon 6 requires him to report all compensation he receives for activities outside his judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. **Fiduciary Activities.** A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance

of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

Commentary

The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

Commentary

A judge's obligation under this Canon and his obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. **Arbitration.** A judge should not act as an arbitrator or mediator.

F. **Practice of Law.** A judge should not practice law.

G. **Extra-judicial Appointments.** A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country,

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state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Commentary

Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

CANON 6

A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

- A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.
- B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.
- C. Public Reports. A judge should report the date, place, and nature of any activity for which he received

compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of the clerk of the court on which he serves or other office designated by rule of court.

CANON 7

A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General

- (1) A judge or a candidate for election to judicial office should not:
 - (a) act as a leader or hold any office in a political organization;
 - (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

Commentary

A candidate does not publicly endorse another candidate for public office by having his name on the same ticket.

- (c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);
- (2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak

to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.

- (3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a nonjudicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.
- (4) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

B. Campaign Conduct.

- (1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:
 - (a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;
 - (b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;

- (c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

- (2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit or accept campaign funds, or solicit publicly stated support, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate's committees may solicit funds for his campaign no earlier than [90] days before a primary election and no later than [90] days after the last election in which he participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

Commentary

Unless the candidate is required by law to file a list of his campaign contributors, their names should not be revealed to the candidate.

[Each jurisdiction adopting this Code should prescribe a time limit on soliciting campaign funds that is appropriate to the elective process therein.]



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MONTANA 59043

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IN REPLY REFER TO:

Executive Direction
Code 100

MAY - 1 2006

Eugene Little Coyote, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Little Coyote:

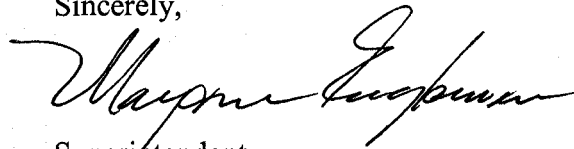
Enclosed is the original of Northern Cheyenne Tribal Ordinance No. DOI-011 (06) enacted by the Council on April 3, 2006 and received in this office on April 18, 2006.

Ordinance No. DOI-011 (06) – the Northern Cheyenne Tribal Council rescinding Ordinance No 25- (83) and approving and adopting the Northern Cheyenne Landlord and Tenant Code.

Ordinance No. DOI-011 (06)- is hereby noted. The resolution and Business Lease Form have been forwarded to the Regional Office for review. The Tribe will be notified on the whether the resolution and form has been approved or disapproved.

All necessary copies of this resolution have been retained for our files.

Sincerely,


Superintendent

Enclosure

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE TRIBE
LAME DEER, MONTANA**

ORDINANCE NO. DOI-011 (06)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL RESCINDING ORDINANCE 25 (83), THE NORTHERN CHEYENNE TRIBAL EVICTION ORDINANCE, AND APPROVING AND ENACTING IN ITS PLACE, THE NORTHERN CHEYENNE TRIBAL LANDLORD AND TENANTS RIGHTS CODE WHICH SHALL HEREBY BE MADE A PART OF AND INCLUDED IN THE NORTHERN CHEYENNE LAW AND ORDER CODE, DESIGNATED AS TITLE XI, PROPERTY, CHAPTER 1. NORTHERN CHEYENNE TRIBAL LANDLORDS AND TENANT RIGHTS CODE.

WHEREAS; the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Reservation, by authority of the Amended Constitution and Bylaws, as approved by the Secretary of the Interior on May 31, 1996; and,

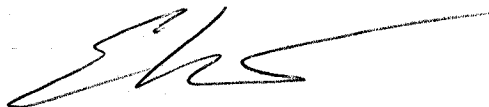
WHEREAS; pursuant to Northern Cheyenne Tribal Council enacted Ordinance 25 (83) known as the Northern Cheyenne Tribal Eviction Ordinance, which established Tribal law and procedures in regard to the eviction of tenants who are in unlawful possession of the premises owned by another; and,

WHEREAS; it is desirable for the Northern Cheyenne Tribal Council to update Tribal laws from time to time; and,

WHEREAS; the Northern Cheyenne Tribal Landlord And Tenant Rights Code is attached hereto as Exhibit A, and made relevant part thereof; now,


THEREFORE BE IT ORDAINED that the Northern Cheyenne Tribal Council hereby rescinds Ordinance 25 (83); and approves and adopts the Northern Cheyenne Tribal Landlord And Tenant Rights Code, as attached; which hereby is made a part of and included in the Northern Cheyenne Law And Order Code, Designated as Title XI. Property, Chapter 1, Northern Cheyenne Landlord And Tenant Rights Code.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 8 votes for passage and adoption and 1 vote against passage and adoption and 1 abstention this 3rd day of April 2006.



Eugene Little Coyote, President
Northern Cheyenne Tribe

ATTEST:


Sharlene Evans, Secretary
Northern Cheyenne Tribe

NOTED:

SUPERINTENDENT

TITLE XI. PROPERTY

Chapter 1. NORTHERN CHEYENNE TRIBAL LANDLORD AND TENANT RIGHTS CODE

11-1-1. Jurisdiction and Scope

- A. This Chapter shall govern relationships between all landlords-tenants, on lands, improvements and property subject to the governing authority of the Northern Cheyenne Tribe, as established by the Tribal Constitution, Tribal Code, or applicable federal law.

Additionally, this Chapter shall enumerate the rights and due process of law which both landlords and tenants are entitled to, and shall govern the unlawful detainer process which applies to foreclosure evictions, once a Judgment of Foreclosure has been issued pursuant to the Northern Cheyenne Tribal Mortgage Lending Code.

1. "Landlords" are owners of improvements upon real property which the landlord either owns or has a leasehold interest, who have authorized the right of occupancy thereof, to another.
 2. "Tenants" shall include all renters, lessees, and sublessees, whose right of occupancy is authorized by the landlord or his agent.
 3. "Homebuyers" shall be used in a broad sense, and shall include all mortgagors, borrowers, purchasers, and sublessees whose title or right to possession is based upon a mortgage agreement, contract for deed, Mutual Help and Occupancy Agreement or some other contractual instrument.
 4. "Mortgagees/Lenders/Sellers" shall include all owners of improvements upon real property, or holders of a financial interest therein.
- B. Notwithstanding the provisions set forth herein, with the exception of the procedures for unlawful detainer actions, the Northern Cheyenne Tribal Housing Authority (NCTHA) may prescribe and implement its own policies which do not conflict with this Chapter.
- C. With regard to unlawful detainer actions, all landlords, including the NCTHA, must comply with the provisions set forth herein; except in cases of recovery of abandoned units; provided that the tenant(s)/homebuyer(s) are no longer in actual possession of the unit, and the Occupancy Agreement has been properly terminated. Actual possession requires physical residence. Storage of personal property is not sufficient.

- D. With regard to foreclosure eviction actions, all mortgagees must comply with the applicable eviction provisions set forth herein, except in cases of abandoned foreclosed units. Once a Judgment of Foreclosure has been issued pursuant to the Northern Cheyenne Tribal Mortgage Lending Code, abandoned foreclosed units may be recovered without the necessity of filing an unlawful detainer action; provided that the mortgagor(s) are no longer in actual possession of the unit. Actual possession requires physical residence. Storage of personal property is not sufficient.

11-1-2. Grounds for Termination and Eviction.

(NOTE: A mortgagee's authority to foreclose a mortgage, and the procedures for the foreclosure of a mortgage is specifically controlled by the Northern Cheyenne Tribal Mortgage Lending Code. Once a Judgment of Foreclosure has been issued pursuant to the Northern Cheyenne Tribal Mortgage Lending Code, and the mortgage is properly foreclosed, the eviction procedures contained herein shall apply.)

A landlord (other than a mortgagee) has the authority to terminate an agreement for the rental, lease, sublease, or occupation, or Mutual Help and Occupancy Agreement, (hereinafter all generally referred to as "Occupancy Agreement") of a dwelling or housing unit ("unit") when any of the following occurs:

- A. A serious violation of any term or condition of the Occupancy Agreement and/or repeated violations of any term or condition of the Agreement, including repeated minor violations.
- B. Non-payment of rent, under an Occupancy Agreement, when such payments are not made after thirty (30) calendar days of the payment due date, or thirty (30) calendar days following the first day of the month with regard to a month to month tenancy. For purposes of this chapter, any occupancy which is not supported by a valid lease or rental agreement for a longer period of time, shall be deemed to constitute a month to month tenancy;
- C. Arrears in rent payments, costs or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an Agreement shall not excuse the payment of any balance due upon demand; nor shall it constitute a waiver of any right the landlord may have to require timely payments in the future.
- D. Tenant/homebuyer, or any member of their household, or any guest or visitor of the household, engages in any nuisance, property damage and/or destruction or injuries to property, persons and/or peace of the community or community residents, or injuries and/or damage to common areas and property.

- E. Tenant/homebuyer, or any member of their household, or any guest or visitor of the household, is convicted of a serious crime, (including “no contest” pleas), which was committed on or off the premises. Serious crimes shall include but are not limited to drug related crimes, bootlegging, violent crimes, sex crimes, burglary, and arson.
1. Drug-related crimes include, but are not limited to, the illegal manufacture, sale, distribution, use, or possession of a controlled substance, as defined in the Federal Controlled Substance Act, with intent to manufacture, sell, distribute, on or off the premises of the unit.
 2. Eviction proceedings related to the commission of a crime, may only be commenced after a tenant, tenant family member or their guest or visitor has been convicted of a serious criminal offense which occurred on or off the premises of the unit.
- F. Abandonment of the unit. Abandonment exists where the tenant/homebuyer and their family listed as part of the household composition is absent from the unit for a period of over thirty (20) continuous calendar days without authorization of the landlord. The continued presence of tenant/homebuyer’s personal belongings in the unit does not affect the status of the unit as abandoned.
1. Unlawful detainer actions are not required for the recovery of abandoned units. Once the abandonment of a unit has been determined as set forth above, the landlord may recover the abandoned unit by conspicuously posting a copy of the Notice of Termination of Occupancy and Eviction, on the door of the unit, and mailing the Notice to the tenant’s last known address by certified mail. Such Notice must comply with the requirements of Section 11-1-3, herein. If the tenant fails to cure the abandonment by the deadline, the landlord may thereafter immediately recover possession of the unit.
- G. Occupation of a unit without the permission of the landlord, or a written Occupancy Agreement, shall be deemed trespass. The refusal by a trespasser to vacate the premises, upon the demand by the landlord or his agent, to quit the premises, shall subject the trespasser to immediate removal from such premises, without right to any notice, and subject to payment of pro rata rent and actual damages.

11-1-3 Notice of Termination of Occupancy and Eviction.

(NOTE: A mortgagee's authority to foreclose a mortgage, and the procedures for the foreclosure of a mortgage is specifically controlled by the Northern Cheyenne Tribal Mortgage Lending Code. Once a Judgment of Foreclosure has been issued pursuant to the Northern Cheyenne Tribal Mortgage Lending Code, and the mortgage is properly foreclosed, the eviction procedures contained herein shall apply.)

When a landlord (non-mortgagee) desires to obtain possession of a unit, and when there exists legal cause to terminate the Occupancy Agreement and evict the tenant, as set forth at Section 11-1-2 herein, the landlord shall serve the tenant, or an adult member of the tenant's household, with a Notice of Termination of Occupancy and Eviction, addressed to an adult tenant of the unit.

- A. Requirements. The Notice shall include the following information:
1. Name and address of the tenant, and in the case of NCTHA units, the unit number must be identified;
 2. A statement of the specific ground(s) for termination and eviction, pursuant to Section 11-1-2 herein.
 3. A statement that the Occupancy Agreement has been terminated and that the tenant must quit the premises on or before a specific date, not less than thirty (30) calendar days from the date that the Notice was mailed. If the grounds for termination are remediable, the Notice shall state the required remedy to be performed and that the deadline for such performance is the date by which the tenant must quit the premises, in accordance with Section 11-1-3(C);
 4. A statement that the tenant is required to quit possession of the unit on a specific date, should the tenant fail to remedy the grounds for termination by such date (if termination is remediable), pursuant to Section 11-1-3(C);
 5. A statement that if the tenant has not remedied the situation and does not quit possession of the unit by the required date, the landlord may file a civil court action for unlawful detainer.
- B. In the case of abandonment, pursuant to Section 11-1-2(F), a statement that if the tenant does not repossess the unit and make any unpaid payments by the required date, the Occupancy Agreement will not be reinstated; and that the

landlord may recover possession of the unit after such date, without any further proceedings. Any unclaimed personal belongings will be treated in accordance with Section 11-1-3(F).

C. Remedy of Grounds.

1. If it is a first offense and the grounds for termination and eviction is remediable by repairs, the payment of rent and/or damages, or otherwise; and the tenant adequately remedies the situation, including payment of any enforcement related costs incurred by the Landlord, before the date to quit the premises specified in the Termination and Eviction Notice; the tenant's right of occupancy will not terminate and the tenant will not be required to quit possession. In such cases, the Occupancy Agreement will be fully reinstated.
2. Notwithstanding remedy by the tenant, if the tenant has repeated the same offense, constituting grounds for termination and eviction, two or more times, the landlord at his/her option, may elect to proceed with termination and eviction proceedings.
3. In the case of abandonment, remedy is accomplished if the tenant repossesses the unit and pays any and all unpaid rent and enforcement costs incurred by the Landlord, by the required date.
4. Terminations based upon conviction of a criminal offense, pursuant to 11-1-2 (E), are not remediable.

D. Time Periods. The Termination and Eviction Notice must be mailed or delivered to the tenant, pursuant to Section 11-1-3(E), within the following periods of time:

1. Not less than thirty (30) calendar days prior to the date to quit specified in the Notice.
2. In situations in which there is an emergency, such as fire or condition making the unit unsafe or uninhabitable; or in situations involving an imminent or serious threat to public health or safety, or serious damage to the unit, the Notice may be delivered within a period of time which is reasonable, given the situation.

E. Service of Notice. The Termination and Eviction Notice must be in writing and delivered to the tenant in the following manner:

1. Personal service to the tenant or any adult member of the household composition, residing in the unit; or

2. Delivery may be accomplished by mailing the Notice to the tenant's last known address, by certified mail, with return receipt requested, and conspicuously posting a copy of the Notice on the front door of the unit;
3. In cases of abandonment, service may be accomplished by mailing the Notice to the tenant's last known address, by certified mail, with return receipt requested, and conspicuously posting a copy of the Notice on the front door of the unit.

F. Disposition of Tenant's Personal Belongings. Upon termination of the Occupancy Agreement, and after the tenant has vacated the unit, the landlord may take possession of the tenant's personal belongings left in the unit and at his option either dispose of such belongings or sell them. The tenant shall be responsible for any storage costs incurred by the landlord, not to exceed thirty (30) calendar days, and the landlord may file a small claims action for collection of such costs. The receipt of any monies from the sale of such property shall apply first towards the costs of such storage and disposal; and secondly to any unpaid rent or other bill owed to the landlord by the tenant. The landlord shall have no liability to the tenant for any property which is left in the unit after the tenant has vacated the unit.

11-1-4. Failure to Comply with Termination and Eviction Notice.

In the event the tenant fails to voluntarily vacate the premises by the required date, or fails to remedy the grounds for termination and eviction by the required date, the tenant must vacate the premises immediately or be subject to an action for unlawful detainer.

11-1-5 Unlawful detainer.

Upon the failure of the tenant/homebuyer to comply with the Notice of Termination and Eviction, or the failure of a mortgagor to comply with a Judgment of Foreclosure, the landlord or mortgagee may file a civil court action for unlawful detainer.

A. Definitions.

1. An action for unlawful detainer means any suit brought in Tribal Court to evict any person from occupancy of real property and any unit, dwelling or improvements thereupon.
 - a. A person is guilty of unlawful detainer if he or she:
 - i. Holds over any lands, dwellings, tenements, or other improvements on real property after termination of his or her right to possession,

either due to expiration of the Occupancy Agreement, or through the procedures set forth at Section 11-1-3 herein, or through the mortgage foreclosure procedures set forth under the Northern Cheyenne Tribal Mortgage Lending Code.

- b. An unlawful detainer occurs if a tenant/homebuyer or mortgagor fails or refuses to quit possession of the premises under any of the following situations:
 - i. After the expiration of the term of the Occupancy Agreement;
 - ii. After termination of the Occupancy Agreement through the procedures set forth at Section 11-1-3 herein;
 - iii. Upon entering onto or remaining on the real property of another without permission of the owner and without having any substantial claim to the property; or
 - iv. After the NCTHA has terminated such person's tenancy pursuant to this Chapter or any procedures established by the NCTHA.
 - v. After a tenant has executed a written document stating his/her voluntary termination of the Occupancy Agreement
 - vi. After the Tribal Court has issued a Judgment of Foreclosure, foreclosing the interest of the Homebuyer/Borrower/Mortgagor and each other defendant, including Subordinate Lienholders, in the mortgaged property, and granting title to the property to the Lender/Mortgagee or the Lender's Designated Assignee, pursuant to the Northern Cheyenne Tribal Mortgage Lending Code.

B. Procedural Requirements. The following guidelines must be observed before any action for unlawful detainer is taken:

- 1. The tenant/homebuyer must have been provided notice pursuant to Section 11-1-3.

2. The mortgagor must have been provided the due process required pursuant to the Northern Cheyenne Tribal Mortgage Lending Code; and a Judgment of Foreclosure must have been issued in conformance with the provisions thereof.
3. If the NCTHA is bringing the action, the tenant must have been afforded an opportunity to request a hearing before the NCTHA Board of Commissioners.

C. Requirements of Action in Tribal Court. The Rules of Civil Procedure, set forth at Title IV of the Northern Cheyenne Law and Order Code shall generally control any actions brought for unlawful detainer in the Northern Cheyenne Tribal Court, **except** that:

1. In addition to the requirements for Complaint and Summons imposed under the Rules of Civil Procedure, the Complaint must include the following:
 - a. The facts which entitle plaintiff to possession of the property and authorize the action;
 - b. Description of the property so it can be identified with reasonable certainty;
 - c. Any claim for damages or compensation due from the persons to be evicted; and
 - d. In cases of foreclosure evictions, the complaint must contain the information required pursuant to the Northern Cheyenne Tribal Mortgage Lending Code.
2. A hearing upon a Petition for unlawful detainer is subject to the following time frames:
 - a. Defendant shall have ten (10) calendar days from the service of the Petition to file a response;
 - b. The Court shall conduct a hearing within fourteen (14) calendar days of the deadline for Defendant to file a response, provided the parties are given at least five (5) calendar days written notice of the hearing.
 - c. The Court must issue a decision within five (5) calendar days of the hearing.

E. Defenses. In any action for unlawful detainer, it shall not be a defense to such action that the tenant is unable to pay rent or other monthly payments when due.

F. Writ of Restitution.

1. If judgment is entered for the plaintiff, the Court shall order that the defendant pay to the plaintiff all costs, damages, and rent found to be due and unpaid at the time of judgment, plus litigation costs. The Court shall grant a Writ of Restitution, granting plaintiff possession of the premises, and a Warrant of Removal, commanding the law enforcement authorities to immediately remove the defendant from the premises.
2. If judgment is entered for the defendant, the court shall order that the plaintiff pay the defendant's litigation costs, and if it appears that the plaintiff has acquired possession of the premises since commencement of the action, a Writ of Restitution, and if applicable, a Warrant of Removal, shall issue in favor of the defendant.

G. Order of Repossession.

1. In a foreclosure eviction action, if judgment is entered for the plaintiff, the Court shall order that the defendant pay to the plaintiff all costs, damages, payments, and rent found to be due and unpaid at the time of judgment, plus litigation costs. The Court shall issue an Order of Repossession, granting plaintiff possession of, and title to, the premises, and a Warrant of Removal, commanding the law enforcement authorities to immediately remove the defendant from the premises.
2. In a foreclosure eviction action, if judgment is entered for the defendant, the court shall order that the plaintiff pay the defendant's litigation costs, and if it appears that the plaintiff has acquired possession of the premises since commencement of the action, a Writ of Restitution, and if applicable, a Warrant of Removal, shall issue in favor of the defendant.

H. The proceedings under an unlawful detainer action shall not bar an action for criminal trespass, waste, small claims or any other action at law or equity.

11-1-6. Appeal.

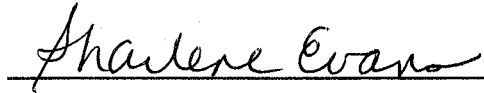
The Appellate Code, codified at Title II of the Northern Cheyenne Tribal Law and Order Code, and Rule 38 of the Tribal Court Rules of Civil Procedure, codified at Title IV, shall govern any appeal from the decision of the Trial Court in an unlawful detainer action.

PASSED, ENACTED AND APPROVED by the Northern Cheyenne Tribal Council by 8 votes for passage and enactment and 1 votes against passage and enactment, and 1 abstentions, this 3rd day of April, 2006.



EUGENE LITTLECOYOTE, PRESIDENT
NORTHERN CHEYENNE TRIBAL COUNCIL

ATTEST:





**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**



IN REPLY REFER TO:
Executive Direction

AUG 18 2014

MEMORANDUM

TO: Darryl LaCounte, Acting Director – Rocky Mountain Region
FROM: Michael Addy, Superintendent – Northern Cheyenne Agency *Michael Addy*
SUBJECT: Resolution No. DOI-128 (2014)

Attached for your review and action is a copy of Resolution No. DOI-128 (2014) which was enacted by the Northern Cheyenne Tribal Council on July 30, 2014 and received in our office on August 13, 2014.

Resolution No. DOI-128 (2014) approving new Northern Cheyenne Probate Code.

If you have questions or concerns on this matter, please contact my office at (406) 477-8242.

Attachments



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**



IN REPLY REFER TO:
Executive Direction

AUG 18 2014

Llevando Fisher, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Fisher:

This is in reference to Northern Cheyenne Tribal Resolution No. DOI-128 (2014) enacted by the Council on July 30, 2014 and received in this office on August 13, 2014.

Resolution No. DOI-128 (2014) – approving new Northern Cheyenne Probate Code.

Resolution No. DOI-128 (2014) is hereby noted. The new probate code will be forwarded to the Secretary of Interior for review and action. When we receive a response we will return the documents to the tribe for their records.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Superintendent

Enclosure

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

RESOLUTION NO. DOI-128 (2014)

**RESOLUTION APPROVING NEW NORTHERN CHEYENNE
PROBATE CODE**

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe, organized and operating under the Tribe's Amended Constitution and Bylaws approved by the Secretary of the Interior on May 31, 1996;

WHEREAS, the rules governing descent and distribution of trust and restricted land and trust personalty (Individual Indian Money accounts) is governed by the American Indian Probate Reform Act (AIPRA);

WHEREAS, the rules governing descent and distribution of property not covered by AIPRA is in Title IX of the Northern Cheyenne Law Order Code;

WHEREAS, AIPRA provides that a tribe may adopt its own probate code governing descent and distribution and, under Article IV, Section 1(o) of the Amended Constitution, the Tribal Council has the authority to regulate the inheritance of property, real and personal, of the Northern Cheyenne Reservation;

WHEREAS, the Tribe has engaged in a lengthy process to develop a draft probate code that governs descent and distribution of property covered by AIPRA and Title IX;

WHEREAS, working with representatives of the Bureau of Indian Affairs and the Northern Cheyenne Tribal Court, and with the Tribal Attorney, a committee of the Northern Cheyenne Tribal Council has prepared a draft probate code for consideration by the full Tribal Council;

WHEREAS, draft probate code is designed to: (1) to encourage estate planning; (2) to discover and effectuate the intent of the deceased; (3) to promote a speedy and efficient probate process that is as simple as possible; (4) to prescribe the manner of descent and distribution in the event there is no will; (5) to avoid land ownership fractionation; (6) to consolidate fractionated land; and (7) to enhance Tribal self-sufficiency, self-determination, and sovereignty.

WHEREAS, the draft probate code has been vetted at public meetings in each of the five Reservation districts in June 2014;

WHEREAS, as a result of the feedback received at district meetings, the draft probate code was modified in several ways;

WHEREAS, the draft probate code has been reviewed and informally approved by representatives of the Solicitor's Office of the United States Department of the Interior;

WHEREAS, the only provision that was not informally reviewed by the Solicitor's Office is the recently-added provision by which the definition of a "spouse" includes a party married by "common law marriage;"

WHEREAS, attached to this Resolution is the July 30, 2014 Northern Cheyenne Probate Code which is intended to be consistent with AIPRA and replace Title IX in its entirety; and

WHEREAS, in order for the Code to be effective, it must be approved by the Secretary of the Interior.

THEREFORE BE IT RESOLVED, the Tribal Council hereby:


approves the attached July 30, 2014 Northern Cheyenne Probate Code

declares that the Code will replace Title IX of the Law and Order Code in its entirety; and

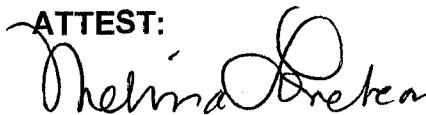
directs the Tribal President to submit the Code for formal approval under AIPRA by the Secretary of the Interior;

CERTIFICATION

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 10 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions, this 30th day of July 2014.


Llevando Fisher, President
Northern Cheyenne Tribe

ATTEST:


Melissa Lonebear, Secretary
Northern Cheyenne Tribe

TITLE IX

PROBATE CODE

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TITLE IX

PROBATE CODE

I. LEGISLATIVE FINDINGS AND PURPOSE

This Code shall be known as the "Northern Cheyenne Probate Code."

9-1-1. Legislative Findings.

The Tribe finds and declares that:

- A. It is of paramount importance to encourage the preparation of wills or other estate plans for the transfer of property upon death, to carry out the intent of the decedent, and to provide a speedy, efficient and user-friendly system for the administration of all aspects of decedent estates, including all types of real and personal property;
- B. It is also important to provide the opportunity to prepare for catastrophic and end of life events by creating health care directives and durable powers of attorney;
- C. Preservation of the land base of the Tribe is critical to the vitality of the sovereignty, environment, and economy of the Tribe;
- D. It is of paramount importance to encourage and consolidate Tribal and Tribal member ownership of lands on the Reservation;
- E. Because of the federal allotment policy that began in the late nineteenth century and the subsequent transfers of allotted lands, a significant portion of the Reservation is fractionated or owned by non-members;
- F. The transfer or devise of interests in Reservation trust land upon the death of any individual owner could lead to further fractionation or non-member ownership of Reservation land; and
- G. By establishing a probate code that covers all types of real estate and personal property, including trust and restricted land and personalty, and appending forms to this code, the Tribe intends to foster a uniform system to facilitate the probate process in a cost efficient manner and to maintain and enhance its self-sufficiency, self-determination, and sovereignty.

II. DEFINITIONS

9-2-1. Definitions.

When used in this Title, unless otherwise required from the context:

- A. "Child" and "Children" mean the lineal descendants of the decedent including all lawfully adopted children, as provided in Sections 9-5-5 and 9-8-3, and all children born after death of decedent, as provided in Sections 9-5-6 and 9-8-4.
- B. "Codicil" means a will that modifies or partially revokes an existing earlier will.
- C. "Common law marriage" means (1) the parties are competent to enter into the marriage; (2) the parties entered into the marital arrangement by mutual consent; and (3) the parties confirmed their marriage by cohabitation of at least 6 month and present themselves as husband and wife openly and conspicuously.
- D. "Court" means the Northern Cheyenne Tribal Court.
- E. "Decedent" means a deceased person.
- F. "Estate" means all of the assets and liabilities of a deceased person.
- G. "Heirs" means those persons who are entitled by a will or under the rules of intestate succession to the real or personal property or trust land of a decedent.
- H. "Indian" means:
 - 1. Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of October 27, 2004) of trust land;
 - 2. Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. § 479) and the regulations promulgated thereunder; or
 - 3. With respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to 25 U.S.C. § 2206, any person described in subparagraph (1) or (2) or any person who owns trust land in that State.
- I. "Intestate" means that a person has died without making a valid will as to some or all of the estate assets. Such property will pass to other persons under the intestate succession rules of this Title.
- J. "Land" means any real property.
- K. "Lawfully adopted child" means a child adopted lawfully in accordance with 25 U.S.C. § 372a.

- L. "Letters of Administration" means the document referred to in Section 9-10-9.
- M. "Net estate" means the real and personal property of a decedent except exempt property, non-probate assets, and allowable claims against and debts of the decedent or the estate.
- N. "Parent" means the biological or lawful adoptive mother or father of a child, as defined by Subsection 9-2-1(J). It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.
- O. "Personal property" means any property that is not included in the definition of real property.
- P. "Personal representative" means that person appointed by the court to carry out the powers and duties conferred by this Title on behalf of the estate.
- Q. "Real property" means all interests and estates in land, including leasehold interests and improvements to land, such as houses or other buildings, which have been affixed to the land. A mobile or modular home located on individual trust property and subject to a security interest, mortgage, promissory note, or other financing agreement or which is located on tribal fee or trust property shall be considered personal property for purposes of this Title. All other mobile and modular homes shall be considered real property for purposes of this Title.
- R. "Reservation" means the Northern Cheyenne Indian Reservation.
- S. "Shall" means an act that is required and is not permissive.
- T. "Special administrator" means that person appointed by the court to administer decedent's estate when it is necessary to probate or preserve the estate.
- U. "Spouse" means a party to a marriage recognized by any jurisdiction or a party to a common law marriage.
- V. "Testator" means a person who has created a valid will.
- W. "Title" means this Title and includes all amendments hereafter made to this Title.
- X. "Tribal Court" means the court of the Northern Cheyenne Tribe.
- Y. "Tribe" means the Northern Cheyenne Indian Tribe.

- Z. “Trust land” means any real property, title to which is held in trust or restricted fee status by the United States for the benefit of the Tribe, a member of a federally-recognized tribe, or a person eligible to be a member of a federally-recognized tribe. Improvements attached to trust land are not trust land or trust personalty.
- AA. “Trust Personalty” shall mean all funds and securities of any kind which are held in trust in an individual Indian money account or otherwise supervised by the Secretary.
- BB. “Will” means an instrument validly executed as required by this Title that disposes of all or part of an individual’s estate at death.
- CC. “Without regard to waste” means, with respect to a life estate interest in trust land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

III. PERSONS AND PROPERTY SUBJECT TO TITLE

9-3-1. Persons and Property Subject to Title — Domicile Presumed.

- A. This Title applies to enrolled members of the Tribe, all enrolled members of a federally recognized Indian tribe, and all persons eligible for enrollment in a federally recognized Indian tribe, or who otherwise meet the definition of “Indian” under this Title, who have an interest in real or personal property or trust land subject to this Title.
- B. For purposes of this Section, an enrolled member of the Tribe shall be presumed to be domiciled within the Reservation in absence of proof of domicile in another location.
- C. Except to the extent the descent and distribution of real or personal property is governed by federal law, this Title governs the descent and distribution of real property that is within the Reservation and personal property of any person domiciled on the Reservation.

9-3-2. Jurisdiction of Tribal Court – Non-Trust Property.

- A. The Tribal Court shall have all authority necessary to take evidence and determine the validity of any will or other document, the qualifications of any person to be a personal representative, the family relationships of the decedent, or any other matter necessary and relevant to determining the proper distribution of a decedent’s estate under this Title. The court shall have the broadest possible authority to execute its duties and responsibilities under this Title. It shall have authority to probate all estate interests subject to this Title which do not come within the exclusive jurisdiction of the United States,

including over all real or personal property except trust and restricted land and trust personalty.

- B. Unless the American Indian Probate Reform Act is amended to allow Tribes to carry out probate of trust and restricted land and trust personalty, the United States shall carry out the probate of such property, as currently set forth in 25 CFR 15 and other applicable law.

9-3-3. Application to Probate of Trust and Restricted Property by the United States Department of the Interior.

United States Department of the Interior Administrative Law Judges or other Department of the Interior probate tribunals of trust and restricted property shall apply the provisions of this Title to the maximum extent permitted by law.

9-3-4. Indian Custom and Tradition — Distribution of Cultural Patrimony.

- A. Notwithstanding the provisions of this Title relating to descent and distribution, Cultural Patrimony possessed by the decedent shall be distributed in accordance with the customs and traditions of the Tribe.
- B. “Cultural Patrimony” means an object that, according to the customs and traditions of the Tribe, has (1) historical, traditional, or cultural importance central to the Tribe, and (2) cannot be owned, conveyed, or appropriated by any individual.

9-3-5. Non-Probate Assets.

- A. Non-Probate Assets are not covered by this Title.
- B. “Non-Probate Assets” means those rights or interests of a person having beneficial ownership of an asset that passes on the person’s death under a written instrument or arrangement existing at the time of decedent’s death other than the person’s will or by descent and distribution under this Title. “Non-Probate asset” includes, without limitation, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death bank account, transfer on death security or security account, a conveyance that has been postponed until the death of the person, or a trust that becomes effective or irrevocable only upon the person’s death.

IV. TRUST PROPERTY

9-4-1. Applicability.

Chapters V, VI and VII, IX, XII, XIII apply to trust or restricted land within the Reservation and trust personalty. The United States Department of the Interior Office of

Hearings and Appeals shall follow these rules when exercising jurisdiction over estates that include such land and personalty.

V. INTESTATE SUCCESSION OF TRUST PROPERTY

9-5-1. Intestate Succession of Interests in Trust Land of 5% or Greater.

- A. **Surviving Spouse.** If the decedent owns 5% or more in any parcel of trust land and leaves a surviving spouse, the surviving spouse shall receive a life estate without regard to waste in any such parcel. Upon the surviving spouse's death, all such ownership interests transfer to the surviving heir listed in Subsection 9-5-1(B) below.
- B. **No Surviving Spouse.** If the decedent leaves no surviving spouse, all parcels of trust land described in Subsection 9-5-1(A) are transferred to one or more eligible heirs in the following order:
 - 1. Children, in equal shares, provided, if any child does not survive decedent, the child(ren) of such deceased child who survived decedent shall receive the share of the deceased child by right of representation;
 - 2. Grandchildren, in equal shares;
 - 3. Great-grandchildren, in equal shares;
 - 4. Parents, in equal shares;
 - 5. Siblings, in equal shares;
 - 6. Tribe, provided an Indian co-owner of a parcel of trust land may acquire an interest that would otherwise descend to the Tribe by paying into the estate of the decedent, before the close of the probate estate, the fair market value of the interest in land; if more than one Indian (including the Tribe) offers to pay for such interest, the highest bidder shall acquire such interest.
- C. **Eligible Heir.** To be eligible to receive trust land, an heir must qualify as one or more of the following:
 - 1. A member of a federally-recognized tribe;
 - 2. A person eligible to become a member of a federally-recognized tribe;
 - 3. A person meeting the definition of "Indian" under the American Indian Probate Reform Act, as amended;
 - 4. A person who owned trust land as of October 27, 2004;

5. A person who co-owns the trust land subject to probate; or
 6. A lineal descendant within two generations of decedent.
- D. If land passes to the Tribe, a co-owner of the land may purchase the land by paying fair market value for the land into the estate of decedent.
- 9-5-2. Intestate Succession of Interests in Trust Land of Less Than 5%.

- A. **Surviving Spouses.** If the decedent owns less than 5% in any parcel of trust land and leaves a surviving spouse who was residing on the property at the time of decedent's death, the surviving spouse receives a life estate without regard to waste in any such parcel. Upon the surviving spouse's death, all such ownership interests transfer to the surviving heir listed in Subsection 9-5-2(B) below.
- B. **No Residing Surviving Spouse.** If there is no surviving spouse residing on the property at the time of decedent's death, all parcels of trust land in which the decedent owned less a 5% interest are transferred to an eligible heir in the following order:
1. Oldest surviving child;
 2. Oldest surviving grandchild;
 3. Oldest surviving great-grandchild;
 4. Tribe.
- C. **Renouncement of Rights.** An heir of trust land interests of less than 5% may agree to renounce that interest so that it instead goes to one of the following:
1. Any other eligible heir or Indian related to the heir by blood;
 2. A co-owner of the land; or
 3. The Tribe.

9-5-3. Permanent Improvements on Trust Land.

- A. A permanent improvement on trust land shall descend to either:
1. The eligible heirs who inherit the trust land; or
 2. A person or the Tribe who received the trust land pursuant to a renunciation.

- B. This provision applies even though the permanent improvement is not held in trust.
- C. This provision does not alter or otherwise affect the non-trust status of such improvement.

9-5-4. Trust Personalty.

Trust Personalty shall be distributed in accordance with the American Indian Probate Reform Act, as amended.¹

9-5-5. Inheritance by Adopted Child.

¹ As of _____, 2014, the American Indian Probate Reform Act provides:

- A. If the decedent leaves a surviving spouse and no eligible heirs, the surviving spouse receives all of the trust personalty.
- B. If the decedent leaves a surviving spouse and one or more eligible heirs, the surviving spouse receives one-third of the trust personalty and the eligible heirs two-thirds of the trust personalty.
- C. If there is no surviving spouse, the trust personalty is transferred in the following order, so long as the recipient is an eligible heir:
 - 1. Children, in equal shares, provided, if any child does not survive decedent, the child(ren) of such deceased child who survived decedent shall receive the share of the deceased child by right of representation;
 - 2. Grandchildren, in equal shares;
 - 3. Great-grandchildren, in equal shares;
 - 4. Parents, in equal shares;
 - 5. Siblings, in equal shares;
 - 6. Tribe.
- D. If the surviving spouse or heir is an Indian, any trust personalty passing to a surviving spouse is maintained in an Individual Indian Money account by the Secretary. If not Indian, the trust personalty is distributed to the proper recipient.

A lawfully adopted child shall be considered a child of the adopted family rather than a child of his or her biological family unless the decree of adoption provides for the continuation of inheritance rights from the biological family. This provision shall not prevent a biological family from giving or devising property or trust land to his or her biological child who has been adopted out of the family by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his or her biological family.

9-5-6. Child Born After Death of Decedent.

A child of decedent born after the death of decedent is considered living at the time of death of decedent.

VI. DISTRIBUTION OF TRUST PROPERTY BY WILL

9-6-1. Distribution of Trust Land By Will.

A. An owner of an interest in trust land may devise trust land to any of the following:

1. Any lineal descendant;
2. Any person who owns an interest in the same parcel;
3. The Tribe; or
4. Any Indian, as defined by the American Indian Probate Reform Act, as amended.

B. The land shall remain in trust status.

C. If the land is devised to a person not eligible under Subsection 9-5-1(C) to hold the land in trust, that person shall hold a life estate without regard to waste and the remainder shall go to the first surviving person or entity on the following list that is an eligible heir as defined by Subsection 9-5-1(C), in order of priority:

1. Spouse;
2. Children, in equal shares;
3. Grandchildren, in equal shares;
4. Great-grandchildren, in equal shares;
5. Parents, in equal shares;

6. Siblings, in equal shares;

7. Tribe.

9-6-2. Distribution of Trust Personalty By Will.

- A. Trust personalty may be devised to any person or entity in accordance with the American Indian Probate Reform Act, as amended.
- B. If devised to a Tribe or Indian, the trust personalty shall be managed by the Secretary of the Interior.
- C. If devised to any other person or entity, the trust personalty shall be distributed to that person or entity.

9-6-3. Joint Tenancy Right of Survivorship.

If a testator devises an interest in the same parcel of trust land to more than one person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests involved.

VII. OTHER TRUST PROPERTY RULES

9-7-1. Renunciation or Disclaimer of Interests.

- A. Any person 18 years of age or older may renounce or disclaim an inheritance of trust land or personalty, either in full or subject to the reservation of a life estate interest in land, in accordance with this Section 9-7-1, by filing a signed and acknowledged declaration with the probate decisionmaker prior to entry of a final probate order. No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir, devisee or legatee, and the renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.
- B. Interests in Land. A trust or restricted interest in land may be renounced or disclaimed only if the interest passes in trust status in favor of:
 - 1. An eligible heir; or
 - 2. The Tribe;

and the interest so renounced shall pass to its recipient in trust or restricted status.

- C. Trust Personalty. An interest in trust personalty may be renounced or disclaimed in favor of any person who would be eligible to be a receiver of such an interest.
- D. Unauthorized Renunciations and Disclaimers. If a renouncement or disclaimer is not made in compliance with this Section 9-7-1, the renounced or disclaimed interest shall pass as if the renunciation or disclaimer had not been made.
- E. Acceptance of Interest. A renunciation or disclaimer of an interest filed in accordance with this Section 9-7-1 shall be considered accepted when implemented in a final order by a decisionmaker, and shall thereafter be irrevocable. No renunciation or disclaimer of an interest shall be included in such order unless the recipient of the interest has been given notice of the renunciation or disclaimer and has not refused to accept the interest.
- F. A renunciation or disclaimer of an interest that is subject to the rules for intestate succession trust land interests of less than 5% may not be in favor of more than one person.

9-7-2. Right to Purchase Trust Land During Probate.

- A. The following may purchase trust land during probate for fair market value:
 - 1. Eligible heirs, as defined in Subsection 9-5-1(C);
 - 2. Any person who owns an interest in the land; or
 - 3. The Tribe, or the Secretary of the Interior on behalf of the Tribe.
- B. Prior to any purchase, there shall be:
 - 1. A bona fide appraisal of the trust land to determine fair market value;
 - 2. Reasonable advance written notice by first class mail of the proposed purchase to the United States Office of Hearings and Appeals, the Tribal President, and any eligible heir or purchaser, stating that the land is available for purchase;
 - 3. Written consent to the purchase from the surviving spouse and any heir who resides on the land;
 - 4. Written consent to the purchase from the surviving spouse and any eligible heir who does not reside on the land if the decedent's ownership interest in the land is 5% or more, there is a valid will addressing

disposition of that land, and either the Tribe is the purchaser from a non-Tribal member or the Secretary is the purchaser; and

5. A written request by the purchaser prior to distribution of the interest in land stating the results of the appraisal and providing proof of any required notice and consent.
- C. If more than one party requests to purchase the same interest in land, the land shall be sold by public auction or sealed bid after reasonable notice to the Tribal President and all eligible purchasers at no less than fair market value to the purchaser with the highest bid.
- D. Proceeds from the sale of interests under this Section 9-7-2 shall be distributed to the devisee, surviving spouse, or eligible heir whose interest was sold in accordance with the amount of their respective interests. The proceeds may be deposited or held in an account as trust personalty if the interest sold would otherwise pass to:
 1. The heir, by intestate succession; or
 2. The devisee in trust or restricted status.

9-7-3. Tribal Purchase of Trust Land Intended for Non-Indian.

- A. Trust land may not be devised to a person who is not a member of a federally-recognized Indian tribe or eligible to be such a member.
- B. The Tribe shall acquire the land by paying fair market value for the land to the Secretary of the Interior before the close of the probate proceedings and the Secretary shall transfer the payment to the person or persons who would have received an interest in the land if the interest had not been acquired by the Tribe.
- C. Fair market value shall be determined by bona fide appraisal.
- D. This Section 9-7-3 shall not apply in the event the non-Indian devisee renounces the trust land interest in favor of an Indian.
- E. A person who would have received the interest in the land may retain a life estate in the land without regard to waste.

9-7-4. Consolidation and Partition.

Nothing in this Title shall diminish the rights to enter into consolidation agreements or partition trust property as provided by federal law.

VIII. INTESTATE SUCCESSION OF NON-TRUST PROPERTY

9-8-1. Intestate Succession Rules.

Subject to the provisions of this Title, the portion of the estate of a person dying intestate not covered by Chapter 9-5 shall descend and be distributed as follows:

- A. If the decedent leaves a surviving spouse, the surviving spouse shall receive the entire net estate.
- B. If the decedent leaves children and no surviving spouse, the children shall each take an equal share of the entire net estate. If descendants of a deceased child survive the decedent, the share of that deceased child shall go to his or her descendants by representation.
- C. If the decedent leaves no surviving spouse or children, the entire net estate shall go to the first surviving relative(s) on the following list, in order of priority:
 - 1. Grandchildren, in equal shares;
 - 2. Great-grandchildren, in equal shares;
 - 3. Parents, in equal shares;
 - 4. Siblings, in equal shares;
 - 5. Grandparents, in equal shares;
 - 6. Children of the grandparents, in equal shares.
- D. If the decedent leaves no surviving relatives identified in Subsection 9-8-1(D), the entire net estate shall go to the Tribe.

9-8-2. Inheritance by Child.

For the purposes of inheritance by, through, and from any child, the effects and treatment of the parent-child relationship shall not depend on whether or not the parents have been married.

9-8-3. Inheritance by Adopted Child.

A lawfully adopted child shall be considered a child of the adopted family rather than a child of his or her biological family unless the decree of adoption provides for the continuation of inheritance rights from the biological family. This provision shall not prevent a biological family from giving or devising property to his or her adopted child by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his or her biological family.

9-8-4. Child Born After Death of Decedent.

A child born after the death of decedent is considered as living at time of the death of decedent.

9-8-5. "By Representation".

Distribution "by representation" in this Title shall be accomplished as follows:

- A. Determine the sum of the children of the decedent who (a) survived the decedent and (b) did not survive the decedent but had descendants who survived decedent;
- B. Divide the estate into equal shares by the sum derived in Subsection 9-8-5(A) above;
- C. The children of the decedent who survived decedent each take the share derived in Subsection 9-8-5(B) above;
- D. The children of the non-surviving child share take equal shares of the non-surviving child's portion of the estate.

IX. WILLS (TRUST AND NON-TRUST PROPERTY)

9-9-1. Who May Make A Will.

Any person of sound mind who is eighteen years of age or older may make a will.

9-9-2. Requirements of Wills.

- A. To be valid and effective, a will must be in writing, dated, and signed by the testator or some other person under the testator's authority and direction in the presence of the testator. The will shall be attested by two or more adult competent witnesses, not having an interest in the testator's estate or in the will, signing their names to the will in the presence of the testator by the testator's direction or request: provided, that a will executed outside the Reservation, in the mode prescribed by applicable law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of the Tribe.
- B. A will created prior to the date of adoption of this Section 9-9-2 shall not be declared invalid if one or more of the witnesses to the will have an interest in the testator's estate or in the will.

9-9-3. Self-Proven Will At Time of Execution and After Execution.

A. A will may be simultaneously executed, attested, and made self-proved by acknowledgment by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal in substantially the following form:

I, _____, swear or affirm under penalty of perjury that, on the ___ day of _____, 20___, I requested _____ and _____ to act as witnesses to my will; that I declared to them that the document was my last will; that I signed the will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and that I willingly made and executed the will as my free and voluntary act for the purposes expressed in the will.

Testator

We, _____ and _____, swear or affirm under penalty of perjury that on the ___ day of _____, 20___, _____ of the State of _____, published and declared the attached document to be his/her last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her request, signed the will as witnesses in his/her presence and in the presence of each other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness

Witness

THE STATE OF _____
COUNTY OF _____

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 20___.

(SEAL)

(Signed) _____



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**



IN REPLY REFER TO:
Executive Direction

DEC 11 2015

Llevando Fisher, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Fisher:

This is in reference to Northern Cheyenne Tribal Ordinance No. DOI-003 (2016) enacted by the Council on November 16, 2015 and received in this office on December 1, 2015.

Ordinance No. DOI-003 (2016) –adopting Montana State Law in limited areas of protection orders, adult guardianship and adult commitments.

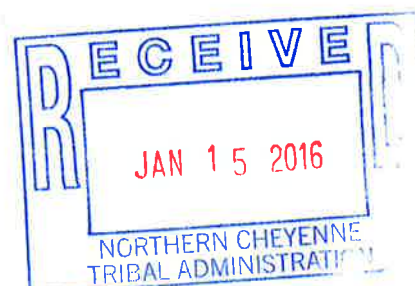
Ordinance No. DOI-003 (2016) is hereby approved. This ordinance did not include the specific language for adoption. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (a), (i), (q) and (r) of the Northern Cheyenne Tribe's Amended Constitution and Bylaws.

Pursuant to Article IV, Section 4 of the Northern Cheyenne Tribe's Amended Constitution the Superintendent has authority to respond to said ordinance. All necessary copies of this ordinance have been retained for our files.

Sincerely,

Michael Ledy
Superintendent

Enclosure



**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-003 (2016)

ORDINANCE ADOPTING MONTANA STATE LAW IN LIMITED AREAS OF PROTECTION ORDERS, ADULT GUARDIANSHIPS AND ADULT COMMITMENTS.

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe, organized and operating under the Tribe's Amended Constitution and Bylaws approved by the Secretary of the Interior on May 31, 1996; and

WHEREAS, under Article IV, Section 1(i) of the Constitution, the Tribal Council is empowered to promulgate and enforce ordinances governing the conduct of members of the Tribe or other persons within the Tribe's jurisdiction, provide for the maintenance of law and order, and establish the Tribe's judicial system and define its powers; and

WHEREAS, based on its general knowledge and experience, and feedback from the Northern Cheyenne community, including Tribal members, Tribal Court, Tribal Prosecution, and Tribal attorneys, the Tribal Council is aware that the Tribe's Law and Order Code needs updates and supplementation as soon as possible and it is anticipated that the Law and Order Code revisions will not be completed until August 2016; and

WHEREAS, before then, it is imperative that the following three areas of law be addressed immediately for the health, safety and welfare of the Tribe: protection orders, adult guardianships, and adult commitments; and

WHEREAS, Section 1A-14-3 of the Separation of Powers Ordinance states that the Tribal Council may consent to application of state law to matters on the Northern Cheyenne Reservation; and

WHEREAS, on a temporary basis, until the Law and Order Code revisions can become law, the Tribal Council wishes to adopt Montana state law in the areas of protection orders, adult guardianships, and adult commitments; and

WHEREAS, in adopting state law in these limited areas, the Tribal Council does not intend to adopt state law in other areas, or to waive or diminish the sovereign powers or immunities of the Tribe and its instrumentalities, programs, and representatives in any way; now

THEREFORE BE IT RESOLVED AS FOLLOWS:

1. The State of Montana statutes and common law applicable to protection orders, adult guardianships, and adult commitments are hereby adopted as the law of the Northern Cheyenne Tribe; and
2. This limited adoption of state law in no way constitutes a waiver or cession of any sovereign powers or immunities of the Tribe to the State of Montana or any other

entity or person, and does not in any way diminish such powers or immunities, including such powers and immunities of Tribal instrumentalities, courts, programs, officers, councilmembers, officials, employees, or other representatives.

CERTIFICATION

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 8 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions, this 16th day of November 2015.

Llevando Fisher, Tribal President
Northern Cheyenne Tribe

ATTEST:

Melissa Lonebear, Tribal Secretary
Northern Cheyenne Tribe

Disapproved:

~~Michael Addy
Superintendent~~

DEC 11 2015

APPROVED:

Michael Addy
SUPERINTENDENT

DEC 11 2015



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**



IN REPLY REFER TO:
Executive Direction

APR 12 2016

Llevando Fisher, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Fisher:

This is in reference to Northern Cheyenne Tribal Ordinance No. DOI-010 (2016) enacted by the Council on April 4, 2016 and received in this office on April 8, 2016.

Ordinance No. DOI-010 (2016) –amending drug and traffic provisions of Title VII of the Northern Cheyenne Law and Order Code.

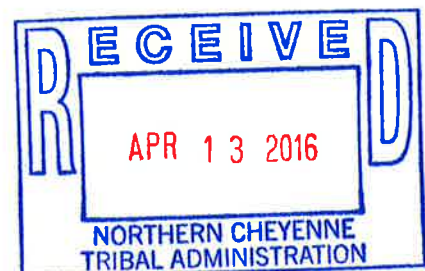
Ordinance No. DOI-010 (2016) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i), (m) and (r) of the Northern Cheyenne Tribe's Amended Constitution and Bylaws.

Pursuant to Article IV, Section 4 of the Northern Cheyenne Tribe's Amended Constitution the Superintendent has authority to respond to said ordinance. All necessary copies of this ordinance have been retained for our files.

Sincerely,

Superintendent

Enclosure



**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-010 (2016)

**ORDINANCE AMENDING DRUG AND TRAFFIC PROVISIONS OF
TITLE VII OF THE NORTHERN CHEYENNE LAW AND ORDER
CODE**

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe, organized and operating under the Tribe's Amended Constitution and Bylaws approved by the Secretary of the Interior on May 31, 1996; and

WHEREAS, under Article IV, Section 1(i) of the Constitution, the Tribal Council is empowered to promulgate and enforce ordinances governing the conduct of members of the Tribe or other persons within the Tribe's jurisdiction, provide for the maintenance of law and order, and establish the Tribe's judicial system and define its powers; and

WHEREAS, the Northern Cheyenne Reservation is experiencing a tremendous problem with illegal drugs and associated criminal activity that threatens the health, welfare, comfort and safety of the Tribe and its members, including recent events within the Reservation that endangered the lives and property of Tribal members and Tribal businesses; and

WHEREAS, the Tribal President has taken the extraordinary measure of issuing a State of Emergency and a related Executive Order to ensure law and order is maintained within the Reservation;

WHEREAS, based on its general knowledge and experience, and feedback from the Northern Cheyenne community, including Tribal members, Tribal Court, Tribal Prosecution, and the Bureau of Indian Affairs, the Tribal Council is aware that the Tribe's Law and Order Code needs updating and supplementation as soon as possible; and

WHEREAS, the Tribe is overseeing a comprehensive overhaul of its Law and Order Code that is anticipated to be completed in August 2016; and

WHEREAS, for the health, welfare, comfort and safety of the Tribal community, it is imperative that certain changes to the Law and Order Code be made at this time to better position federal and Tribal law enforcement services to keep the peace and protect the public; and

WHEREAS, Title VII, Section 7-9-2 of the Northern Cheyenne Law and Order Code prohibits conduct associated with substances listed in Schedule I of the Federal Controlled Substances Act and the Tribal Council wishes also to prohibit conduct associated with substances listed in Schedules II and III of the Federal Controlled Substances Act, and to prohibit possession of drug paraphernalia; and

WHEREAS, Title VII, Chapter 11 of the Northern Cheyenne Law and Order Code sets forth certain traffic rules that are obsolete and need updating to assure highway and street safety on the Reservation; and

WHEREAS, on March 23, 2016, the Tribal President issued an Executive Order clarifying that no one shall have permission or the privilege to enter into and remain in certain areas on Tribal trust lands within the Reservation, and such entries may be considered trespasses under existing Tribal law; and

WHEREAS, law and order within the Reservation would be further strengthened by enacting portions of Executive Order 01-2016 into the Tribal Law & Order Code via a duly-adopted Tribal Council ordinance; and

WHEREAS, the federal Indian trust responsibility is a legal obligation under which the United States “has charged itself with moral obligations of the highest responsibility and trust” toward Indian tribes (*Seminole Nation v. United States*, 1942) to protect tribal lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages; and

WHEREAS, in order to fulfill this high responsibility and trust, it is imperative that the United States dedicate substantially more resources to the law and order of the Northern Cheyenne Reservation and keep Tribal leaders well informed on such efforts so it can coordinate with the federal officials to maintain law and order on the Reservation; and

THEREFORE BE IT ORDAINED AS FOLLOWS:

1. Drug Offenses.

A. Title VII, Section 7-9-2(A)(1) of the Northern Cheyenne Law and Order Code is hereby amended to include the underscored language:

Possesses, uses, sells, trades, transports, gives away or manufactures an article or substance which contains any quantity of a substance classified as belonging to Schedules I, II, or III of the Federal Controlled Substances Act, unless such substance was obtained pursuant to a valid prescription or order from a licensed medical or health practitioner as defined by Title 21 United States Code §802(21), while acting in the course of his professional practice; except peyote in the Native American Church shall not be considered a controlled substance or drug under this section; or

B. A new Section shall be added to Title VII and codified as Section 7-9-7 as follows:

7-9-7 Drug Paraphernalia.

A. It shall be unlawful for any person to possess, sell, trade, bargain or offer for sale drug paraphernalia. The term “drug paraphernalia” means any equipment, product or material of any kind which is primarily intended or designed for use in manufacturing,

compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling or other introducing into the human body a controlled substance, possession of which is unlawful under this Title. It includes items primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine or amphetamines into the human body, including but not limited to pipes, carburetion tubes and devices, cocaine freebase kits and syringes of any kind, with or without a needle attached.

- B. In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the existence and scope of legitimate uses of the item in the community, and/or expert testimony concerning its use, may be considered.
- C. This section shall not apply to any person authorized by applicable law to possess or distribute such items; or any item that is traditionally intended for use with tobacco products.
- D. Violation of this Section is a Class B offense.

2. Traffic Offenses. Title VII, Section 7-11-2 of the Northern Cheyenne Law and Order Code is hereby replaced with the following language:

7-11-2 Road Rules

- A. Law enforcement authorities on the Reservation recognized by the Northern Cheyenne Tribal Council are authorized to enforce Chapter VII, Title 7 of the Northern Cheyenne Law and Order Code.
- B. Federal officials, including the United States Department of Justice and Department of the Interior are hereby authorized to enforce Chapter VII, Title 7 of the Northern Cheyenne Law and Order Code.
- C. All persons who operate a vehicle, motorcycle or ATV on public roads and highways within the Reservation shall be deemed to consent to the Tribe's jurisdiction for the purpose of enforcing the traffic offenses in Title VII, Chapter 11 of this Code.
- D. Violation of any provisions of this section shall be considered Class C offenses requiring payment of a fine, unless otherwise stated in this Title.
- E. Driving Vehicle in Unsafe Condition. No person shall operate a motor vehicle, motorcycle or ATV on the public highways or streets unless such vehicle is in good working order and safe mechanical condition. This includes but is not limited to the good working order of all

exterior lighting, windshields and windows, exterior mirrors and any other safety or mechanical feature that impacts the vehicle's safety.

F. Operating Vehicle Unsafely. No person shall, on the public highways and streets:

1. start a vehicle, motorcycle or ATV which is stopped, standing or parked unless and until such movement can be made with reasonable safety;
2. turn a vehicle, motorcycle or ATV at an intersection unless the vehicle is in such position on the highway that such movement can be made with reasonable safety and signal of intention to turn right or left;
3. when approaching an intersection with a stop sign, or a flashing red or yellow light, stop or yield on the near side of the intersection, or railroad grade crossing, at the point where he or she has a view of approaching traffic and shall not proceed until the intersection is clear.

G. Safety Belt

1. Each driver and passenger of a motor vehicle operated upon a highway or street shall wear a properly adjusted and fastened safety belt.
2. This Section does not apply if the motor vehicle being driven is a bus, school bus, taxi cab, motorcycle, or other motor vehicle not required to be equipped with safety belts under federal law.
3. Failure to wear a safety belt is a Class C offense of the driver of the involved motor vehicle.

Title VII, Section 7-11-11-7 is hereby replaced with the following language:

7-11-11-7. Speeding

- A. Every person driving a vehicle, motorcycle or ATV on a highway or street shall drive in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the conditions, considering actual and potential hazards then existing. In any event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway or street in compliance with legal requirements and the duty of all persons to use due care.
- B. Where no special hazard exists that requires lower speed for compliance with Section 7-11-11-7(A), any speed not in excess of

the posted speed limit for that area shall be lawful; but, it is illegal for any person to drive at any speed in excess of the posted speed limit for that area. The posted speed limit shall not apply to vehicles when operated with due regard for safety under the direction of law enforcement in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire departments when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies. This exemption shall not, however, protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

- C. Any person who drives a number of miles per hour (“mph”) in excess of the maximum speed limit as posted as provided in this section, or at a speed greater than is reasonable and proper under conditions then existing is guilty of speeding and upon conviction thereof shall be sentenced to court costs and a fine associated with the mph over the posted speed limit as follows:
 - 1. 1-10 MPH Over Posted Speed Limit: \$75
 - 2. 11-20 MPH Over Posted Speed Limit: \$100
 - 3. 20-30 MPH Over Posted Speed Limit: \$200
 - 4. Any person who drives a number of miles per hour in excess of the maximum speed limit as posted in a construction zone shall be subject to a doubled fine.
- D. Starting one day before the Annual July 4th Pow-wow and ending the day after the Pow-wow of each year, a 35 m.p.h. speed limit shall be vigorously enforced by the Northern Cheyenne Police Department on the paved road between Lane Deer and the Northern Cheyenne Pow-wow complex. Violators of this speed limit will be issued a warning for their first violation and shall be fined \$5.00 for each violation thereafter.
- E. A citation procedure shall be utilized by the Police Department so each person who is stopped has the option to pay a bond at the time the Police stop is initially made or they may elect to go to court and appear before the reservation Judge to await a hearing on the speeding violation.

A new section is hereby added to Title VII and shall be codified at Title VII, Section 7-11-11-9-1 as follows:

7-11-11-9-1. Aggravated Reckless Driving

- A. A person commits aggravated reckless driving if he or she drives a vehicle in willful or wanton disregard for the safety of persons or property and causes and/or inflicts injury upon the person of another.
- B. Aggravated reckless driving is a Class B offense.

Title VII, Section 7-11-11-8 is hereby replaced with the following:

7-11-11-8 Driving While Under the Influence of Intoxicating Liquors or Drugs

- A. A person who is under the influence of intoxicating liquor or a controlled substance under Schedules I, II or III of the Federal Controlled Substances Act while driving or in physical control of a motor vehicle to a degree which renders him/her incapable of safely driving or has a blood alcohol level of .00% or more by weight of alcohol is guilty of driving under the influence.
- B. In any prosecution for a violation of Section 7-11-11-8(A), the presence of intoxicating liquor or drugs may be shown by chemical analysis of the defendant's bodily substances using an intoxilyzer or similar breath alcohol testing device, or a blood or urine test. In addition to the results of chemical analysis, other competent evidence may be introduced on the question of whether the defendant was under the influence of intoxicating liquor or drugs.
- C. Chemical analysis of a person's blood, breath or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body shall be administered at the direction of the arresting officer having reasonable grounds to believe that the person was in violation of Section 7-11-11-8(A).
- D. If the person under arrest refuses upon the request of a police officer to submit to chemical analysis under this Section, such person shall be presumed to be in violation of Section 7-11-11-8.
- E. Driving under the influence is a Class A offense.

3. Trespass Offense. A new Section is hereby added to Title VII, Chapter 6 and codified at Section 7-6-0 as follows:

7-6-0 Trespass to Trust Land

- A. A person is guilty of trespass to trust land if, between the hours of 10 p.m. and 6 a.m., that person enters into and remains in any public park, recreation area, powwow ground, rodeo ground, or any other unoccupied property or building

held in trust for the Tribe within the exterior boundaries of the Northern Cheyenne Reservation.

- B. This section shall not apply to persons engaged in lawful business or responding to an emergency.
- C. Trespass to trust land is a Class C offense.

THEREFORE BE IT RESOLVED that the Tribal Council supports the Tribal President's State of Emergency declaration and Executive Order No. 01-2016, and by adding a Trespass to Trust Land offense to the Law & Order Code, intends to enact the Tribal President's clarification of the existing trespass statutes into positive Tribal law, pending the adoption of a revised Law & Order Code by the Tribe in the near future.

BE IT FURTHER RESOLVED that the Tribal Council hereby calls on federal law enforcement agencies including the Department of Justice and the Bureau of Indian Affairs to dedicate substantially more of their available resources to enforce the criminal laws on the Northern Cheyenne Reservation to the fullest extent.

BE IT FINALLY RESOLVED that the Tribal Council calls on the Department of Justice and Bureau of Indian Affairs to regularly consult with the Tribal President, Vice President and Tribal Council on the status of federal efforts to establish and maintain law and order on the Reservation.

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 9 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions, this 4th day of April 2016.



Llevando Fisher, Tribal President
Northern Cheyenne Tribe

ATTEST:



Melissa Lonebear, Tribal Secretary
Northern Cheyenne Tribe

APPROVED: _____


SUPERINTENDENT

APR 12 2016



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**



IN REPLY REFER TO:
Executive Direction

APR 12 2016

Llevando Fisher, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Fisher:

This is in reference to Northern Cheyenne Tribal Ordinance No. DOI-011 (2016) enacted by the Council on April 4, 2016 and received in this office on April 8, 2016.

Ordinance No. DOI-011 (2016) –amending drug and traffic provisions of Title VII of the Northern Cheyenne Law and Order Code.

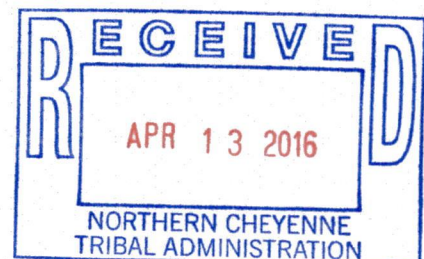
Ordinance No. DOI-011 (2016) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i), (m) and (r) of the Northern Cheyenne Tribe's Amended Constitution and Bylaws.

Pursuant to Article IV, Section 4 of the Northern Cheyenne Tribe's Amended Constitution the Superintendent has authority to respond to said ordinance. All necessary copies of this ordinance have been retained for our files.

Sincerely,

Superintendent

Enclosure



**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-011 (2016)

**ORDINANCE AMENDING DRUG AND TRAFFIC PROVISIONS OF
TITLE VII OF THE NORTHERN CHEYENNE LAW AND ORDER
CODE**

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe, organized and operating under the Tribe's Amended Constitution and Bylaws approved by the Secretary of the Interior on May 31, 1996;

WHEREAS, under Article IV, Section 1(i) of the Constitution, the Tribal Council is empowered to promulgate and enforce ordinances governing the conduct of members of the Tribe or other persons within the Tribe's jurisdiction, provide for the maintenance of law and order, and establish the Tribe's judicial system and define its powers;

WHEREAS, the Northern Cheyenne Reservation is experiencing a tremendous problem with illegal drugs and associated criminal activity that threatens the health, welfare, comfort and safety of the Tribe and its members, including recent events within the Reservation that endangered the lives and property of Tribal members and Tribal businesses;

WHEREAS, the Tribal President has taken the extraordinary measure of issuing a State of Emergency and a related Executive Order to ensure law and order is maintained within the Reservation;

WHEREAS, based on its general knowledge and experience, and feedback from the Northern Cheyenne community, including Tribal members, Tribal Court, Tribal Prosecution, and the Bureau of Indian Affairs, the Tribal Council is aware that the Tribe's Law and Order Code needs updating and supplementation as soon as possible;

WHEREAS, the Tribe is overseeing a comprehensive overhaul of its Law and Order Code that is anticipated to be completed in August 2016;

WHEREAS, for the health, welfare, comfort and safety of the Tribal community, it is imperative that certain changes to the Law and Order Code be made at this time to better position federal and Tribal law enforcement services to keep the peace and protect the public;

WHEREAS, Title VII, Section 7-9-2 of the Northern Cheyenne Law and Order Code prohibits conduct associated with substances listed in Schedule I of the Federal Controlled Substances Act and the Tribal Council wishes also to prohibit conduct associated with substances listed in Schedules II and III of the Federal Controlled Substances Act, and to prohibit possession of drug paraphernalia;

WHEREAS, Title VII, Chapter 11 of the Northern Cheyenne Law and Order Code sets forth certain traffic rules that are obsolete and need updating to assure highway and street safety on the Reservation;

WHEREAS, certain traffic rules within the Law and Order Code should be treated as civil offenses rather than criminal offenses to reflect the Tribe's desire that violation of certain traffic offenses should not result in a criminal penalty and that the traffic rules apply equally to Tribal members and non-members;

WHEREAS, on March 23, 2016, the Tribal President issued an Executive Order clarifying that no one shall have permission or the privilege to enter into and remain in certain areas on Tribal trust lands within the Reservation, and such entries may be considered trespasses under existing Tribal law;

WHEREAS, law and order within the Reservation would be further strengthened by enacting portions of Executive Order 01-2016 into the Tribal Law and Order Code via a duly-adopted Tribal Council ordinance;

WHEREAS, the federal Indian trust responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (*Seminole Nation v. United States*, 1942) to protect tribal lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages;

WHEREAS, in order to fulfill this high responsibility and trust, it is imperative that the United States dedicate substantially more resources to the law and order of the Northern Cheyenne Reservation and keep Tribal leaders well informed on such efforts so it can coordinate with the federal officials to maintain law and order on the Reservation;

WHEREAS, on April 4, 2016, the Tribal Council adopted Ordinance No. DOI-010 (2016), which is identical in many respects to this Ordinance;

WHEREAS, after meeting with the Tribal Court and law enforcement, certain changes and additions are required to Ordinance No. DOI-010 (2016) in order to effectively embody the Tribe's intent to strengthen the Law and Order Code and protect the health, welfare, comfort and safety of the Tribal community.

THEREFORE BE IT ORDAINED AS FOLLOWS:

1. Drug Offenses.

Title VII, Section 7-9-2(A)(1) of the Northern Cheyenne Law and Order Code is hereby amended to include the underscored language:

Possesses, uses, sells, trades, transports, gives away or manufactures an article or substance which contains any quantity of a substance classified as belonging to Schedules I, II, or III of the Federal Controlled Substances Act, unless such substance was obtained pursuant to a valid prescription or

order from a licensed medical or health practitioner as defined by Title 21 United States Code §802(21), while acting in the course of his professional practice; except peyote in the Native American Church shall not be considered a controlled substance or drug under this section; or

A new Section shall be added to Title VII and codified as Section 7-9-7 as follows:

7-9-7. Drug Paraphernalia.

- A. It shall be unlawful for any person to possess, sell, trade, bargain or offer for sale drug paraphernalia. The term “drug paraphernalia” means any equipment, product or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling or other introducing into the human body a controlled substance, possession of which is unlawful under this Title. It includes items primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine or amphetamines into the human body, including but not limited to pipes, carburetion tubes and devices, cocaine freebase kits and syringes of any kind, with or without a needle attached.
- B. In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the existence and scope of legitimate uses of the item in the community, and/or expert testimony concerning its use, may be considered.
- C. This section shall not apply to any person authorized by applicable law to possess or distribute such items; or any item that is traditionally intended for use with tobacco products.
- D. Violation of this Section is a Class B offense.

2. Traffic Offenses. Title VII, Section 7-11-2 of the Northern Cheyenne Law and Order Code is hereby replaced with the following language:

7-11-2. Road Rules

- A. Law enforcement authorities on the Reservation recognized by the Northern Cheyenne Tribal Council are authorized to enforce Chapter VII, Title 7 of the Northern Cheyenne Law and Order Code.
- B. Federal officials, including the United States Department of Justice and Department of the Interior are hereby authorized to enforce

Chapter VII, Title 7 of the Northern Cheyenne Law and Order Code.

- C. All persons who operate a vehicle, motorcycle or ATV on public roads and highways within the Reservation shall be deemed to consent to the Tribe's jurisdiction for the purpose of enforcing the traffic offenses in Title VII, Chapter 11 of this Code.
- D. Violation of any provisions of this section shall be considered civil offenses requiring payment of a reasonable fine, unless otherwise stated in this Title.
- E. Any person cited for the violations in Section 7-11, other than offenses which are Class A, Class B or Class C offenses, may elect to pay a civil fine in the amount of \$75.00, unless another amount is provided as a fine for a particular violation in this Section, to the Police Department in person or by mail, or request a hearing in Tribal Court by filing an answer to the citation with the Tribal Court within 20 days of receiving the citation. The Northern Cheyenne Rules of Civil Procedure, Title IV of this Code, shall apply to such proceedings. The Tribal Court shall construe liberally the applicable Rules as needed to secure a just, speedy and inexpensive determination. No jury trial shall be available for such actions.

7-11-2-1. Traffic Offenses.

- A. Driving Vehicle in Unsafe Condition. No person shall operate a motor vehicle, motorcycle or all-terrain vehicle ("ATV") on the public highways or streets unless such vehicle is in good working order and safe mechanical condition. This includes but is not limited to the good working order of all exterior lighting, windshields and windows, exterior mirrors and any other safety or mechanical feature that impacts the vehicle's safety.
- B. Operating Vehicle Unsafely. No person shall, on the public highways and streets:
 - 1. start a vehicle, motorcycle or ATV which is stopped, standing or parked unless and until such movement can be made with reasonable safety;
 - 2. turn a vehicle, motorcycle or ATV at an intersection unless the vehicle is in such position on the highway that such movement can be made with reasonable safety and signal of intention to turn right or left;

3. when approaching an intersection with a stop sign, or a flashing red or yellow light, stop or yield on the near side of the intersection, or railroad grade crossing, at the point where he or she has a view of approaching traffic and shall not proceed until the intersection is clear.

C. Safety Belt.

1. Each driver and passenger of a motor vehicle operated upon a highway or street shall wear a properly adjusted and fastened safety belt.
2. This Section does not apply if the motor vehicle being driven is a bus, school bus, taxi cab, motorcycle, or other motor vehicle not required to be equipped with safety belts under federal law.
3. Failure to wear a safety belt is a civil offense of the driver of the involved motor vehicle.

Title VII, Section 7-11-11-7 is hereby replaced with the following language:

7-11-11-7. Speeding

- A. Every person driving a vehicle, motorcycle or ATV on a highway or street shall drive in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the conditions, considering actual and potential hazards then existing. In any event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway or street in compliance with legal requirements and the duty of all persons to use due care.
- B. Where no special hazard exists that requires lower speed for compliance with Section 7-11-11-7(A), any speed not in excess of the posted speed limit for that area shall be lawful; but, it is illegal for any person to drive at any speed in excess of the posted speed limit for that area. The posted speed limit shall not apply to vehicles when operated with due regard for safety under the direction of law enforcement in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire departments when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies. This exemption shall not, however, protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

- C. Any person who drives a number of miles per hour (“mph”) in excess of the maximum speed limit as posted as provided in this section, or at a speed greater than is reasonable and proper under conditions then existing is guilty of speeding and upon conviction thereof shall be sentenced to court costs and a fine associated with the mph over the posted speed limit as follows:
1. 1-10 MPH Over Posted Speed Limit: \$75
 2. 11-20 MPH Over Posted Speed Limit: \$100
 3. 20-30 MPH Over Posted Speed Limit: \$200
 4. Any person who drives a number of miles per hour in excess of the maximum speed limit as posted in a construction zone shall be subject to a doubled fine.
- D. Starting one day before the Annual July 4th Pow-wow and ending the day after the Pow-wow of each year, a 35 mph. speed limit shall be vigorously enforced by the Northern Cheyenne Police Department on the paved road between Lame Deer and the Northern Cheyenne Pow-wow complex. Violators of this speed limit will be issued a warning for their first violation and shall be fined \$5.00 for each violation thereafter.
- E. A citation procedure shall be utilized by the Police Department so each person who is stopped has the option to pay a bond at the time the Police stop is initially made or they may elect to go to court and appear before the reservation Judge to await a hearing on the speeding violation.

A new section is hereby added to Title VII and shall be codified at Title VII, Section 7-11-11-9-1 as follows:

7-11-11-9-1. Aggravated Reckless Driving

- A. A person commits aggravated reckless driving if he or she drives a vehicle in willful or wanton disregard for the safety of persons or property and causes and/or inflicts injury upon the person of another.
- B. Aggravated reckless driving is a Class A offense.

Title VII, Section 7-11-11-8 is hereby replaced with the following:

7-11-11-8. Driving While Under the Influence of Intoxicating Liquors or Drugs

- A. A person who is under the influence of intoxicating liquor or a controlled substance under Schedules I, II or III of the Federal Controlled Substances Act while driving or in physical control of a motor vehicle to a degree which renders him/her incapable of safely driving or has a blood alcohol level of .00% or more by weight of alcohol is guilty of driving under the influence.
 - B. In any prosecution for a violation of Section 7-11-11-8(A), the presence of intoxicating liquor or drugs may be shown by chemical analysis of the defendant's bodily substances using an intoxilyzer or similar breath alcohol testing device, or a blood or urine test. In addition to the results of chemical analysis, other competent evidence may be introduced on the question of whether the defendant was under the influence of intoxicating liquor or drugs.
 - C. Chemical analysis of a person's blood, breath or urine for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body shall be administered at the direction of the arresting officer having reasonable grounds to believe that the person was in violation of Section 7-11-11-8(A).
 - D. If the person under arrest refuses upon the request of a police officer to submit to chemical analysis under this Section, such person shall be presumed to be in violation of Section 7-11-11-8.
 - E. Driving under the influence is a Class A offense.
3. Trespass Offense. A new Section is hereby added to Title VII, Chapter 6 and codified at Section 7-6-0 as follows:

7-6-0. Trespass to Trust Land

- A. A person is guilty of trespass to trust land if, between the hours of 11 p.m. and 5 a.m., that person enters into and remains in any public park, recreation area, powwow ground, rodeo ground, or any other unoccupied property or building held in trust for the Tribe within the exterior boundaries of the Northern Cheyenne Reservation.
- B. This section shall not apply to persons engaged in lawful business or responding to an emergency.
- C. Trespass to trust land is a Class C offense.

BE IT FURTHER ORDAINED that this Ordinance shall supersede, replace and repeal Ordinance No. DOI-010 (2016) in its entirety.

THEREFORE BE IT RESOLVED that the Tribal Council supports the Tribal President's State of Emergency declaration and Executive Order No. 01-2016, and by adding a Trespass to Trust Land offense to the Law & Order Code, intends to enact the Tribal President's clarification of the existing trespass statutes into positive Tribal law, pending the adoption of a revised Law & Order Code by the Tribe in the near future.

BE IT FURTHER RESOLVED that the Tribal Council hereby calls on federal law enforcement agencies including the Department of Justice and the Bureau of Indian Affairs to dedicate substantially more of their available resources to enforce the criminal laws on the Northern Cheyenne Reservation to the fullest extent.

BE IT FINALLY RESOLVED that the Tribal Council calls on the Department of Justice and Bureau of Indian Affairs to regularly consult with the Tribal President, Vice President and Tribal Council on the status of federal efforts to establish and maintain law and order on the Reservation.

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 9 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions, this 7th day of April 2016.




Llevando Fisher, Tribal President
Northern Cheyenne Tribe

ATTEST:



Melissa Lonebear, Tribal Secretary
Northern Cheyenne Tribe

APPROVED: _____



SUPERINTENDENT

APR 12 2016



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**



IN REPLY REFER TO:
Executive Direction

MAY 23 2016

Llevando Fisher, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Fisher:

This is in reference to Northern Cheyenne Tribal Ordinance No. DOI-012 (2016) enacted by the Council on May 2, 2016 and received in this office on May 13, 2016.

Ordinance No. DOI-012 (2016) –amending Ordinance No. DOI-011 (2016) and Title VII, Section 7-11-11-8 of the Law and Order Code.

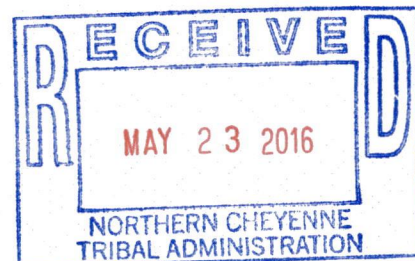
Ordinance No. DOI-012 (2016) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i), (m) and (r) of the Northern Cheyenne Tribe's Amended Constitution and Bylaws.

Pursuant to Article IV, Section 4 of the Northern Cheyenne Tribe's Amended Constitution the Superintendent has authority to respond to said ordinance. All necessary copies of this ordinance have been retained for our files.

Sincerely,

Superintendent

Enclosure



**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-012 (2016)

**AMENDING ORDINANCE NO. DOI-011 (2016) AND TITLE VII,
SECTION 7-11-11-8 OF THE LAW AND ORDER CODE**

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe, organized and operating under the Tribe's Amended Constitution and Bylaws approved by the Secretary of the Interior on May 31, 1996;

WHEREAS, under Article IV, Section 1(i) of the Constitution, the Tribal Council is empowered to promulgate and enforce ordinances governing the conduct of members of the Tribe or other persons within the Tribe's jurisdiction, provide for the maintenance of law and order, and establish the Tribe's judicial system and define its powers;

WHEREAS, the Northern Cheyenne Reservation is experiencing a tremendous problem with illegal drugs and associated criminal activity that threatens the health, welfare, comfort and safety of the Tribe and its members, including recent events within the Reservation that endangered the lives and property of Tribal members and Tribal businesses;

WHEREAS, on April 7, 2016, the Tribal Council adopted Ordinance No. DOI-011 (2016), which amended several existing sections of Title VII of the Northern Cheyenne Law and Order Code to strengthen the Tribe's ability to keep the peace and protect the public with regards to drug and traffic offenses;

WHEREAS, Title VII, Section 7-11-11-8 of the Law and Order Code has made driving while intoxicated (DWI) an offense punishable by the Tribe since it was enacted in 1989;

WHEREAS, Ordinance No. DOI-011 (2016) updated Title VII, Section 7-11-11-8 in several respects to increase the effectiveness of the law in preventing DWI-related accidents and offenses;

WHEREAS, certain changes are now required to Ordinance No. DOI-011 (2016) and Title VII, Section 7-11-11-8 in order to effectively embody the Tribe's intent to strengthen the Law and Order Code and protect the health, welfare, comfort and safety of the Tribal community;

THEREFORE BE IT ORDAINED AS FOLLOWS:

Title VII, Section 7-11-11-8 as amended by Ordinance No. DOI-011 (2016) is hereby replaced with the following:

7-11-11-8. Driving While Under the Influence of Alcohol or Drugs


- A. A person who is under the influence of alcohol or a controlled substance under Schedules I, II or III of the Federal Controlled Substances Act while driving or in physical control of a motor vehicle to a degree which renders him/her

incapable of safely driving, or has an alcohol concentration of 0.08 or more by weight, or any detectable level of a controlled substance in the person's body, is guilty of driving under the influence.


- B. In any prosecution for a violation of Section 7-11-11-8(A), the presence of intoxicating liquor or drugs may be shown by chemical analysis of the defendant's bodily substances using an intoxilyzer or similar breath alcohol testing device, or a blood or urine test. In addition to the results of chemical analysis, other competent evidence may be introduced on the question of whether the defendant was under the influence of intoxicating liquor or drugs.
1. If there was at the time of the test an alcohol concentration of 0.04 or less, it may be inferred that the person was not under the influence of alcohol.
 2. If there was at the time of the test an alcohol concentration in excess of 0.04 by less than 0.08, that fact may not give rise to any inference that the person was or was not under the influence of alcohol, but the fact may be considered with other competent evidence in determining the guilt or innocence of the person.
 3. If there was at the time of the test an alcohol concentration of 0.08 or more, it may be inferred that the person was under the influence of alcohol.
 4. Regardless of the result of chemical analysis of the person's bodily substances for alcohol, this section does not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs or a combination of alcohol and drugs.
 5. A person may not be found in violation of this section based solely upon the detectable presence of a controlled substance in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a controlled substance while driving or in actual physical control of a motor vehicle.
- C. Chemical analysis of a person's blood, breath or urine for the purpose of determining any measured amount or detected presence of alcohol or controlled substance in the person's body shall be administered at the direction of the arresting officer having reasonable grounds to believe that the person was in violation of Section 7-11-11-8(A).
- D. If the person under arrest refuses upon the request of a police officer to submit to chemical analysis under this section, such person shall be presumed to be in violation of Section 7-11-11-8(A). The presumption is rebuttable.
- E. Driving under the influence is a Class A offense.

CERTIFICATION

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 8 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions, this 2nd day of May 2016.


Llevando Fisher, President
Northern Cheyenne Tribe

ATTEST:


Melissa Lonebear, Secretary
Northern Cheyenne Tribe

NOTED:



SUPERINTENDENT

MAY 23 2016



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**

IN REPLY REFER TO:
Executive Direction

DEC 20 2016

L. Jace Killsback, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Killsback:

This is in reference to Northern Cheyenne Tribal Ordinance No. DOI-008 (2017) enacted by the Council on December 7, 2016 and received in this office on December 14, 2016.

Ordinance No. DOI-008 (2017) –adopting Northern Cheyenne Clean Air Act.

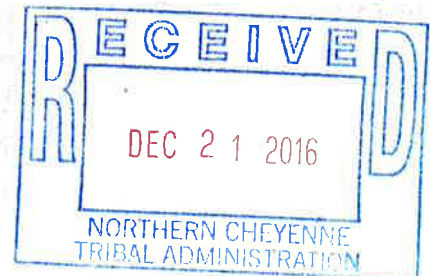
Ordinance No. DOI-008 (2017) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (a), (i) and (r) of the Northern Cheyenne Tribe's Amended Constitution and Bylaws.

Pursuant to Article IV, Section 4 of the Northern Cheyenne Tribe's Amended Constitution the Superintendent has authority to respond to said ordinance. All necessary copies of this ordinance have been retained for our files.

Sincerely,

Superintendent

Enclosure



WHEREAS, the Tribe received two sets of comments from BIA on the draft NCCAA, provided written responses to BIA's comments, and incorporated BIA's comments to the extent consistent with the Tribe's sovereignty, self-determination, and air quality goals for the Reservation; and

WHEREAS, on June 29, 2016, Tribal leaders met with the BIA Regional Director to discuss the NCCAA and agreed upon the joint permitting approach for open burning permits reflected in Section 5.7 of the attached NCCAA.

THEREFORE, BE IT ORDAINED AS FOLLOWS:

The attached Northern Cheyenne Clean Air Act is hereby approved, adopted, and enacted as Tribal law.

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 9 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions, this 7th day of December 2016.



L. Jace Killsback, President
Northern Cheyenne Tribe

ATTEST:



Melissa Lonebear, Secretary
Northern Cheyenne Tribe

APPROVED: _____


SUPERINTENDENT

DEC 20 2016

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-008 (2017)

ORDINANCE ADOPTING NORTHERN CHEYENNE CLEAN AIR ACT

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Reservation by authority of the Amended Constitution and Bylaws as approved by the Secretary of Interior on May 31, 1996; and

WHEREAS, pursuant to Article IV, Section 1, of the Northern Cheyenne Tribe's Constitution, the Tribal Council has governing authority over the Northern Cheyenne Reservation, including without limitation authority to promulgate and enforce laws:

- to protect property, wildlife, and natural resources of the Reservation;
- to regulate trade and property on the Reservation;
- to protect the health and general welfare of the Tribe; and
- to establish, delegate powers to, and regulate the procedures of Tribal boards, agencies, other instrumentalities, and officials, subject to the right of the Tribal Council to review actions taken under such delegated powers;

WHEREAS, the Tribal Council has determined that air pollutants, whether emitted on the Northern Cheyenne Reservation or transported to the Reservation from off-Reservation sources, have the potential to adversely affect air quality on the Reservation, the health and wellbeing of the Tribe's members and other Reservation residents, the economic security of the Tribe, and the traditional way-of-life that the Tribe's members have practiced since time immemorial;

WHEREAS, the Tribal Council has determined it is of upmost importance that air quality on the Northern Cheyenne Reservation is maintained and enhanced, as demonstrated by the Tribe's designation of the Northern Cheyenne Reservation as a Class 1 air quality region pursuant to the federal Clean Air Act and the Tribe's continuing efforts to ensure that on and off-Reservation sources of air pollutants do not adversely affect air quality on the Northern Cheyenne Reservation;

WHEREAS, the Tribal Council has determined that unregulated open burning on the Reservation has significant adverse effects on air quality on the Reservation and may impact the health and welfare of Reservation residents;

WHEREAS, the Northern Cheyenne Tribe has made significant efforts to coordinate with the U.S. Bureau of Indian Affairs ("BIA") and the U.S. Environmental Protection Agency ("EPA") on the regulation of open burning on the Reservation by providing advanced drafts of the Northern Cheyenne Clean Air Act ("NCCAA") to BIA and EPA and providing a meaningful opportunity for BIA and EPA to submit comments on the NCCAA;



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**

**IN REPLY REFER TO:
Executive Direction**

JUL 25 2017

L. Jace Killsback, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Killsback:

This is in reference to Northern Cheyenne Tribal Ordinance No. DOI-020 (2017) enacted by the Council on July 10, 2017 and received in this office on July 21, 2017.

Ordinance No. DOI-020 (2017) repealing certain changes to the traffic rules in the Northern Cheyenne Law & Order Code.

Ordinance No. DOI-020 (2017) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i), (k) and (r) of the Northern Cheyenne Tribe's Amended Constitution and Bylaws.

Pursuant to Article IV, Section 4 of the Northern Cheyenne Tribe's Amended Constitution the Superintendent has authority to respond to said ordinance.

All necessary copies of this ordinance have been retained for our files.

Sincerely,


Superintendent

Enclosure

ACTING

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-020 (2017)

AN ORDINANCE REPEALING CERTAIN CHANGES TO THE TRAFFIC RULES IN THE NORTHERN CHEYENNE LAW & ORDER CODE.

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Reservation by authority of the Amended Constitution and Bylaws as approved by the Secretary of the Interior on May 31, 1996; and

WHEREAS, the Northern Cheyenne Tribal Council is empowered to protect the general welfare of the Northern Cheyenne Tribe and provide for the maintenance of law and order under Article IV, Sections 1(i) and 1(m) of the Constitution of the Northern Cheyenne Tribe as amended in 1996; and

WHEREAS, in March and April 2016, the Tribal President and Tribal Council took a series of measures intended to provide a stop-gap solution to tremendous law enforcement problems occurring within the Reservation by developing changes to the drug and traffic provisions of the Law & Order Code;

WHEREAS, Ordinances DOI-010 (2016), DOI-011 (2016) and DOI-012 (2016) enacted several new traffic rules into the Law & Order Code; and

WHEREAS, the Council now desires to repeal and rescind some of those 2016 traffic rules, and to amend the rules pertaining to speeding and safety belt violations; now

THEREFORE, BE IT ORDAINED, that the following sections of Title VII, Chapter 11 of the Northern Cheyenne Law and Order Code made by Ordinances DOI-010 (2016), DOI-011 (2016) and DOI-012 (2016) setting forth certain traffic rules for the Reservation are hereby repealed and rescinded in their entirety:

1. Section 7-11-2, Road Rules;
2. Section 7-11-2-1.A, Driving Vehicle in Unsafe Condition;
3. Section 7-11-2-1.B, Operating Vehicle Unsafely;

BE IT FURTHER ORDAINED that the following provision is added to Section 7-11-2-1.C (Safety Belt):

4. Failure to wear a safety belt shall be secondary offense and shall not, by itself, be probable or just cause to stop and detain a vehicle.

BE IT FURTHER ORDAINED that Section 7-11-11-7.C, Speeding is changed to read as follows:

C. Any person who drives a number of miles per hour (“mph”) in excess of the maximum speed limit as posted as provided in this section, or at a speed greater than is reasonable and proper under conditions then existing is guilty of speeding and upon conviction thereof shall be sentenced to court costs and a fine associated with the mph over the posted speed limit as follows:

1. 1-10 MPH Over Posted Speed Limit: \$20
2. 11-20 MPH Over Posted Speed Limit: \$40
3. 20-30 MPH Over Posted Speed Limit: \$60
4. Any person who drives a number of miles per hour in excess of the maximum speed limit as posted in a construction zone shall be subject to a doubled fine.

BE IT FURTHER ORDAINED that all other changes to the Law & Order Code enacted by Ordinances DOI-010 (2016), DOI-011 (2016) and DOI-012 (2016) remain in full force and effect.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 10 votes for passage and adoption and 0 votes against passage and adoption this 10th day of July, 2017.

L. Jace Killsback, President
Northern Cheyenne Tribal Council

ATTEST:

Melissa Lonebear, Secretary
Northern Cheyenne Tribal Council

APPROVED: _____

SUPERINTENDENT

ACTING



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**

OCT - 2 2018

IN REPLY REFER TO:
EXECUTIVE DIRECTION

L. Jace Killsback, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Killsback:

This is in reference to Northern Cheyenne Tribal Council Ordinance No. DOI-029 (2018) enacted on September 17, 2018 and received on September 24, 2018.

Ordinance No. DOI-029 (2018) revises the safety belt traffic rule in the Northern Cheyenne Law & Order Code.

Ordinance No. DOI-029 (2018) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i) of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe.

Pursuant to Article IV, Section 4 of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe, the Superintendent has authority to respond to said resolution.

All necessary copies of this resolution have been retained for our files.

Sincerely,


Acting Superintendent

Enclosure

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-029 (2018)

AN ORDINANCE REVISING SAFETY BELT TRAFFIC RULE IN THE NORTHERN CHEYENNE LAW & ORDER CODE

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Reservation by authority of the Amended Constitution and Bylaws as approved by the Secretary of the Interior on May 31, 1996; and

WHEREAS, the Northern Cheyenne Tribal Council is empowered to protect the general welfare of the Northern Cheyenne Tribe and provide for the maintenance of law and order under Article IV, Sections 1(i) and 1(m) of the Constitution of the Northern Cheyenne Tribe as amended in 1996; and

WHEREAS, in March and April 2016, the Tribal President and Tribal Council took a series of measures intended to provide a stop-gap solution to tremendous law enforcement problems occurring within the Reservation by developing changes to the drug and traffic provisions of the Law & Order Code;

WHEREAS, Ordinances DOI-010 (2016), DOI-011 (2016) and DOI-012 (2016) enacted several new traffic rules into the Law & Order Code;

WHEREAS, subsequently, Ordinance DOI-020 (2017) repealed and rescinded some of those 2016 traffic rules, and amended the rules pertaining to speeding and safety belt violations; and

WHEREAS, the Tribal Council wishes to further amend the safety belt violation rules.


THEREFORE, BE IT ORDAINED, that the following provision replaces Section 7-11-2-1.C (Safety Belt):

1. Failure to wear a safety belt shall be a primary offense and shall, by itself, be probable or just cause to stop and detain a vehicle.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 10 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions this 17th day of September 2018.


L. Jace Killsback, President
Northern Cheyenne Tribe

ATTEST:


Melissa Lonebear, Secretary
Northern Cheyenne Tribe

Approved:


Acting Superintendent

OCT - 2 2018



**BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043**

NOV -2 2018

IN REPLY REFER TO:
EXECUTIVE DIRECTION

Conrad Fisher, Acting President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Fisher:

This is in reference to Northern Cheyenne Tribal Council Ordinance No. DOI-001 (2019) enacted on October 17, 2018 and received on October 24, 2018.

Ordinance No. DOI-001 (2019) amends Title IV, Section 4-1-2, 4-2-1, and 4-2-2 of the Law and Order Code.

Ordinance No. DOI-001 (2019) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i) of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe.

Pursuant to Article IV, Section 4 of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe, the Superintendent has authority to respond to said resolution.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Acting Superintendent

Enclosure

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-001 (2019)

**ORDINANCE AMENDING TITLE IV, SECTIONS 4-1-2, 4-2-1 and 4-2-2
OF THE LAW AND ORDER CODE**

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe, organized and operating under the Tribe's Amended Constitution and Bylaws approved by the Secretary of the Interior on May 31, 1996;

WHEREAS, under Article IV, Section 1(i) of the Constitution, the Tribal Council is empowered to promulgate and enforce ordinances governing the conduct of members of the Tribe or other persons within the Tribe's jurisdiction, provide for the maintenance of law and order, and establish the Tribe's judicial system and define its powers;

WHEREAS, the Northern Cheyenne Reservation is experiencing many problems from non-members engaging in a variety of misconduct on the Reservation and the Tribe needs stronger administrative tools to address that problem;

WHEREAS, Title IV, Section 4-1-2 of the Law and Order Code concerns "Trespass Permits" and has been determined to be obsolete, not enforced, and needing updates;

WHEREAS, the scope and grounds for exclusion under Title IV, Section 4-2-1 and 4-2-2 of the Law and Order Code needs to be updated to protect the health and safety of Tribal members and Tribal and Tribal member property;

THEREFORE BE IT ORDAINED AS FOLLOWS:

Title VII, Sections 4-1-1, 4-2-1, and 4-2-2 are hereby amended to read as follows:

4-1-2 Travel Permits by Non-Members

Before any non-member of the Northern Cheyenne Tribe travels over, upon or across the Northern Cheyenne Reservation, he shall obtain a Travel Permit from the Northern Cheyenne Land Authority. The permit may allow access to the Reservation for up to one year, is not transferrable, and may be revoked by the Land Authority with or without cause. A permit is not required to travel over major roads, including State Highways 212 and 39, Tongue River Road, Carl Bement Road, Muddy Creek Road, and Kirby Road. The Land Authority shall set the fee for a Travel Permit.

4-2-1 Who May be Excluded

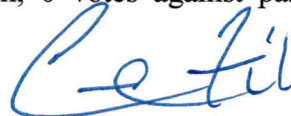
Any non-member of the Northern Cheyenne Tribe, except persons authorized by federal law to be present within the boundaries of the Northern Cheyenne Reservation and owners of non-trust land on the Reservation, may be excluded from the Reservation.

4-2-2 Grounds for Exclusion

Non-members may be excluded for commission of one or more of the following acts within the Northern Cheyenne Reservation:

- A. Violation of any Northern Cheyenne Tribal Council ordinance.
- B. Unauthorized prospecting, measuring or studying of the Northern Cheyenne Reservation.
- C. Entering an area of the Northern Cheyenne Reservation in violation of any order of the Northern Cheyenne Tribal Council designating such area as closed because of a fire hazard or for any other reason.
- D. Use, possession, or sale of any drug, narcotic drug or controlled substance as defined by the state Uniform Controlled Substances Act.
- E. Defrauding any enrolled member of just compensation for his labor or service of any nature done at the request of the non-member.
- F. Any action causing physical injury to any person or damage of any nature to Tribal property or property of any enrolled member.
- G. Possession of a firearm or other dangerous weapon.
- H. Any intentional conduct resulting in the fear of bodily harm, or bodily harm itself.

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 7 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions, this 17th day of October 2018.




Conrad Fisher, Acting President
Northern Cheyenne Tribe

ATTEST:



Melissa Lonebear, Secretary
Northern Cheyenne Tribe

Approved:



Acting Superintendent

NOV - 2 2018



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043

MAR - 5 2019

IN REPLY REFER TO:
EXECUTIVE DIRECTION

Rynalea Peña, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Peña:

This is in reference to Northern Cheyenne Tribal Council Ordinance No. DOI-009 (2019) enacted on February 20, 2019 and received on February 26, 2019.

Ordinance No. DOI-009 (2019) adds new Class A Offenses to Title VII of the Law and Order Code.

Ordinance No. DOI-009 (2019) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i) of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe.

Pursuant to Article IV, Section 4 of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe, the Superintendent has authority to respond to said ordinance.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Superintendent

Enclosure

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-009 (2019)

**ORDINANCE ADDING NEW CLASS A OFFENSES TO
TITLE VII OF THE LAW AND ORDER CODE**

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Tribe, organized and operating under the Tribe's Amended Constitution and Bylaws approved by the Secretary of the Interior on May 31, 1996;

WHEREAS, under Article IV, Section 1(i) of the Constitution, the Tribal Council is empowered to promulgate and enforce ordinances governing the conduct of members of the Tribe or other persons within the Tribe's jurisdiction, provide for the maintenance of law and order, and establish the Tribe's judicial system and define its powers;

WHEREAS, to maintain law and order on the Northern Cheyenne Reservation, BIA Law Enforcement and/or the Chief Judge of Northern Cheyenne Tribal Court have requested several changes to the Offense Code, which is Title VII of the Northern Cheyenne Law and Order Code;

WHEREAS, specifically, it was determined that the current Law and Order Code does not classify the following as offenses: (i) assault while in criminal detention; (ii) violation of a protection order;

WHEREAS, it was determined that the offense of Failure to Heed Emergency Lights and Attempting to Elude should be changed from a Class C offense to a Class A offense; and

WHEREAS, to maintain law and order on the Northern Cheyenne Reservation, it is necessary to make the above-stated changes to Title VII of the Law and Order Code.

THEREFORE BE IT ORDAINED THAT the following changes are made to Title VII of the Northern Cheyenne Law and Order Code:

1. Add to Section 7-4-2(B):
 - d. a bodily injury to another while in custody in a criminal detention facility;
2. Change Section 7-7-16(C) to:
 - C. Conviction under this section is a Class A offense.
3. Add a new Section 7-7-17:

Violation of an Order of Protection

- A. A person commits violation of an order of protection if the person has been lawfully served with a court order for the protection of another and violates the order.
- B. The respondent/petitioner under an order of protection may be cited for a violation of the order.
- C. Conviction under this section is a Class A offense.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 10 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions this 20th day of February 2019.



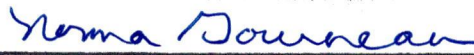
Rynalea Peña, President
Northern Cheyenne Tribe

ATTEST:



Melissa Lonebear, Secretary
Northern Cheyenne Tribe

Approved:



Superintendent

MAR - 5 2019



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043

IN REPLY REFER TO:
EXECUTIVE DIRECTION

AUG -2 2019

Rynalea Peña, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Peña:

This is in reference to Northern Cheyenne Tribal Council Ordinance No. DOI-015 (2019) enacted on July 15, 2019 and received on July 29, 2019.

Ordinance No. DOI-015 (2019) sets forth a mandatory penalty for heroin, methamphetamine, or prescription opioid drug offenses in the Northern Cheyenne Law & Order Code.

Ordinance No. DOI-015 (2019) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i) of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe.

Pursuant to Article IV, Section 4 of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe, the Superintendent has authority to respond to said ordinance.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Acting Superintendent

Enclosure

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-015 (2019)

AN ORDINANCE SETTING FORTH MANDATORY PENALTY FOR HEROIN, METHAMPHETAMINE OR PRESCRIPTION OPIOID DRUG OFFENSES IN THE NORTHERN CHEYENNE LAW & ORDER CODE

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Reservation by authority of the Amended Constitution and Bylaws as approved by the Secretary of the Interior on May 31, 1996; and

WHEREAS, the Northern Cheyenne Tribal Council is empowered to protect the general welfare of the Northern Cheyenne Tribe and provide for the maintenance of law and order under Article IV, Sections 1(i) and 1(m) of the Constitution of the Northern Cheyenne Tribe as amended in 1996; and

WHEREAS, sale, barter, planting, cultivation, production, giving away or possessing heroin, methamphetamine or prescription opioid is a Class A criminal offense under Section 7-9-2 of the Law & Order Code;

WHEREAS, under Section 7-1-7 of the Law & Order Code a Class A offense may result in a fine not to exceed \$5,000 and imprisonment not to exceed 1 year;

WHEREAS, to reduce heroin, methamphetamine and prescription opioid activity on the Reservation the Tribal Council wishes to impose mandatory sentencing for offenses involving those drugs;

WHEREAS, to reduce heroin, methamphetamine and prescription opioid activity on the Reservation the Tribal Council wishes to impose automatic and permanent banishment of any person who engages in heroin or methamphetamine activity in violation Section 7-9-2 and is not an enrolled member of the Tribe; now

THEREFORE, BE IT ORDAINED:

1. that a new Section 7-1-7(D) is added to the Law and Order Code:
D. Heroin, methamphetamine and prescription opioid offenses set forth in Section 7-9-2(A)(1) shall be subject to the sentences set forth in Section 7-9-2(D).
2. that a new Section 7-9-2(D) is added to the Law and Order Code:
Heroin, methamphetamine and prescription opioid offenses set forth in Section 7-9-2(A)(1) shall be subject to the mandatory minimum sentence:

- i. For first offense: 6 months imprisonment and \$1,000 fine and drug treatment.
- ii. For second offense: 1-year imprisonment and \$2,000 fine and drug treatment beyond that ordered due to the first offense.
- iii. For third offense: 1-year imprisonment and \$5,000 fine and drug treatment beyond the treatment ordered due to the second offense.
- iv. For any person not an enrolled member of the Northern Cheyenne Tribe automatic and permanent banishment from the Northern Cheyenne Reservation.


BE IT FINALLY ORDAINED that this Tribal Council action supersedes any conflicting resolution or ordinance.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 10 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions this 15th day of July 2019.



Rynalea Peña, President
Northern Cheyenne Tribe

ATTEST:



Melissa Lonebear, Secretary
Northern Cheyenne Tribe

Approved:



AUG -2 2019
Acting Superintendent



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
NORTHERN CHEYENNE AGENCY
P.O. BOX 40
LAME DEER, MT 59043

AUG -2 2019

IN REPLY REFER TO:
EXECUTIVE DIRECTION

Rynalea Peña, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Peña:

This is in reference to Northern Cheyenne Tribal Council Ordinance No. DOI-016 (2019) enacted on July 15, 2019 and received on July 29, 2019.

Ordinance No. DOI-016 (2019) revises the penalty for marijuana possession in the Northern Cheyenne Law & Order Code.

Ordinance No. DOI-016 (2019) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i) of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe.

Pursuant to Article IV, Section 4 of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe, the Superintendent has authority to respond to said ordinance.

All necessary copies of this resolution have been retained for our files.

Sincerely,



Acting Superintendent

Enclosure

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. DOI-016 (2019)
OVERRIDE ORDINANCE NO. DOI-004 (2019)

AN ORDINANCE REVISING PENALTY FOR MARIJUANA POSSESSION IN THE NORTHERN CHEYENNE LAW & ORDER CODE.

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Reservation by authority of the Amended Constitution and Bylaws as approved by the Secretary of the Interior on May 31, 1996; and

WHEREAS, the Northern Cheyenne Tribal Council is empowered to protect the general welfare of the Northern Cheyenne Tribe and provide for the maintenance of law and order under Article IV, Sections 1(i) and 1(m) of the Constitution of the Northern Cheyenne Tribe as amended in 1996; and

WHEREAS, sale, barter, planting, cultivation, production, giving away or possessing marijuana is a Class A criminal offense under Section 7-9-2 of the Law & Order Code;

WHEREAS, the Montana Medical Marijuana Act, MCA § 50-46-301 through 50-46-345, allows for limited cultivation, manufacture, delivery and possession of marijuana for use in alleviating the symptoms of debilitating medical conditions within Montana;

WHEREAS, under Montana law, certain persons are allowed to possess up to 1 ounce of marijuana;

WHEREAS, the Tribal Council acknowledges that possession of marijuana remains illegal under federal law; and

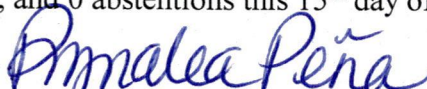
WHEREAS, the Tribal Council wishes to reduce the criminal penalties allowed under Tribal law for persons found guilty of possession of up to 1 ounce of marijuana within the Reservation, without decriminalizing such possession.

THEREFORE, BE IT ORDAINED, that the following provision replaces Section 7-9-2.C:


C. Drug Abuse is a Class A offense, except that possession of less than 1 ounce of marijuana is a Class C offense with a maximum fine of \$25.00.

BE IT FINALLY ORDAINED that this Tribal Council action supersedes any conflicting resolution or ordinance.


PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 8 votes for passage and adoption, 2 votes against passage and adoption, and 0 abstentions this 15th day of July 2019.


Rynalea Peña, President
Northern Cheyenne Tribe

ATTEST:


Melissa Lonebear, Secretary
Northern Cheyenne Tribe

Approved:



Acting Superintendent

AUG -2 2019



United States Department of the Interior
Bureau of Indian Affairs
Northern Cheyenne Agency
P.O. Box 40
Lame Deer, MT 59043

IN REPLY REFER TO:
EXECUTIVE DIRECTION

July 16, 2020

Rynalea Peña, President
Northern Cheyenne Tribe
P.O. Box 128
Lame Deer, MT 59043

Dear President Peña:

This is in reference to Northern Cheyenne Tribal Council Ordinance No. DOI-012 (2020) enacted on July 9, 2020 and received on July 10, 2020.

Ordinance No. DOI-012 (2020) amends the Northern Cheyenne Tribe criminal offenses set forth in Title VII of the Law and Order Code to enhance public health and safety.

Ordinance No. DOI-012 (2020) is hereby approved. The Northern Cheyenne Tribal Council has the authority to take this action pursuant to Article IV, Section 1 (i) of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe.

Pursuant to Article IV, Section 4 of the Amended Constitution and Bylaws of the Northern Cheyenne Tribe, the Superintendent has authority to respond to said ordinance.

All necessary copies of this resolution have been retained for our files.

Sincerely,

CALEB CAIN

Digitally signed by CALEB
CAIN
Date: 2020.07.16
17:54:51 -06'00'

Acting Superintendent

Enclosure

**TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA**

ORDINANCE NO. DOI-012 (2020)

**ORDINANCE AMENDING THE NORTHERN CHEYENNE TRIBE CRIMINAL
OFFENSES SET FORTH IN TITLE VII OF THE LAW AND ORDER CODE TO
ENHANCE PUBLIC HEALTH AND SAFETY**

WHEREAS, the Northern Cheyenne Tribal Council is the governing body of the Northern Cheyenne Reservation by authority of the Amended Constitution and Bylaws as approved by the Secretary of the Interior on May 31, 1996;

WHEREAS, the Northern Cheyenne Tribal Council is empowered to protect the general welfare of the Northern Cheyenne Tribe and provide for the maintenance of law and order under Article IV, Sections 1(i) and 1(m) of the Constitution of the Northern Cheyenne Tribe as amended in 1996;

WHEREAS, under the advisement of the Northern Cheyenne Tribal Court, Northern Cheyenne Societies, and Northern Cheyenne Chief of Police, the Northern Cheyenne Tribal Council finds that establishment of enhanced criminal rules and penalties are needed to deter conduct proscribed;

WHEREAS, the Northern Cheyenne Tribal Council finds that that enhanced penalties, additional provisions and, in some instances, clearer definitions are needed to deter conduct that endangers the safety and well-being of Northern Cheyenne Tribal Members and Reservation residents

WHEREAS, the current COVID-19 pandemic has heightened the need for enforcement of new and existing measures to deter conveyance of the highly communicable and dangerous coronavirus;

THEREFORE, BE IT ORDAINED that the Northern Cheyenne Law and Order Code is amended as follows, with new or revised language indicated in underline;

BE IT FURTHER ORDAINED that Section 7-7-5, Breach of the Peace or Disorderly Conduct, is amended as follows:

- Subsection A is amended to add the following as an offense of disorderly conduct:

10. Violating any curfew mandate ordained by the Tribal Council.

- Subsection B is amended to enhance the classification of the offense of disorderly conduct:

B. Disorderly conduct is a Class B offense.

BE IT FURTHER ORDAINED that Section 7-7-10, Sanitation and Public Health, is amended as follows:

- Subsection A is restructured and amended to add the following as a sanitation and public health offense:

A. A person is guilty of a sanitation and public health offense if he:

1. Violates any rules or regulations enforced by the Department of Public Health, or United States Public Health Service Division of Indian Health, as adopted by Tribal Council ordinances, or any Indian group, organization, or committee for tribal celebrations or gatherings; or
2. Fails to properly dispose of all body wastes, garbage, trash and other waste materials or litter; or
3. Violates any Tribal Council ordinances or resolution prohibiting or requiring conduct pertaining to public health and/or the health, safety and welfare of Tribal members and other residents living within the exterior boundaries of the Northern Cheyenne Reservation.

BE IT FURTHER ORDAINED that Section 7-9-6, Intoxication, is amended as follows:

- Section A is amended to add the following clarification:
 - A. A person who is found publicly under the influence of intoxicating liquor within the exterior boundaries of the Northern Cheyenne shall be charged with a violation of this section.

BE IT FURTHER ORDAINED that Section 7-4-3, Intimidation, is amended as follows:

- Subsection C is amended to enhance the classification of the offense of intimidation:
 - C. Intimidation is a Class A offense.

BE IT FURTHER ORDAINED that Section 7-5-3, Endangering the Welfare of a Child, is amended as follows:

- Subsection B is amended to enhance the classification of the offense of endangerment of a child:
 - B. Endangering the welfare of a child is a Class A offense.

BE IT FURTHER ORDAINED that Title VII, Chapter 5, Offenses against the Family, is amended to add the following new Section:

7-5-11 Violation of Restraining Order

A. A person commits the offense of violating a restraining order when he:

1. Is the subject of a restraining order issued by the Tribal Court;
2. Has notice of the order; and
3. Engages in any conduct proscribed by the restraining order or fails to meet any requirement of the restraining order.

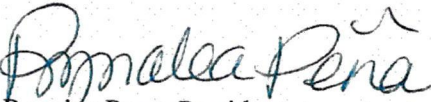
- B. “Restraining order” means any order issued by the Tribal Court to protect person(s) by proscribing and/or requiring certain conduct of another. A restraining order may include a temporary restraining order as provided under NTCLOC 4-A-4(B), Rule 35 of Civil Procedure.
- C. Violation of a restraining order is a Class A offense.
- D. Violation of a restraining order, including any prohibition against entering a residence, is not excused by the consent or permission of the person whom the restraining order is intended to protect or any other person.
- E. All provisions of a restraining order shall remain in full force and effect until the restraining order terminates or is modified by the Tribal Court.

BE IT FURTHER ORDAINED that Title VII, Chapter 8, Offenses against the Administration of Government, is amended to add the following new Section:


7-8-5 Impersonating a Law Enforcement Officer

- A. A person commits the offense of impersonating a law enforcement officer by pretending to hold a position as a law enforcement officer as a means of inducing another to submit to the person's authority or otherwise act in reliance upon such representation.
- B. Impersonating a Law Enforcement Officer is a Class A offense.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 9 votes for passage and adoption, 0 votes against passage and adoption, and 0 abstentions on this 9th day of July 2020.


 Rynalea Pena, President
 Northern Cheyenne Tribe

ATTEST:


 Melissa Lonebear, Secretary
 Northern Cheyenne Tribe

Approved:

CALEB CAIN

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Acting Superintendent