

**TITLE 9
CRIMINAL OFFENSES**

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Chapter 1 - Criminal Code

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§ 101 - Jurisdiction

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

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

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

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

- (1) **Major Crimes Act:** The Major Crimes Act (MCA), 18 U.S.C. § 1153, originally enacted by the U.S. Congress in 1885, gives the federal government jurisdiction over certain enumerated “major crimes” committed by one Indian against the person or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

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

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

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

§ 102 - Definitions

For purposes of this Criminal Code:

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

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

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

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

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

§ 103 - Requirements for Conviction

- (a) Culpability. A person shall not be guilty of an offense unless that person acted intentionally, maliciously, knowingly, recklessly, or negligently as the law requires with respect to each material element of the offense. Provided that any material element of an offense that does not require a mental state may be established by proving that the person participated in the prohibited conduct regardless of his/her state of mind.
- (b) Proof. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt.
- (c) Intoxication.
 - (1) Intoxication is not a defense unless it negates an element of the offense.
 - (2) Self-induced intoxication cannot negate the element of recklessness.
- (d) Statute of Limitations. No person shall be prosecuted, tried, or punished for any criminal offense unless the prosecution is initiated within one (1) year after both of the following conditions have been met:
 - (1) discovery that an offense has been committed; and
 - (2) discovery of the identity of the person who committed the offense.
- (e) Multiple Counts. When the conduct of a defendant establishes the commission of more than one offense, the defendant may be prosecuted for each such offense, unless:
 - (1) one offense consists only of an attempt to commit the other;

- (2) inconsistent findings of fact are required to establish commission of the offenses; or
- (3) the offenses differ only in that one prohibits a designated kind of conduct generally, and the other prohibits a specific instance of such conduct.

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

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

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

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

§ 104 - Affirmative Defenses

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

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

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

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

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

§ 105 - Counsel

- (a) **Right to Counsel.** Any person accused of an offense under this code may represent himself before the Tribal Court, or may be represented, at his/her own expense, by a person duly licensed to practice before the Tribal Court.
- (b) **Persons Licensed to Practice in Tribal Court.** An attorney admitted to practice law in any state may be licensed to practice in GTB Courts upon:
 - (1) payment of an annual fee, as specified by Court Rule; provided that the fee may be waived if the attorney is providing pro bono services;
 - (2) certification to the Tribal Court that he/she has read the Court Rules; and
 - (3) taking of an oath to uphold the Constitution and laws of the Grand Traverse Band of Ottawa and Chippewa Indians, maintaining due respect for the Tribal Court, and employing, in his/her conduct and duties, the highest degree of ethical and moral standards with which the legal profession is charged. The Tribal Court Rules may also set out a procedure for licensing non-attorney Tribal members to practice before the Tribal Court.

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

§ 106 - Sentencing

- (a) **Types of Sentences.** The Court may suspend the imposition of sentence of a person who has been convicted of a crime, may order an appropriate rehabilitative treatment, may order the offender to be committed in lieu of sentence to a hospital or other institution for medical, psychiatric, or other rehabilitative treatment, or may sentence him/her as follows:
 - (1) To perform community service work;
 - (2) To pay restitution or provide restitutive services to the injured parties;

- (3) To be placed on probation;
 - (4) To imprisonment for a definite period up to the term authorized by law; and/or
 - (5) To fine and probation, or fine and imprisonment.
- (b) **Delayed Sentencing.** The judge may delay final sentencing for a period up to one (1) year, and order community service and/or rehabilitative services during that time. At the end of the specified time, the judge may, if appropriate, dismiss the charges and expunge them from the Court record.
- (c) **Taking Jurisdiction over Family or Household.** When an offense has been committed against the family under § 107(k) of this Title, the Court may take jurisdiction over the family or household, make child/victims wards of the Court, and issue such orders as are necessary to ensure the safety and welfare of family members.
- (d) **Probation.** The Court shall have the discretion in any case, except where prohibited by this code or by Tribal ordinance, to suspend all or any part of an offender's sentence and release the defendant on probation. The offender shall sign a probationary pledge, the conditions and limitations of which shall be clearly set forth by the Court.
- (e) **Victim's Impact Statement.** Prior to sentencing, the Court shall inform the victim(s) of their right to submit a written statement to the Court detailing the physical, material, and emotional damages that they suffered as a result of the offender's actions. The judge, in his/her discretion, may allow oral testimony to be taken regarding such damages, in addition to, or in lieu of, the written statement.
- (f) **Sentencing Considerations.** Before imposing sentence, the Court shall take into consideration the offender's prior record, family circumstances, employment status, and any other circumstance which will aid in imposing a just and fair sentence, paying particular attention to the victim's impact statement described above. Restitution and community service work should generally be preferred over incarceration. A judge should only order incarceration when the Court determines that it is necessary for the safety of the community, or when the Court determines that the offender is unlikely to cooperate in providing restitution or performing community service work, or when the offense committed is such that incarceration is the only viable punishment.

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

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

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

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

§ 107 - Offenses

(a) Contempt of Court and Perjury

(1) Contempt of Court.

- (A) Offense. Intentional and unjustifiable behavior by any person, which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding of the Court, or which obstructs, or interferes with the administration of justice by the Court, including disobedience or resistance to, or interference with, any lawful summons, subpoena, process, order, rule, term of probation, sentence, decree, or command of the Court, including failure to appear for a court date, shall constitute contempt of court.
- (B) Contempt Committed in the Presence of the Court. When contempt of court is committed in the presence of the Court it may be punished summarily by the Court. In such case, an order shall be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment.
- (C) Contempt Committed Out of the Presence of the Court. When it appears to the Court that a contempt has been committed out of the presence of the Court, the Court may issue a summons to the person so charged directing him/her to appear at a time and place designated for hearing on the matter.
- (D) Sentence. A person found guilty of contempt of court may be sentenced to a jail term not to exceed thirty (30) days, or to a fine not to exceed one thousand dollars (\$1,000.), or to both. In addition, if a person is charged with contempt for jumping bail, the Court may order forfeiture of the person's bail.

(2) Perjury.

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

(b) Scheming and Planning Offenses

(1) Solicitation

- (A) Offense. A person commits solicitation if, with intent that another person engage in illegal conduct, he/she commands, entreats, induces or otherwise endeavors to persuade such person to engage in illegal conduct.
 - (B) Affirmative Defense. It is an affirmative defense to a charge of solicitation that the defendant completely renounced his/her criminal intent before commission of the crime, and made a reasonable attempt to prevent the solicited conduct.
 - (C) Sentence. A person convicted of solicitation shall be subject to the same punishment as that specified in this code for the completed offense.
- (2) Conspiracy
- (A) Offense. A person commits conspiracy if that person agrees with one or more persons, with the intent to promote or facilitate the commission of an offense, that at least one of them will engage in conduct constituting the offense, and one of the parties commits an overt act in furtherance of the agreement.
 - (B) Affirmative Defense. It is an affirmative defense to a charge of conspiracy that the defendant completely and voluntarily renounced his/her criminal intent before commission of the crime, and made a reasonable attempt to prevent the illegal action.
 - (C) Sentence. A person convicted of conspiracy shall be subject to the same punishment as that specified in this code for the completed offense.
- (3) Attempt
- (A) Offense. A person commits an attempt, with respect to any of the enumerated offenses in this code, if that person, acting with the intent to commit the offense, takes a substantial step toward the commission of the crime, and does not retract his/her action, but is foiled by circumstances beyond his/her control.
 - (B) Sentence. A person convicted of an attempt shall be subject to the same punishment as that specified in this code for the completed offense.
- (4) Contributing to the Delinquency of a Minor
- (A) Offense. Any person who aids, abets, or encourages any minor to commit an act that would be an offense under this code, if committed by an adult, shall be guilty of contributing to the delinquency of a minor.
 - (B) Sentence. A person convicted of contributing to the delinquency of a minor may be sentenced to a jail term not to exceed sixty (60) days, or to a fine not to exceed one thousand dollars (\$1,000.), or to both.

(5) Aiding and Abetting

- (A) Offense. A person commits an offense if he/she knowingly aids or abets another person in the commission or furtherance of a crime.
- (B) Sentence. A person found guilty of aiding and abetting will be subject to the same sentence as provided for the underlying crime.

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

(c) Offenses Against the Person

(1) Assault

- (A) Offense. A person commits assault if that person, by any unlawful act, threat, or menacing conduct, causes another person to reasonably believe that the other person is in immediate danger of physical harm.
- (B) Sentence. A person convicted of assault may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.

(2) Assault with a Weapon

- (A) Offense. A person commits assault with a weapon if that person, through the use, or threatened use, of a weapon, causes another person to reasonably believe that he/she is in immediate danger of physical harm.
- (B) Sentence. A person convicted of assault with a weapon may be sentenced to a jail term not to exceed one (1) year, or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

(3) Battery

- (A) Offense. A person who intentionally strikes or offensively touches the person of another commits the offense of battery.
- (B) Sentence. A person convicted of battery may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

(4) Sexual Assault

- (A) Offense. A person commits sexual assault if that person intentionally or knowingly engages in sexual penetration or sexual contact with any person

without the consent of that person. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.

- (B) Sentence. Any person found guilty of sexual assault may be sentenced to a jail term not to exceed one (1) year or to a fine not exceed five thousand dollars (\$5,000.), or to both.

(5) Sexual Assault of a Child

- (A) Offense. A person commits sexual assault of a child if he/she intentionally or knowingly engages in sexual penetration or sexual contact with any person aged 16 years or younger, regardless of whether he/she has the consent of that person. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.

- (B) Sentence. Any person found guilty of sexual assault of a child may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

(6) Unlawful Imprisonment

- (A) Offense. A person commits unlawful imprisonment if, without lawful authority, that person intentionally removes, detains, restrains, or confines the person of another without his/her consent.

- (B) Sentence. A person convicted of unlawful imprisonment may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

(7) Harassment

- (A) Offense. A person who verbally harasses another, including obscene or threatening phone calls, with the intent of causing that person physical or emotional harm, shall be guilty of an offense.

- (B) Sentence. A person convicted of harassment may be sentenced to a jail term not to exceed sixty (60) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.

(d) Weapons and Explosives

(1) Carrying of a Deadly Weapon without a License

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

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

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

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

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

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

(B) Sentence.

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

(f) Burglary and Arson

(1) Burglary

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

(2) Arson

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

(g) Forgery and Related Crimes

(1) Forgery

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

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

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

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

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

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

- (B) Sentence. A person convicted of littering or burning trash may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars (\$500.), or to both.
 - (C) The judge may, in addition to, or in lieu of, the punishments set out above, order the offender to pick up litter or burned trash areas within Tribal lands, as a community service, for a time not to exceed eighty (80) hours.
- (3) Dumping of Hazardous Material
- (A) Offense. A person commits an offense if that person throws, places, drops or disposes of any hazardous material in a place which is not a lawful disposal site for such materials.
 - (B) Sentence. A person convicted of dumping hazardous materials may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both. In addition, the Court may order the person to remove the materials that have been dumped or to pay for the cost of such removal.
- (4) Trespass
- (A) Offense. A person commits the offense of trespass if that person knowingly enters the property or dwelling of another with reason to know that the owner would not permit him/her to do so, or refuses to depart when requested to do so, or enters upon Tribal properties and refuses to depart when requested to do so by an officer or employee of the Grand Traverse Band.
 - (B) Sentence. A person convicted of trespass may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed two thousand dollars (\$2,000.), or to both.
- (k) Offenses Against the Family
- (1) Expansion of Court's Jurisdiction. The Court, in its discretion, may order the victim(s) or others touched by any of the offenses enumerated in this Section to undergo appropriate treatment(s) or participate in appropriate rehabilitative program(s).
 - (2) Abandonment of a Child
 - (A) Offense. A parent, guardian or other person having legal custody of a child commits abandonment of a child if he/she intentionally or knowingly abandons a child under eighteen (18) years of age.

- (B) Sentence. A person convicted of abandonment of a child may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed three thousand dollars (\$3,000.), or to both.
 - (C) The judge may order the offender to undergo an appropriate rehabilitative program, in lieu of, or in addition to, the sentence set out above, if it appears from the totality of the circumstances that rehabilitative services could help the offender become a responsible parent.
- (3) Failure to Support a Dependent
- (A) Offense. A person commits an offense if that person knowingly and persistently fails to provide food, shelter, clothing, medical attention, financial support or other necessary care which he/she is capable of providing to his/her child or other dependent.
 - (B) Sentence. A person convicted of failure to support a dependent may be sentenced to a jail term not to exceed ninety-three (93) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
 - (C) The judge may order the offender to undergo an appropriate rehabilitative program, in lieu of, or in addition to, the sentence set out above, if it appears from the totality of the circumstances that rehabilitative services could help the offender become a responsible parent.
- (4) Sexual Conduct with a Foster Child or Stepchild
- (A) Offense. A person commits an offense if that person knowingly engages in sexual penetration or contact with his/her foster child or stepchild who is under eighteen (18) years of age. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast.
 - (B) Sentence. A person convicted of sexual conduct with a foster child or stepchild may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.
- (5) Incest
- (A) Offense. A person commits incest if that person knowingly engages in sexual penetration or contact with another who is a member of such person's immediate family. Sexual contact means any fondling or manipulating of any part of the genitals, anus, or female breast. For purposes of this Section, immediate family means mother, father, son, daughter, brother, or sister.
 - (B) Sentence. A person who commits incest may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

(6) Child Abuse

- (A) Offense. A person commits the offense of child abuse if that person intentionally, knowingly, or recklessly causes physical injury to a child in his/her care or custody.
- (B) Sentence. A person who commits child abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

(7) Spouse Abuse

- (A) Offense. A person commits an offense if that person intentionally, knowingly or recklessly causes physical injury to his/her spouse.
- (B) Sentence. A person who commits spouse abuse may be sentenced to a jail term not to exceed one (1) year or to a fine not to exceed five thousand dollars (\$5,000.), or to both.

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

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

(1) Riot and Related Offenses

(1) Riot

- (A) Offense. A person commits riot if, with five (5) or more other persons acting together, that person intentionally, knowingly or recklessly uses force or violence, or threatens to use force or violence, which disturbs the public peace.
- (B) Sentence. A person who is convicted of riot may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed four thousand dollars (\$4,000.), or to both.

(2) Disorderly Conduct

- (A) Offense. A person commits disorderly conduct if that person intentionally, knowingly or recklessly:
 - (i) engages in fighting, or provokes a fight;
 - (ii) makes any protracted commotion which prevents the transaction of the business of a lawful meeting, gathering or procession;

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

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

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

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

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

(o) Alcohol-Related Offenses

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

(B) Sentence. A person convicted of allowing a person under 21 years of age to consume alcohol may be sentenced to a jail term not to exceed one (1) year or given a fine not to exceed five thousand dollars (\$5,000.), or both.

(p) Possession, Use, Sale, Manufacture and/or Distribution (Controlled Substances)

(1) Offense. It shall be unlawful for any person to possess, use, sell, manufacture, and/or distribute any controlled substance defined and/or described in the Uniform Controlled Substances Act, 21 U.S.C. § 812, as updated, without prior authorization.

(2) Sentence. Any person convicted of this offense may be sentenced to a jail term not to exceed one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.), or to both.

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

(q) Youth and Tobacco

(1) Offense. It shall be unlawful for any minor to possess, use, or purchase any tobacco or tobacco products. Furthermore, it shall be unlawful for any person to allow the possession, use, or sale of tobacco or tobacco products to any minor.

(2) Sentence. Any person found guilty of this offense may be sentenced to a jail term not to exceed ninety-three (93) days or to pay a fine not to exceed two thousand dollars (\$2,000.), or to both.

(3) Affirmative Defense. It shall be an affirmative defense to this offense when the alleged violation occurred in the furtherance of a recognized Tribal and/or religious purpose.

(r) Animal Control

(1) Failure to Have a Dog Properly Licensed

(A) Offense. Any person who owns a dog must have the dog properly licensed under the Leelanau County Animal Control Enforcement Ordinance or by the Grand Traverse Band if the Band sets up its own animal licensing system. A person commits an offense if that person fails to have his/her dog so licensed.

(B) Sentence. A person who commits an offense may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed five hundred dollars (\$500.), or to both.

(2) Allowing a Dog to be a Public Nuisance

- (A) Offense. Any person who owns, possesses, or maintains a dog is responsible for such dog. A person, whose dog barks outside to an extent that a person of reasonable sensibility is disturbed by such barking, or whose dog is vicious or has propensity to be vicious, commits an offense.
 - (B) Sentence. Any person convicted of allowing a dog to be a public nuisance may be sentenced to a jail term not to exceed thirty (30) days or to pay a fine not to exceed five hundred dollars (\$500.), or to both. In addition, the Court may order the destruction of the dog if necessary to protect the public.
- (3) Animal Abuse
- (A) Offense. A person commits an offense if that person intentionally beats, cruelly treats, torments, overloads or otherwise abuses any dog, livestock or poultry, or instigates any dog fight, cock fight, bull fight or other combat between animals or between animals and humans.
 - (B) Sentence. A person convicted of animal abuse may be sentenced to a jail term not to exceed thirty (30) days or to a fine not to exceed one thousand dollars (\$1,000.), or to both.
- (s) Violation of a Tribal Ordinance
- (1) Offense. In addition to the offenses specified above, a person commits an offense under this code if that person violates any criminal ordinance duly enacted by the Tribal Council.
 - (2) Sentence. A person convicted of violation of a Tribal ordinance may be subject to whatever punishment is specified in the ordinance that was violated.
- (t) Habitual Offender
- (1) Offense. Any person who is convicted under Tribal law, who has previous conviction(s) under Tribal law, may be charged as an habitual offender.
 - (2) Sentence. A person convicted of being an habitual offender may be sentenced as follows:
 - (A) 2nd Offense: One and a half (1.5) times the maximum for the underlying offense not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.), or to both;
 - (B) 3rd Offense: Two (2) times the maximum for the underlying offense not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.), or to both;
 - (C) 4th or More Offense: Not to exceed a jail term of one (1) year or to pay a fine not to exceed five thousand dollars (\$5,000.), or to both.

- (u) Criminal Violation of Michigan Tribal-State Tax Agreement
 - (1) Offense. An individual under the jurisdiction of the Tribal Court that intentionally and maliciously violates the Tax Agreement between the Grand Traverse Band of Ottawa and Chippewa Indians and the State of Michigan, either during or after the Agreement's term, is guilty of criminally violating the Michigan Tribal-State Tax Agreement.
 - (2) Sentence. The Tribal Court may sentence a person convicted of criminally violating the Michigan Tribal-State Tax Agreement to a fine of up to five thousand dollars (\$5000) and may be ordered to pay restitution to the Grand Traverse Band.
- (v) Toxic Vapors
 - (1) Offense. A person commits the offense of inhaling toxic vapors if that person, for the purpose of becoming intoxicated or subjecting that person to the influence of them, willfully inhales the vapors or fumes of paint, gasoline, glue or any other substance producing intoxicating fumes or vapors.
 - (2) Sentence. A person guilty of inhaling toxic vapors may be sentenced to imprisonment for a period not to exceed thirty (30) days, or a fine not to exceed two hundred fifty dollars (\$250.), or both.

History: The Criminal Code was adopted by the Tribal Council on April 20, 1988; as amended by Tribal Act #92-10.78, enacted by Tribal Council on October 20, 1992; as amended by Tribal Act #00-18.883, adopted by Tribal Council in Special Session on August 10, 2000; as amended by Tribal Council in Special Session on February 27, 2001; as amended by Tribal Act #04-22.1389, enacted by Tribal Council on May 14, 2004; as amended by Tribal Act #04-22.1465, enacted by Tribal Council on November 24, 2004; as amended by Tribal Act #04-22.1467, enacted by Tribal Council on December 15, 2004; as amended by Tribal Act #07-25.1863, enacted by Tribal Council in Special Session on November 28, 2007.

Chapter 2 - Application of Non-Tribal Laws

§ 201 - Adoption of State Laws and Ordinances

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

the details of which, instead of being recited, are adopted by reference from the State of Michigan and are essentially to provide gap fillers where the current GTB Code is silent.

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

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

§ 202 - Adoption of State of Michigan’s Vehicle Code

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

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

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

Chapter 3 - GTB Domestic Violence Ordinance

§ 301 - General Provisions; Policy and Purpose

The purpose of this title is to protect the health, safety and welfare of the Grand Traverse Band of Ottawa and Chippewa Indians tribal community, consistent with the Grand Traverse Band’s reserved rights, by: preventing acts of domestic violence, affording victims of domestic violence maximum assistance, safety and support, and holding perpetrators of domestic violence accountable for their actions and for changing their behavior.

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

§ 302 - Jurisdictional Statement

Pursuant to Article IV, Section (1)(a), of the Tribal Constitution, the Tribal Council of the Grand Traverse Band hereby enacts this “Domestic Violence Code” which shall govern incidents of domestic violence. The Tribe has the inherent authority to protect its political integrity and provide for the welfare of its citizens. This Tribal Council shall have the authority to amend or repeal this code in accordance with procedures set forth in the Tribal Constitution and by the Tribal Council. The jurisdiction of the Tribal Court over persons and territory is limited only by federal law and the Constitution of the Grand Traverse Band. The Tribal Court shall have the power to decide questions of jurisdiction that may be raised under this code.

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

§ 303 - Sovereign Immunity

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

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

§ 304 - Liability of Law Enforcement Officers

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

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

§ 305 - Court Orders

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

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

§ 306 - Time Computation

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

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

§ 307 - Liberal Construction

The provisions of this code shall be liberally construed in order to further the purpose stated in § 301.

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

§ 308 - Repealer

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

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

§ 309 - Severability

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

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

§ 310 - Definitions

- (a) “Abuse” means:
- (1) Intentionally or recklessly or negligently causing or attempting to cause physical harm or mental anguish to another person; or
 - (2) Threatening or placing another person in reasonable apprehension of imminent serious physical injury.
- (b) “Advocate” means a person who is employed to provide services to victims of domestic violence and/or sexual assault.
- (c) “Business Hours” means from 8:00 a.m. until 5:00 p.m. on judicial days.
- (d) “Court” means the Grand Traverse Band Tribal Court.
- (e) “Dating Relationship” means: a social relationship of a romantic nature. In determining whether parties have a “dating relationship,” the Court shall consider:
- (1) The length of time the relationship has existed;
 - (2) The nature of the relationship;
 - (3) The frequency of the interaction between the parties.

- (f) “Domestic Violence” means:
- (1) Engaging in any of the following acts against family or household members or persons in a dating relationship:
 - (A) Attempting to cause or causing physical harm;
 - (B) Attempting to cause or causing injury to a pet or property damage;
 - (C) Attempting to cause or causing a family or household member to engage involuntarily in sexual activity by force, threats or duress;
 - (D) Inflicting injury to household pets, reasonable fear of physical harm, sexual assault, or property damage;
 - (E) Stalking, as defined in this code;
 - (2) All crimes involving threats, violence, assault and/or physical or sexual abuse against, adults, children, the elderly or others enumerated in Title 9 of the Grand Traverse Band Constitution may be charged as domestic violence and those crimes listed under the Major Crimes Act, 18 U.S.C. § 1153.
 - (3) Any act of self-defense or self-defense of another reasonably taken in response to an act of domestic violence shall not be considered a crime of domestic violence.
- (g) “Essential Personal Effects” means those items necessary for a person’s immediate health, welfare and livelihood, such as clothing, cribs, bedding, medications, personal documentation, personal hygiene items and tools of trade.
- (h) “Family or Household Member” includes:
- (1) Spouses;
 - (2) Former spouses;
 - (3) Persons who have a child in common or who are expecting a child in common, regardless of whether they have been married or lived together at any time;
 - (4) Persons eighteen (18) years of age or older who are related by blood or marriage;
 - (5) Persons eighteen (18) years of age or older who are presently residing together or who have resided together in the past;
 - (6) Person who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren;

- (7) Physically or mentally disabled persons and their caregivers residing in the household;
 - (8) Elders fifty-five (55) years of age or older and their caregivers residing the household;
 - (9) Minor children of a person in a relationship described in (1) through (8) above; or
 - (10) Vulnerable adults residing in the household, including adults unable to protect themselves from abuse, neglect, or exploitation.
- (i) “Harassment” means conduct directed toward a victim/minor victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim/minor victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.
 - (j) “Law Enforcement” means the Grand Traverse Band Tribal Police Department or any other police department authorized by the Tribe.
 - (k) “Minor” means any unmarried person who is less than eighteen (18) years of age, and has not been emancipated by order of a court of competent jurisdiction, or a person who is eighteen (18) years of age, but remains under the continuing jurisdiction of the court.
 - (l) “Next Friend” means any legally competent adult that petitions or represents a minor in proceedings under this code.
 - (m) “Prosecutor” means the Grand Traverse Band Tribal Prosecutor or any other person authorized by the Tribe to perform the duties of the prosecutor for the purpose of this code.
 - (n) “Protection Order” means:
 - (1) A court order granted for the protection of victims of domestic violence;
 - (2) A restraining order of which the defendant has received actual notice;
 - (3) An injunction;
 - (4) A preliminary injunction;
 - (5) A condition of probation, pretrial release, release on bond pending appeal or parole.
 - (o) “Reservation” means all territory within the exterior boundaries of the Grand Traverse Band Indian Reservation and six county service area as defined in Article I, § 2(a), of the Grand Traverse Band Constitution.

- (p) “Restitution” means repayment to a victim of domestic violence including but not limited to property damage, moving expenses, medical expenses related to the incident of domestic violence, or loss of earnings or support.
- (q) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual or minor that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (r) “Tribal Court” means the Tribal Court of the Grand Traverse Band of Ottawa and Chippewa Indians as established by Article V of the Grand Traverse Band Constitution.
- (s) “Tribe” or “Tribal” refers to the Grand Traverse Band of Ottawa and Chippewa Indians, a sovereign nation.
- (t) “Victim” means a family or household member, or one with whom a dating relationship exists, who has been subjected to domestic violence.
- (u) “Unconsented contact” means any contact with another individual that is initiated or continued without that individual’s consent or in disregard of that individual’s expressed desire that the contact be avoided or discontinued. Unconsented contact includes the following:
 - (1) Following the other person;
 - (2) Approaching or confronting that individual in a public place or on private property;
 - (3) Appearing at the individual’s work place, school, or residence;
 - (4) Entering onto or remaining on property owned, leased, or occupied by that individual;
 - (5) Contacting that individual by telephone;
 - (6) Sending mail or electronic communications to the individual; or
 - (7) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

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

§ 311 – Domestic Violence Crimes; Domestic Violence and Sentencing

- (a) A person commits the crime of domestic violence when:
 - (1) The person engages in any of the following acts against a family or household members or person in a dating relationship as defined in § 310(e).

- (b) First offense: Any person who commits a crime of domestic violence with no prior conviction of domestic violence in any jurisdiction shall be deemed guilty of the first offense of domestic violence. A person convicted of a first offense of domestic violence shall be imprisoned, for a term of not less than three (3) days or more than one (1) year and shall be fined an amount not less than one hundred dollars (\$100.) or more than five thousand dollars (\$5,000.). A domestic violence assessment and a requirement that the defendant follows through with the recommendations made in the assessment shall be part of sentencing as well as restitution when appropriate.
- (c) Second offense: A person convicted of a second offense of domestic violence shall be imprisoned for a term of not less than thirty (30) days or more than one (1) year and fined an amount not less than five hundred dollars (\$500.) or more than five thousand dollars (\$5,000.). Mandatory counseling shall be part of sentencing as well as restitution when appropriate.
- (d) Third and subsequent offenses: A person convicted of a third or subsequent offense of domestic violence shall be imprisoned for a term of not less than ninety-three (93) days or more than one (1) year and fined an amount not less than one thousand dollars (\$1,000.) or more than five thousand dollars (\$5,000.). Mandatory counseling shall be part of the sentencing as well as restitution when appropriate.
- (e) Availability of deferral of sentence for first offenders.
 - (1) When an individual who has not been convicted previously of an assaultive crime pleads guilty to, or is found guilty of, a violation in Chapter 2 or 3 of the Tribal Code and the victim of the assault is the offender's spouse or former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender, the court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney in consultation with the victim, may defer further proceedings and place the accused on probation as provided in this section. However, before deferring proceedings under this subsection, the court shall contact any resource that may have knowledge that the accused has previously been convicted of an assaultive crime or has previously availed himself or herself of this section. If the search of the records reveals an arrest for an assaultive crime but no disposition, the court shall contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest for purpose of this section.
 - (2) Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided in this section.
 - (3) An order of probation entered under this chapter may include any condition of probation authorized under the Tribal Code Criminal Procedure, including, but not limited to, requiring the accused to participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the mandatory counseling program. The court also may order the accused to participate in drug court. The court may order the defendant to be imprisoned for not more than twelve

(12) months at the time or intervals, which may be consecutive or nonconsecutive and within the period of probation, as the court determines. However, the period of imprisonment shall not exceed the maximum period of imprisonment authorized for the offense if the maximum period is less than twelve (12) months.

- (4) The court shall enter an adjudication of guilt and proceed as otherwise provided in this chapter if any of the following circumstances exist:
- (A) The accused commits an assaultive crime during the period of probation;
 - (B) The accused violates an order of the court that he or she receive counseling regarding his or her violent behavior;
 - (C) The accused violates an order of the court that he or she not have contact with a named individual.
- (f) For second and subsequent convictions: The Court may suspend up to half of the imposition of fines and imprisonment for domestic violence offense(s) on the condition that the perpetrator is placed on probation for not less than one (1) year and completes domestic violence counseling or treatment as ordered. Failure to comply with terms of probation shall result in the completion of the original sentence.
- (g) Revenue from fines: Revenue from fines may be used to help defray the costs of services required under this code for defendants who demonstrate that they are unable to afford mandatory services.

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

§ 312 - Aggravated Domestic Violence

- (a) Any person who commits an act of domestic violence without a weapon, and inflicts serious or aggravated injury upon that person, but did not intend to commit murder or inflict great bodily harm less than murder has committed the crime of aggravated domestic violence.
- (b) Sentence for aggravated domestic violence: a person convicted of aggravated domestic violence shall be imprisoned for a term of not less than ninety-three (93) days or more than one (1) year and fined no less than one thousand dollars (\$1,000.) or more than five thousand dollars (\$5,000.). Mandatory counseling shall be a part of the sentencing as well as restitution when appropriate.

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

§ 313 - Violation of a Domestic Violence Restraining Order

- (a) Any person who violates a restraint provision contained in an order entered under this code, or of a comparable provision of an order accorded full faith and credit by the court,

of which the person had actual notice prior to the time of the alleged violation, has committed the crime of violating a domestic violence restraining order.

- (b) For the purposes of this code, violation of a domestic violence restraining order shall be considered a crime of domestic violence.
- (c) Penalty: Depending on the circumstances, violation of a restraining order or PPO may subject a respondent to immediate arrest and to the civil and criminal contempt powers of the court, which may include up to ninety-three (93) days' imprisonment and/or a fine up to one thousand dollars (\$1,000.).

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

§ 314 - Interfering With Reporting of Domestic Violence

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

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

§ 315 - Assaulting Domestic Violence Staff

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

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

§ 316 – Stalking; Crime of Stalking and Sentencing

- (a) A person commits the crime of stalking if, without lawful authority:
 - (1) The person willfully and repeatedly engages in unwanted contact with another person, either directly or indirectly; and
 - (2) The person receiving the unwanted contact is intimidated, alarmed, emotionally distressed, or placed in fear that the stalker intends to injure the person or property

of the person or of another person and the feeling of intimidation, alarm, emotional distress or fear is one that a reasonable person in the victim's situation would experience under all the circumstances; and

- (3) The stalker either:
 - (A) Intends to frighten, intimidate, alarm or emotionally distress the other person; or
 - (B) Knows or reasonably should know that the other person being followed is frightened, intimidated, alarmed or emotionally distressed, even if the stalker did not intend such a result.

- (b) "Contact" includes, but is not limited to:
 - (1) Coming into and remaining a visual or physical presence of the other person;
 - (2) Following the other person;
 - (3) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;
 - (4) Sending or making written communication in any form to the other person;
 - (5) Speaking with the other person by any means;
 - (6) Communicating with the person through a third person;
 - (7) Committing a crime against the other person;
 - (8) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;
 - (9) Communicating with business entities with the intent of affecting some right or interest of the other person;
 - (10) Damaging the other person's home, property, place of work or school; or
 - (11) Delivering directly or through a third person any object to the home, property, place of work, or school of the other person.

- (c) Penalty: Stalking will result in up to one (1) year imprisonment and/or up to a one thousand dollar (\$1,000.) fine.

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

§ 317 - Stalking a minor

- (a) A person commits the crime of stalking a minor if, without lawful authority:
- (1) The person willfully and repeatedly engages in unwanted contact with a minor, either directly or indirectly; and
 - (2) The minor receiving the unwanted contact is intimidated, alarmed, emotionally distressed, or placed in fear; the stalker intends to injure the person or property of the person or of another person and the feeling of intimidation, alarm, emotional distress or fear is one that a reasonable person in the victim's situation would experience under all the circumstances; and
 - (3) The stalker either:
 - (A) Intends to frighten, intimidate, alarm or emotionally distress the minor; or
 - (B) Knows or reasonably should know that the minor being followed is frightened, intimidated, alarmed or emotionally distressed, even if the stalker did not intend such a result.
- (b) Penalty: Stalking of a minor shall result in not less than ninety-three (93) days' imprisonment, but no more than a year's imprisonment and/or up to a five thousand dollar (\$5,000.) fine.

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

§ 318 - Aggravated Stalking

- (a) An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances:
- (1) At least one (1) of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least one (1) of the actions is in violation of an injunction or preliminary injunction.
 - (2) At least one (1) of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.
 - (3) The course of conduct includes the making of one (1) or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.
 - (4) The individual has been previously convicted of a violation of this section or section § 311.

- (b) The Tribal Court may place an individual convicted of violating this section on probation for any term of years, accordingly. If a term of probation is offered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:
- (1) Refrain from stalking any individual during the term of probation;
 - (2) Refrain from any contact with the victim of the offense;
 - (3) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.
- (c) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (d) Penalty: Penalty for aggravated domestic violence shall result in no less than ninety-three (93) days' imprisonment, but no more than one year's imprisonment and/or up to a five thousand dollar (\$5,000.) fine.
- (e) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct.

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

§ 319 - Aggravated Stalking of a Minor

- (a) An individual who engages in stalking a minor is guilty of aggravated stalking of a minor if the violation involves any of the following circumstances:
- (1) At least one (1) of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least one (1) of the actions is in violation of an injunction or preliminary injunction;
 - (2) At least one (1) of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal;
 - (3) The course of conduct includes the making of one (1) or more credible threats against the minor victim, a member of the minor victim's family, or another individual living in the same household as the minor victim;

- (4) The individual has been previously convicted of a violation of this section or section § 311.
- (b) The Tribal Court may place an individual convicted of violating this section on probation for any term of years, accordingly. If a term of probation is offered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:
 - (1) Refrain from stalking any individual during the term of probation;
 - (2) Refrain from any contact with the minor victim of the offense;
 - (3) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.
- (c) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the minor victim after having been requested by the minor victim/minor victim's parent(s)/caregiver to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the minor victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the minor victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (d) Penalty: Penalty of aggravated stalking of a minor shall result in not less than one hundred eighty (180) days' imprisonment, but no more than one (1) year's imprisonment and/or up to a five thousand dollar (\$5,000.) fine.
- (e) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct.

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

§ 320 - Use or Possession of a Dangerous Weapon

A person who engages in conduct proscribed under §§ 312 through 314 and who, in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a crime. If an aggravated assault or serious injury is inflicted by any person while violating this section, the person shall be turned over to federal authority for felony punishment.

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

§ 321 - Stalking to be treated as Domestic Violence Crime

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

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

§ 322 - Location of Stalking Perpetrator Not Bar to Prosecution

- (a) The location of the threatening action by a stalking perpetrator, either directly or through a third party, as corroborated through computer or telephone records, postmarks, or order/delivery records, and/or witnesses as being outside the boundaries of the six county service area, will not bar prosecution under this section. The act is considered to be a credible threat when full transmittal of the threat has been completed to the victim, when said victim is within the boundaries of the six county service area.
- (b) Corroborated initial or intervening acts, used to establish a pattern of conduct for the purpose of probable cause under this section, but which occurred outside the boundaries of the six county service area, may be used to establish and corroborate said pattern for prosecution of a violation under this section. However, initial or intervening acts occurring outside the boundaries of the six county service area are not prosecutable as separate offenses under this section.
- (c) The present incarceration of the person making the threat shall not bar prosecution under this section.

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

§ 323 – Law Enforcement Authority; Entering a Residence without a Warrant

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

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

§ 324 - Seize and Hold Weapons and/or Firearms

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

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

§ 325 - Mandatory Arrest

- (a) A law enforcement officer who has probable cause to believe that a person has committed a domestic violence crime within the past four (4) hours shall, without a warrant, arrest the alleged perpetrator. A law enforcement officer shall arrest an alleged perpetrator of domestic violence whether or not the victim signs a complaint and whether or not the arrest is against the express wishes of the victim.
- (b) A person arrested for a domestic violence crime shall not be released from detention until seventy-two (72) hours after arrest unless a court hearing is held prior to the expiration of the seventy-two-hour period.
- (c) Law Enforcement Officers of the Grand Traverse Band will follow all jurisdictional guidelines when dealing with a domestic violence situation. If the officer cannot arrest by jurisdiction, the appropriate authority will be notified of the situation for immediate action.
- (d) The officer will not make dual arrests unless probable cause determines both parties were assaulting each other equally or a determination cannot be made as to who was the primary assaulting party.
- (e) The officer will not subject a victim to a lie-detector test.

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

§ 326 - Mandatory Arrest for Violation of Protection Order

- (a) When a law enforcement officer has probable cause to believe that a respondent has violated one of the following orders of the Tribal Court or of any other court order entitled to full faith and credit of this code, the officer shall, without a warrant, arrest the alleged violator. Arrest shall be mandatory where the violation is of one of the following:

- (1) An order not to commit or threaten to commit further acts of domestic violence;
 - (2) An order not to contract, harass, annoy, telephone, or otherwise communicate, directly or indirectly, with the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence;
 - (3) An order to vacate, or stay away from the victim's residence;
 - (4) An order to stay away from any well-defined geographic area, including, but not limited to, a residence, workplace, school or daycare of the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence;
 - (5) An order prohibiting the possession or use of any firearm or other weapon specified by the court, and to turn such weapon over to law enforcement for safekeeping.
- (b) A person arrested for violation of a protection order shall not be released from detention until seventy-two (72) hours after arrest unless a court hearing is held prior to expiration of the seventy-two-hour period.

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

§ 327 - Cross Complaints of Domestic Violence

If a law enforcement officer receives a complaint alleging domestic violence from two (2) or more opposing persons, the officer shall evaluate each complaint separately to determine who was more likely to have been the primary aggressor. If the law enforcement officer determines that one (1) person was the primary aggressor, the officer need not arrest the other person alleged to have committed a domestic violence crime. In determining whether one (1) party was the primary aggressor, the officer shall consider:

- (a) The history of domestic violence, both documented prior complaints and convictions and the officer's own prior knowledge of the family;
- (b) The comparative demeanor of the parties involved and the relative severity of the injuries inflicted on each person;
- (c) The likelihood of future injury to each person;
- (d) Whether one (1) person acted in self-defense or in defense of others;
- (e) The degree which one (1) of the persons has acted with a more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or third party.

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

§ 328 - Notice of Escape or Release

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

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

§ 329 – Pre-trial Release; Considerations for Pre-trial Release

In determining whether to order release of a person lawfully arrested for a domestic violence crime, and, if so, under what conditions, the court shall consider:

- (a) The likelihood that the defendant will appear for further criminal proceedings;
- (b) The nature and severity of the offense;
- (c) The likelihood that the defendant will commit a violent crime, seek to intimidate a witness, or unlawfully interfere with the administration of justice;
- (d) The criminal history of the defendant, with particular emphasis on prior acts of domestic violence and other assaultive crimes.

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

§ 330 - Conditions for Pre-trial Release

If the court finds that the defendant should be released pending further criminal proceedings, the court may impose one (1) or more of the following conditions of release:

- (a) Posting of bond in an amount deemed adequate to guarantee the appearance of the defendant throughout the criminal proceedings;
- (b) Postponing release until after a further "cooling off" period not to exceed one hundred twenty (120) hours;
- (c) An order to commit no further acts of domestic violence or exhibit any assaultive behavior;

- (d) An order not to contact, harass, annoy, telephone, or otherwise communicate, directly or indirectly, with the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence, except that essential contact may be made through application to the court;
- (e) An order to vacate, or stay away from the victim's residence, even if it is a shared residence or principally owned by the alleged perpetrator;
- (f) An order to stay away from any well-defined geographic area, including, but not limited to, residence, workplace, school or daycare of the alleged victim, the alleged victim's family or household members, or any witness to the alleged act of domestic violence;
- (g) An order prohibiting the possession or use of any firearm or other weapon specified by the court, and to turn such weapon over to law enforcement for safekeeping;
- (h) An order prohibiting the person from possessing or consuming alcohol or controlled substances and from being at any place where alcohol is served or being consumed. The court may order physical, mechanical, chemical or electronic testing to assure compliance;
- (i) Any other order the court believes is reasonably necessary to protect and ensure the safety of the alleged victim or family or household member, or to ensure the appearance of the person at subsequent court proceedings.

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

§ 331 - Notifying the Defendant of Pre-trial Release Conditions

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

"Violation of this order is a criminal offense and will subject the violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate it. You have the sole responsibility to fully comply with all of the order's provisions."
- (b) The court shall immediately distribute a copy of the order to law enforcement and direct law enforcement to provide a copy to the alleged perpetrator upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person had notice of the conditions.

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

§ 332 - Duration of Pre-trial Release Conditions

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

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

§ 333 - Notifying the Victim of Pre-trial Release

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

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

§ 334 - Mandatory Arrest for Violation of Pre-trial Release Conditions

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

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

§ 335 – Trial Court Authority; Handling Domestic Violence Cases

Because of the serious nature of domestic violence, the court in domestic violence cases:

- (a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;
- (b) Shall not require proof that either party is seeking dissolution of marriage prior to instigation of criminal proceedings;
- (c) Shall waive any requirements that the alleged victim's location be disclosed to any person upon a showing that there is a possibility of further violence. When the victim's location is not disclosed, any communication with the victim by the attorney of the defendant, or any other person, shall be conducted through the victim's advocate or the court;
- (d) Shall not subject a victim to a lie-detector test.

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

§ 336 - Rules of Evidence

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

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

§ 337 - Evidence; Statement by Declarant Relating to Infliction or Threat of Physical Injury, Admissibility; Notice

- (a) Evidence of a statement by a declarant is admissible if all of the following apply:
 - (1) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.
 - (2) The action in which the evidence is offered under this section is an offense involving domestic violence.
 - (3) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than five (5) years before the filing of the current action or proceeding is inadmissible under this section.
 - (4) The statement was made under circumstances that would indicate the statement’s trustworthiness.
 - (5) The statement was made to a law enforcement officer.
- (b) Circumstances relevant to the issue of trustworthiness include, but are not limited to, all of the following:
 - (1) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

- (2) Whether the declarant has bias or motive for fabrication of the statement, and the extent of any bias or motive.
 - (3) Whether the statement is corroborated by evidence other than statements that are admissible only under this section.
- (c) If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or summary of the substance of any testimony that is expected to be offered, to the defendant not less than fifteen (15) days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.
- (d) Nothing in this section shall be construed to abrogate any privilege conferred by law.
- (e) As used in this section:
- (1) “Declarant” means a person who makes a statement.
 - (2) “Domestic Violence” or “offense involving domestic violence” means an occurrence of one (1) or more of the following:
 - (A) Causing or attempting to cause physical or mental harm to a family or household member;
 - (B) Placing a family or household member in fear of physical or mental harm;
 - (C) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress;
 - (D) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested;
 - (3) “Family or household member” means any of the following:
 - (A) A spouse or former spouse;
 - (B) An individual with whom the person resides or has resided;
 - (C) An individual with whom the person has or has had a child in common;
 - (D) An individual with whom the person has or has had a dating relationship; as used in the subparagraph, “dating relationship.”

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

§ 338 - Evidence; Defendant's Commission of Other Acts of Domestic Violence, Admissibility; Notice

- (a) Except as provided in Subsection (d) in a criminal action in which the defendant is accused of any offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant.
- (b) If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than fifteen (15) days before the scheduled date of the trial or at a later time as allowed by the Tribal Court for good cause shown.
- (c) This section does not limit or preclude the admission or consideration of evidence under any other statute, rule of evidence, or case law.
- (d) Evidence of an act occurring more than ten (10) years before the charged offense is inadmissible under this section, unless the Tribal Court determines that admitting this evidence is in the interest of justice.
- (e) As used in this section:
 - (1) "Domestic Violence" or "offense involving domestic violence" means an occurrence of one (1) or more of the following:
 - (A) Causing or attempting to cause physical or mental harm to a family or household member;
 - (B) Placing a family or household member in fear of physical or mental harm;
 - (C) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress;
 - (D) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested;
 - (2) "Family or household member" means any of the following:
 - (A) A spouse or former spouse;
 - (B) An individual with whom the person resides or has resided;
 - (C) An individual with whom the person has or has had a child in common;
 - (D) An individual with whom the person has or has had a dating relationship; as used in the subparagraph, "dating relationship."

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

§ 339 - Reasons for Dismissal Required in Court File

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

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

§ 340 – Firearms Disqualification; Purpose

It shall be the purpose of this section to prohibit any person who has been convicted of a crime of domestic violence under tribal, state or federal law, or any person who is subject to an order of protection based upon a finding that the person presents a credible threat of violence to the victim, under tribal, state or federal law, from possessing a firearm.

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

§ 341 - Firearms Prohibition

- (a) It shall be unlawful for any person to possess a firearm who:
 - (1) Is subject to any court order from a court of competent jurisdiction that restrains such person from injuring, harassing, stalking or threatening a family or household member or engaging in any other conduct that would place a family or household member in reasonable fear of bodily injury, except that this paragraph shall apply only to those orders that:
 - (A) Were issued after a hearing of which such person received actual notice and had the opportunity to participate; and
 - (B) Include a finding that such person represents a credible threat to the physical safety of such household or family member; or
 - (C) By its terms explicitly prohibit the use, attempted use or threatened use of physical force against such household or family members.
 - (2) Has been convicted in state, federal or tribal court of any crime of domestic violence that involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against a household or family members.

- (b) A person subject to an order issued under Subparagraph (a)(1) or (2) may petition the court for partial restoration of firearm use privileges.
- (1) The person shall have the burden of demonstrating that:
- (A) The person no longer constitutes a threat against any household or family member; and
- (B) Prior to issuance of the order, the person used a firearm for subsistence hunting.
- (2) If the court finds that the person has met the requirements of Subparagraph (b)(1)(A) and (B) above, the court may exercise its discretion to allow the person to use a firearm for subsistence hunting during authorized hunting seasons. Said firearm shall be stored at GTB Tribal Law Enforcement and may only be released during hunting season under terms and conditions set by the court. Said firearm may only be used for subsistence hunting. The person shall not be allowed to possess or otherwise bring said firearm or any other firearm into the person's residence. Violation of these conditions shall result in immediate revocation of firearm use privileges.

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

§ 342 - Penalty

Violating the firearms requirement set forth in § 341 shall be considered a crime of domestic violence for the purposes of this code. Any related sentences for a violation of this section or any other section of this code shall be served consecutively.

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

§ 343 – Petition for Order of Protection; Civil Action

There shall be a civil action known as a Petition for an Order of Protection.

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

§ 344 - Venue

A petition may be filed under this chapter in any of the following circumstances:

- (a) The petitioner resides or is domiciled within the six county service area;
- (b) The respondent resides or is domiciled within the six county service area;
- (c) The alleged act of domestic violence occurred within the six county service area;

- (d) A communication that allegedly constitutes domestic violence was either transmitted or received within the six county service area.

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

§ 345 - Effects of Other Proceedings Pending

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

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

§ 346 - Who May File a Petition for Order of Protection

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

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

§ 347 - Contents of Petition

A petition for an order of protection shall include the following information:

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

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

§ 348 - Omission of Petitioner's Address in Petition

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

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

§ 349 - Filing Fees

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

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

§ 350 - Temporary Order of Protection

- (a) When the court finds probable cause to believe that there is a danger of domestic violence to the petitioner, based on an allegation that domestic violence has occurred or is about to occur, the court may enter a temporary order of protection on an ex-parte basis, without notice to the respondent, pending a full hearing.

- (b) A temporary order may be issued by telephone or fax. A telephone order shall be followed by a written order from the Tribal Judge mailed or faxed within three (3) working days from the date of the telephone order.
- (c) Following entry of a temporary order of protection, the court shall:
 - (1) Set a date for a hearing on the petition for an order of protection in accordance with § 351.
 - (2) Cause the order to be delivered to the GTB Tribal Police Department for enforcement purposes and for service upon the respondent.
 - (3) Transmit a copy of the order to any additional appropriate law enforcement or other agency designated by the petitioner.
- (d) If a hearing is not held within the time required by § 809, the temporary order shall expire unless it is re-issued by the court for good cause.

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

§ 351 - Notice of Hearing

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

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

§ 352 - Service of Process

- (a) A petition, notice of hearing, and temporary order of protection issued pursuant to section § 351 shall be served on the respondent at least seventy-two (72) hours before the hearing. If service has not been made within seventy-two (72) hours of the hearing, the court may set a new hearing date and re-issue a temporary order of protection as appropriate.
- (b) Service may be made by tribal law enforcement or by any officer of the court by handing a copy to the respondent.
- (c) If, after a diligent effort has been made to personally serve the respondent, personal service cannot be made, the court may order that the respondent be served by certified mail, return receipt requested. Such service is complete upon delivery of the mail.
- (d) If the certified mail is returned with a notation by postal authorities that the respondent refused to accept the mail, or that the mail was unclaimed, the court may order that the respondent be served by mailing a copy by first class mail to the respondent at his or her last and best known address. Service by first class mail shall be complete three (3) days after mailing.

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

§ 353 - Order of Protection

Upon and after hearing, if the court finds, by a preponderance of the evidence, that domestic violence or stalking has occurred or is likely to occur in the future, the court may issue an order of protection containing provisions:

- (a) Prohibiting the respondent from committing or threatening to commit acts of domestic violence against the petitioner or the petitioner's family or household members.
- (b) Prohibiting the respondent from contacting, harassing, annoying, telephoning, or otherwise communicating with the petitioner, the petitioner's family or household members, directly or indirectly, through friends, relatives or co-workers.
- (c) Requiring the respondent to vacate, or stay away from, the petitioner's residence, even if it is a shared residence or principally owned by the respondent.
- (d) Requiring the respondent to stay away from any well-defined geographic area, including, but not limited to, a residence, workplace, school or daycare of the petitioner or the petitioner's family or household members.
- (e) Prohibiting the respondent from possessing or using any firearm or other weapon specified by the court, and ordering the respondent to turn such weapons over to law enforcement for safekeeping. In exercising its discretion, the court shall give due consideration to Title 14, Chapter 7.
- (f) Establishing possession of the parties' residence and use of vehicles or other essential personal effects, regardless of ownership, and directing law enforcement to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to the possession of the residence, vehicle, and other personal effects or to supervise the petitioner's or respondent's removal of personal belongings.
- (g) Prohibiting the destruction, liquidation or disposal of any and all joint assets or property and any and all specific assets and property of the petitioner.
- (h) Granting temporary custody of any minor children to the petitioner and/or establishing visitation rights. Any temporary custody order shall provide for child support and temporary support of the person having custody of the children in amounts deemed proper by the court.
- (i) Ordering the respondent to timely pay any existing debts of the respondent, including mortgage or rental payment necessary to maintain the petitioner in his/her residence.
- (j) Ordering the respondent to pay for the support of the petitioner and any minor children if the respondent is found to have a duty to support the petitioner or minor children.

- (k) Ordering the respondent to reimburse the petitioner for any expenses associated with the domestic violence incident, including, but not limited to, medical expenses, counseling, shelter, repair or replacement of damaged property, court costs and attorney fees.
- (l) Ordering the respondent to attend and successfully complete one (1) or more programs, including, but not limited to, a domestic violence perpetrator program, mental health counseling, substance abuse treatment, and parenting classes, and to execute all forms and releases that are necessary for the court to be kept apprised of the defendant's compliance with the court's order.
- (m) Any other order the court believes is reasonably necessary to protect and ensure the safety of the alleged victim or family or household member.

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

§ 354 - Service of Order of Protection

- (a) All orders of protection not received in court shall be served by law enforcement on the respondent by delivering a copy personally to the respondent.
- (b) The clerk of the court shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to law enforcement for service upon the respondent. Service of an order under this chapter shall take precedence over the service of other documents, unless they are of similar emergency nature.
- (c) If law enforcement cannot complete service on the respondent within ten (10) days, the petitioner shall be notified. The petitioner shall provide information sufficient to permit notification if possible.
- (d) If the order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.
- (e) Any person who serves an order of protection upon a respondent shall file an affidavit with the court stating the date, time, place, and manner of service, and any other facts necessary for the court to determine if service has been made.

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

§ 355 - Duration of Order/Motion to Renew

- (a) An order of protection shall remain in effect for a period of two (2) years unless it is terminated or modified by the court prior to that time. The court may make an order of protection for a longer period of time or may make a permanent order of protection if the court determines that it is necessary for the protection of the victim and the victim's family.

- (b) A petitioner may file a written motion to renew an order of protection at any time within three (3) months prior to the expiration of the order. The motion shall be supported by a declaration stating why the petitioner believes the order should be renewed. The motion shall be served and a hearing scheduled and conducted according to the procedures set forth in this chapter.

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

§ 356 - Request to Terminate or Modify Order by Petitioner

A temporary modification may be made ex-parte upon a showing of immediate danger to the petitioner or a member of the petitioner's family or household. However, an order of protection shall not be dismissed until the following have been completed:

- (a) The petitioner will attend a PROTECTION ORDER DISMISSAL session at the local Women's Resource Center or other agency providing this service; and
- (b) A full court hearing is held and the request to dismiss the protection order is determined by the Judge.

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

§ 357 - Request to Modify Order by Respondent

- (a) A respondent may request a modification of an order of protection if the order either:
 - (1) Removes the respondent from a residence that he or she owns;
 - (2) Requires the respondent to stay away from a specific residence, school, place of employment or other location;
 - (3) Grants the petitioner possession and use of automobile and other essential personal items;
 - (4) Grants the petitioner temporary custody of a child or children;
 - (5) Provides or denies the respondent visitation with his or her minor child or children;
 - (6) Requires the respondent to make payments to the petitioner, the court or another party.
- (b) Upon receiving the respondent's request, the court shall set a hearing date as soon as practicable, but in no event later that fifteen (15) days after the next day on which court is in session following the filing of respondent's request. Notice of the request for modification and the hearing date shall be served on the petitioner in accordance with § 352(b) through (d).

- (c) At the hearing, the court shall consider whether any less restrictive alternatives may be appropriate under the circumstances. The court may modify the order where the order works an unreasonable hardship upon the respondent, provided that the safety of the victim and any family or household member remains the primary consideration.

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

§ 358 – Tribal Domestic Violence Full Faith and Credit; Purpose

It is the purpose of this chapter to ensure that domestic violence protection orders issued by other jurisdictions, including tribal, federal and state courts, be honored and enforced by the courts of the Grand Traverse Band as well as Tribal Law Enforcement. Chapter X of the Tribal Court Rules obligates the Tribal Court to grant full faith and credit to judgments of other tribal courts, Michigan courts, and federal courts. The Tribe finds that federal law, 18 U.S.C. § 2265, requires state and tribal courts to honor protection orders entered by each court. Moreover, MCR 2.615 (Enforcement of Tribal Judgments) provides that judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts are recognized by all state courts of Michigan.

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

§ 359 - HIV Testing Provision for Victims of Domestic Violence; HIV Testing

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

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