

CHAPTER 43 - REHABILITATION REVIEW

| | | |
|--------------|------------|---|
| 43.1 | SECTION 1- | AUTHORITY AND PURPOSE |
| 43.2 | SECTION 2- | APPLICABILITY |
| 43.3 | SECTION 3- | DEFINITIONS |
| 43.4 | SECTION 4- | PROHIBITION |
| 43.5 | SECTION 5- | CRIMINAL BACKGROUND INVESTIGATIONS |
| 43.6 | SECTION 6- | CONFIDENTIALITY OF CRIMINAL BACKGROUND INVESTIGATIONS |
| 43.7 | SECTION 7- | REHABILITATION REVIEW BOARD |
| 43.8 | SECTION 8- | REHABILITATION REVIEW HEARING |
| 43.9 | SECTION 9- | CONDITIONS FOR GRANTING A CERTIFICATE OF REHABILITATION |
| ATTACHMENT A | | TRIBAL POSITION LIST |
| ATTACHMENT B | | CRIMES LIST |

CHAPTER 43 -- REHABILITATION REVIEW

43.1 AUTHORITY AND PURPOSE

This Ordinance is enacted pursuant to the Red Cliff Constitution, Article IV, subsections (e), (i), (l) and (p). The purpose of this code is to safeguard the welfare of children, clients of designated departments within the Red Cliff Tribal organization, to conform with the requirements of 25 USC 3200, et. seq. as amended from time to time and Wisconsin caregiver laws, Wisconsin Statutes, sections 48.685 and 50.065, including related provisions as amended from time to time.

43.2 APPLICABILITY

- a) The provisions of this ordinance shall apply to all persons and positions designated in Attachment A. Such designation may be by specific position, by department or by division. Additions or deletions may be made by Tribal Administration but shall be subject to review by the Tribal Council at the next regular Council meeting.
- b) Attachment A shall be reviewed by Tribal Administration on a yearly basis to determine appropriate changes. The Tribal Council shall approve all changes.

43.3 DEFINITIONS

- a) "Attachment A" means the list of positions or category of positions over which the Red Cliff Tribal Council has authority
- b) "Attachment B" means the crimes list for which a conviction requires a rehabilitation review if a person is in a position or category listed in Attachment A

- c) "Certificate of Rehabilitation" means a certificate issued by the Red Cliff Tribal Council authorizing a person who has been convicted of a crime listed on Attachment B to work in all or part of the positions on Attachment A. This certificate may also put forth conditions under which the person may work in the identified position.
- d) "Tribal Administration" means a combination of the Chairperson, Vice-Chairperson, Secretary, and Treasurer of the Red Cliff Tribal Council and may include such other position within the tribal organization as deemed appropriate by the above named officers of the Red Cliff Tribal Council.

43.4 PROHIBITION

- a) No person may be employed within the Tribal organization in a position identified by Attachment A if said person has been convicted of an offense listed in Attachment B, unless said person has been granted a Certificate of Rehabilitation by the Red Cliff Tribal Council.
- b) The offenses listed in Attachment B may be amended by Administration at any time. Any change to Attachment B must be approved by the Tribal Council at the next regular Tribal Council meeting.

43.5 CRIMINAL BACKGROUND INVESTIGATIONS

- a) All persons who are employed with the Tribe in a position identified in Attachment A, or are in a category listed in Attachment A, shall have a criminal background investigation completed. A copy of the results of the investigation shall be kept in the employee's personnel file.
- b) All persons affiliated with the Tribe in a category listed in Attachment A shall have a criminal background investigation completed. A copy of the results of the investigation shall

be maintained with the Personnel Manager.

- c) A person applying for a position listed in Attachment A shall complete a criminal background investigation form, as prescribed by the Personnel Department of the Tribe. Any person who gives false or misleading information on the Criminal Background Information Form shall be denied employment, or be terminated from employment with the Tribe, as applicable.
- d) All persons employed in a position in Attachment A shall have a criminal background check performed every fourth (4th) year of employment with the Tribe.
- e) All current employees, holding a position listed in Attachment A, who have been convicted of an offense listed in Attachment B shall have ten (10) working days to file for a Rehabilitation Review Hearing before the Red Cliff Tribal Council.
- g) An employee working in a position listed in Attachment A shall immediately inform Administration if they have been charged with an offense listed in Attachment B. Administration shall determine if said employee may continue in that position pending the outcome of the legal proceeding. The decision of the Administration shall be in writing. The Administrative decision shall be reviewed at the next Tribal Council Meeting. The Tribal Council shall make the final determination pending the outcome of the legal proceeding.
- h) An employee who is convicted of an offense listed in Attachment B while employed in a position listed in Attachment A may file for a Rehabilitation Review Hearing within ten (10) working days of the conviction.

- i) Any employee listed in Attachment A, who has been convicted of an offense listed in Attachment B, who does not file for a Rehabilitation Review Hearing within the designated time frame shall be terminated as an employee at the expiration of the time frame designated herein.

**43.6 CONFIDENTIALITY OF CRIMINAL BACKGROUND
INVESTIGATIONS**

- a) All information gained in a criminal background investigation shall be kept strictly confidential, subject to review only by the program manager or department head, as applicable, and the Red Cliff Tribal Council.
- b) All criminal background investigations shall be conducted by the program manager or department head. The results of this investigation shall be turned over to the Personnel Manager. The Personnel Manager shall store the results of the investigation in a locked file for safekeeping.
- c) The results of the criminal background investigation shall not be duplicated in any manner unless authorized by Administration and the individual on whom the investigation has been conducted.
- d) Any person who violates the provisions of this section shall be subject to disciplinary action by the Red Cliff Tribal Council, which may include dismissal as an employee of the Tribe.

43.7 REHABILITATION REVIEW BOARD

The Rehabilitation Review Board shall be the Red Cliff Tribal Council.

43.8

REHABILITATION REVIEW HEARING

- a) All Rehabilitation Review Hearings shall be held in executive session of the Red Cliff Tribal Council Meetings. Only the Tribal Council, those persons designated by the Tribal Council, the petitioner, his or her representative and such other persons agreed to by the Tribal Council and the petitioner may attend a Rehabilitation Review Hearing.
- b) Attendance is mandatory for the petitioner. If the petitioner is not present at the Hearing, the petition shall be denied.
- c) The petitioner's supervisor, the department head, and the division chief, as applicable shall attend the Rehabilitation Review Hearing. The Tribal Council may direct the Personnel Manager to attend the Rehabilitation Review Hearing.
- d) The Rehabilitation Review Hearing shall be scheduled upon filing of a petition with the Personnel Manager. If the Personnel Manger is not available, the petition may be filed with either the Tribal Manager or the Executive Secretary. All petitions for a Rehabilitation Review Hearing shall be dated and time stamped upon receipt of the petition. The petition for a Rehabilitation Review Hearing shall be forwarded to the Secretary of the Tribal Council for scheduling.
- e) The petition for a Certificate of Rehabilitation shall contain the following information:
 - Employee's position, or the position being applied for
 - Criminal record along with dates of convictions, and Court of conviction
 - The petitioner's current address and a phone number where petitioner can be

reached

- Such other information the petitioner deems necessary for the Rehabilitation Review Board to make a just decision
- f) The Rehabilitation Review Hearing shall be held within thirty (30) days of receipt of the request for a Rehabilitation Review Hearing.
- g) Notice of the Rehabilitation Review Hearing shall be mailed to the petitioner, the supervisor, the department head and the division chief as applicable. Inter-office mail is an acceptable method for noticing employees of the Tribe of a pending Rehabilitation Review Hearing.
- h) The supervisor, the department head, and the division chief, as applicable, shall be prepared to provide information as to the scope of employee's work, or other contact with clients and the potential impact the identified conviction(s) will have on the clients being served.
- i) The Rehabilitation Review Board shall be provided with a packet that contains the petitioner's conviction record, date(s) of conviction(s), information as to the persons status within the legal system and such other information as requested by the Rehabilitation Review Board. The Personnel Manager shall provide this packet of information to the Tribal Council Secretary. This packet shall be returned to the Personnel Manager upon the completion of the meeting.
- j) The Rehabilitation Review Board may:
 1. Grant a Certificate of Rehabilitation
 2. Grant a Certificate of Rehabilitation with conditions. Conditions of this Certificate shall be strictly adhered to by those persons supervising the petitioner, shall be made in writing, and

shall operate as continuing restrictions on said person's employment with the Tribe.

3. Deny the Certificate of Rehabilitation.

- k) A Certificate of Rehabilitation means the person who has been convicted of an offense listed in Attachment B is able to work at any position listed in Attachment A.

A Certificate of Rehabilitation with Conditions means special conditions exist for the petitioner to work for the Tribe. A violation of these conditions may result in termination of employment for the petitioner. If it is learned that the supervisor, the department head, and/or the division chief were aware of the violations of the terms of the Certificate of Rehabilitation with conditions, disciplinary action may be taken against the supervisor, department head or division chief. This Certificate of Rehabilitation with Conditions shall also indicate when the petitioner may petition for another hearing on the matter or state conditions that must be met before another hearing is held on the matter.

A denial of Certificate of Rehabilitation means the petitioner is not able to work in any position listed in Attachment A. This ruling shall also identify the earliest date another hearing may be held on the matter, or indicate conditions that must be met before another hearing will be held on the matter.

- m) The decision of the Red Cliff Tribal Council is final and no appeal may be made from that decision.

43.9

CONDITIONS FOR GRANTING A CERTIFICATE OF REHABILITATION

- a) In considering whether to grant a Certificate of Rehabilitation the following factors shall be considered:
 - 1) The seriousness of the offense and the length of time since the conviction, and

whether the petitioner is still on probation for that offense.

- 2) The circumstances surrounding the conviction, what actions, if any, have been taken to correct those circumstances, and assurances that this behavior will not occur in the future.
 - 3) The petitioner's record since the conviction(s) that have caused the petitioner to be before the Rehabilitation Review Board.
 - 4) The possible risks toward the clients being served by the position for which the petitioner is applying or is employed.
 - 5) The manner in which the Tribe became aware of the conviction.
- b) In making decisions on this matter the Tribal Council may consider such other factors deemed appropriate.

ATTACHMENT A
TRIBAL POSITION LIST

1. **Persons within the following categories are required to have criminal background investigations:**
 - a) All tribal foster care licensees and all persons living in the residence age 12 and older.
 - b) All persons in the home, age 12 and older, of recipients of Kinship Care.
 - c) Red Cliff Community Health Center
 - (1) All personnel, including volunteers.
 - d) Red Cliff Early Childhood Center

- (1) All personnel, including volunteers.
- (2) Policy Council Members
- (3) Independent Contractors and any person affiliated with the Independent Contractor who will perform work at the Early Childhood Center premises. **(03-07-05-D)**
- e) Red Cliff Even Start Program
 - (1) All personnel, including volunteers.
- f) Red Cliff Library
 - (1) All personnel, including volunteers.
- g) All Day Care License holders and Day Care providers within the boundaries of the Red Cliff Reservation, and persons living in the residence age 12 and older.
- h) All Respite Care providers and all persons living in the home of the provider age 12 and older.
- i) Red Cliff Chippewa Housing Authority
 - (1) All personnel that have access to the residences and/or records of the clients of the Housing Authority.
- j) Indian Child Welfare Department
 - (1) All personnel, including volunteers.
- k) Alcohol or Drug Abuse Program
 - (1) All personnel, including volunteers.
- l) Mishomis House
 - (1) All employees, and non-resident volunteers.
- m) Red Cliff Elderly Program
 - (1) All personnel, including volunteers.

- n) All Law Enforcement Personnel.
- o) All Youth Services Workers and volunteers over 12 years of age.
- p) First American Prevention Center
 - (1) All personnel that provide direct client services
 - (2) All volunteers that have contact with clients of the program(s) involving direct client services.

NOTE: the Red Cliff Tribal Council shall make Decisions involving criminal background investigations for the First American Prevention Center.

- q) The Family Services Division of the Tribe.

2. The following specific positions are required to have criminal background investigation results in their personnel file.

- a) Alcohol or Drug Abuse Counselor Coordinator
- b) Child Care Director
- c) Community Health Nurse
- d) CHN/PCCP
- e) Day Care Director/Teacher
- f) Day Care Teacher
- g) Director FP/FS
- h) Headstart Director
- i) Early Headstart Director
- j) Education Director
- k) Elderly Program Manager
- l) Indian Child Welfare Social Worker

- m) Mental Health Case Worker
- n) Mishomis House Manager
- o) Personnel Manager
- p) Pharmacist
- q) Mishomis House Relief Manager
- r) Social Service Administrator
- s) Supervisor
- t) Teachers
- u) Alt. Res./CHS Asst
- v) AODA Counselor Trainee
- w) Assistant Cook
- x) Bus Driver
- y) Court Appointed Special Advocate (CASA)
Coordinator
- z) Chil. Soc. Work. Tr.
- aa) Community Health Representative (CHR)
- bb) CHR/WIC
- cc) Clinical Nurse
- dd) Community Health Nurse
- ee) Cook
- ff) Coordinator/ FLS
- gg) Domestic Violence Advocate
- hh) Economic Support Specialist
- ii) Elderly Counselor

jj) Elementary Tutor
kk) Energy Assistance Coordinator
ll) Family Resource Coordinator
mm) Family Education
nn) Head Cook
oo) History Preservation Coordinator
pp) Homemaker
qq) Job Assistance
rr) Law Enforcement Officer
ss) Emergency Shelter Manager
tt) Medical Receptionist/Billing Clerk
uu) Out Patient Specialist
vv) Medical Assistant
ww) Nutrition Aide
xx) Officer
yy) Outreach Worker
zz) Paralegal
aaa) Receptionist
bbb) Secretary/Clerk
ccc) Teacher Aide
ddd) Teacher Assistant
eee) Tutor
fff) Youth Activities Coordinator
ggg) Youth Worker

ATTACHMENT B
CRIMES LIST

1. Persons who have been convicted of a violation listed herein and are in a position listed in attachment A, or prior to being placed in a position listed in attachment A, are required to have a certificate of rehabilitation.

| <u>Wisconsin Statute</u> | <u>Crime</u> |
|--------------------------|---|
| 346.62(4) | Reckless driving - cause great bodily harm, felony |
| 940.01 | First degree intentional homicide |
| 940.02 | First degree reckless homicide |
| 940.03 | Felony murder |
| 940.05 | Second degree intentional homicide |
| 940.06 | Second degree reckless homicide |
| 940.08 | Homicide by negligent handling of dangerous weapon, explosive or fire |
| 940.12 | Assisting suicide |
| 940.19(2) - (6) | Battery, felony |
| 940.20 | Battery, special circumstances |
| 940.203 | Battery or threat to judge |
| 940.205 | Battery or threat to a Department of Revenue employee |
| 940.207 | Battery or threat to a Department of Commerce or DHLR employee |
| 940.21 | Mayhem |
| 940.22(2) | Sexual exploitation by therapist - sexual contact |

| | |
|----------------------------|--|
| 940.22 (3) | Sexual exploitation by therapist - duty to report |
| 940.225 (1) | First degree sexual assault |
| 940.225 (2) | Second degree sexual assault |
| 940.225 (3) | Third degree sexual assault |
| 940.23 | Reckless injury |
| 940.285 (2) (b) 1 or 2 | Abuse of vulnerable adults - felony |
| 940.285 (2) (b) 3, 4, or 5 | Abuse of vulnerable adults - felony or misdemeanor |
| 940.29 | Abuse of residents of a penal facility |
| 940.295 | Abuse/neglect of patients and residents - felony or misdemeanor |
| 940.305 | Taking hostages |
| 940.31 | Kidnapping |
| 941.20 (2) or (3) | Endangers safety by use of a dangerous weapon |
| 941.21 | Disarming a peace officer |
| 943.10 (2) | Burglary while armed |
| 943.23 (1g), (1m) or (1r) | Operating motor vehicle without owner's consent |
| 943.32 (2) | Robbery with dangerous weapon |
| 948.02 (1) | First degree sexual assault of a child* |
| 948.02 (2) | Second degree sexual assault of a child* |

***Consideration:** If person was, at the time of the assault more than four (4) years older than the child

| | |
|-------------|---|
| 948.02 (3) | Sexual assault of a child - failure to act |
| 948.02 (3m) | Sexual assault of a child - penalty enhancement sexual assault by certain persons |
| 948.025 | Repeated acts of sexual assault of same child* |

*** Consideration:** Is child over the age of age 13 is child over the age of 13 but under the age of 16 and the person was more that 4 years older

| | |
|------------------------|--|
| 948.03 (2) (a) | Physical abuse of a child - intentional- cause great bodily harm |
| 948.03 (2) (b) or (c) | Physical abuse of a child - intentional- cause bodily harm |
| 948.03 (3) | Physical abuse of a child - reckless |
| 940.03 (4) | Physical abuse of a child - failure to act |
| 948.04 | Causing mental harm to a child |
| 948.05 | Sexual exploitation of a child |
| 948.055 | Causing a child to view or listen to sexual activity |
| 948.06 | Incest with a child |
| 948.07 | Child enticement |
| 948.08 | Soliciting a child for prostitution |
| 948.095 | Sexual assault of student by school staff |
| 948.11 (2) (a) or (am) | Exposing child to harmful material |

or harmful descriptions or
narcotics - felony

948.12 Possession of child pornography

948.13 Child sexual offender working with
a child

948.20 Abandonment of a child

948.21(1) Neglect of a child - resulting in
death - felony

948.22 Failure to support - felony

948.23 Concealing death of a child

948.24 Unauthorized placement for adoption

948.30 Abduction of another's child;
constructive custody

948.31 Interference with custody by parent
or others

948.35 Solicitation of a child to commit a
felony

948.36 Use of a child to commit a class A
felony

948.40 Contributing to the delinquency of
a minor - felony

948.51 Hazing

948.60 Possession of dangerous weapons by
a person under 18 - felony

948.605(3) Gun-free school zones; discharge of
firearm in a school zone felony

948.61 Dangerous weapons other than
firearm on school premises - felony

948.62 Receiving stolen property from a
child - felony

All other Chapter 48 crimes that are felonies

| | |
|----------------|--|
| 961.41 (1) | Manufacture, distribution or delivery - felony |
| 961.41 (1m) | Possession with intent to manufacture, distribute or deliver - felony |
| 961.41 (3g) | Possession - felony |
| 961.43 (1) (a) | Acquire or obtain possession of controlled substances by fraud, misrepresentation, or forgery, deception, or subterfuge - felony |
| 961.43 (1) (b) | To possess/make a counterfeit substance or to duplicate the appearance, packaging, form, or label of a controlled substance - felony |
| 961.455 | Using a child for illegal distributions or manufacture purposes - felony |
| 961.46 | Distribution to persons under 18 - felony |
| 961.465 | Distribution to prisoners |
| 961.49 | Distribution of or possession with intent to deliver at or near certain places |
| 961.492 | Distribution of or possession with intent to deliver on public transit - felony |

All other chapter 961 offenses that are felonies

- 2. Any conviction from another tribe, state or country that falls within the scope of the above identified offenses.**

