

# **Saginaw Chippewa Tribal Law**

## **TITLE I**

*As amended August 23, 2017*

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# TITLE I

## Chapter 1.1

### DEFINITIONS AND GENERAL PROVISIONS

- 1.101 SAGINAW CHIPPEWA TRIBAL COURT JUDGE. A Saginaw Chippewa Court Judge has general criminal and civil powers among which are the power to issue warrants to try criminal cases brought before the Court.
- 1.102 OFFICERS OF THE TRIBAL COURT. Officers of The Saginaw Chippewa Indian Tribal Community Court, shall include all police officers and all judges, clerks, probation officers, and baliffs of the Saginaw Chippewa Indian Tribe. Officers of The Saginaw Chippewa Indian Tribal Community Court shall also include Tribal Court substance abuse workers. The police shall include all Tribal Police and their deputies plus all Bureau Of Indian affairs Law Enforcement personnel, including Indian Bureau Police and their deputies. Police and peace officers may be used interchangeably in this Code.
- 1.103 SIGNATURE. The act of putting one's name at the end of an instrument to attest its validity. A signature may be written by hand, printed, stamped, typewritten or engraved. Whatever mark, symbol, or device one may choose to employ as representative is sufficient for the purposes of this Code.
- 1.104 WORDS USED IN PRESENT TENSE. Unless otherwise provided, words used in this Code in the present tense include the future as well as the present. Words used in the masculine gender include the feminine and the neuter, and plural includes the singular and vice-versa. The term "writing" includes printing. The term "Oath" includes affirmation.
- 1.105 SPECIAL PROVISIONS CONTROL GENERAL PROVISIONS. In construing this Code, each general provision shall be controlled by any special provisions on the same subject if a conflict should arise.
- 1.106 CODE TO BE CONSTRUED ACCORDING TO THE PLAIN IMPORT OF ITS LANGUAGE. This Code, together with any additions hereto which may be enacted is to be construed according to the plain import of its language. No person shall be punished for an offense definition upon the pretense that such person has offended against the statutes spirit. Words not specifically defined herein are to be taken according to their ordinary meaning.
- 1.107 STATUTE OF LIMITATIONS. No prosecution shall be maintained under this Code unless the action shall commenced within one (1) year after the alleged commission of the offense. Such time period shall not include time spent outside the jurisdiction of the Court for the purpose of avoiding prosecution. The burden for providing the reason for absence from the jurisdiction shall be upon the prosecution.

1.108 DEFINITION OF TERMS. In this Code the following definitions shall apply unless the context or subject matter shall otherwise require:

- (a) “Tribe”, shall mean the Saginaw Chippewa Indian Tribe of Michigan.
- (b) “Willfully”, when applied to the intent with which an act is done or omitted, implies a purpose or willingness to commit the act or omission referred to.
- (c) “Neglect”, “Negligence”, “Negligent” and “Negligently” import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.
- (d) “Corruptly” imports a wrongful design to acquire or cause some pecuniary or other advantage to the person charged with the act or omission referred to, or to some other person.
- (e) “Malice” and “Maliciously” import a wish or conscious desire to vex, annoy, or injure another person or another's property, or an intent to do wrongful act, established either by proof or presumption of law.
- (f) “Knowingly” imports consciousness that the facts exist which make the act or omission a crime. It does not require knowledge of the unlawfulness of the act or omission.
- (g) “Bribe” signifies any money, goods, right in action, property, thing of value, or advantage, present or prospective asked, promised, given, or accepted, with intent to influence lawfully the recipient or prospective recipient, in his action, vote, or opinion in any public or official capacity;
- (h) “Writing” includes printing and typewriting.
- (i) “Signature” includes any name, mark, or sign written with intent to authenticate any instrument or writing.
- (j) “Person” includes any corporation or other legal entity as well as a natural person. When used to designate the party whose property may be subject of any offense, it includes the Tribe, any state, government, or country which lawfully may own any property within this jurisdiction, and all public or private corporation, or joint associations, as well as individuals.
- (k) “Property” includes every estate, interest, and right in lands, tenements and hereditament. “Personal Property” includes every description of money, goods, chattels, effects, evidences of a right in action, and written instruments by which any pecuniary obligation, right, or title to property, real or personal, is created or acknowledged, transfer, increased, defeated, discharged or diminished.
- (l) “Actor” means a person accused of criminal sexual conduct.
- (m) “Appears to Include a Child” means for the purpose of this Title that the depiction appears to include, or conveys the impression that it includes, a person who is less than 18 years of age, and the depiction was either created using a depiction of any part of an actual person under 18 years of age or it was not created using a depiction of any part of an actual person under the age of 18, but that the average individual, applying contemporary community standards, would find the depiction, taken as a whole, appeals to the Prurient Interest and the reasonable person would find the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value, and the depiction depicts or describes a Listed Sexual Act in a patently offensive way.
- (n) “Child Sexually Abusive Activity” means a child engaging in a Listed Sexual Act.

- (o) “Child Sexually Abusive Material” means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or Appears to Include a Child engaging in a Listed Sexual Act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.
- (p) “Commercial Film or Photographic Print Processor” means a person or his or her employee who, for compensation, develops exposed photographic film into movie films, negatives, slides, or prints; makes prints from negatives or slides; or duplicates movie films or videotapes.
- (q) “Computer Technician” means a person who installs, maintains, troubleshoots, upgrades, or repairs computer hardware, software, personal computer networks, or peripheral equipment.
- (r) “Contemporary Community Standards” means the customary limits of candor and decency in the tribal community at or near the time of the alleged violation of this Title.
- (s) “Erotic Fondling” means touching a person’s clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic Fondling does not include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.
- (t) “Erotic Nudity” means the lascivious exhibition of the genital, pubic, or rectal area of any person. As used in this Title, “lascivious” means wanton, lewd, and lustful and tending to product voluptuous or lewd emotions.
- (u) “Listed Sexual Act” means Sexual Intercourse, Erotic Fondling, Sadomasochistic Abuse, Masturbation, Passive Sexual Involvement, Sexual Excitement or Erotic Nudity.
- (v) “Masturbation” means the real or simulated touching, rubbing, or otherwise stimulating of a person’s own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purposes of real or simulated overt sexual gratification or arousal of the person.
- (w) “Passive Sexual Involvement” means an act, real or simulated, that exposes another person to or draws another person’s attention to an act of sexual intercourse, Erotic Fondling, Sadomasochistic Abuse, Masturbation, Sexual Excitement, or Erotic Nudity because of viewing any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt

- (x) sexual gratification of stimulation of 1 or more of the persons involved.
- (x) “Prurient Interests” means a shameful or morbid interest in nudity, sex, or excretion.
- (y) “Somasochistic Abuse” means either flagellation of torture, real or simulated, for the purpose of real or simulated sexual stimulation or gratification, by or upon a person; or the condition, real or simulated, of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.
- (z) “School” means a tribal, public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. School does not include a home school.
- (aa) “Sexual Contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.
- (bb) “Sexual Excitement” means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.
- (cc) “Sexual Intercourse” means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.
- (dd) “Sexual Penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but the emission of semen is not required.
- (ee) “Victim” as used in Chapter 1.20 of this Title means the person alleging to have been subjected to criminal sexual conduct.

1.109 APPLICABILITY OF CODE PROVISIONS RESTRICTED-OFFENSES COMMITTED BEFORE ADOPTION OF CODE. The provisions of this code shall not apply nor extend to any act done or offense committed prior to January 1, 1982, except as to matters of procedure and as to provisions alleviating the punishment to be imposed upon conviction in any case. The provisions of law now in force and applicable to any crime to which this title relates, to the penalty affixed, as well as in all respects, shall be and remain in full force and effect as to any offense committed before the taking effect of this title.

1.110 COMMUNITY COURT FUND.

- (a) There is hereby created a Community Court Fund for Tribe. All fines and costs levied and assessed by shall be paid into said Community Court Fund and receipted for.
- (b) Fines shall be separately accounted for, and, no later than the 15th day of each month, the Community Court Clerk, or the Community Court Judge acting in place of the clerk, shall account to the Treasurer of the Tribe for all fines assessed, paid, and outstanding during the previous month. The Community Court shall maintain a separate account for fines. Such funds shall then be available for appropriation by the Tribal Council for any court related or public purpose.
- (c) Costs shall be separately accounted for. All amounts paid to the Community Court Fund as cost of prosecution in criminal cases or as filing fees and cost in civil



cases, shall be retained in the Community Court Fund and used to defray the operating expenses of the Community Court, provided, however, that no portion of the Judge, the Magistrate, or the clerk of courts salaries be paid from said fund.

## Chapter 1.2

### PREVENTION OF CRIME

- 1.201 LAWFUL RESISTANCE BY PRIVATE PERSONS. Any person may lawfully resist the commission of any public offense, but the amount of force used in resisting such offense shall not be greater than is reasonably necessary to prevent the offense. Deadly force may not be used except where a private person, in resisting the commission of a public offense believes his life to be in danger by reason of the acts of one whom he believes to be committing such an offense.
- 1.202 PRIVATE PERSONS, JUSTIFICATION OF ACTIONS. When police officers are by this Code authorized to act in the prevention of public offenses, other persons, who by the police officers command, act in their aid, are justified in doing so. Such other persons shall be entitled to employ the same degree of force as provided for in Section 1.201 herein and shall not be liable in any civil suit or criminal action for reasonable action taken pursuant to this section.
- 1.203 PRESERVING THE PEACE AT PUBLIC GATHERINGS. The police officer having direction of the police force shall order a force sufficient to preserve the peace or to attend any public gathering or meeting when he is satisfied that a breach of the peace may reasonably be anticipated.

## Chapter 1.3

### SUPPRESSION OF RIOTS AND ROUTE OR RESISTANCE OF PROCESS

- 1.301 RIOTS; DEFINITION; PENALTY. Any use of force or violence or any threat to use force or violence, if accompanied by immediate power of execution, by six or more persons acting together and without authority of law, is a riot. Any person found guilty of participating in a riot shall be sentenced to serve a jail term of not less than one (1) month, nor more than six (6) months.
- 1.302 UNLAWFUL ASSEMBLY: DEFINITIONS: PENALTY. Whenever three or more persons assemble with intent or with means and preparation to do an unlawful act which if involving more persons, would be riot if actually committed, but do not act toward the commission thereof, or whenever such persons assemble without authority of law and in such a manner as is adapted to disturb the public peace or excite public alarm, such assembly is unlawful assembly and upon conviction thereof such individuals shall be sentenced to imprisonment for a period not to exceed thirty (30) days or to a fine not to exceed one hundred dollars (\$100.00) or to both such imprisonment and fine with costs.

- 1.303 COMMAND TO DISPERSE. Where and when any number of persons armed or unarmed are unlawfully or riotously assembled, of the Tribal Police shall command such persons by going among them or otherwise to disperse immediately.
- 1.304 COMMAND; WHEN NOT HEEDED. If such unlawfully assembled persons do not disperse when so commanded, the officer in charge may proceed in a manner as in his judgment is necessary to disperse the assembly and arrest the offenders. Punishment upon conviction for violation of this Section shall be as in 1.302.
- 1.305 AID IN DISPERSAL, PENALTY. In order to disperse any such unlawful assembly, the police officer or police officers may command a sufficient number of persons to aid in the dispersal. Any person so commanded who fails or refuses, without justification, to aid the police shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to imprisonment.
- 1.306 AID IN EXECUTION OF PROCESS. When a police officer, authorized to execute process finds or has reason to anticipate that resistance will be made to the execution of the process, he may command as many persons he may think necessary to assist him in overcoming such resistance, and if necessary, in seizing, arresting, confining, and charging resisters and their aiders and abettors in accordance with Section 1.305 of this Code.
- 1.307 ROUT; DEFINITION; PENALTY. Whenever three or more persons, acting together, make any attempt to do any act which would be riot if actually committed, and involving; more persons such assembly is a rout and upon conviction thereof shall be deemed guilty of an offense and shall be sentenced to imprisonment for a period not to exceed thirty (30) days or to a fine not to exceed one hundred dollars (\$100.00) or to both such imprisonment or fine with costs.
- 1.308 INJURY TO PUBLIC PEACE; PENALTY. Any person who willfully and wrongfully commits any act or series of acts which results in a disturbance of the public peace by causing annoyance or nuisance to the general public shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed thirty (30) days or to a fine not to exceed one hundred dollars (\$100.00) or to both such imprisonment and fine and costs.
- 1.309 DISTURBING LAWFUL MEETING; PENALTY. Any person who without authority of law, willfully and maliciously disturbs or breaks up any assembly or meeting, not unlawful in its character, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed fifteen (15) days or to a fine not to exceed fifty dollars (\$50.00) or to both such imprisonment and fine, and costs.

#### Chapter 1.4

#### PEACE BONDS

- 1.401 COMPLAINTS; WARRANT OF ARREST. A complaint may be taken before any Judge of the Community Court, stating that a person has threatened to commit an offense recognized by this Code against the person or property of another. If it appears from the complaint that there is just reason for such a person to fear that commission of the offense threatened by the person complained of, the Judge shall issue a warrant directed generally to any peace officer as designated in Section 1.102 of this Code reciting the substance of the complaint and commanding the officer to arrest the person complained of and to bring him before the Judge.
- 1.402 PROCEEDINGS BEFORE A SAGINAW CHIPPEWA INDIAN, TRIBAL JUDGE; DISCHARGE OR ORDER FOR PEACE BOND ACCORDING TO FACT. When the person complained of is brought before the Tribal Judge, such Judge must, if the charge is denied, conduct an evidentiary hearing with all due haste, and in no case shall a person proceeded against under this section be held, after being brought before being granted a hearing. Any evidence to be presented must, on the demand of the defendant, be reduced to writing by the clerk or court reporter and subscribed by the witnesses. If it appears that there is no just reason to fear the commission of the offense charged, the defendant must be discharged. If however, there is just reason to fear the commission of the offense, the defendant may be required, as provided in Section 1.403, to furnish bond. In no case shall the bond exceed the maximum penalty prescribed by this Code for the offense threatened. The accused shall be directed to abide by the order of the Community Court and to keep the peace toward the people of the Tribe's jurisdiction, and particularly toward the complainant, for a time set by the Judge, not to exceed one (1) year. The peace bond must be transferred by the Judge to the clerk, who shall hold the same during the period specified.
- 1.403 BREACH OF PEACE BOND; PROSECUTION. A cash or surety peace bond may be forfeited upon the failure of the defendant to appear before the Court at the end of the specified period (Section 1.402) in person or by authorized representative, after first being given notice of the command to appear by certified mail at his last known address. The bond shall be breached upon his being convicted of a breach of the peace during the term of the bond, or upon his continuing the threat after the bonding is issued. Upon such failure to appear, unless good cause be shown, or upon the prosecuting attorney's or other officer of the court producing evidence of such conviction, the Court shall, in its discretion, order the bond to be forfeited and prosecuting attorney shall commence an action thereon in the name of the Saginaw Chippewa Indian tribe of Michigan. If upon such appearance by the defendant no breach of the peace has been committed by him, as prohibited by the bond, the bond shall be returned to the defendant by the clerk. If it appears that the threat continues, the Court may renew the bond for a like period.
- 1.404 COSTS; PEACE BOND PROCEDURE. In all cases of security to keep the peace under this chapter, the Court shall tax the costs against the complainant or defendant or both as justice may require, and enter judgments for costs in civil cases.

## JURISDICTION AND AUTHORITY OF THE COURT

- 1.501 COMMUNITY COURT. The Saginaw Chippewa Community Court is hereby created pursuant to Article VI Section 1(t), of the Amended Tribal Constitution and pursuant to the inherent and sovereign powers of the Saginaw Chippewa Indian Tribe of Michigan.
- 1.501.1 SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, JURISDICTION DEFINITION. For the purpose of enforcement of this Code, the Community Court's jurisdiction shall be deemed to extend to all land within the exterior boundaries of the Isabella Reservation and all land within the control of the Tribe at the Saganing Reservation pursuant to Article II of the Amended Tribal Constitution. The jurisdiction of the Saginaw Chippewa Indian Tribe of Michigan shall extend to all crimes committed within the Isabella or the Saganing Reservations including those crimes set forth under the Major Crimes Act in 18 USC 1153, which by their very nature must be transferred to U.S. District Court, Eastern District of Michigan for disposition.
- 1.502 PERSON TO WHOM JURISDICTION EXTENDS. Any Indian, who is found within the territorial jurisdiction of this Court as defined in Section 1.501, or who has allegedly committed an offence defined in this Code, shall be subject to the jurisdiction of this Court.
- 1.503 TRIBAL COURT JURISDICTION. The Court shall have criminal jurisdiction over all offenses enumerated in this Code, when committed by a person within the jurisdiction of the Saginaw Chippewa Indian Tribe of Michigan.
- 1.504 POWER AND AUTHORITY OF TRIBAL PROSECUTOR OR ANY PROSECUTOR APPOINTED BY THE COURT. In any and all criminal proceedings in the Court and within the Tribe's jurisdiction, the Tribal Prosecutor or any person appointed to act as such shall have the power and authority to sign, file and present any and all complaints, subpoenas, affidavits, motions, processes and papers of any kind, and to appear before all courts, commissions, or tribunals in any criminal proceedings within the Tribe's jurisdiction.
- 1.505 COMPOSITION OF THE COURT. The Saginaw Chippewa Community Court shall consist of: one (1) Chief Judge, one (1) Associate Judge and a Magistrate who shall also serve as Court Clerk, all of who shall be appointed by the Tribal Council. A Chief Judge or an Associate Judge whose term of office is concluding may be re-appointed by the Tribal Council as Senior Judge to the Saginaw Chippewa Community Court to serve as needed by assignment of the Chief Judge.
- 1.506 APPOINTMENT OF JUDGES. All Judges shall be appointed by simple majority by the Tribal Council.
- 1.507 TERM OF OFFICE. The Chief Judge shall be appointed to hold office for a term of not less than three (3) years. The Associate Judge shall be appointed to hold office for a term

of not less than one (1) year. In the event of the removal, resignation, or permanent incapacity of the Tribal Court Judge the Tribal Council shall appoint a new Tribal Court Judge without undue delay.

1.508 OATH OF OFFICE. Before taking office, a Judge or Magistrate shall take an oath as follows: I, \_\_\_\_\_, do solemnly swear that I will administer justice in a fair and impartial manner and perform all the duties incumbent upon me as Judge/Magistrate of the Saginaw Chippewa Tribe, to the best of my abilities so help me God.

1.509 QUALIFICATIONS OF JUDGES. No person shall be eligible to serve as a Judge unless he or she:

- (a) Is 25 years of age or older.
- (b) Has not been convicted of a misdemeanor type offense, excluding a minor traffic offense, within one year past.
- (c) Has never been convicted of a felony type offense.
- (d) Is of good moral character and integrity.
- (e) Has graduated from an accredited law school and is a member in good standing of the State Bar of Michigan, or is licensed to practice law in another state.
- (f) Is capable of preparing papers and reports incident to the office of Judge.
- (g) Has demonstrated a knowledge of being familiar with, and able to read and interpret the Tribal Code as well as having an understanding of Federal and State law and Court procedures.
- (h) Shall, prior to entering on duty, be bonded in the amount of \$5,000.00 as an authorized collector of fines and other cost moneys for The Saginaw Chippewa Community Court. Cost of bond to be paid from the Court Fund.

1.510 DISQUALIFICATION, DISCIPLINE OR REMOVAL OF A JUDGE OR MAGISTRATE.

1.510.1 Disqualification of a Judge or Magistrate.

- (a) **WHO MAY RAISE.** A party may raise the issue of a judge's disqualification by motion, or the judge may raise it.
- (b) **GROUND.** A judge is disqualified in any proceeding in which the impartiality of the judge may reasonably be questioned, including but not limited to instances in which:
  - (1) The judge is or reasonably appears to be personally biased or prejudiced for or against a party or attorney.
  - (2) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.
  - (3) The judge has been consulted or employed as an attorney in the matter in controversy.
  - (4) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.
  - (5) The judge or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's

household, has any other more than *de minimis* interest that could be substantially affected by the proceeding;

- (6) The judge or the judge's spouse, or a person within the second degree of relationship to either of them, or the spouse of such person:
  - (A) is a party to the proceeding;
  - (B) is acting as a lawyer in the proceeding;
  - (C) has more than *de minimis* interest that could be substantially affected by the proceeding;
  - (D) is likely to be a material witness in the proceeding.

In any motion under this rule, the moving party must include all grounds for disqualification that are known at the time the motion is filed.

(c) PROCEDURE.

- (1) Stay of Proceedings. Upon the filing of a motion to disqualify, all other proceedings in the case shall be stayed until a decision has been rendered on the motion by the challenged judge. If the challenged judge denies the motion and a party requests that another judge of the court review the motion *de novo*, all other proceedings in the matter shall be stayed until the other judge renders a decision on the motion.
- (2) Ruling. The challenged judge shall decide the motion expeditiously. If the challenged judge denies the motion, on the request of a party made in the motion, in open court or during the hearing on the motion or within one day following the decision of the challenged judge, the challenged judge shall refer the motion to the Chief Judge or, if the Chief Judge is the subject of the motion, to any other judge of the Court who shall decide the motion *de novo*.
- (2) Motion Granted. When a judge is disqualified, the action must be assigned to another judge of the court, or, if one is not available, the Tribal Council shall appoint another judge to whom the action must be assigned.

(d) REMITTAL OF DISQUALIFICATION. If it appears that there may be grounds for disqualification, the judge may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement shall be in writing or placed on the record.

(e) MAGISTRATE DISQUALIFICATION. This subsection concerning disqualification of judges shall also apply to magistrates; provided, however, that no referral for *de novo* review of a denial of a motion to disqualify shall be made to a magistrate.

1.510.2 Discipline or Removal of a Judge or Magistrate.

(a) **GROUND FOR DISCIPLINE OR REMOVAL.** A Judge or Magistrate may be censured, suspended with or without salary, or removed for the following reasons:

- (1) any violation of applicable standards regarding judicial ethics or conduct;
- (2) conviction of a criminal offense;
- (3) physical or mental disability which prevents or substantially impairs the performance of judicial duties;
- (4) misconduct while in office;
- (5) persistent failure to perform judicial duties or administrative duties;
- (6) abuse of power or improper use of judicial office;
- (7) conduct that is clearly prejudicial to the administration of justice; and
- (8) the discipline of the Judge or Magistrate by another jurisdiction or a court for a violation of professional ethical standards.

An erroneous decision made by a Judge or Magistrate in good faith and with due diligence shall not be considered grounds for the discipline or removal of the Judge or Magistrate. Conduct in violation of applicable standards regarding judicial ethics or conduct, whether the conduct complained of occurred before or after the Judge or Magistrate assumed office or was or was not connected with his or her judicial office, may constitute misconduct in office, conduct that is clearly prejudicial to the administration of justice, or another ground for discipline. All the circumstances are to be considered in deciding whether disciplinary action is warranted.

(b) **AUTHORITY.**

- (1) **Discipline or Removal of a Judge.** The Tribal Appellate Court shall have exclusive authority to discipline or remove a Judge. The Tribal Appellate Court may only discipline or remove a Judge upon the filing of a complaint by the Tribal Council with the Tribal Appellate Court pursuant to the procedures set forth in subsection 1.513 of this Chapter 1.5.
- (2) **Discipline or Removal of a Magistrate.** The Tribal Council shall have exclusive authority to discipline or remove a Magistrate pursuant to the standards and procedures set forth in this subsection 1.510.2.

(c) **PROCEDURE TO DISCIPLINE OR REMOVE A JUDGE.** A procedure to discipline or remove a Judge shall be commenced and conducted as follows:

- (1) **Commencement of Investigation.** Any person (“complainant”) may serve the Tribal Council with a signed statement (“request for investigation”) alleging factual grounds for discipline or removal of a judge (“respondent judge”). If upon initial examination and inquiry by the Tribal Council, the request for investigation is

determined to be neither unfounded nor frivolous, the Tribal Council shall conduct a preliminary investigation to determine if there are sufficient grounds to file a complaint with the Tribal Appellate Court. If the Council determines that the request for investigation is sufficiently credible on its face and that the alleged misconduct warrants prompt action, the Tribal Council may immediately file a complaint with the Tribal Appellate Court along with a motion for an order suspending the respondent judge, with or without pay, pending a final decision by the Tribal Appellate Court.

- (2) Appointment of Special Investigator. The Tribal Council shall commence the preliminary investigation by appointing a Special Investigator, who shall be an attorney licensed in good standing by any state of the United States. An attorney may not serve as Special Investigator while the attorney or the attorney's law firm provide legal services to the Tribe or any agency or enterprise of the Tribe in any other matter.
- (3) Authority of Special Investigator. The Special Investigator shall have authority to investigate the factual and legal basis for disciplining or removing a respondent judge. The respondent judge and all court staff shall cooperate with the investigation and comply with all reasonable requests of the Special Investigator. The Special Investigator shall investigate the allegations promptly and without bias or prejudice.
- (4) Notification to the Judge. The Tribal Council shall provide the respondent judge with a copy of the request for investigation along with written notification that an investigation has been undertaken. A copy of the notification shall also be served on the complainant. The Tribal Council shall provide a reasonable opportunity to the respondent judge to respond in writing to the request for investigation. The Tribal Council shall provide the complainant with a copy of any written response to the request for investigation received by the Tribal Council from the respondent judge.
- (5) Conclusion of Investigation. Upon the conclusion of the investigation, the Tribal Council shall determine whether or not there are sufficient grounds to file a complaint for the discipline or removal of the respondent judge. If the Tribal Council determines that sufficient grounds exist, the Tribal Council may direct the Special Investigator to prepare and file with the Tribal Appellate Court a complaint against the respondent judge in the name of the Saginaw Chippewa Tribe pursuant to subsection 1.513 of this Chapter 1.5. All deliberations of the Tribal Council related to the request for investigation shall be closed to the public and the request for investigation and all related documents shall be confidential.

(d) PROCEDURE TO DISCIPLINE OR REMOVE A MAGISTRATE. A



procedure to discipline or remove a Magistrate shall be commenced and conducted as follows:

- (1) Commencement of Investigation. Any person (“complainant”) may present the Tribal Council with a signed statement (“request for investigation”) alleging factual grounds for discipline or removal of a Magistrate (“respondent magistrate”). If upon initial examination and inquiry by the Tribal Council, the request for investigation is determined to be neither unfounded nor frivolous, the Tribal Council shall conduct a preliminary investigation to determine if there are sufficient grounds to discipline or remove the respondent magistrate. If the Council determines that the request for investigation is sufficiently credible on its face and that the alleged misconduct warrants prompt action, the Tribal Council may immediately suspend the respondent magistrate, with or without pay, pending the outcome of the investigation and final decision by the Tribal Council.
- (2) Appointment of Special Investigator. The Tribal Council shall commence the preliminary investigation by appointing a Special Investigator, who shall be an attorney licensed in good standing by any state of the United States. An attorney shall be eligible to serve as Special Investigator while the attorney or the attorney’s law firm provide legal services to the Tribe or any agency or enterprise of the Tribe in any other matter.
- (3) Authority of Special Investigator. The Special Investigator shall have authority to investigate the factual and legal basis for disciplining or removing a respondent magistrate. The respondent magistrate and all court staff shall cooperate with the investigation and comply with all reasonable requests of the Special Investigator. The Special Investigator shall investigate the allegations promptly and without bias or prejudice.
- (4) Notification to the respondent magistrate. The Tribal Council shall provide the respondent magistrate with a copy of the request for investigation along with written notification that an investigation has been undertaken. A copy of the notification shall also be served on the complainant. The Tribal Council shall provide a reasonable opportunity to the respondent magistrate to respond in writing to the request for investigation. The Tribal Council shall provide the complainant with a copy of any written response to the request for investigation received by the Tribal Council from the respondent magistrate.
- (5) Conclusion of Investigation. Upon the conclusion of the investigation, the Special Investigator shall file a written report with the Council, including recommendations regarding whether or not discipline or removal is warranted. The report shall include as attachments all documents obtained through the investigation.
- (6) Hearing. A copy of the Special Investigator’s report and the

attachments shall be served on the respondent magistrate and on the complainant. If the Special Investigator recommends disciplinary action or removal, the report shall be accompanied by written notification that the respondent magistrate is entitled to a hearing before the Tribal Council. The respondent magistrate shall notify the Tribal Council in writing within five (5) business days of receipt of the notice that a hearing is requested. The Tribal Council shall promptly schedule a hearing on the matter, which shall be held within 30 calendar days from the date of receipt of the respondent magistrate's request for a hearing. The Tribal Council shall provide the respondent magistrate and the complainant with written notice of the hearing schedule. The hearing shall be closed to the public and all documents related to the hearing shall be confidential. The hearing shall be conducted in accordance with rules and procedures established by the Tribal Council.

- (7) Decision. The Tribal Council shall render a decision in writing, which shall include findings of fact and conclusions of law, and shall conclude with an order declining to impose disciplinary measures or imposing censure, suspension with or without salary, or removal. The decision of the Tribal Council shall be final and shall not be subject to review by any court with the sole exception that a decision to remove a Magistrate shall be subject to review *de novo* by the Tribal Appellate Court.

1.511 QUALIFICATION OF CLERK OF THE COURT. To be eligible to serve as clerk of the Court he or she:

- (a) Must be 21 years of age or older.
- (b) Must not have been convicted of a felony type offense.
- (c) Must not have been convicted of a misdemeanor type offense, excluding a minor traffic offense, within one year past.
- (d) Must be of good and moral character and integrity.
- (e) Must be capable of typing letters and reports with a minimum of errors.
- (f) Must be capable of accurately preparing papers and reports incident to the Community Court to include keeping financial records and other bookkeeping records of the Court.
- (g) Must have demonstrated a knowledge of being familiar with, and able to read and interpret the Tribal Code as well as having an understanding of Court procedure.
- (h) Shall, prior to entering on duty, be bonded in the amount of \$5,000.00 as an authorized collector of fines and other costs moneys for Community Court, the cost of said bond to be paid from the Community Court Fund.

1.512 RULES OF THE COURT. The time and place of Court sessions and all other details of judicial procedure not prescribed by this code shall be laid down in rules of court approved by the Tribal Council. It shall be the duty of the Chief Judge of the Court, to make recommendations to the Tribal Council for the enactment or amendment of such rules of Court as are necessary for improvement.

1.513 TRIBAL APPELLATE COURT.

1.513.1 Establishment. There is hereby established a Saginaw Chippewa Tribal Appellate Court. The Tribal Appellate Court shall sit at such time and places as is proper and necessary to hear and decide appeals on the law from judgments, sentences, rulings, or other orders of the Community Court in any and all civil (excepting traffic infractions) and criminal matters. The Tribal Appellate Court shall be the final authority within this jurisdiction for the interpretation of tribal law, including the Tribal Constitution and this Code.

1.513.2 Jurisdiction.

- (a) The Tribal Appellate Court shall have jurisdiction over appeals from any final decision, sentence, judgement, order, writ, or imposition of sanctions of the Saginaw Chippewa Community Court; jurisdiction over appeals from any interlocutory order in a civil case if the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation; and authority to stay execution of any final decision, sentence, judgment, order, writ, or imposition of sanctions of the Saginaw Chippewa Community Court pending appeal; and
- (b) The Tribal Appellate Court shall have original and exclusive jurisdiction over all matters involving extraordinary writs of habeas corpus, mandamus, and prohibition and is empowered to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the Court of Appeals may be justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the Community Court and due appeal to the Tribal Appellate Court an inadequate remedy, or when supervision of the Community Court other than by appeals is deemed necessary or proper.
- (c) The Tribal Appellate Court shall have original and exclusive jurisdiction over all proceedings instituted in the Court of Appeals for the discipline or removal of a Tribal Court Judge, for the imposition of a suspension of a Tribal Court Judge, with or without pay, pending a final decision, or for the *de novo* review of a decision to remove a Magistrate. The Tribal Appellate Court shall establish procedural rules for all proceedings involving the discipline or removal of a Tribal Court Judge or the removal of a Magistrate and shall expedite all such proceedings. All proceedings conducted pursuant to this subsection (c) shall be closed to the public and all documents related to such proceedings shall be confidential.

1.513.3 Composition. The Tribal Appellate Court shall be comprised of one Chief Appellate Judge and two Associate Appellate Judges sitting as a three-judge panel to hear and decide appeals. At the discretion of the Chief Appellate Judge, appeals from any interlocutory order in a civil case and requests to stay execution of any final decision, sentence, judgement, order, writ, or imposition of sanctions of the

Saginaw Chippewa Community Court pending appeal may be heard and decided by the Chief Appellate Judge or, if the Chief Appellate Judge is unavailable, an Associate Appellate Judge appointed by the Chief Appellate Judge. The appointment of the Appellate Judges shall be made by a simple majority of the Tribal Council. If any Appellate Judge is unavailable or is disqualified pursuant to §1.511, the Tribal Council may appoint a pro-tem Appellate Judge to serve in place of the unavailable or disqualified Appellate Judge.

1.513.4 Term of Office. Each Appellate Judge shall be appointed to hold office for a term of three (3) years. In the event of the removal, resignation, or permanent incapacity of an Appellate Judge, the Tribal Council shall appoint a new Appellate Judge.

1.513.5 Qualifications of Appellate Judges. No person shall be eligible to serve as an Appellate Judge unless he:

- (a) Meets the qualifications of a Community Court Judge as set forth in § 1.509; and
- (b) Is an attorney licensed in any state; and
- (c) Has not less than five years' experience in the practice of law or on the bench, or a combination or the equivalent thereof.
- (d) Except for employment as a Saginaw Chippewa Community Court Judge, Magistrate, or Court Clerk, a person is not disqualified from appointment to the Tribal Appellate Court for the reason that the Appellate Judge is otherwise employed; provided that the nature of the employment does not interfere with judicial duties, the employment is not inherently prejudicial to the exercise of the appellate function, or is not likely to give rise to an appearance of impropriety.

1.513.6 Oath of Office. Before taking office, an Appellate Judge shall take the following oath: I, [Appellate Judge's Name], do solemnly swear that I will administer justice in a fair and impartial manner and perform all the duties incumbent upon me as an Appellate Judge of the Saginaw Chippewa Tribe, to the best of my abilities so help me God.

1.513.7 Vacancies and Removal.

- (a) In the event that an Appellate Judge, by reason of resignation or otherwise, fails or is unable to complete an appointed term, the Tribal Council will fill the vacancy by appointment for the balance of the unexpired term.
- (b) An Appellate Judge may be removed from office during his or her appointed term, after adequate notice and an opportunity to be heard, by an affirmative vote of seven members of the Tribal Council, for reasons of misconduct in office, persistent neglect of judicial duties, mental or physical incapacity, conviction by a court of competent jurisdiction of a felony or failure to comply with applicable rules of judicial conduct.

1.513.8 Administration. The Chief Appellate Judge is responsible for the administrative

management of the Tribal Appellate Court, including maintaining permanent records of proceedings and decisions of the Tribal Appellate Court with the assistance of the Court Clerk. Records of proceedings and decisions of the Tribal Appellate Court will be compiled chronologically, indexed by subject matter, docket number, and caption, and made available to the public. The Chief Appellate Judge may order the periodic publication of the decisions of the Court of Appeals and provide for the distribution of the same to law libraries, other appropriate repositories, and subscribers.

1.513.9 Additional Powers and Duties of Appellate Judges. In addition to the powers and duties expressed in or necessarily implied from the provisions of this Code, an Appellate Judge has the following powers:

- (a) Upon the Appellate Judge's own motion or that of a party, to issue a citation for criminal or civil contempt of court or other sanction as may be appropriate in the circumstances to a person appearing before the Court whose conduct is disruptive, contemptuous, or otherwise sanctionable, or to a person disobeying an order of the Court.
- (b) To order the Tribal Police to provide for and to maintain the order and security of the courtroom.
- (c) To stay execution of a Community Court decision, sentence, judgment, order, writ, or imposition of sanctions pending appeal, and
- (d) To issue a writ of habeas corpus, mandamus, or prohibition.

1.513.10 Decisions. The Appellate Judge hearing the appeal or special proceeding shall render a written decision, order, or judgement which shall be timely filed with the Court Clerk.

- (a) Every decision shall be based on the record established in the court below and on the law.
- (b) The decision is final and binding upon the parties as to all issues and claims that were raised or might have been raised at trial or upon appeal.

1.513.11 Rules of Court. To supplement the rules of appellate procedure and the procedures governing original proceedings contained in this Code, the Tribal Appellate Court, with the approval of the Tribal Council, may adopt such rules of practice, procedure, and administration as may improve or facilitate Court operations.

#### 1.514 APPEALS, PROCEDURE.

1.514.1 Criminal Appeals. Upon appeal, the Court of Appeals may review the verdict of decision and any alleged error objected to which involves the merits or necessarily affects the judgment. An appeal may be taken by the defendant only from a judgment of conviction and order after judgment which affect the substantial rights of the defendant. Except as otherwise specifically authorized, the Tribal prosecutor may not appeal a criminal case. The Tribal prosecutor may appeal from any Tribal Court order or judgment which:

- (a) Results in the dismissal of a case;
- (b) Modifies a jury verdict;
- (c) Grants a new trial;
- (d) Quashes an arrest or search warrant;
- (e) Suppresses evidence;
- (f) Suppresses a confession or admission; or
- (g) Imposes a sentence that may be contrary to law.

1.514.2 Civil Appeals. The Court of Appeals has exclusive jurisdiction over appeals by an aggrieved party in the following cases:

- (a) Appeals from any final decision, sentence, judgement, order, writ, or imposition of sanctions of the Saginaw Chippewa Community Court;
- (b) Appeals from any interlocutory order in a civil case if the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation;
- (c) Request for stay of execution of a Community Court decision, sentence, judgement, order, writ, or imposition of sanctions pending appeal;
- (d) All matters involving extraordinary writs of habeas corpus, mandamus, and prohibition and such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction.
- (e) Other such matters justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the Tribal Court and due appeal to the Tribal Appellate Court an inadequate remedy, or when supervision of the Community Court other than by appeals is deemed necessary or proper by the Tribal Appellate Court.

1.514.3 Harmless Error. No final decision, sentence, judgement, order, writ, or imposition of sanctions of the Saginaw Chippewa Community Court shall be reversed upon appeal by reason of any error committed by the trial court affecting the interests of the appellant where the record shows that the same result would have been attained had the trial court not committed an error or errors except when such error involves any issue of constitutional or statutory interpretation.

1.514.4 Stay of Judgment or Order Pending Appeal.

- (a) Criminal Cases. The Community Court Judge shall grant a stay of execution of any final decision, sentence, judgement, order, writ, or imposition of sanctions of the Community Court in a criminal case provided the criminal defendant posts any required bond with the Clerk of the Court unless the Community Court Judge deems that a stay of execution poses a significant threat to the public safety or a significant risk that the criminal defendant will flee the territorial jurisdiction of the Tribe.
- (b) Civil Cases. The Community Court Judge shall grant a stay of execution of any final decision, sentence, judgement, order, writ, or imposition of sanctions of the Community Court in a civil matter provided the Appellant

posts any required bond with the Clerk of the Court.

- (i) The Clerk of the Court shall, within five (5) days of the posting of the bond, notify the appellee by registered letter of the stay of execution pending appeal. If a request for appeal is not filed within twenty-one (21) days of the date of judgement, the bond and fees shall be forfeited and executed according to the original decree.
- (ii) If a stay of execution was not requested before or not granted by the Community Court, upon the filing of a notice of appeal, a party may apply to the Tribal Appellate Court ex parte for a stay of execution of the judgment or order. The Tribal Appellate Judge may grant said stay for such period of time and under such conditions as may be deemed proper.

1.514.5 Expedited Appeals. Proceedings commenced in the Tribal Appellate Court to obtain a writ of habeas corpus, mandamus or prohibition, interlocutory order, or other remedial writs or orders shall be expeditiously commenced and conducted as provided in this section.

- (a) Notice to trial judge. If an application for a writ or an order is directed against a ruling of a trial judge, the application and all further documents relating to the ruling must be served upon the judge. Such application shall, in its title, contain the name of the judge who issued the ruling.
- (b) Filing of applications. An application may be made to the Tribal Appellate Court at any time. The moving party's application and all supporting documents shall be filed with the Clerk of the Court.
- (c) Contents of application. The application for the issuance of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated to be raised in the proceeding and also the fact which renders it necessary and proper that the writ should issue from the Tribal Appellate Court. Each application shall also set forth as exhibits a copy of each judgment, order, notice, pleading, document, proceeding, or court minute referred to in the application, or which is necessary to make out a prima facie case or to substantiate the application or conclusion or legal effect. A memorandum of authorities must be filed with the application. Counsel shall file with the Clerk of the Court the original court file, unless for some reason the same is not available.
- (d) Court consideration. The Appellate Judge shall consider whether to accept jurisdiction of an extraordinary writ at a bench conference, which may be held by telephone, within 5 days of the receipt of the application. As promptly as possible thereafter, the Appellate Judge shall, on the basis of the application, dismiss the application for want of jurisdiction, accept jurisdiction, or order a response reserving the question of jurisdiction. Only in extraordinary cases will the court grant oral argument to determine the necessity and propriety of accepting jurisdiction. Unless oral argument is ordered by the court in order to establish jurisdiction, the court will enter an appropriate order forthwith. Such order may dismiss the application, grant the relief requested, order a hearing on the application, or issue any

other writ or order deemed appropriate in the circumstances.

1.514.6 Notice of Appeal. An appeal shall be taken by filing a notice of appeal with the Court Clerk within 21 days of the date of the final judgment or order of the Community Court, unless otherwise provided by tribal law. Failure of an appellant to timely file a notice of appeal shall constitute a waiver and forfeiture of the right to an appeal.

- (a) Appeals may be consolidated by order of the Tribal Appellate Court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.
- (b) The notice of appeal shall specify the party or parties taking the appeal, and shall designate the judgment, order, or part of either appealed from.
- (c) The Court Clerk shall serve notice of the filing of a notice of appeal by mailing a copy thereof, together with a copy of this Code, along with any additional Rules of Appellate Procedure, to counsel of record of each party other than the appellant, or, if a party is not represented by counsel to the party at his last known address. The Court Clerk shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, such counsel shall provide the Court Clerk with sufficient copies of the notice of appeal to permit the Court Clerk to comply with the requirements of this rule. Failure of the Court Clerk to serve notice shall not affect the validity of the appeal. The Court Clerk shall note in the appellate docket the names of the parties to whom copies have been mailed, with the date of mailing.

1.514.7 Record on Appeal. The original papers and exhibits filed in the Community Court, any transcript of the proceedings, and a certified copy of the minute entries prepared by the Clerk of the Court shall constitute the record on appeal in all cases.

- (a) Within five (5) days after filing the notice of appeal, the appellant shall order from the Clerk of the Court a transcript of such parts of the proceedings not already on file as the appellant deems necessary for inclusion in the record. The transcript shall be filed and certified with the Clerk of the Court as part of the record on appeal within 20 days of the filing of the notice of appeal.
- (b) The cost of producing the transcript shall be borne by the appellant unless the Appellate Judge waives the transcript cost by granting leave to proceed *in forma pauperis* or for other good cause shown. In the event of such a waiver, the Community Court shall provide the transcript. Costs of a transcript are among the costs of appeal that may be awarded by the Tribal Appellate Court to a prevailing party as provided herein.
- (c) If no record of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days of the hearing or trial or such time extended as the Appellate Judge may allow, prepare a statement of the evidence or proceedings from the best available means, including his or her recollection. The statement shall be served on



the respondent, who may serve objections or propose amendments thereto within 10 days after service.

- (d) At the time of filing the notice of appeal, the appellant shall pay to the Clerk of the Tribal Court a fee of \$25.00 in criminal cases and \$150.00 in civil cases for filing and transmitting the record on appeal, unless the fee is waived by the Tribal Appellate Judge upon the granting of leave to proceed *in forma pauperis* or for other good cause shown. Failure to pay the filing fee, unless waived, is ground for dismissal of the appeal.
- (e) On the date on which the record on appeal is transmitted to the Tribal Appellate Court, the Court Clerk will docket the appeal and file the record in a repository. An appeal shall be docketed and filed under the title given to the action in the Community Court with such addition as necessary to indicate the identity of the appellant. The Court Clerk shall immediately give notice to all parties of the date on which the record was filed and the appeal docketed.

1.514.8 *Appeals in forma pauperis.* An indigent party who desires to proceed on appeal *in forma pauperis* shall file with the Clerk of the Court a motion for leave to proceed together with an affidavit showing the party's inability to pay the fees and costs of the appeal or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal. If the motion is granted, the Appellate Judge may waive the payment of fees or costs or the giving of security therefore.

1.514.9 *Filing and Service.* Papers required or permitted to be filed with the Appellate Court must be placed in the custody of the Clerk of the Court within the time fixed for filing.

- (a) A signed original and three copies of all papers shall be filed with the Clerk of the Court.
- (b) The Clerk of the Court shall note upon each such paper or document the time of filing and transmit the same to the Appellate Judge.
- (c) Copies of all papers filed by any party shall, at or before the time of filing, be served by the party on all other parties to the appeal. Service may be made on behalf of a party by any adult person who is not a party to the proceedings, except where a party is acting pro se. Service on a party represented by counsel shall be made on counsel. Service may be by personal or by certified mail. Papers presented for filing shall contain a certification of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.

1.514.10 *Briefs.* An appellant's brief shall be filed and served within 20 days of the date the record is filed and transmitted. Appellee's brief shall be filed and served within 20 days after service of the appellant's brief. Within 14 days of service of the appellee's brief, the appellant may file a reply brief, which shall be limited to any new issues that may have been raised in the brief of the appellee. No further

briefs may be filed except with leave of Appellate Judge.

1.514.11 Content of Briefs. All briefs required to be filed with the Tribal Appellate Court shall contain under appropriate headings in the order indicated:

- (a) A table of contents and a table of laws, decisions, and other authorities cited, with references to the pages of the brief where they are cited.
- (b) A statement of the legal issues presented for review, provided that the appellee does not need to include a statement of the legal issues if satisfied with the statements of the appellant.
- (c) A statement of the nature of the case and of the judgment or order appealed from, provided that the appellee does not need to include a statement of the of the case if satisfied with the statements of the appellant.
- (d) The appellant's legal argument, which shall be limited to the issues presented and shall include citations to the authorities and pages of the record relied on.
- (e) A short conclusion, stating the precise relief sought.
- (f) A copy of the judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any.
- (g) Except by permission of the Appellate Judge, briefs shall not exceed 50 pages, double spaced, on 8 ½ x 11" paper, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, etc.
- (h) The brief will contain a certification of service to each party appearing separately, unless separately represented, and will not be accepted for filing absent such certification.
- (i) If an appellant fails to file a brief within the time provided by this rule, or within the time extended, the appellee may move for dismissal of the appeal.

1.514.12 Rule 16. Oral Arguments. The presumption is that oral argument is not necessary. The Appellate Judge may schedule a special session of the Court and set the time and place at which oral argument may be heard upon the Appellate Judge's determination that oral argument is necessary to assist the Court or upon a showing by any party of compelling reasons that oral argument is needed to further advance the arguments presented in the briefs or other extraordinary circumstances.

1.514.13 Voluntary Dismissal. If any party files with the Clerk of the Court an agreement signed by all parties requesting that the proceeding be dismissed and which specifies the terms as to payment of costs and whatever fees are due, the Clerk shall enter the case dismissed, and shall mail to each party a copy of the agreement filed and the notice of dismissal. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the Appellate Judge.

1.514.14 Return and Remand. A judgment on appeal shall be entered in full by the Clerk of the Court in the appellate records. When a judgment on appeal includes a remand to the court below for further findings of fact, conclusions, or amendment of the lower court judgment or order in keeping with the decision of the Tribal Appellate Court, the lower court jurisdiction over the matter is reinstated for the purpose of such further proceedings as may be appropriate. Any party may appeal any amended or modified judgment of the trial court on remand that is not in accord with the appellate decision or instructions or that incorporates new findings or conclusions alleged to be in error.

1.514.15 Costs on Appeal. If not otherwise provided by the court in its decision, costs on appeal and in original proceedings will automatically be awarded to the successful party against the other party.

(a) Costs incurred in the printing or producing of briefs and appendices, in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for the cost of *supersedeas* bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taken by the Appellate Administrator as costs of the appeal in favor of the party entitled to costs under this rule.

(b) The Clerk of the Court shall, in all civil cases, include in the order of judgment of affirmance, reversal, or modification on appeal or for the issuance of a writ in an original or special proceeding, and in remand, peremptory writ, or judgment, a clause awarding the costs in accordance with this rule or the special order of the Tribal Appellate Court to be recovered by claim as provided by law; and the Clerk of the Court shall also furnish therewith an itemized statement of such costs as have been paid by the Clerk or by the Community Court.

1.514.16 Certification of Judgment to Clerk of the Tribal Court. When judgment is rendered upon the appeal, it must be certified by the Clerk of the Court and entered into the records of the Community Court.

1.514.17 Effective Date and Application to Pending Proceedings. The effective date of these amendments and revisions to the Code shall be the date of approval and adoption by the Tribal Council. They shall govern all appeals filed after the effective date.

1.515 MAGISTRATE; QUALIFICATIONS; DUTIES.

(a) There is hereby created the position of the Magistrate of the Saginaw Chippewa Tribal Court. Such Magistrate shall be appointed pursuant to the procedure for appointment of Community Court Judges set forth in Section 1.506.

(b) No person shall be eligible to be appointed as Magistrate of the Community Court unless he or she:

(1) Is an enrolled member of the Tribe.

- (2) Has not been convicted of a misdemeanor type offense, within one year.
  - (3) Has never been convicted of a felony type offense.
  - (4) Is of good moral character and integrity.
  - (5) Is capable of preparing papers and reports incidents to the office of judge.
  - (6) Has demonstrated a knowledge of being familiar with, and able to read and interpret the Tribal Code as well as having an understanding of Federal and State law and court procedure.
  - (7) Shall, prior to entering on duty, be bonded in the amount of \$5,000.00 as authorized collector of fines and other cost moneys for Community Court. Cost of bond to be paid from the Tribal Court Fund.
- (c) The Magistrate shall be empowered:
- (1) To sign proper arrest warrants and extradition orders pursuant to Sections 1.702 and 1.710.
  - (2) To preside over the initial appearance of a defendant before the Tribal Court pursuant to Section 1.708.
  - (3) To sign proper search warrants pursuant to Section 1.8.
  - (4) To release or refuse to release persons on bail or on personal recognizance pursuant to Chapter 1.9.
  - (5) To arraign persons accused of crime pursuant to Chapter 1.10, provided that the Magistrate shall try no cases, and shall not pronounce sentence, but rather postpone sentencing until the next regular Community Court calendar date.
  - (6) To issue orders for immediate and temporary placement of a child, in a proper case, pursuant to Title II of this code.

## Chapter 1.6

### COMMENCEMENT OF CRIMINAL PROCEEDINGS

1.601 COMPLAINT DEFINED. A complaint is a written charge by any person presented to Community Court which alleges that a person within the jurisdiction of has committed a specified offense with an offer by the complainant to prove the fact.

1.602 CONTENTS OF COMPLAINT. Such complaint must contain:

- (a) The name of the jurisdiction where it is filed and the Judge or Magistrate issuing the warrant.
- (b) The names of the parties, if the defendant's be known and if not, then such names as may be given by the complainant.
- (c) A statement signed by the Complainant setting forth the acts which allegedly constitute the offense, in ordinary and concise language, and the time and place of the commission of the offense, as nearly as may be ascertained.

1.603 PROCEDURE UPON FILING OF COMPLAINT. Upon presentation of written complaint to the Court, the same shall be reviewed by said Judge. If it appears on the face of the complaint that the requirements of 1.602 are satisfied, and if it shall appear to said Judge that the facts therein alleged, if true, would constitute the offense charge, Judge or Magistrate shall accept said complaint and shall cause a warrant for the arrest of the individual or individuals charged to be issued and delivered to the proper peace officer for further action.

## Chapter 1.7

### ARREST, EXTRADITION AND FRESH PURSUIT

1.701 ARREST DEFINED: PERSONS QUALIFIED TO MAKE: AID MAY BE REQUIRED. Arrest is the taking of a person into custody to answer for an alleged Tribal offense. An arrest may be made by:

- (a) A duly authorized police officer under a warrant;
- (b) A duly authorized police officer without a warrant; or
- (c) Any person, as defined in Section 1.502 of this Code.

1.702 ARREST, UNDER A WARRANT. A warrant of arrest is an order in writing, signed by a Community Court Judge or Magistrate commanding the arrest of the defendant. The warrant must specify the name of the defendant; or if the name of the defendant is unknown, the defendant may be designated by any name if the warrant also contains a description by which the defendant can be identified with reasonable certainty. It must also state the offenses charged and the date of issuance. A warrant for arrest shall be valid outside the jurisdictional limits of the Tribe, as defined in Section 1.501 of this Code.

1.703 DIRECTION TO PEACE OFFICER; EXECUTION. The warrant may be directed to the Bureau of Indian Affairs police, Tribal police, or other authorized peace officers, and may be executed by any such officer to whom it may be delivered.

1.704 EXECUTION OF WARRANT. The warrant shall be executed by the arrest of the defendant. The peace officer need not have the warrant in his possession at the time of the arrest, but upon request shall, as soon as possible, show it to the defendant. At the time of making the arrest, the arresting officer must inform the defendant of his various legal rights as recognized by Federal and Tribal Law.

1.705 ARREST, WITHOUT A WARRANT. A peace officer may, without a warrant, arrest a person:

- (a) For a Tribal offense committed or attempted in his presence;
- (b) When he has reasonable cause to believe that the person to be arrested has committed any Tribal or Federal offense. He is justified in making such an arrest though it afterwards is found that the offense had not been committed by the party arrested. When a person is arrested without a warrant, the arresting officer must inform him of his authority and the cause of the arrest, except when he is apprehended in the actual

commission of a Tribal or Federal offense, or is pursued immediately after said commission.

- 1.706 ARREST, BY PERSON OTHER THAN PEACE OFFICER. A person may, without a warrant, arrest another person for a Tribal offense when committed in his presence.
- 1.707 BREAKING INTO DWELLING HOUSE OR OTHER STRUCTURE TO MAKE ARREST; DEMAND FOR ADMITTANCE REQUIRED. Any police officer having authority to make an arrest may break open an outer or inner door or window of a dwelling house or other structure for the purpose of making the arrest, if, after presenting reasonable notice of his intention and authority, he is refused admittance.
- 1.708 PROMPT APPEARANCE OF DEFENDANT BEFORE A TRIBAL COURT JUDGE. An officer making an arrest, shall take the arrestee, without undue delay, before the presiding Judge or Magistrate of the Community Court for arraignment as provided herein. When a defendant arrested without a warrant is brought before the Court, a complaint shall be filed forthwith. The defendant shall be arraigned at the next regularly scheduled session of the Court or within seventy-two (72) hours, whichever occurs first, including Saturdays, Sundays and legal holidays. The Court may, in its discretion, order the incarceration of persons taken into police custody for an alleged offense if it appears that such persons will not present themselves at the Tribal Court at the scheduled session or within the 72 hour period.
- 1.709 RETURN OF WARRANT. Upon service of the warrant or upon failure to find and apprehend the accused within the period of the Statute of Limitations, the officer to whom the warrant is directed shall endorse and return it to the Court for filing.
- 1.710 EXTRADITION.
- (a) Any Indian person found within the boundaries of a Saginaw Chippewa Indian Reservation who is wanted by State authorities for a violation of State law committed outside Tribal jurisdiction of and warrant of arrest having been issued from a State Court, may be arrested and taken into custody by the Bureau of Indian Affairs or Tribal law enforcement personnel for prompt transfer to the appropriate enforcement agency. The arrest and removal procedure set forth herein. Copies of State warrants shall be presented to the Community Court Judge or Magistrate for a review as to date, charge and person named therein to determine its apparent validity. The Judge after satisfying himself as to the apparent validity of the warrant, shall issue an order for the arrest of the alleged fugitive.
  - (b) Any Indian taken into custody as provided in the proceeding paragraph shall be taken by the arresting officer to Community Court where the Judge shall promptly hold a hearing to determine only whether the Indian person in custody and before the Court is the same person charged on the face of the warrant. An Indian may waive such hearing by executing a Waiver of Removal Hearing and shall, in such case, be promptly turned

over to the custody of the appropriate State official. States other than the State of Michigan, the warrant should be presented to the Tribal Court by the Sheriff of Isabella County. Upon assurance by the local Sheriff that the out-of-state agency will extradite the wanted subject, the procedure governing the arrest of the wanted fugitive may be completed as in other cases.

- (c) After a hearing, as provided in paragraph (2), if the Judge shall be satisfied the fugitive is the same person named in the State warrant, the Judge shall issue an appropriate order to that effect which will authorize the State official to remove the fugitive from Saginaw Chippewa Indian Tribe Reservation. In all cases wherein Indians are arrested by Tribal law and other personnel, the requesting agency supplying the warrant shall be immediately notified that the subject is in custody and will be delivered to a proper official within a reasonable time to transfer the fugitive to their particular jurisdiction.

## Chapter 1.8

### SEARCH WARRANTS

- 1.801 DEFINITION. A search warrant is an order in writing, signed by a Judge, directed to any peace officer, as designated by Section 1.102 of this Code, commanding him to search specifically defined areas for items or articles designated in the warrant and bring them before the Community Court.
- 1.802 ISSUANCE AND CONTENTS. A search warrant shall not be issued except upon probable cause, supported by oath or affirmation, naming or describing the person, and particularly describing the items or articles to be seized, the place to be searched, and the reason or reasons for its issuance.
- 1.803 EXECUTION OF WARRANT; OFFICERS AUTHORIZED; AUTHORITY TO BREAK IN STRUCTURE. A search warrant shall be served by any duly authorized peace officer during any time of the day or night unless the court finds sufficient reason to limit the time and manner in which the warrant may be served and so endorses the warrant. The officer may break open any building, structure, or container after reasonably identifying himself and his authority, requesting entry or access from the occupant, if any, and being refused such entry or access.
- 1.804 TIME LIMIT; EXECUTION OF WARRANT; VOID AT EXPIRATION. A search warrant must be executed and returned within seven (7) days to the Court. After the expiration of such time the warrant, unless the time is extended in the discretion of the Court by endorsement, is void.
- 1.805 INVENTORY. The executing officer must immediately return the warrant to the Court as set forth in Section 1.804, together with a complete inventory of the items or articles taken. The inventory must be made before witnesses or in the presence of the person

from whose possession it was taken. The Judge or Magistrate or their representative, must deliver a copy of the inventory to the person from whose possession the items or articles were taken.

- 1.806 HEARING ON ISSUE OF SEARCH WARRANT; TESTIMONY MUST BE TAKEN, REDUCED TO WRITING, FILED. If the grounds on which the warrant was issued be denied, the Judge must proceed to take testimony in relation thereto, reduce it to writing, cause it to be authenticated, and transmit the same to the Tribal Appellate Court, which shall be the judge of the validity of the issuance of the search warrant.
- 1.807 SEARCH OF SEIZURE INCIDENTAL TO ARREST. All reasonable searches and seizures which re incidental to a legal arrest shall be valid.
- 1.808 INADMISSIBLE EVIDENCE. All evidence unlawfully obtained shall be inadmissible in criminal prosecutions.

## Chapter 1.9

### BAIL

- 1.901 DEFINITION. To set at liberty a person arrested or imprisoned on security being taken for his appearance. His sureties shall be regarded as custodians of the principal's person. This provision is applicable only to offenses over which the Tribe has jurisdiction.
- 1.902 BAILABLE OFFENSES. All defendants, as a matter or right, are bailable before conviction, by sufficient cash or surety bail bond and after conviction if an appeal be pending. If bail is not met, the defendant shall be committed until his case is heard.
- 1.903 TAKING OF BAILED DEFINED, ENTRY BY CLERK. The taking of bail consists of the acceptance by the Court of sufficient cash or surety bond for the appearance of the defendant. Upon filing the clerk shall enter in the register of actions the date and amounts of the bond or name or names of the surety or sureties thereon and the amount of the bond.
- 1.904 BAIL SET; MAXIMUM AMOUNT. Bail shall be set by the Judge or Magistrate upon the showing of probable cause by the prosecutor or complainant. Bail shall be fixed in such amount and in such form as, in the judgment of the Court will insure the presence of the defendant in the Court at the time of trial, having due regard for the nature and circumstances of the offense charged and the character and reputation of the defendant and the previous criminal record of the defendant. In no case shall the bail exceed four times the maximum cash penalty for each offense for which the defendant has been charged.
- 1.905 DISCHARGE OF DEFENDANT; BAIL FURNISHED; ORDER. Upon the execution of the requisite recognizance or bail bond to the Tribe, the Court must, if the defendant is in custody issue a written order for his discharge, upon the delivery of which to the proper



officer the defendant must be discharged.

- 1.906 INCREASE OR DECREASE OF BAIL BOND; COMMITMENT ON DEFAULT. When proof is made to the Court having authority to commit on criminal charges that a person previously admitted to bail on any such charge is about to abscond, or that his bail is insufficient, the Court may increase the amount of required bail, or in default thereof, cause him to be committed to jail. Upon good cause shown, the Court may reduce the bail originally set.
- 1.907 FORFEITURE OF BAIL. If the defendant fails to appear for trial or when his personal appearance in Court is lawfully required, the Court may direct an entry of such failure to be made in the record, and the surety bond, or the money deposited instead of bond, may be forfeited without further proceedings, and the Court may thereafter issue a warrant for the arrest of the defendant.
- 1.908 RETURN OF CASH OR SURETY BOND. Any security given by the surety or the defendant must be returned upon the return of a non-guilty verdict or upon the execution of the sentence.
- 1.909 RELEASE ON RECOGNIZANCE. At arraignment the Court, in its discretion, may release a defendant upon the defendant's own recognizance.

## Chapter 1.10

### ARRAIGNMENT

- 1.1001 DEFINITION. Arraignment must be by the Court, and consists of reading the complaint to the defendant and delivering to him a true copy thereof and of the endorsements thereon, and asking him whether he pleads guilty or not guilty to the offense charged in the complaint.
- 1.1002 PROCEDURE AT ARRAIGNMENT. Within 21 days of filing the complaint the arraignment shall be conducted in open Court, and shall consist of:
- (a) Reading the complaint to the accused;
  - (b) Stating the charges, the language of the law establishing the offense and the penalty provided;
  - (c) Various rights under Federal and Tribal law; and
  - (d) Calling for a plea to the charges.
- 1.1003 PLEAS. The defendant may plead "guilty", "not guilty", or "no contest". If the defendant wished to plead not guilty, he may demand a jury trial. After a plea of not guilty, the Court shall set a date for trial which shall allow sufficient time for defendant to prepare his defense. In no case shall the time be less than 7 days or more than 30 days from the date of the arraignment unless waived by the defendant. If the defendant refuses to plead, a plea of not guilty will be entered for him by the Court. If the defendant wishes to plead guilty he may be sentenced immediately or within a reasonable time thereafter. Any plea

made to the Court must be made in open court with defendant himself in Court.

## Chapter 1.11

### PRE-TRIAL MOTIONS

- 1.1101 MOTIONS; DEFINITION. A motion is the formal mode in which a party submits a proposed measure or resolution for the consideration and action of the Court.
- 1.1102 MOTION TO SET ASIDE THE COMPLAINT. The complaint must be set aside upon the defendant's motion in the following cases:
- (a) Where it is found not to comply with the requirements of Section 1.602.
  - (b) Where it is found that the defendant has been charged or committed without reasonable or probable cause.
  - (c) Upon a determination that the Court has no jurisdiction over the person or the offense.
- 1.1103 ORDER SETTING ASIDE COMPLAINT NOT BAR TO SUBSEQUENT PROSECUTION. An order to set aside the complaint, as provided in this chapter, is no bar to future prosecution for the same offenses, except in the case wherein the Court has no jurisdiction of the subject matter or of the person of the defendant.
- 1.1104 MOTION WAIVED BY FAILURE TO MOVE TO SET ASIDE COMPLAINT. If the motion to set aside the complaint is not made before the defendant pleads, the defendant is precluded from afterwards making the motion, except in the case wherein the Court has no jurisdiction.
- 1.1105 PRE-TRIAL MOTIONS HEARD AT TIME MADE; EXCEPT GOOD CAUSE POSTPONEMENT. All pre-trial motions shall be ruled upon at the time they are made unless for good cause the Court postpones the hearing to another time.
- 1.1106 MOTION FOR A BILL OF PARTICULARS. The defendant may, in order to obtain facts other than those specified in the complaint, make a motion for a bill of particulars.
- 1.1107 MOTION FOR A CHANGE OF JUDGE PROCEDURE. If the defendant shall make affidavit of prejudice, that he cannot have an impartial trial by reason of the bias of prejudice of the presiding Judge of the Court, the Judge may call some other Judge of the Court to preside at said trial. It shall be the duty of such other Judge to preside at said trial and do any other act with reference thereto as though he were the Judge before whom the action was originally brought. If the Judge honors the affidavit of prejudice, the defendant shall be entitled to such change of Judge at once.
- 1.1108 MOTION TO SUPPRESS EVIDENCE. A defendant has the right to file with the Court a motion to suppress evidence which he contends has been obtained from him in an unlawful manner. If the Court is satisfied that the evidence has been unlawfully obtained, it shall order the evidence be suppressed. If the Court decides that the evidence was

lawfully obtained, it may be used against the defendant.

## Chapter 1.12

### TRIAL, GENERAL PROVISIONS

- 1.1201 CRIMINAL ACTION DEFINED. A criminal action is one prosecuted by the Tribe as a party against a person charged with violating Tribal laws, and for the punishment thereof.
- 1.1202 IRREGULARITIES, MISTAKES, OMISSIONS HAVE NO LEGAL EFFECT UNLESS ACTUALLY PREJUDICIAL. Neither a departure from the form or mode prescribed in this chapter in respect to any pleading or proceedings nor an error or mistake therein renders it invalid, unless it has prejudiced the defendant.
- 1.1203 SUMMONING WITNESSES. The Tribal Court shall have the power to issue summons to witnesses from within the reservations. The summons must contain the reason for summoning the person and the number of days the person will be required to be present. If the witness is summoned to attend and testify, he shall be rendered the sum of twenty-four cents (\$.24) per mile for each mile by ordinary traveled route to and from the Court where the prosecution is pending and five dollars (\$5.00) for each half day or portion thereof which he is required to travel and attend as a witness.
- 1.1204 TRIAL BY JURY OR BY THE COURT. Cases shall be tried by the Court unless the defendant demands a jury trial in writing within 21 days of his arraignment, and meets the requirements of Section 1.1003 of this Code. Juries shall be six (6) in number, and the method of jury selection and procedure shall be the same as in Chapter 3.9 of Title III of this Code.
- 1.1205 RIGHTS OF ACCUSED. In all criminal prosecutions, the accused person shall have the right to defend himself in person or by counsel; to demand the nature and cause of the accusation against him; to have a copy thereof; to meet the witnesses against him face to face; to have compulsory process served to obtain witnesses in his behalf; and to a speedy public trial by an impartial jury. No person shall be compelled in any criminal case to give evidence against himself or be twice put in jeopardy for the same offense.
- 1.1206 PRESENCE OF THE DEFENDANT. The defendant in a criminal case shall be present in Court at every stage of the proceedings, including impaneling of the jury and the return of the verdict, where trial is by jury, and at the imposition of sentence.
- 1.1207 CALENDAR; CLERK OF COURT DUTIES. The clerk of the court must keep a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the complaints, specifying the offense charged and whether the defendant is in custody or on bail.
- 1.1208 SETTING CASES FOR TRIAL; MAXIMUM TIME; CONTINUANCE; PROOF REQUIRED, PRECEDENCE OR CRIMINAL CASES. The Court shall set all criminal

cases for trial as soon as possible after the date of entry of the plea of the defendant, so long as said trial date is in conformity with the provisions of Section 1.1003 of this Code. No continuances of the trials shall be granted except upon good cause shown in open court, upon reasonable notice, that the ends of justice require a continuance. The defendant shall be entitled to a reasonable continuance, but such continuance shall not exceed thirty (30) days, unless for good cause. criminal cases shall be given precedence over civil cases.

1.1209 DEATH; ILLNESS; SUBSTITUTION; AUTHORITY OF SUBSTITUTE JUDGE. If, after the commencement of the trial of a criminal action or proceedings, the Judge presiding at such trial shall dies, become ill, or for any other reason be unable to proceed with the trial, any other Judge of the Court may proceed with and finish the trial. If there be no other Judge of that court available, then the clerk of that court shall adjourn the court until such time as a Judge shall be appointed in conformity with the provisions of this code and such Judge shall arrive to complete said trial. The Judge authorized by the provision of this section to proceed with and complete the trial shall have the same power, authority and jurisdiction as if the trial had been commenced before such Judge.

## Chapter 1.13

### FORMATION OF THE JURY

1.1301 FORMATION OF TRIAL JURY. Trial juries for all criminal actions are formed in the same manner as trial juries in civil actions.

1.1302 JURY DISMISSED; MATTER OF LAW. It shall be discretionary with the Court as to whether the jury impaneled for trial prior to postponement pursuant to Section 1.1209 shall remain seated or a new jury seated in its stead.

1.1303 CHALLENGES; DEFINITION; KINDS. A challenge is an objection made to the trial jurors and is of two kinds:

- (a) To the panel; or
- (b) To an individual juror.

1.1304 PANEL DEFINED. A panel is a list of jurors returned by the board of jury selectors.

1.1305 CHALLENGE TO PANEL DEFINED; WHO MAY CHALLENGE; REASON FOR CHALLENGE. A challenge to the panel is an objection in writing made to all the jurors returned, and may be taken by either party. The panel may be challenged when any of the following appear:

- (a) There is an error in the procedure used in summoning the juror;
- (b) Bias can be shown; or
- (c) There was an omission to summon one or more of the jurors drawn.

1.1306 CHALLENGES TO INDIVIDUAL JURORS. A challenge to an individual juror is an objection which may be taken orally, and is either for cause or peremptory.

- 1.1307 ORDER FOR EXERCISING CHALLENGES FOR CAUSE; PEREMPTORY AND TIME. All challenges for cause must be taken first by the defendant and then by the Tribe. PEREMPTORY challenges may be taken by either party at any time during the seating of the jury and before the jury is sworn.
- 1.1308 CHALLENGE FOR CAUSE. A challenge for cause may be made by the Tribal Prosecutor or by the defendant, and must specify the facts constituting the causes thereof. It may be made for any of the following causes:
- (a) A previous conviction of a felony;
  - (b) Lack of any of the qualifications set out in Section 2.903 of this Code;
  - (c) Unsoundness of mind, or such defects in the faculties of mind or the organs of the body as render him incapable of performing the duties of a juror;
  - (d) Having served as a juror in a civil action brought against the defendant for the act charged as an offense;
  - (e) Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal action;
  - (f) Having formed or expressed such an opinion as to the guilty or innocence of the defendant as would prevent him from rendering a fair verdict upon the evidence submitted on the trial;
  - (g) Having served in the Court as a juror during the last month;
  - (h) Standing in the relation or guardian and ward, attorney and client, master and servant, or landlord and tenant; or being a member of the family, or a relative of the 3rd degree of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint, or at whose instance the prosecution was instituted, or in his employ. Failure to challenge for cause shall constitute a waiver of the basis for challenge.
- 1.1309 PEREMPTORY CHALLENGE; PARTIES WHO MAY TAKE; FORM, DEFINITION. A PEREMPTORY challenge can be taken by either party and may be oral. It is an objection to a juror for which no reason need be given, but upon which the Court must exclude him.
- 1.1310 PEREMPTORY CHALLENGE; NUMBER; JOINT DEFENDANT. The defendant is entitled to two and the Tribe to two PEREMPTORY challenges. If two or more defendants are jointly tried for any public offense, the Tribe and the defendants shall be entitled to two PEREMPTORY challenges for each defendant.
- 1.1311 VACANCY FILLED. After each challenge, sustained for cause or made peremptorily, another juror shall be called, may be challenged for cause, and shall be subject to peremptory challenge.
- 1.1312 JURORS SWORN. When the jury has been accepted they shall be sworn to try the facts.
- 1.1313 TRIBAL COUNCIL MEMBERS NOT TO SERVE AS JURORS. Members of the Saginaw Chippewa Tribal Council shall be excluded from jury duty.

## Chapter 1.14

### TRIAL PROCEDURE

- 1.1401 ORDER OF PROCEDURE. The jury having been impaneled and sworn, the trial must proceed in the following order:
- (a) The Judge shall read the complaint, and state the plea of the defendant to the jury.
  - (b) Opening statements shall be given by the Prosecutor, followed by the defendant and his counsel.
  - (c) The Prosecutor must open the case and offer evidence in support of the charge. The defendant or his counsel shall have the right to cross-examine any witness called to the stand by the Tribe.
  - (d) The defendant or his counsel may then open the defense and offer evidence in support thereof. The Prosecutor shall have the right to cross-examine any witness called to the stand by the defendant or his counsel.
  - (e) The parties may then respectively offer rebutting testimony only, unless the Court, in furtherance of justice, permits them to offer evidence upon their original case.
  - (f) When the evidence is concluded the Tribe and the defendant or his counsel may argue the case to the court and jury, with the Prosecutor opening the argument and having the right to close.
  - (g) Upon the conclusion of the arguments, the Court shall charge the jury orally or in writing, stating the law of the case. However, at the beginning of the trial or from time to time during the trial and without any request from either party, the Judge may give the jury such instructions on the law applicable to the case as he may deem necessary for their guidance on hearing the case.
- 1.1402 PRESUMPTION OF INNOCENCE; EFFECT; REASONABLE DOUBT; DEFENDANT'S REFUSAL TO TESTIFY. A defendant in a criminal action need not testify. He is presumed to be innocent until the contrary is proved. The effect of this presumption is to place upon the Tribe the burden of proving him guilty beyond a reasonable doubt. The defendant's failure to testify on his own behalf shall in no way be construed against him nor commented upon by the prosecutor.
- 1.1403 JOINT DEFENDANTS TRIED JOINTLY; COURT MAY DIRECT SEPARATE TRIALS. When two or more defendants are jointly charged with a Tribal offense, they shall be prosecuted jointly, provided that the Court may, in its discretion, on application duly made prior to trial, direct that separate trials be had.
- 1.1404 VIEW OF PREMISES BY JURY. When the Court is of the opinion that it is proper for the jury to view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body in the custody of proper officers to the place which shall be shown them by a person appointed by the Court for that purpose.
- 1.1405 DISCHARGE OF JUROR FOR ILLNESS OR DISABILITY; NEW TRIAL. If before the jury has returned its verdict into Court, a juror becomes sick, or upon other good

cause shown to the Court is found to be unable to perform his duty, the Court may order him discharged. When a juror is discharged for any of the above reasons, the Court may, upon stipulation, proceed in the absence of said juror. In the absence of such stipulation, the jury shall be discharged and a new jury shall be impaneled to hear the case.

- 1.1406 LAW QUESTIONS FOR COURT AND FACT QUESTIONS FOR JURY. Questions of law are to be decided by the Court, questions of fact by the jury.
- 1.1407 INSTRUCTION TO JURY. At the close of evidence or at such time during the trial as the Judge directs, counsel for each party may file with the Judge written instructions on the law which the party requests the Judge to deliver to the jury. At the same time, copies of such requests shall be furnished to opposing counsel. The Judge shall inform counsel of his proposed action upon each request prior to the arguments to the jury, but the Judge shall deliver his instructions to the jury after arguments are completed. No party may assign as error any portion of the Judge's charge or omission therefrom unless he makes his objection before the jury retires to consider its verdict. Objections must be given out of the hearing of the jury.
- 1.1408 DECISION IN COURT; RETIREMENT. After hearing the charge, the jury shall retire for deliberation.
- 1.1409 POLL OF JURY BEFORE RECORDING VERDICT; EITHER PARTY AUTHORIZED; DISSENTING JUROR; FURTHER DELIBERATION; DISMISSAL OF JURY. When a verdict is rendered and before it is recorded, the jury may be polled on the request of either party or the Court, in which case each juror must be asked whether it is his verdict. If any juror answers in the negative, the jury must be sent out for further deliberation. If upon returning after further deliberation, the jury is polled again and a juror answers that the verdict is not his own, then the Judge shall dismiss the jury and a new trial will be ordered.
- 1.1410 DIRECTION OF VERDICT OF ACQUITTAL. At any time after the evidence on either side is closed, the Court may, upon motion of the defendant or upon its own motion, direct the jury to return a verdict of acquittal; and in the event of the failure of the jury to return such a verdict of acquittal, the Court may refuse to receive any other verdict and may discharge the jury and enter a judgment of acquittal. The denial of the motion shall be considered a final order of the Court for purposes of appeal.

## Chapter 1.15

### SUBMISSION TO THE JURY AND VERDICT

- 1.1501 PAPERS TAKEN BY JURY. Upon retiring for deliberation, the jury may take with it all instructions, exhibits, and papers which have been received in evidence. Also any notes of the testimony taken in the trial by the jurors may be taken.
- 1.1502 INFORMATION BY COURT ON POINTS OF LAW. After the jury has retired for

deliberation, if there by any disagreement as to any part of the testimony or if it desires to be informed on any point of law arising in the case, it must require the officer to conduct it into court, and upon its being brought in, the information required may be given at the discretion of the Court.

- 1.1503 JURY KEPT TOGETHER. The jury shall be under the charge of the bailiff or other officer appointed by the Court. The jury must be kept together after the cause is submitted to them by the clerk of the court until they have agreed upon and rendered a verdict, unless, for good cause, the Judge sooner discharges them.
- 1.1504 VERDICT. The jury must render a general verdict of "guilty" or "not guilty", which imports a conviction or acquittal on every material allegation in the complaint. The verdict in all criminal actions must be unanimous.

## Chapter 1.16

### JUDGMENT

- 1.1601 JUDGMENT OF CONVICTION; TIME FOR. Upon a plea of guilty or a verdict of guilty, the Court must fix a time for pronouncing judgment, which must be pronounced within a reasonable time after the verdict is rendered. Prior to pronouncing judgment the Court may make a pre-sentence investigation.
- 1.1602 EXECUTION OF JUDGMENT; IMPRISONMENT; FINE; RECORD. When judgment of imprisonment is entered, a signed copy thereof must be delivered to the police officer as defined in Section 1.102 of this code, or other officer which is a sufficient warrant for its execution. When a judgment is entered imposing a fine and ordering the defendant to be imprisoned until the fine and costs are paid, he must be held in custody during the time specified in the judgment in the discretion of the Court, unless the fine and costs are sooner paid. Upon payment of a fine by the defendant, the defendant shall be immediately set free unless detained for other legal cause.
- 1.1603 PRESENCE OF DEFENDANT. When judgment is pronounced the defendant must be personally present.
- 1.1604 INSANITY. If the Court is of the opinion that there is reasonable grounds for believing the defendant is insane or incompetent, the question of his sanity and commitment shall be determined as provided in Chapter 3.11 Title III of this code. The defendant may not be tried nor convicted of a crime, nor shall sentence be carried out if the defendant is declared insane during the proceedings or prior to execution of the sentence. Subject to the Statute of Limitations herein provided, an individual may again be made subject to criminal proceedings or shall be sentenced at such time as sanity is regained.
- 1.1605 IMPRISONMENT FOR FINE. A judgment that the defendant pay a fine, and costs may also direct that he be imprisoned until the fine and costs are satisfied, specifying the extent of the imprisonment, which shall not exceed one day for every five dollars of fine.



Upon showing of indigency, a defendant may not be incarcerated solely because of his inability to pay the assessed fine but may, in the discretion of the Court, be given the choice of:

- (a) Release on probation, the terms of which shall include performing community services for the Tribe which are within his range of skills and at a wage rate commensurate with the services rendered until such time as the assessed fine and costs have been satisfied; or
- (b) Release on probation, one of the terms of which shall include the payment, in regular installments within his means of the total fine and costs assessed. A defendant, indigent or not, may be incarcerated for his failure to comply with the Court's order to perform services as is specified in (a) above or his failure to comply with the terms of his probation with respect to timely payments as is set forth in (b) above.

1.1606 SUSPENSION OF SENTENCE. The Court may, on such terms and conditions as the Court may impose, suspend the sentence and release a convicted person on probation upon that person's signed pledge of good conduct for the duration of the sentence.

1.1607 COMMUTATION OF SENTENCE. If the Court is satisfied that justice will best be served by reducing a sentence, the Court may, at any time after one-half of a sentence has been served, commute to a lesser period any sentence imposed upon a person, upon proof that during the period of sentence the person served without misconduct.

#### Chapter 1.17

#### PROBATION

1.1701 CONDITION OF PROBATION. The Court may release on probation a convicted person on such terms and conditions as are just and appropriate, taking into consideration the prior criminal record of the defendant, his background, character, financial condition, family obligation, and any other pertinent circumstances.

1.1702 VIOLATION OF CONDITIONS OF PROBATION. Any person who violated the terms and conditions of his probation or suspension of sentence under Section 1.1606 shall be required to serve the original sentence.

#### Chapter 1.18

#### PAROLE

1.1801 THOSE ELIGIBLE. Any person confined to jail who shall have served without misconduct one-half of the sentence imposed shall be eligible to be considered for parole, upon written application to the Court.

1.1802 GRANTING PAROLE. Parole may be granted by the Court upon such terms and conditions, including the requirement of personal reports from the parolee, as the Court

may prescribe.

- 1.1803 VIOLATION OF PAROLE. Any paroled person who shall violate any provision of his parole, at the discretion of the Court, shall be apprehended and confined to serve the remainder of the original sentence with diminishment for the time the person was released on parole.

## Chapter 1.19

### NEW TRIAL

- 1.1901 DEFINITION. A new trial is a re-examination of an issue of fact in the same Court after a verdict has been given.
- 1.1902 APPLICATION. Application for a new trial may be made only by the defendant or his attorney and must be made before the completion of the sentence. Application must be made to the Court before which the case was tried.
- 1.1903 GROUND. The Court, on application from the defendant or on its own motion, may grant a new trial based on the following cause or causes:
- (a) When proper evidence has been presented that the jury has received any evidence, paper or document out of Court not authorized by the Court;
  - (b) When the verdict has been decided by lot or by means other than a fair expression of opinion on the part of all the jurors;
  - (c) When the Court has refused to instruct the jury properly as to the law;
  - (d) When for any other cause the defendant has not received a fair and impartial trial.
- 1.1904 EFFECT OF A NEW TRIAL. The granting of a new trial places the parties in the same position as if no trial has been held; all testimony must be reproduced and the former verdict cannot be used or referred to either in the evidence or in argument.
- 1.1905 STATUS OF THE ACCUSED PENDING NEW TRIAL. Pending a new trial the accused shall be entitled to bail the same as before trial.
- 1.1906 COURT COSTS IN CRIMINAL CASES. The judgment of conviction in criminal cases shall include costs of court, not to exceed five hundred (\$500) dollars.
- 1.1907 DEFERRED PAYMENT OF FINE AND/OR COURT COSTS. Where fines and/or court costs are imposed in criminal cases, the Court may defer payment to a date agreed upon by the defendant on condition that the defendant also agrees that in case of non-payment by the agreed upon date, he or she will voluntarily go to jail and begin serving the sentence imposed.

## Chapter 1.20

### OFFENSES AND PENALTIES

- 1.2001 ABDUCTION. Any person who shall willfully take away or detain another person against his will or without consent of the parent or other person having lawful care or charge of him or her shall be deemed guilty of abduction and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed one (1) year or to a fine not to exceed five thousand (\$5,000) dollars, or to both such imprisonment and fine, with costs.
- 1.2002 ASSAULT. Any person who shall attempt or threaten bodily harm to another person through unlawful force or violence shall be deemed guilty of an assault and upon conviction not to exceed thirty (30) days or to a fine not to exceed one hundred (\$100) dollars, or to both such imprisonment and fine, with costs, and may be required to furnish a satisfactory peace bond for one (1) year.
- 1.2003 ASSAULT AND BATTERY. Any person who shall willfully strike another person or otherwise inflict bodily injury, or who shall be offering violence cause another to harm himself, shall be deemed guilty of assault and battery, and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed one (1) year or to a fine not to exceed five thousand (\$5,000) dollars, or to both such imprisonment and fine, with costs and may be required to furnish a satisfactory peace bond for one (1) year.
- 1.2004 ATTEMPT. Any person who shall attempt to commit an offense prohibited by this Code, and in such attempt shall do any act towards the commission of such offense but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same, unless otherwise provided by law, shall be punishable as follows:
- (a) Upon conviction a person may be sentenced to imprisonment for a period not to exceed six (6) months and/or to a fine not to exceed two thousand five hundred (\$2,500) dollars plus costs.
  - (b) In no event shall the time for imprisonment or fine thereon be greater than one-half of the punishment for the offense attempted.
- 1.2005 RESERVED formerly “Attempted Rape” (repealed May 29, 2013).
- 1.2006 BASTARDY. Any male person who has sexual intercourse with an unmarried woman and as the result thereof, she becomes pregnant and delivers a child, shall be sentenced by the court to pay a sum of money not to exceed five hundred (\$500) dollars in addition to such civil consequences as may arise.
- 1.2007 BIGAMY. Any person who, being married to another marries any other person, is guilty of bigamy and upon conviction thereof, shall be sentenced to imprisonment for a period of not more than three (3) months, or to a fine of not less than one hundred (\$100) dollars or more then five hundred (\$500) dollars, or to both such fine and imprisonment with costs.
- 1.2008 BREAKING AND ENTERING. Any person who shall break and enter with the intent to commit any crime, or any larceny therein, any tent, office, store, shop, warehouse, barn, granary, factory or other building, structure, or any private apartment in any such

buildings or any unoccupied dwelling house, shall be guilty of breaking and entering and upon conviction thereof, shall be sentenced to imprisonment for not more than six (6) months, or a fine of not more than two thousand five hundred (\$2,500) dollars, or both such fine and imprisonment.

- 1.2009 BRIBERY. Any person who shall give or offer to give any money, property or services, or anything else of value to another person with corrupt intent to influence another in the discharge of his public duties or conduct and any person who shall accept, solicit or attempt to solicit any bribe as above defined, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed six (6) months, or to a fine not to exceed five hundred (\$500) dollars, or to both such imprisonment and fine, with costs, and any Tribal Office held by such person shall be forfeited.
- 1.2010 CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD THE SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN. If two or more persons conspire, either to commit any offense, enumerated in this Code, against the Saginaw Chippewa Indian Tribe of Michigan, or any of its members, or to defraud The Saginaw Chippewa Indian Tribe of Michigan, or any branch thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy each shall, upon conviction; be fined not more than five hundred (\$500) dollars or sentenced to imprisonment for a period not to exceed six (6) months, or both, with costs.
- 1.2011 CONTRIBUTING TO THE DELINQUENCY OF A JUVENILE. Any person who shall willfully contribute to the delinquency of any juvenile shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to imprisonment for a period not to exceed six (6) months or to a fine not to exceed five hundred (\$500) dollars, or to both such imprisonment and fine, with costs. Any person under the age of eighteen years (18) shall be deemed to be a juvenile.
- 1.2012 COMMUNICABLE DISEASE. The Community Court shall have authority to order and compel the medical examination and treatment of any person within its jurisdiction who, for good cause shown in open court, is suspected to be afflicted with any communicable disease.
- 1.2013 CRUELTY TO ANIMALS. Any person who shall torture or cruelly mistreat any animal, shall be deemed guilty of an offense and shall be sentenced to imprisonment for a period not to exceed thirty (30) days or to a fine not to exceed one hundred dollars (\$100) or to both such imprisonment and fine, with costs.
- 1.2014 CURFEW. Any person under the jurisdiction of the Saginaw Chippewa Indian Tribe of Michigan who has not yet reached their fourteenth (14) birthday, shall be in their regular place of abode not later than 10:00 p.m. in the evening; and any person between the ages of fourteen (14) and sixteen (16) shall be in their regular place of abode not later than 10:00 p.m. each night proceeding a regular school day and 12 midnight any other night unless such person is accompanied by his parent or legal guardian. Any such person who

knowingly and willfully fails to comply with this section and is found in violation thereof, shall be subject to proceedings pursuant to the juvenile provisions of this Code. Any parent, parents, guardian or guardians who allow, or who fail to require minors to obey this section, and such minor is not sixteen (16) years of age, shall be guilty of the offense of Contributing to the delinquency of a Minor, and in addition thereto shall be liable for all damages resulting to property by reason of acts and vandalism committed by any such child.

1.2015 CUTTING TIMBER WITHOUT A PERMIT. Any person who, without first securing a proper permit, cuts any standing timber from Tribal land, shall be termed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed thirty (30) days or to a fine not to exceed one hundred fifty (\$150) dollars, or to both such imprisonment and fine, with costs.

1.2016 DISOBEDIENCE TO LAWFUL ORDER OF COURT. Any person who shall willfully disobey any order, warrant or command duly issued, made or given by Court or any officer thereof shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed thirty (30) days or to a fine not to exceed one hundred (\$100) dollars, or to both such imprisonment, or fine with costs.

1.2017 DISPOSING OF PROPERTY OF AN ESTATE. Any person who without proper authority, sells, trades or otherwise disposes of any property of an estate before the determination of the heirs shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period to exceed two (2) months or to a fine not to exceed one hundred fifty dollars (\$150), or to both such imprisonment and fine, with costs.

1.2018 DISORDERLY CONDUCT.

- (a) It shall be unlawful for any person to:
- (1) Engage in fighting in a public place.
  - (2) Disturb or aid in disturbing the peace of others by violence, or by loud, offensive, vulgar or boisterous conduct, and no person shall knowingly permit such conduct on any premises occupied or controlled by him.
  - (3) Disturb or aid in disturbing any public or religious assembly by making noise or by rude or indecent behavior, or by using profane language within their assembly or place of worship or so near the same as to disturb the order or solemnity of the meeting, congregation or assembly.
  - (4) Throw any snowball, stick, stone or other object at any moving vehicles or at any other public or private property.
  - (5) Throw or cause to be thrown any waste paper or other waste matter on any public place; or light or cause to be lit fire upon any street or sidewalk.
  - (6) Intentionally call for the police or an ambulance when no real or apparent emergency exists or aid or abet in the commission of any such act.
  - (7) Be under the influence of alcoholic liquor or any narcotic drug in any public place.
  - (8) Engage in any indecent, insulting, immoral or obscene conduct in any

- public place.
- (9) Engage in window peeping.
  - (10) Swim or bathe in the nude in any public place.
  - (11) Beg in any public place.
  - (12) Make any immoral exhibition or indecent exposure of his/her body or of the body of another.
  - (13) Loiter on any street, sidewalk, or in a park or public building or conduct himself in any public place so as to obstruct the free and uninterrupted passage of the public.
  - (14) Use of vulgar, profane or indecent language in any public place.
- (b) Any person who violates any of the above mentioned subsections and are not subject to the provisions of section 1.2018(d) shall be deemed guilty of disorderly conduct and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed ninety (90) days or to a fine not to exceed three hundred dollars (\$300.00) or both such imprisonment and fine with costs.
  - (c) If a person and was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breasts while violating subsections 1.2018(a)(9) or 1.2018(a)(12), that person may be sentenced to imprisonment for a period of not less than twelve (12) months or to a fine not to exceed two thousand five hundred (\$2,500) dollars or to both such imprisonment and fine, with costs.
  - (d) Any person who violates section 1.2018(a)(12) and has a previous conviction for the same offense shall be sentenced to imprisonment for a period of not less than six (6) months or to a fine not to exceed two thousand five hundred (\$2,500) dollars or to both such imprisonment and fine, with costs.

1.2019 DRAWING OR UTTERING INSTRUMENT ON BANK WITHOUT FUNDS OR CREDIT; DEFINED, PENALTY. Any person who shall for a present consideration make or draw or utter or deliver any check, draft, or other such instrument for the payment of money upon any bank or other depository, knowing at the time of such making that the maker or drawer has not sufficient funds in or of such check, draft or order in full upon its presentation, shall be guilty of an offense, and upon conviction thereof shall be fined not more than one hundred (\$100) dollars or imprisonment for not more than sixty (60) days or both. The making drawing, uttering or delivering of such check, draft, or other as aforesaid, shall be prima facie evidence as against the maker or drawer of knowledge of insufficient funds in or credit with such bank or other depository. The word "credit", as used herein, shall be construed to mean an arrangement or understanding with the bank or depository for the payment of such check, draft or order.

1.2020 EMBEZZLEMENT. Any person who shall, having lawful custody of property not his own, appropriate the same to his use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed six (6) months or to a fine, not to exceed five hundred dollars (\$500) or to both such imprisonment and fine, with costs, as used in this section, embezzlement shall include the spending of minor's funds by parents or guardians for other than the purpose for which the funds were placed in the custody of the parents or guardians.

- 1.2021 ESCAPE. Any person who being in lawful custody or any offense, shall escape or attempt to escape or who shall permit or assist or attempt to permit or assist another person to escape from lawful custody shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed six (6) months to be served consecutively with any other term that person may be convicted of and to a fine not to exceed five hundred dollars (\$500), or to both such imprisonment and fine, with costs.
- 1.2022 EXTORTION. Any person who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any money, goods, property or anything else of any value, shall be deemed guilty of extortion for a period not to exceed three (3) months or to a fine not to exceed three hundred dollars (\$300), or to both such imprisonment and fine, with costs.
- 1.2023 FAILURE TO SUPPORT DEPENDENT PERSONS AND ABANDONMENT. Any person who shall, because of intemperance or gambling or for any other reason, refuse or neglect to provide food, shelter or care for those dependent upon him or her, including children born out of wedlock, or who shall abandon those dependent upon him or her, or who shall fail or neglect to expend properly funds awarded for the care and support of persons dependent upon him or her, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period of not to exceed two (2) months or fined not to exceed one hundred dollars (\$100), or both such fine and imprisonment and costs.
- 1.2024 FAILURE TO SEND CHILDREN TO SCHOOL. Any person who shall without good cause, neglect or refuse to send his children or any children under his care under the age of sixteen (16) years to school shall be deemed guilty of an offense and conviction thereof, shall be sentenced to imprisonment for a period not to exceed fifteen (15) days or to a fine not to exceed fifty dollars (\$50.00), or to both such imprisonment and fine, with costs, for the first such offense. The court may, in its discretion, double the penalties herein for each additional offense. Any child under the age of sixteen who refuses to attend school may be charged as truant under the procedures set out in Title II for Juvenile Offenders.
- 1.2025 FALSE ARREST. Any person who shall willfully and knowingly make, or cause to be made, the unlawful arrest, detention or imprisonment of another person, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed six (6) months or to a fine not to exceed three hundred dollars (\$300), or to both such imprisonment and fine, with costs.
- 1.2026 FORCIBLE ENTRY OR DETAINER OF LANDS, BUILDINGS OR OTHER POSSESSIONS. Every person subject to the jurisdiction of the Tribe, found guilty of using or procuring, encouraging, or assisting another to use, any force or violence in entering upon or detaining any lands, buildings or other possessions owned by the Tribe, by any persons, corporation or organization, except in the cases and manner allowed by law, shall be deemed guilty of a Tribal offense and upon conviction thereof, shall be

sentenced to imprisonment for a period not to exceed sixty (60) days or to a fine not to exceed one hundred dollars (\$100) or to both such imprisonment and fine, with costs.

1.2027 FRAUD. Any person who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures, obtain any money or other property shall be deemed guilty of fraud and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed six (6) months or to a fine not to exceed five hundred dollars (\$500), or to both such imprisonment and fine, with costs.

1.2028 FORGERY. Any person who shall, with intent to defraud, falsely sign, execute or alter any written instrument, shall be deemed guilty of forgery and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed three (3) months or to a fine not to exceed three hundred dollars (\$300), or to both such imprisonment and fine, with costs.

1.2029 RESERVED FORMERLY "Gambling-Prohibited"(repealed October 5, 1993)

1.2030 INDECENT LIBERTIES WITH A CHILD. Any person of the age of sixteen (16) years and upwards who performs or submits to any of the following acts with a child under the age of sixteen (16) commits indecent liberties with a child:

- (a) Any act of deviate sexual conduct;
- (b) Any lewd fondling or touching of either the child or the person, done or submitted to, with the intent to arouse or satisfy the sexual desires of either the child or the person or both. Any person convicted of indecent liberties with a child shall be sentenced to imprisonment for a period not less than six (6) months or more than one (1) year or to a fine of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5000), or to both such fine and imprisonment, with costs.
- (c) In addition to the punishment contained herein, a person convicted under this subsection must register as a convicted sex offender in accordance with the registration requirements contained in Title XIII of the Tribal Code.

1.2031 INJURY TO PUBLIC PROPERTY. Any person who shall without proper authority, use or injure any public, Government or Tribal property, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed thirty (30) days or to a fine not to exceed fifty dollars (\$50) or to both such imprisonment and fine, with costs.

1.2032 LITTERING PUBLIC WATERS, PARKS AND ROADWAYS PROHIBITED; PENALTY. It shall be unlawful for any person to deposit garbage, refuse, ashes, junk, glass, bottles, tin cans or any other forms of litter or debris in any public waters of the Tribe, on any bank of a river or stream, on any public park or public recreation area, or on any roadway, except in containers or public dump grounds which are provided and designated for such use.

1.2033 RESERVED FOR FUTURE USE.



- 1.2034 MALICIOUS MISCHIEF. Any person who shall maliciously disturb, injure or destroy any livestock or other domestic animal or other property, shall be sentenced to imprisonment for a period not to exceed six (6) months or to a fine not to exceed five hundred dollars (\$500), or to both such imprisonment and fine, with costs.
- 1.2035 MAINTAINING A PUBLIC NUISANCE. Any person who shall act in such a manner; or permit his property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his neighbors, shall be sentenced upon conviction to imprisonment for a period not to exceed thirty (30) days or to a fine not to exceed one hundred dollars (\$100), or to both such imprisonment and fine, with costs.
- 1.2036 CONTROLLED SUBSTANCES, NARCOTICS. Any person who shall plant, grown, cultivate, harvest, gather, manufacture, sell, barter, give away, or have in his possession any substance which shall now or in the future be a controlled substance pursuant to the provisions of the Michigan Controlled Substances Act Michigan Statutes Annotated Sec. 14.15 (7101) et. seq. shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed one (1) year or a fine not to exceed five thousand (\$5000) dollars, or to both such imprisonment and fine, with costs. A valid permit from the Federal government authorizing a person or persons to possess such substances or a prescription from a physician licensed to practice medicine in the State of Michigan shall be a defense to a prosecution under this provision. Possession of a valid Registry Identification Card issued under the Michigan Medical Marihuana Act shall not be a defense against prosecution under this statute.
- 1.2036.1 CONTROLLED SUBSTANCES-FORFEITURE. The following described property is subject to forfeiture:
- (1) A prescription form, official prescription form, controlled substance, an imitation controlled substance, or a controlled substance analogue which has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article.
  - (2) A raw material, product, or equipment of any kind which is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance or a controlled substance analogue in violation of this article; or a raw material, product, or equipment of any kind which is intended for use in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance.
  - (3) Property which is used, or intended for use, as a container for property described in subdivision (1) or (2).
  - (4) A conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (1) or (2), but:
    - (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge

of the conveyance is a consenting party or privy to a violation of this article.

- (b) A conveyance is not subject to forfeiture by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent.
  - (c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.
- (5) Books, records, and research products and materials, including formulas, microfilm, tapes, and data used, or intended for use, in violation of this article.
  - (6) Anything of value that is furnished or intended to be furnished in exchange for a controlled substance or an imitation controlled substance in violation of this article, traceable to an exchange for a controlled substance or an imitation controlled substance in violation of this article, or used or intended to be used to facilitate any violation of this article including but not limited to money, negotiable instruments, or securities. To the extent of the interest of an owner, a thing of value is not subject to forfeiture under this subdivision by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner's knowledge or consent. Any money that is found in close proximity to any property that is subject to forfeiture under subdivision (1), (2), (3), (4), or (5) shall be presumed to be subject to forfeiture under this subdivision. This presumption may be rebutted by clear and convincing evidence.
  - (7) Any other drug paraphernalia not described in subdivision (1) or (2). As used in this section "imitation controlled substance" means an imitation controlled substance as defined in Michigan Law pursuant to MSA 14.15(7341).

1.2036.2 PROPERTY SUBJECT TO SEIZURE WITHOUT PROCESS. Seizure without process may be made in any of the following cases:

- (1) The seizure is incident to an arrest or a search warrant or an inspection under an administrative inspection warrant.
- (2) The property subject to seizure has been the subject of a prior judgment in favor of the Tribe in an injunction of forfeiture proceeding based upon this section.
- (3) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.
- (4) There is probable cause to believe that the property was used or is intended to be used in violation of this section.

1.2036.3 FORFEITURE PROCEEDINGS; SEIZURE WITHOUT PROCESS;

PROCEDURE. In case of a seizure pursuant to forfeiture proceedings shall be instituted promptly. If seizure is made without process as provided under section 1.2036(a), and the total value of the property seized does not exceed \$100,000.00,

the following procedure shall be used:

- (1) The Tribe shall cause notice of the seizure of the property and the intention to forfeit and dispose of the property according to this section to be given to the owner of the property by delivering to the owner the notice or by sending the notice to the owner by certified mail. If the name and address of the owner are not reasonable ascertainable, or delivery of the notice cannot be reasonably accomplished, the notice shall be published in a newspaper of general circulation in the county in which the property was seized, for 10 successive publishing days.
- (2) Unless all criminal proceedings involving or relating to the property have been completed, the Tribal Police shall immediately notify the prosecuting attorney for seizure of the property and the intention to forfeit and dispose of the property.
- (3) Any person claiming an interest in property which is the subject of a notice under subdivision (1) may, within 20 days after receipt of the notice or of the date of the first publication of the notice, file a claim with the Tribe expressing his or her interest in the property. Upon the filing of the claim, and the giving of a bond to the Tribe in the amount of \$250.00 with sureties approved by the Tribe conditioned that in case the property is ordered forfeited by the court the Obligor shall pay all costs and expenses of the forfeiture proceedings, the Tribe shall transmit the claim and bond with a list and description of the property seized to the prosecuting attorney. The prosecuting attorney, shall promptly institute forfeiture proceedings after the expiration of the 20-day period.
- (4) If no claim is filed or bond given within the 20-day period as described in subdivision (3), the Tribe shall declare the property forfeited and shall dispose of the property pursuant to section 1.2036(f). However, unless all criminal proceedings involving or relating to the property, have been completed, the Tribe shall not dispose of the property pursuant to this subdivision without written consent of the prosecuting attorney.

1.2036.4 PROPERTY TAKEN OR DETAINED; ACTION TO RECOVER; ORDER, JUDGMENT OF COURT; POWER OF DEPARTMENT.

- (1) Property taken or detained under this section shall not be subject to an action to recover personal property, but is deemed to be in the custody of the Tribe, subject only to this section or an order and judgment of the court over the forfeiture proceedings. When property is seized under this section the Tribe may do any of the following:
  - (a) Place the property under seal.
  - (b) Remove the property to a place designated by the court.
  - (c) Require the administrator to take custody of the property and remove it to an appropriate location for disposition in accordance with law.
- (2) Title to real property forfeited under this section shall be determined by the court. A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party who neither had

knowledge of nor consented to the act or omission.

1.2036.5 FORFEITED PROPERTY; TRIBAL USAGE AND POWERS. When property is forfeited under this section, the Tribe may do any of the following:

- (1) Retain it for official use.
- (2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and any money, negotiable instruments, securities, or any other thing of value as described in Section 1.2036.1(6), that are forfeited pursuant to this section shall be applied as follows:
  - (aa) For the payment of proper expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process, maintenance of custody, advertising, and court costs.
  - (ab) The remaining balance after the payment of expenses shall be distributed by the Tribal Court to the Tribal General Fund. The money received under this subparagraph shall be used to enhance law enforcement efforts pertaining to this section.

1.2036.6 SALE OF FORFEITED REAL PROPERTY. In the course of selling real property pursuant to 1.2036(f)(2) the Tribal Court shall appoint the Tribal Attorney to act as the receiver to dispose of real property forfeited. As receiver the Tribal Attorney shall have the authority to do all of the following:

- (1) List the forfeited real property for sale.
- (2) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.
- (3) Accept offers to purchase the forfeited real property.
- (4) Execute instruments transferring title to the forfeited real property directly to the Tribe.

1.2036.7 GOOD SAMARITAN LAW

- (a) Notwithstanding any other Tribal law, it shall not be a crime for a person to be under the influence of, or to possess for personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if that person, in good faith, seeks medical assistance for another person while such other person is experiencing a drug-related overdose, and the person seeking medical assistance fully cooperates with medical and law enforcement personnel, remains on scene and identifies themselves. This provision shall not apply to a person seeking medical assistance if such person sold controlled substances, controlled analog, or drug paraphernalia to the person for whom medical assistance is requested or to any other person. No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.
- (b) Notwithstanding any other Tribal law, it shall not be a crime for a

person who while experiencing a drug-related overdose, and in need of medical assistance, to be under the influence of, or to possess for his or her own personal use, a controlled substance, controlled substance analog, or drug paraphernalia, if the person or one or more other persons at the scene of the overdose, in good faith, seek medical assistance for the person experiencing the overdose subject to the provisions of 1.2036.7(a). No other immunities or protections from arrest or prosecution for violations of the law are intended or may be inferred.

- (c) This section shall not affect laws prohibiting the selling of drugs, or the forcible administration of drugs against a person's will.
- (d) Nothing in this section shall affect liability for any offense that involves activities made dangerous by the consumption of a controlled substance or controlled substance analog, including, but not limited to, Operating a Motor Vehicle.
- (e) For the purposes of this section, "drug-related overdose" means an acute medical condition that is the result of the ingestion or use by an individual of one or more controlled substances or one or more controlled substances in combination with alcohol, in quantities that are excessive for that individual that may result in death, disability, or serious injury. An individual's condition shall be deemed to be a "drug-related overdose" if a reasonable person of ordinary knowledge would believe the condition to be a drug-related overdose that may result in death, disability, or serious injury.

1.2037 OPERATION OF MOTOR VEHICLE WITHOUT CONSENT OF OWNER. No person shall drive, operate or use a motor vehicle without the permission of the owner or of his agent in charge or in control thereof. Any person so doing is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment in jail for not more than three (3) months or by both such imprisonment and fine, with costs.

1.2038 PERJURY. Any person who shall willfully and deliberately, in any judicial proceeding in any court of the Saginaw Chippewa Indian Tribe of Michigan falsely swear or interpret, or shall make a sworn statement of affidavit knowing the same to be untrue, or shall induce to procure another person to do so, shall be deemed guilty of perjury and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed six (6) months or to a fine not to exceed five hundred dollars (\$500) or to both such imprisonment and fine, with costs.

1.2039 PROSTITUTION AND SOLICITATION. Any person who shall practice prostitution or who shall knowingly keep, maintain, rent, or lease any house room or other place for the purpose of prostitution or any person who shall patronize a place of prostitution shall be deemed guilty of the offense upon the conviction thereof shall be sentenced to imprisonment for a period not to exceed three (3) months or a fine not to exceed three hundred (\$300) dollars or both such imprisonment and fine, with costs.

- 1.2040 PROTECTIVE CUSTODY. Any person who through physical or mental disability, or physical or mental incapacity due to excessive use of alcohol or controlled substances, is unable to care for himself may be taken into protective custody by a peace officer and held, without criminal charge and in a suitable facility, for such period not to exceed 48 hours as is necessary to deliver him to his family or to a suitable agency of the Tribal, State, or Federal government. This provision shall not be construed to authorize incarceration in a jail or prison.
- 1.2041 RECEIVING STOLEN PROPERTY. Any person who shall receive or conceal or aid in concealing or receiving any property, knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, robbery or burglary, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed three (3) months or to a fine not to exceed two hundred dollars (\$200), or to both such fine and imprisonment, with costs.
- 1.2042 REFUSING TO AID OFFICER. Any person who shall neglect or refuse, when called upon by a Police officer, to assist in the arrest of any person charged with or convicted of an offense or in securing such offender when apprehended or in conveying such offender to the nearest place of confinement, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed seven (7) days or to a fine not to exceed fifty dollars (\$50), or to both such imprisonment and fine, with costs.
- 1.2044 RESISTING LAWFUL ARREST. Any person who shall willfully and knowingly, by force or violence, resist or assist another person to resist a lawful arrest, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed sixty (60) days or to a fine not to exceed two hundred fifty dollars (\$250), or to both such imprisonment and fine, with costs.
- 1.2045 RESERVED formerly “Rape” (repealed May 29, 2013).
- 1.2046 ROBBERY. Any person who, in the course of committing a theft, inflicts serious bodily injury upon another, or threatens another with, or purposely puts him in fear of immediate serious bodily injury, shall be deemed guilty of robbery. Any individual convicted of this crime shall be sentenced to imprisonment not to exceed one (1) year, or to a fine not to exceed five thousand dollars (\$5,000), or both such imprisonment and fine, with costs.
- 1.2047 SHOPLIFTING DEFINED; PENALTY. Any person who shall willfully take possession of any goods; wares or merchandise offered for sale by any store or other mercantile establishment with the intention of converting the same to his or her use without paying the purchase price thereof, shall be guilty of the offense of shoplifting and shall be punished by a fine of not more than one hundred dollars (\$100), or by imprisonment of not more than thirty days (30), or by both such fine and imprisonment, with costs.
- 1.2048 THEFT. Any person who shall take the property of another person with intent to steal shall be deemed guilty of theft and upon conviction thereof, shall be sentenced to

imprisonment for a period not to exceed one (1) year or to a fine of not to exceed five thousand dollars (\$5000), or to both such fine and imprisonment, with costs.

- 1.2049 THREAT OR INTIMIDATION. Any person who directly or indirectly utters or addresses any threat or intimidation to or regarding any judicial or ministerial officer, juror, referee arbitrator, umpire, assessor, person authorized to hear or determine any controversy, witness court interpreter, persons appointed to assist the Court, or Tribal Council member or any person employed by the Tribe who is supervised by and reports to the Tribal Council is guilty of an offense and shall be punished by a fine of not more than five thousand dollars (\$5,000.00)and/or sentenced to imprisonment for up to one (1) year, or both, with costs.
- 1.2050 TRESPASS. Any person who shall go upon or pass over any cultivated or other lands of another person and shall refuse to go immediately therefrom on the request of the owner or occupant thereof, shall be deemed guilty of an offense and upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars (\$100) or sentenced to imprisonment for a period not to exceed thirty (30) days, or to both such imprisonment and fine, with costs.
- 1.2051 VIOLATION OF AN APPROVED TRIBAL ORDINANCE. Any person who violates an ordinance designed to preserve the peace and welfare of the Tribe which was promulgated by the Tribal Council, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced as provided in the ordinance. Should no punishment be provided within said ordinance, such offense shall be punishable by a fine of no more than one hundred dollars (\$100), and imprisonment for not more than thirty (30) days.
- 1.2052 VIOLENCE TO POLICEMAN OF JUDGE. Any person who shall willfully or knowingly, by force or violence render physical abuse, to a Tribal policeman, Judge or Magistrate of the Saginaw Chippewa Indian Tribe of Michigan shall be deemed guilty of an offense and upon conviction shall be sentenced to a period of imprisonment not to exceed six (6) months (non-suspendable), or a fine of five hundred dollars (\$500), or both such imprisonment and fine, with costs.
- 1.2053 WILLFUL OBSTRUCTION OF EMERGENCY TELEPHONE CALLS. For the purpose of this act the following terms shall have the following definitions;
- (a) "Party line" means a subscribers telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive right or telephone number.
  - (b) "Emergency" means a situation in which property or human life are in jeopardy, and the prompt summoning of said is essential.
- 1.2054 SECURING LINE BY FALSELY STATING EMERGENCY; MISDEMEANOR; PENALTY. Any person who shall secure the use of a party line by falsely stating that such line is needed for an emergency shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not exceeding Two-hundred (\$200) dollars, or

imprisonment not to exceed sixty (60) days, or both, with costs.

- 1.2055 SNOWMOBILES AND OTHER RECREATIONAL VEHICLES. Any person who shall operate a snowmobile or other recreational vehicle within 100 feet of any residence, school, public building or other place of public gathering between the hours of 9:00 p.m. and 7:00 a.m. shall be fined not more than one hundred (\$150) dollars and/or imprisoned for a period not to exceed thirty (30) days.
- 1.2056 RESERVED formerly “Falsely Assuming to Act as a Public Officer or Employee” (repealed July 15, 1999).
- 1.2057 RESERVED formerly “Tampering With Public and Tribal Records And Notices” (repealed July 15, 1999).
- 1.2058 RESERVED formerly “Sedition” (repealed July 15, 1999).
- 1.2059 RESERVED formerly “Simulation of Governmental Processes” (repealed July 15, 1999)
- 1.2060 ACCOSTING, ENTICING OR SOLICITING A CHILD FOR IMMORAL PURPOSE. A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of Sexual Intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a crime and upon conviction shall be subject to imprisonment not to exceed one (1) year or to a fine not to exceed five thousand (\$5,000) dollars, or to both such imprisonment and fine, with costs. In addition to the punishment contained herein, a person convicted under this subsection must register as a convicted sex offender in accordance with the registration requirements contained in Title XIII of the Tribal Code.
- 1.2061 ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT. A person who commits assault with intent to commit criminal sexual conduct involving Sexual Penetration is guilty of a crime and shall be subject to imprisonment not to exceed six (6) months or to a fine not to exceed two thousand five hundred (\$2,500) dollars, or to both such imprisonment and fine, with costs. In addition to the punishment contained herein, a person convicted under this subsection must register as a convicted sex offender in accordance with the registration requirements contained in Title XIII of the Tribal Code.
- 1.2062 CHILD SEXUALLY ABUSIVE ACTIVITY OR MATERIAL.
- (a) A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in Child Sexually Abusive Activity for the purpose of producing any Child Sexually Abusive Material, or a person who arranges for, produces, makes, or finances, or a person who attempts or conspires to arrange for, produce,



make or finance any Child Sexually Abusive Activity or Child Sexually Abusive Material is guilty of a crime, punishable by imprisonment for not more than one (1) year or a fine of not more than five thousand (\$5,000) dollars or to both such imprisonment and fine, with costs. In addition to the punishment contained herein, a person convicted under this subsection must register as a convicted sex offender in accordance with the registration requirements contained in Title XIII of the Tribal Code.

- (b) A person who distributes or promotes, or finances the distribution or promotion of, or receives for the purpose of distributing or promoting, or conspires, attempts, or prepares to distribute, receive, finance, or promote any Child Sexually Abusive Material or Child Sexually Abusive Activity is guilty of a crime, punishable by imprisonment for not more than one (1) year or a fine of not more than five thousand (\$5,000) dollars or to both such imprisonment and fine, with costs. In addition to the punishment contained herein, a person convicted under this subsection must register as a convicted sex offender in accordance with the registration requirements contained in Title XIII of the Tribal Code.
- (c) A person who knowingly possesses any Child Sexually Abusive Material is guilty of a crime punishable by imprisonment for not more than one (1) year or a fine of not more than five thousand (\$5,000) dollars or to both, if that person knows, or has reason to know, or should reasonably be expected to know the child is a child or that the Child Sexually Abusive Material includes a child or that the depiction constituting the Child Sexually Abusive Material Appears to Include a Child, or that person has not taken reasonable precautions to determine the age of the child. In addition to the punishment contained herein, a person convicted under this subsection must register as a convicted sex offender in accordance with the registration requirements contained in Title XIII of the Tribal Code. However, this subsection does not apply to any of the following:
  - (1) A Commercial Film or Photographic Print Processor who reports to a law enforcement agency having jurisdiction his or her knowledge or observation, within the scope of his or her professional capacity of employment, of a file, photograph, movie, film, videotape, negative, or slide depicting a person that the processor has reason to know or reason to believe is a child engaged in a Listed Sexual Act; furnishes the film, photograph, movie, film, videotape, negative or slide or a copy of the film, photograph, movie, film, videotape, negative, or slide to a law enforcement agency having jurisdiction; or keeps the film, photograph, move, film, videotape, negative or slide according to the law enforcement agency's instructions. For the purposes of this subsection, the identity of the processor shall be confidential, subject to disclosure only with his or her consent or by judicial process and if the processor acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. The immunity extends only to acts described in this subsection.
  - (2) A police officer acting within the scope of his or her duties as a police officer.
  - (3) A judicial officer or judicial employee acting within the scope of his or her

- duties as a judicial officer or judicial employee.
- (4) A physician, psychologist, limited license psychologist, professional counselor, or registered nurse duly licensed under the public health code of a jurisdiction and acting within the scope of practice for which he or she is licensed.
  - (5) A Computer Technician who reports to a law enforcement agency having jurisdiction over his or her knowledge or observation within the scope of his or her professional capacity of employment, of an electronic visual image, computer-generated image or picture, or sound recording depicting a person that the computer technician has reason to believe is a child engaged in a Listed Sexual Act; furnishes the original or a copy of that image, picture or sound recording to the law enforcement agency; or keeps the image, picture, or sound recording according to the law enforcement agency's instructions. For the purposes of this subsection, the identity of the Computer Technician shall be confidential, subject to disclosure only with his or her consent or by judicial process and if the technician acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. The immunity extends only to acts described in this subsection.

1.2063 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. A person is guilty of criminal sexual conduct in the first degree if he or she engages in Sexual Penetration with another person and if any of the following circumstances exists:

- (a) That the other person is under 13 years of age.
- (b) That the other person is at least 13 but less than 16 years of age and any of the following:
  - (1) The Actor is a member of the same household as the Victim.
  - (2) The Actor is related to the Victim by blood or affinity to the fourth degree.
  - (3) The Actor is in a position of authority over the Victim and used this authority to coerce the Victim to submit.
  - (4) The Actor is a teacher, substitute teacher, employee, volunteer, a contractual service provider or administrator of the School in which the Victim is enrolled.
- (c) Sexual Penetration occurs under circumstances involving the commission of another crime.
- (d) The Actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
  - (1) The Actor knows or has reason to know that the Victim is mentally incapable, mentally incapacitated, or physically helpless.
  - (2) The Actor uses force or coercion to accomplish the Sexual Penetration. Force or coercion includes, but is not limited to, any of the circumstances in section 1.2063(f).
- (e) The Actor is armed with a weapon or any article used or fashioned in a manner to lead the Victim to reasonably believe it to be a weapon.
- (f) The Actor causes personal injury to the Victim and force or coercion is used to accomplish Sexual Penetration. Force or coercion includes, but is not limited to,

any of the following circumstances:

- (1) When the Actor overcomes the Victim through actual application of physical force or physical violence.
- (2) When the Actor coerces the Victim to submit by threatening to use force or violence on the Victim, and the Victim believes that the Actor has the present ability to execute these threats.
- (3) When the Actor coerces the Victim to submit by threatening to retaliate in the future against the Victim, or any other person, and the Victim believes that the Actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnaping or extortion.
- (4) When the Actor engages in the medical treatment or examination of the Victim in a manner or for purposes that are medically recognized as unethical or unacceptable.
- (5) When the Actor, through concealment or by the element of surprise, is able to overcome the Victim.
- (g) The Actor causes personal injury to the Victim, and the Actor knows or has reason to know that the Victim is mentally incapable, mentally incapacitated, or physically helpless.
- (h) That the other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:
  - (1) The Actor is related to the Victim by blood or affinity to the fourth degree.
  - (2) The Actor is in a position of authority over the Victim and used this authority to coerce the Victim to submit.
- (i) Criminal sexual conduct in the first degree is a crime and upon conviction a person found guilty of criminal sexual conduct in the first degree shall be subject to imprisonment not to exceed one (1) year or to a fine not to exceed five thousand (\$5,000) dollars, or to both such imprisonment and fine, with costs. In addition to the punishment contained herein, a person convicted under this subsection must register as a convicted sex offender in accordance with the registration requirements contained in Title XIII of the Tribal Code.

1.2064 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE. A person is guilty of criminal sexual conduct in the second degree if the person engages in Sexual Contact with another person and if any of the following circumstances exists:

- (a) That the other person is under 13 years of age.
- (b) That the other person is at least 13 but less than 16 years of age and any of the following:
  - (1) The Actor is a member of the same household as the Victim.
  - (2) The Actor is related by blood or affinity to the fourth degree to the Victim.
  - (3) The Actor is in a position of authority over the Victim and used this authority to coerce the Victim to submit.
  - (4) The Actor is a teacher, substitute teacher, employee, volunteer, a contractual service provider or administrator of the School in which the Victim is enrolled.
- (c) Sexual Contact occurs under circumstances involving the commission of another

- crime.
- (d) The Actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
    - (1) The Actor knows or has reason to know that the Victim is mentally incapable, mentally incapacitated or physically helpless.
    - (2) The Actor uses force or coercion to accomplish the Sexual Contact. Force or coercion includes, but is not limited to, any of the circumstances in section 1.2063(f).
  - (e) The Actor is armed with a weapon or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.
  - (f) The Actor causes personal injury to the Victim and force or coercion is used to accomplish Sexual Contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 1.2063(f).
  - (g) The Actor causes personal injury to the Victim and the Actor knows or has reason to know that the Victim is mentally incapable, mentally incapacitated or physically helpless.
  - (h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless and any of the following:
    - (1) The Actor is related to the Victim by blood or affinity to the fourth degree.
    - (2) The Actor is in a position of authority over the Victim and used this authority to coerce the Victim to submit.
  - (i) Criminal sexual conduct in the second degree is a crime and upon conviction a person found guilty of criminal sexual conduct in the second degree shall be subject to imprisonment not to exceed one (1) year or to a fine not to exceed five thousand (\$5,000) dollars, or to both such imprisonment and fine, with costs. In addition to the punishment contained herein, a person convicted under this subsection must register as a convicted sex offender in accordance with the registration requirements contained in Title XIII of the Tribal Code.

1.2065 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE. A person is guilty of criminal sexual conduct in the third degree if the person engages in Sexual Penetration with another person and if any of the following circumstances exist:

- (a) That other person is at least 13 years of age and under 16 years of age.
- (b) Force or coercion is used to accomplish the Sexual Penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 1.2063(f).
- (c) The Actor knows or has reason to know that the Victim is mentally incapable, mentally incapacitated, or physically helpless.
- (d) That other person is at least 16 years of age but less than 18 years of age and a student at a School and the Actor is a teacher, substitute teacher, employee, volunteer, a contractual service provider or administrator of the School in which the Victim is enrolled.
- (e) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and the Actor is a teacher, substitute teacher, employee, volunteer, a contractual service provider or administrator of the School in which the Victim is enrolled.
- (f) Criminal sexual conduct in the third degree is a crime and upon conviction a

person found guilty of criminal sexual conduct in the third degree shall be subject to imprisonment not to exceed one (1) year or to a fine not to exceed five thousand (\$5,000) dollars, or to both such imprisonment and fine, with costs. In addition to the punishment contained herein, a person convicted under this subsection must register as a convicted sex offender in accordance with the registration requirements contained in Title XIII of the Tribal Code.

- 1.2066 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE. A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in Sexual Contact with another person and if any of the following circumstances exist:
- (a) That other person is at least 13 years of age but less than 16 years of age, and the Actor is 5 or more years or older than that other person.
  - (b) Force or coercion is used to accomplish the Sexual Contact. Force or coercion includes, but is not limited to, any of the following circumstances:
    - (1) When the Actor overcomes the Victim through the actual application of physical force or physical violence.
    - (2) When the Actor coerces the Victim to submit by threatening to use force or violence on the Victim, and the Victim believes that the Actor has the present ability to execute the threat.
    - (3) When the Actor coerces the Victim to submit by threatening to retaliate in the future against the Victim, or any other person, and the Victim believes that the Actor has the ability to execute that threat. As used in this subsection, “to retaliate” includes threats of physical punishment, kidnaping or extortion.
    - (4) When the Actor engages in the medical treatment or examination of the Victim in a manner or for purposes which are medically recognized as unethical or unacceptable.
    - (5) When the Actor achieves the Sexual Contact through concealment or by the element of surprise.
  - (c) The Actor knows or has reason to know that the Victim is mentally incapable, mentally incapacitated or physically helpless.
  - (d) The Actor is a mental health professional and the Sexual Contact occurs during or within 2 years after the period in which the Victim is his or her client or patient and not his or her spouse. The consent of the Victim is not a defense to a prosecution under this subsection. A prosecution under this subsection shall not be used as evidence that the Victim is mentally incompetent.
  - (e) That other person is at least 16 years of age but less than 18 years of age and a student at a School, and the Actor is a teacher, substitute teacher, employee, volunteer, a contractual service provider or administrator of the School in which the Victim is enrolled.
  - (f) That other person is at least 16 years of age but less than 26 years of age and is receiving special education services, and the actor is a teacher, substitute teacher, employee, volunteer, a contractual service provider or administrator of the School in which the Victim is enrolled.
  - (g) Criminal sexual conduct in the fourth degree is a crime and upon conviction a person found guilty of criminal sexual conduct in the fourth degree shall be

subject to imprisonment not to exceed six (6) months or to a fine not to exceed two thousand five hundred (\$2,500) dollars, or to both such imprisonment and fine, with costs. In addition to the punishment contained herein, a person convicted under this subsection must register as a convicted sex offender in accordance with the registration requirements contained in Title XIII of the Tribal Code.

1.2067 CORROBORATION OF VICTIM'S TESTIMONY NOT REQUIRED. The testimony of a Victim need not be corroborated in prosecutions under subsections 1.2060, 1.2061, 1.2062, 1.2063, 1.2064, 1.2065 and 1.2066.

1.2068 RESISTANCE BY VICTIM NOT REQUIRED. A Victim need not resist the Actor in prosecutions under subsections 1.2060, 1.2061, 1.2062, 1.2063, 1.2064, 1.2065 and 1.2066.

1.2069 EVIDENCE OF VICTIM'S SEXUAL CONDUCT. Evidence of specific instances of the Victim's sexual conduct, opinion evidence of the Victim's sexual conduct, and reputation evidence of the Victim's sexual conduct shall not be admitted under subsections 1.2060, 1.2061, 1.2062, 1.2063, 1.2064, 1.2065 and 1.2066 unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

- (a) Evidence of the Victim's past sexual conduct with the Actor.
- (b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

1.2070 LEGAL SPOUSE AS A VICTIM. A person may be charged and convicted under subsections 1.2060, 1.2061, 1.2062, 1.2063, 1.2064, 1.2065 and 1.2066 even though the Victim is his or her legal spouse. However, a person may not be charged or convicted solely because his or her legal spouse is under the age of 16, mentally incapable or mentally incapacitated.

1.2071 ENDANGERING THE WELFARE OF A CHILD. A person charged with the care of the child is guilty of endangering the welfare of the child if he or she:

- (a) leaves the child with another person knowing that the person is registered or required to register as a sex offender under the laws of the Tribe or another jurisdiction, or has been charged in any jurisdiction with a sex offense involving a child, and the child is subsequently harmed by that person; or
- (b) leaves the child with another person knowing that the person has previously abused or is suspected to have abused a child, and the child is subsequently harmed by that person.
- (c) A person found convicted under section 1.2071 is guilty of a crime and may be sentenced to imprisonment of a period not to exceed one (1) year or to a fine not to exceed five thousand (\$5,000) dollars, or to both such imprisonment and fine, with costs.

## CHAPTER 1.21

## WEAPONS

- 1.2101 PISTOL DEFINED. "Pistol" as used in this Chapter means any firearm having a barrel less than twelve (12) inches long.
- 1.2102 COMMISSION OFFENSE WHEN ARMED. Any person whose hall commit or attempt to commit abduction, disorderly conduct, escape, resisting lawful arrest, violence to policeman or judge, theft injury to public peace, disturbing lawful meeting, riot or forcible entry or detainer of lands, building or other possessions, when armed with a pistol, knife of any other object which could be construed as a dangerous weapon shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not less than six (6) months days and not more than one (1) year or by a fine of not less than five hundred (\$500) nor more than five thousand dollars (\$5000) or by both such imprisonment and fine, with costs in addition to the punishment provided for the crime.
- 1.2103 WHO NOT TO POSSESS PISTOLS. The following persons shall not own a pistol or have one in their possessions or under their control:
- (a) A person who has been convicted of committing or attempting to commit a felony, in violation of any law of the United States of any state involving the use of threats, force or violence; and/or
  - (b) A person who has been convicted of committing a violation of section 1.2102 of this Code.
- 1.2104 LICENSE TO CARRY PISTOL TO WHOM ISSUED. A license to carry a pistol within the Tribal Jurisdiction may be issued to the following persons providing that they are not prohibited from possessing a pistol under the provisions of Section 1.2103 of this Code, and if it appears that the applicant therefore has proper purpose for the carrying of such pistol and that the applicant is a proper person to be so licensed:
- (a) Any person who is eighteen (18) years of age or older, having a bona fide residence or place of business within the jurisdiction of The Saginaw Chippewa Indian Tribe of Michigan.
  - (b) Any person having a bona fide residence or place of business within the United States of America and a license to carry a pistol issued by a competent authority of any State or subdivision of the United States of America.
- 1.2105 LICENSE TO CARRY PISTOL-WHO MAY ISSUE. A license to carry as pistol within the Tribal Jurisdiction may be issued to qualified persons by the captain of the Tribal Police Department or any person authorized by him only after an investigation is conducted to determine that eligibility of the applicant to acquire such license. Such license shall be valid only if countersigned by a judge of the Community Court and the Chief of The Saginaw Chippewa Indian Tribe of Michigan.
- 1.2106 CARRYING PISTOLS PROHIBITED EXCEPTIONS. Except as otherwise provided in this subsection, no person without a license shall carry a pistol, either openly or concealed, in any vehicle or on or about his person, within the Tribe's Jurisdiction, save

on his own land, in his own abode or fixed place of business or on a target range. This prohibition, however, shall not apply to the following persons:

- (a) Marshals, Sheriffs, prison or jail wardens or their regularly employed deputies, policeman, or other law enforcement officers of any state or political division thereof.
- (b) Members of the armed forces of the United States when on duty or when going to or from duty.
- (c) The members of the national guard, organized reserves, or state guard organizations when on duty or going to or from duty.
- (d) Officers of employees of the United States duly authorized to carry a pistol.
- (e) Any person engaged in manufacturing, repairing or dealing in pistols of the agent or representative of such person possessing, using or carrying a pistol in the usual or ordinary course of such business.
- (f) Any common carrier; or
- (g) Any person permitted by law to possess a pistol while carrying such pistol unloaded in a secure wrapper from the place of purchase to his home or place of business.
- (h) Any person lawfully engaged in hunting or fishing and by the terms and conditions of Tribal Fish and Game Regulations is authorized to use a pistol therefore.

1.2107 JUVENILE CARRYING FIREARMS OR GUN. Any person under the age of eighteen (18) years, who shall go about anywhere within Tribal Jurisdiction armed with a shotgun, rifle, pistol, air gun or other firearm, unless his parent or guardian shall have obtained a permit therefore, under the provisions of Section 1.2104 of this Code, shall be deemed guilty of an offense and be subject to proceedings under Tribal Children's Juvenile Code (Title II). Every parent, or guardian applying for a permit shall agree to pay all damages to person or property resulting from the use of firearms in the lands of the person for whom the permit had been issued. Any gun seized for violation of the foregoing section may be confiscated.

1.2108 CONFISCATED WEAPONS-DISPOSITION. Any weapons confiscated shall be sold at public auction at least once a year, at a time and place set by the Chief Judge. It shall be the duty of the Judge presiding in the case to determine if the weapon should be returned to the owner or sold at public auction proceeds from the sale of confiscated weapons shall be deposited in the Community Court Fund in the same manner as other cash receipts.

1.2109 PRODUCING LICENSE ON DEMAND-PENALTY. Every person while carrying a pistol, for the possession of which a license is required shall have on his person the license issued to him and shall exhibit it for inspection upon demand to any duly qualified peace officer. The failure of any person so to exhibit his license shall justify his arrest for illegally carrying a pistol and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed three (3) months or to a fine not to exceed two hundred dollars (\$200) or to both such imprisonment and fine, with costs.

1.2110 FALSE INFORMATION PROHIBITED. No person shall give false information or offer



false evidence of his identity when applying for a license to carry a pistol within Tribal Jurisdiction.

- 1.2111 PENALTIES. Any person who shall violate any provision of Chapter 1.21 of this Code, for which another penalty is not specifically provided, shall be deemed guilty of an offense and imprisoned for a period of not less than seven (7) days nor more than two (2) months or by a fine of not less than one hundred dollars (\$100) or both such imprisonment and fine with costs, and the pistol so carried may be confiscated.

## Chapter. 1.22

### FIRES, REGULATIONS AND PENALTIES

- 1.2202 TESTIFYING FALSELY AT INVESTIGATION OF FIRE. Any witness at an investigation conducted by the State Fire Marshal or Deputy Fire Marshal, Bureau of Indian Affairs, or Tribal Officials under the provisions of this Chapter, who gives false testimony at such hearing is guilty of perjury and shall be punished thereof.
- 1.2203 PENALTY IF CAMPFIRE BURNS WOOD, MARSH, PRAIRIE, HAYLANDS, BUILDINGS OR IMPROVEMENTS. If any person who makes a campfire or other fire or causes the same to be made, leaves such fire without having thoroughly extinguished the same and the fire spreads and burns any wood, marsh or prairie such person is guilty of an offense and upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars (\$100), or by imprisonment for a period not to exceed thirty (30) days, or to both such fine and imprisonment.
- 1.2204 MISCONDUCT AT FIRES, PENALTY. Every person who, at any burning, interferes with the lawful efforts of any fireman or company of fireman to extinguish the fire, or conducts himself in a manner calculated, prevents or persuades other from assisting to extinguish the fire, is guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period of not to exceed thirty (30) days or to a fine not to exceed one hundred dollars, (\$100) or to both such fine and imprisonment.
- 1.2205 FALSE ALARM. Any person or persons turning in a false fire alarm shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed thirty (30) days, or to a fine not to exceed one hundred dollars (\$100) or to both such fine and imprisonment, and any costs.
- 1.2206 FIREFIGHTERS. Any person who is physically fit between the ages of 18 and 55 without a good and sufficient reason who refuses to fight forest fires within the Saginaw Chippewa Indian Tribe of Michigan, for the established firefighters wages, when requested to do so by the Tribal Chief, Indian Police, or forest officers shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to imprisonment for a period not to exceed seven (7) days.
- 1.2207 ARSON. Any person who burns or sets on fire the dwelling house of another, or any

building in which there shall be at the time a human being, or who sets any fire manifestly dangerous to any human or animal life, shall be deemed guilty of arson and upon conviction thereof shall be sentenced to imprisonment for a period not to exceed one (1) year or a fine not to exceed five thousand (\$5,000) or both such imprisonment and fine with costs.

## Chapter 1.23

### CRIMINAL TRAFFIC OFFENSES AND PENALTIES

1.2301 ARRESTING PERSON FOR VIOLATION OF CRIMINAL TRAFFIC REGULATIONS-DUTY OF ARRESTING OFFICER. Whenever any person is arrested for the violation of any of the criminal provisions of Chapter 1.23 of this Code, the officer arresting of such person, except as otherwise provided in Section 1.2310 of this code shall:

- (a) Take the name and address of such person.
- (b) Take the license number of the motor vehicle.
- (c) Issue a summons or otherwise notify the person in writing to appear at a time and place to be specified in such summons or notice.

1.2301 OFFICERS DUTY FOR VIOLATION OF CIVIL TRAFFIC INFRACTION. Certain traffic violations have been decriminalized pursuant to Chapter 3.16 of Title III of this Code. Whenever any person is stopped for an infraction that is a civil offense, the officer shall:

- (a) Take the name and address of such person.
- (b) Take the license number of the motor vehicle.
- (c) Issue a civil citation in writing to appear at a time and place to be specified in such citation.

1.2302 FAILURE TO APPEAR-HEARING UPON ARREST-TIME OF PROMISE OF DEFENDANT TO APPEAR. Such hearing shall be before the Magistrate of the Community Court. Upon receipt from the arrested person of a written promise to appear at the time and place mentioned in the summons or notice, such officer may release him from custody. Any person refusing to give such written promise to appear shall be taken immediately by the arresting officer before the nearest or most accessible Tribal Judge. Any person willfully violating his written promise to appear shall be subject to the penalty prescribed by Section 1.2315 regardless of the disposition of the charge upon which he originally was arrested.

1.2303 DRIVING WITHOUT A LICENSE.

- (a) No person shall drive a motor vehicle on the public highways within Tribal jurisdiction without a valid driver's or chauffeur's license.
- (b) Any person convicted of violation of this section shall be sentenced to imprisonment for a period not to exceed sixty (60) days or to a fine not to exceed one hundred fifty dollars (\$150), or to both such imprisonment and fine.

1.2304 PERMITTING AN UNAUTHORIZED PERSON TO DRIVE.

- (a) No person shall permit another person to drive or operate a motor vehicle on the public highways unless such person is licensed to drive or is participating in an authorized driver's training program.
- (b) Any person convicted of violating this section shall be sentenced to imprisonment for a period not to exceed thirty (30) days, or to a fine not to exceed one hundred dollars (\$100) or to both such imprisonment and fine, with costs.

1.2305 OFFENSE UNDER WHICH PERSON ARRESTED MAY NOT BE ENTITLED TO RELEASE UPON PROMISE TO APPEAR. The provisions of section 1.2301 of this Code shall not apply to a person when:

- (a) The arresting officer shall have good reason to believe such person guilty of any felony or when such person is arrested and charged with either of the following offenses:
  - (1) Causing or contributing to an accident resulting in injury or death of any person;
  - (2) Driving while under the influence or impairment of intoxicating liquor or a narcotic drug;
- (b) The arresting officer, acting within his discretion, deems it inadvisable to release such person upon his promise to appear when arrested and has charged either of the following offenses:
  - (1) Reckless driving;
  - (2) Driving in excess of speed limitations established by the Tribal Code. The arresting officer forthwith shall take any person not released upon his promise to appear before the nearest Tribal Court Judge or Magistrate.

1.2306 GARAGES TO REPORT. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in a reportable accident or of being struck by any bullet, shall report or cause a report to be made to a police officer of the Saginaw Chippewa Indian Tribe of Michigan within twenty four (24) hours after such motor vehicle is received, and before any repairs are made to such vehicle, giving the registration number, the name and address of the owner operating or person in control of such vehicle with a description of the location and type of damage to the vehicle or any missing parts.

1.2307 RECKLESS DRIVING.

- (a) Any person who drives a vehicle carelessly or recklessly in willful or wanton disregard of the rights and safety of others or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or the property of another is guilty of reckless driving.
- (b) Every person convicted of reckless driving shall be punished by imprisonment for a period of not more than thirty (30) days, to a fine of not more than one hundred dollars (\$100), or to both such imprisonment and fine, with costs, and may be deprived of the right to operate a motor vehicle for a period not to exceed one (1) year.

1.2308 OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS (OUIL); OR OPERATING A MOTOR VEHICLE WITH UNLAWFUL BLOOD ALCOHOL LEVEL OF .10% OR MORE.

- (a) It is unlawful and punishable for any person who is under the influence of intoxicating liquor or who is under the influence of any drug to a degree which renders him incapable of safely driving a motor vehicle to operate or be in actual physical control of any motor vehicle upon a highway within the jurisdiction of the Saginaw Chippewa Indian Tribe of Michigan. For the purposes of this Code, the provisions of Michigan Law as set forth in MSA 9.2325 through MSA 9.2325(3) are hereby adopted in their entirety as part of this Section and any references therein to the State of Michigan shall be deemed to apply as well to the Saginaw Chippewa Indian Tribe of Michigan and its jurisdiction. All future amendments to the aforementioned Michigan Statutes are hereby prospectively incorporated herein.
- (b) Every person who is convicted of a violation of this section shall be punished as follows:
  - (1) First offense of Operating While Under the Influence of Intoxicating Liquor, by imprisonment for not more than ninety (90) days, or by a fine of not more than Five-hundred dollars (\$500), or by both such fine and imprisonment, and costs. In addition the Court may suspend the license of a person convicted of this offense for a minimum period of six (6) months to maximum period of two (2) years.
  - (2) Second offense of Operating While Under the Influence of Intoxicating Liquor, by imprisonment for not more than six (6) months, or by a fine of not more than One-thousand dollars (\$1,000), or by both such fine and imprisonment, and costs. In addition the Court may suspend the license of a person convicted of this offense for a minimum period of one (1) year to a maximum period of two (2) years.
  - (3) Third offense of Operating While Under the Influence of Intoxicating Liquor, by imprisonment for not more than one (1) year, or by a fine of not more than Five-thousand dollars (\$5,000), or by both such fine and imprisonment, and costs. In addition the Court may suspend the license of a person convicted of this offense for a minimum period of two (2) years to a maximum period of five years.

1.2309 OPERATING A MOTOR VEHICLE WITH ABILITY IMPAIRED.

- (a) It is unlawful and punishable for any person to operate a motor vehicle while their ability is visibly impaired due to the ingestion of alcohol, drugs or other controlled substance, or both, whereby that person drove or operated a motor vehicle with less ability than would an ordinary, careful and prudent driver or operator, upon a highway within the jurisdiction of the Saginaw Chippewa Indian Tribe of Michigan. For the purposes of this Code, the provisions of Michigan Law as set forth in MSA 9.2325(2) is hereby adopted in their entirety as part of this Section and any references therein to the State of Michigan shall be deemed to apply as well to the Saginaw Chippewa Indian tribe of Michigan and its jurisdiction. All future amendments to the aforementioned Michigan Statutes are hereby

prospectively incorporated herein.

- (b) Every person who is convicted of a violation of this section shall be punished as follows:
- (1) First offense of Operating With Ability Impaired, by imprisonment for not more than forty-five (45) days, or by a fine of not more than Two-hundred fifty dollars (\$250), or by both such fine and imprisonment, and costs. In addition the Court may suspend the license of a person convicted of this offense for a minimum period of three (3) months to a maximum period of one (1) year.
  - (2) Second offense of Operating With Ability Impaired, by imprisonment for not more than ninety (90) days, or by a fine of not more than Five-hundred dollars (\$500), or by both such fine and imprisonment, and costs. In addition the Court may suspend the license of a person convicted of this offense for a minimum period of six (6) months to a maximum period of eighteen (18) months.
  - (3) Third offense of Operating With Ability Impaired, by imprisonment for not more than six (6) months or by a fine of not more than Two-thousand five hundred dollars (\$2,500), or by both such fine and imprisonment, and costs. In addition the Court may suspend the license of a person convicted of this offense for a minimum period of one (1) year to a maximum period of thirty (30) months.

1.2310 GARBAGE, GLASS, ETC. ON HIGHWAY.

- (a) No person shall throw or deposit upon the highway any glass bottle, glass, nails, tacks, wire, cans, rubbish or any other thing likely to injure any person, animal or vehicle.
- (b) Any person who drops or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.
- (c) Any person removing a wrecked or damaged vehicle from the highway shall remove any glass or injurious substance dropped upon the highway from such vehicle.

1.2311 OPEN BOTTLE IN VEHICLE. No person shall drink or consume alcoholic beverages in or on any motor vehicle when such vehicle is in operation upon a public highway or in an area used principally for public parking. No person shall have in his possession on his person while in or on a private vehicle in operation upon a public highway or in an area used principally for public parking within the jurisdiction of the Tribe any bottles or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It shall be unlawful for the owner of any private motor vehicle or the driver if the owner be not then present in or on the motor vehicle to keep or allow to be kept in a motor vehicle when such vehicle principally for public parking within the jurisdiction of the Tribe any bottle or receptacle containing such alcoholic beverages which have been partially removed except when such bottle or receptacle shall be kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied

by the driver or passengers if the vehicle not normally occupied by the driver or passengers if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers. Any person violating the provisions of this section shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars (\$25), nor more than seventy-five dollars (\$75), or by imprisonment for not more than thirty (30) days or by both such fine and imprisonment, in the discretion of the court.

1.2312 DRIVING IN VIOLATION OF AN ORDER OF THE COURT.

- (a) Any person whose right to operate a motor vehicle has been suspended by the Community Court, by any state court or by the Secretary of State of the State of Michigan and who within the period fixed by that suspension, drives or attempts to drive a motor vehicle upon a public highway is guilty of an offense.
- (b) Every person who is convicted of a first offense of driving a motor vehicle in violation of Section 1.2312(a) shall be sentenced to imprisonment for a period not to exceed ninety (90) days or to a fine not to exceed one hundred dollars (\$100) or to both such imprisonment and fine, with costs, and within the discretion of the Court may be further deprived of the right to operate a motor vehicle for an additional period for six (6) months.
- (c) Every person who is convicted of a second or subsequent offense of driving a motor vehicle in violation of Section 1.2312(a) shall be sentenced to imprisonment for a period not to exceed six (6) months, or to fine not to exceed five hundred dollars (\$500) or to both such imprisonment and fine, with costs, and within the discretion of the Court may be further deprived of the right to operate a motor vehicle for an additional period for one (1) year.

1.2313 DUTIES IN THE EVENT OF ACCIDENT.

- (a) A driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall give his name, address, and the registration number of the vehicle he is driving and shall upon request, and if available, exhibit his driver's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including hospital or medical attention.
- (b) The driver of any vehicle which collides with any vehicle of which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.
- (c) The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of the accident and of his name and address and of the registration number of the vehicle he is driving and shall upon request, and if available, exhibit his operator's or chauffeur's license.

- (d) The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to another or others to an apparent extent of one hundred dollars (\$100) or more, shall as soon as practicable thereafter give notice of such accident to a police officer of the Tribe.
- (e) Violation of any of the requirements of this section shall be an offense.

1.2314 LAW OFFICERS TO REPORT ACCIDENTS. Every Saginaw Chippewa Law Enforcement Officer who, in the regular course of duty, investigates a motor vehicle accident either at the time of and at the scene of the accident or thereafter by interviewing the participants or witnesses shall, within twenty-four (24) hours after completing such investigation, forward a written report of the accident to the Captain of the Tribal Police.

1.2315 PENALTIES NOT OTHERWISE PRESCRIBED. Any person who is convicted of an offense enumerated in this chapter for which the penalty is not otherwise prescribed shall be sentenced under this section to a fine of not more than one hundred dollars (\$100), or to imprisonment for a period not to exceed thirty (30) days; and the court shall take into consideration any circumstances urged for the imposition of a lesser amount.

1.2316 STATUTE OF LIMITATIONS. No prosecution shall be maintained under this chapter or under Chapter 3.16 of Title III of the Tribal Code unless the action shall have been commenced within twelve (12) months after the commission of the offense.

1.2317 INCORPORATION OF STATE LAWS BY REFERENCE; PROSPECTIVE INCORPORATION OF AMENDMENTS.

- (a) Whenever any section of this chapter shall indicate that the laws of the State of Michigan have been incorporated by reference, such laws or portions thereof as are specified shall be of equal force and effect within the jurisdiction of the Saginaw Chippewa Indian Tribe of Michigan as if they had been promulgated by the Tribal Council of the Saginaw Chippewa Indian Tribe of Michigan and set forth herein in the entirety; provided, however, that the penalties for violation thereof shall not be incorporated herein but shall be as provided in this Code; and provided further that in the event of any conflict or inconsistency between such incorporated State Laws and this Code, the provisions of this Code shall govern.
- (b) Wherever such State Laws are incorporated herein by reference, amendments thereto shall also be deemed to be incorporated upon their effective date in the State of Michigan without further action by Tribal Council, provided, however, that in the event of any conflict between such amendments and the existing provisions of this Code (excepting the State Law being amended), the provisions of this Code shall govern.

1.2318 AUTOMOBILE LIABILITY INSURANCE. No person shall operate or assist in the operation of a motor vehicle within the jurisdiction of the Tribe nor shall any owner of a motor vehicle allow or consent to the vehicle's operation within this jurisdiction, until and unless the operator of said vehicle shall have in full force and effect at the time of said operation a policy of liability insurance comporting in all respects with the requirements and regulations of the State of Michigan then in force with respect to such insurance

throughout the State of Michigan, violation of the provisions of this section is an offense punishable by imprisonment for no less than three (3) days, nor more than thirty (30) days and a fine of no less than fifty dollars (\$50), nor more than one hundred dollars (\$100), with costs.

- 1.2319 TRAFFIC SAFETY SCHOOL. Any person convicted of an offense under this chapter may, in lieu or in addition to any penalty set forth herein be required to attend a recognized traffic safety school administered by the State of Michigan, the Saginaw Chippewa Indian tribe of Michigan, the Federal government, or any other municipality. Any person who shall fail to attend the traffic safety school when ordered may have his driving privileges suspended, in the discretion of the court for a period not to exceed six (6) months.

## Chapter 1.24

### DOMESTIC ABUSE PROTECTION CODE

#### 1.2401 CONSTRUCTION

The Domestic Abuse Protection Code must be construed to promote:

1. Every man, woman, and child's right to be free of harm or intimidation perpetrated by a person of intimate association.
2. The protection and safety of all victims of family violence In a fair, prompt, and effective manner.

#### 1.2402 DEFINITIONS

1. "Family violence" means any act which is intended to harm or intimidate a family or household member, either directly or indirectly, but does not include acts of self-defense. Such acts include, but are not limited to:
  - (a) assault;
  - (b) battery;
  - (c) sexual acts with a minor or non-consenting adult;
  - (d) withholding of medical treatment, or the means necessary to obtain medical treatment, that is reasonably necessary to alleviate pain or to treat an injury, disease, or other medical condition;
  - (e) damage to property, if intended to harm or intimidate a family or household member;
  - (f) stalking;
  - (g) child abuse;
  - (h) witnessing abuse;
  - (i) vulnerable adult abuse;
  - (j) oral or written threats to commit an act described in subparagraphs (a) through (j) of this paragraph.
2. "Family or household members" are:
  - (a) spouses, or former spouses;
  - (b) persons who are related by blood, adoption or marriage;



- (c) persons who have a child in common;
  - (d) persons who are, or previously were involved in a romantic, dating, or other intimate personal relationship, regardless of the formality of this relationship;
  - (e) any minor children residing in the household;
  - (f) vulnerable adults, including adults unable to protect themselves from abuse, neglect, or exploitation.
3. "Intimidate" means:
    - (a) to place a person under reasonable apprehension of immediate harm; or
    - (b) to influence, by violence or threats of violence, a person's conduct or decisions.
  4. "Personal protection order" means an injunctive order issued by the Tribal Court restraining or enjoining family violence, intimidation, or stalking.
  5. "Self Defense" means a person's justifiable use of force upon another person when that person believes such force is necessary to defend his or her self or a third party from what that person reasonably believes to be the use or, imminent use, of unlawful physical force by the other person.
  6. "Stalking" means a willful action involving repeated or continuing harassment of another individual that would cause a reasonable person to feel frightened, intimidated, threatened, or harassed, and that actually causes the victim to feel frightened, intimidated, threatened, or harassed.

#### 1.2403 PENALTY AND ENHANCEMENT OF PENALTY FOR OFFENSES INVOLVING FAMILY VIOLENCE

1. When an individual who has not been previously convicted of an assault crime against a family or household member pleads guilty to, or is found guilty of a violation of the Code, the court, without entering a judgment of guilt, may defer further proceedings and place the accused on probation as provided in this section.
2. An order of probation entered under subsection (1) will require the accused to participate in a mandatory counseling program. The counseling programs will be clinically based. Counseling programs include:
  - (a) Batterer intervention programs;
  - (b) mental health services programs;
  - (c) If alcohol or controlled substance use was involved in the occurrence or incident, the accused must participate in substance abuse counseling programs;
  - (d) If criminal sexual conduct was involved in the incident, the accused must participate in sex offenders treatment programs;
  - (e) If any child resided in the home at the time of the incident, the accused must participate in an effects of violence on children program.
3. Upon fulfillment of the terms and conditions, the court may discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section. There may be only one (1) discharge and dismissal under this section with respect to any individual.
4. The court shall enter an adjudication of guilt and proceed as otherwise provided in

this section if any of the following circumstances exist.

- (a) If the accused commits an act of family violence, as defined above, a penalty of one (1) year may be imposed if the crime is committed during the 72 hours immediately following release from custody. The 72 hour period applies whether or not the victim drops the charges. The victim of the subsequent family violence crime does not have to be the same as the victim of the original family violence incident that resulted in the arrest.
- (b) If the accused violates a probation, treatment, contact, or other Court order, a penalty of one (1) year may be imposed.
- (c) If the accused pleads guilty to or has been found guilty of a second or subsequent crime involving family violence, a penalty of one (1) year may be imposed. The victim of the subsequent family violence crime does not have to be the same as the victim of the original domestic violence incident that resulted in the first arrest.
- (d) If the court rejects a deferment of proceedings, a penalty of 90 days may be imposed.

#### 1.2404 SENTENCING ALTERNATIVES

Purpose: To deter and punish family violence offenders and to provide safety for family violence victims in a culturally sensitive manner by utilizing modern and traditional Saginaw Chippewa remedies and punishments.

- 1. Sentencing Guidelines and First Offenders.
  - (a) When appropriate, the court may order the following types of counseling;
    - i. Bantered counseling;
    - ii. mental health counseling;
    - iii. substance abuse counseling;
    - iv. sexual offender counseling.
  - (b) The court may impose monetary punishment(s) including, but not limited to:
    - i. fines of up to One Thousand Dollars (\$1,000), which shall be separately accounted for and used to offset the costs of programming and enforcement under this code;
    - ii. court costs and legal fees;
    - iii. victim reimbursement including, but not limited to:
      - a. medical expenses;
      - b. personal property damage;
      - c. counseling expenses;
      - d. relocation expenses;
    - iv. reimbursing service providers for court ordered counseling programs;
    - v. reimbursing the local domestic violence program for emergency shelter services provided to the victim and other household members.
  - (c) Jail time may be ordered.
  - (d) Any traditional Saginaw Chippewa remedies that the Court deems

- appropriate may be ordered.
2. Sentencing Guidelines for Repeat Offenders.
    - (a) A court order prohibiting contact with the victim must be a condition to bond.
    - (b) The maximum jail sentence of one (1) year must be imposed.
    - (c) Monetary punishment including, but not limited to:
      - i. fines of up to Five Thousand Dollars (\$5,000), which shall be separately accounted for and used to offset the costs of programming and enforcement under this Code;
      - ii. court costs and legal fees;
      - iii. restitution to the victim, including, but not limited to.
        - a. medical expenses;
        - b. personal property damage;
        - c. victim counseling;
        - d. relocation expenses.
      - iv. reimbursing service providers for court ordered counseling programs;
      - v. reimbursing the local domestic violence program for emergency shelter services provided to the victim and other household members.

#### 1.2405 CONDITIONS OF PRE-TRIAL RELEASE

1. In making a decision concerning pre-trial release of an offender who is arrested or charged with a crime involving family violence the Tribal Court has the authority to decide whether to allow pre-trial release and shall review whether the offender:
  - (a) is a threat to the alleged victim or other family or household members;
  - (b) is a threat to public safety;
  - (c) is reasonably likely to appear in court;
  - (d) has a prior assaultive history.
2. The Tribal Court may impose the following conditions of release:
  - (a) an order enjoining an offender from threatening to commit future acts of family violence against the alleged victim;
  - (b) an order prohibiting the offender from harassing, telephoning, or otherwise contacting the alleged victim;
  - (c) an order directing the offender to vacate the premises the victim occupies;
  - (d) an order prohibiting the offender from using or possessing alcohol or controlled substance;
  - (e) an order prohibiting the offender from using or possessing a firearm or other weapon;
  - (f) any other order required to protect the safety of the victim and to ensure the presence of the offender in court.
3. If conditions of release are imposed, the Tribal Court shall:
  - (a) issue a written order for conditional release;
  - (b) immediately provide a copy of the order to the tribal police and the Domestic Violence Officer.
4. The Domestic Violence Officer shall:

- (a) immediately notify the victim of the conditions of release and the pending charges;
  - (b) furnish the victim with a copy of the release conditions.
5. The Tribal Court shall provide a copy of the conditions of release to the offender upon his or her release. However, failure to provide the offender with a copy of the conditions of release does not invalidate the order.
  6. The Trial Court must issue a no contact order valid for a minimum of 72 hours following release of the alleged offender.

#### 1.2406 ENFORCEMENT

Purpose: The purpose of this section is to establish guidelines for handling family violence incidents that promote the prevention of future violence.

1. The Tribal Police Department shall view family violence as a crime against the tribal community. Their policy shall be to:
  - (a) reinforce that family violence is criminal conduct;
  - (b) immediately arrest the perpetrator of violence in all cases where probable cause exists;
  - (c) notify the prosecutor so an arrest warrant may be issued if probable cause exists to arrest and the alleged aggressor cannot be found;
  - (d) preserve the integrity of the family and tribal community.

#### 1.2407 RESPONSIBILITIES OF THE LAW ENFORCEMENT OFFICER TO THE VICTIMS

1. A law enforcement officer who responds to a family violence call must use all reasonable means to protect the victim and minor children, and to prevent further violence. This may include, but is not limited to:
  - (a) taking the action necessary to provide for the safety of the victim and any household members;
  - (b) confiscating any weapon involved;
  - (c) assisting all victims in obtaining medical treatment, including transportation to a medical facility;
  - (d) assisting the victims in removing essential personal effects;
  - (e) transporting the victim and any minor child to a shelter;
  - (f) giving the victims immediate notice of rights, remedies, and services available;
  - (g) notifying the appropriate agency or agencies that can provide assistance.
2. In cases of conflicting complaints from two or more parties, mutual arrest shall not be the preferred policy of the Tribe. When conflicting complaints are received from two or more parties, the following guidelines must be followed:
  - (a) When complaints are received from two or more persons, the law enforcement officer must evaluate each complaint separately to determine who was the primary aggressor. The officer should consider:
    - i. prior complaints of family violence;
    - ii. the relative severity of the injuries inflicted on each person;
    - iii. the likelihood of future Injury to each person;

- iv. whether one of the persons acted in self-defense or defense of another;
- v. the statements of any children present;
- vi. any evidence of alcohol or drug use.
- (b) If the primary aggressor is not apparent and the officer determines that mutual arrest is necessary, the officer must submit a separate written report containing the specific reasons for this action.
- 3. The law enforcement officer must inform the victim that they are entitled to:
  - (a) assistance in obtaining medical treatment;
  - (b) assistance in obtaining essential personal effects;
  - (c) assistance in locating and obtaining transportation to a shelter, or other place of safety.

#### 1.2408 RESPONSIBILITIES OF THE LAW ENFORCEMENT OFFICER TO ANY MINOR CHILDREN PRESENT

- 1. A law enforcement officer who responds to family violence where minor children are present must use all reasonable means to protect the minor children and prevent further acts of violence in their presence. This includes, but is not limited to:
  - (a) taking the actions necessary to provide for the safety of the minor children;
  - (b) ensuring that the minor children will have adequate supervision after the abuser(s) are removed;
  - (c) notifying the Child Welfare worker.

#### 1.2409 RESPONSIBILITIES OF THE LAW ENFORCEMENT TO THE ALLEGED ABUSER

If a law enforcement officer has probable cause to believe that a person has committed a crime involving family violence, the officer must, without a warrant, arrest and charge the abuser with the appropriate crime, and fingerprint the alleged abuser.

#### 1.2410 AUTHORITY OF LAW ENFORCEMENT OFFICER TO SEIZE WEAPONS

- 1. Incident to an arrest or removal for a crime involving family violence a law enforcement officer:
  - (a) must seize all weapons that are allegedly involved in the crime, either by use or by threat;
  - (b) must seize a weapon that is in plain view or was discovered pursuant to a consensual search, if necessary to protect the officer and any other persons.
- 2. Any weapons seized under this Section shall, upon conviction of the accused, be forfeited and destroyed.

#### 1.2411 THE COOLING-OFF PERIOD

When an alleged abuser has been arrested for a family violence crime, the officer must take and hold the alleged abuser in custody until arraignment. No bond may be granted pending formal arraignment in open court.

#### 1.2412 REPORTING REQUIREMENTS

1. A law enforcement officer must complete a detailed written report for each response to a family violence complaint. The report must include, but is not limited to:
  - (a) address, date, time of the occurrence or incident investigated;
  - (b) the victim's name, address, home and work telephone numbers, race, sex, and date of birth;
  - (c) the suspect's name, address, home and work telephone numbers, race, sex, date of birth, and information describing the suspect;
  - (d) the name, address, home and work telephone numbers of any witnesses to the crime, including children of the victim or suspect or any children residing in the residence;
  - (e) the relationship between the suspect and the victim;
  - (f) a complete record of all statements made by the abuser, victim, witnesses, and all minor children present;
  - (g) a detailed description of the victim's and the abuser's physical condition including height, weight, and photographs of all injuries;
  - (h) history of prior abuse of any party;
  - (i) the relationship of the person who called the police;
  - (j) a notation that the 911 tape was requested for evidence;
  - (k) whether alcohol or controlled substances were involved in the incident, and by whom;
  - (l) a narrative describing the dispute and the circumstances that lead to it;
  - (m) whether the suspect physically and/or sexually assaulted the victim, including a list of any injuries;
  - (n) a description of any weapon or object used in committing the crime;
  - (o) a description of property damage and any evidence gathered at the scene;
  - (p) information on the medical treatment, if any, that the victim received.
2. The tribal police shall retain the completed police report in its files. The officer shall forward the copies to the prosecutor within twenty-four (24) hours of the incident.

#### 1.2413 PROSECUTOR'S DUTIES IN FAMILY VIOLENCE OFFENSES

Purpose: To establish clear guidelines for the Tribal Prosecutor to follow to insure offender accountability and the safety of the victim.

1. In prosecuting family violence crimes, the protection and safety of the victim(s) shall be controlling.
2. The prosecutor must promptly review every report of family violence that is received from the tribal police.
3. If sufficient evidence is present, each and every charge present must be brought against the alleged offender.
4. If charges are not brought, the victim(s) must be notified as soon as practical.
5. The prosecutor must contact the Domestic Violence Officer as soon as practical, to:
  - (a) give/receive additional information;
  - (b) assess with the Domestic Violence Officer the facts and circumstances

- underlying the offense(s);
  - (c) plan for the safety of the victim(s).
- 6. Plea bargaining shall not be an option in family violence offenses.
- 7. The prosecutor's office must collect and collate data on family violence offenses.
- 8. The prosecutor must notify the victim(s) of a family violence offense that they have certain rights. These rights include, but are not limited to:
  - (a) the right to receive notice of all hearing dates and continuances;
  - (b) the right to address the court;
  - (c) the right to be reimbursed for personal property destroyed by the offender;
  - (d) the right to assistance from the Victim's Advocate.

#### 1.2414 AUTHORITY OF THE COURT TO ISSUE A PERSONAL PROTECTION ORDER

Purpose: To protect and promote safety of victims from the fear of family violence, harm or intimidation.

1. An individual may petition the Tribal Court to enter a personal protection order to restrain or enjoin a family or household member from the threat or commission of family violence, intimidation, or stalking, as defined in this code.
2. The court shall issue a personal protection order if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit family violence, intimidation, or stalking.
  - (a) A personal protection order is effective upon signing by a Judge or magistrate of the Tribal Court.
  - (b) A personal protection order shall be served personally or by certified mail, return receipt requested, delivery restricted to the person restrained or enjoined.
  - (c) The personal protection order may be a civil or criminal restraining order depending upon the personal jurisdictional facts determined by the court.
3. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the person has been served with or has received actual notice of the order. The court shall hold a hearing on a motion to modify or rescind a personal protection order within 14 days of the filing of the motion.

#### 1.2415 AUTHORITY OF TRIBAL POLICE AND COURT TO ENFORCE A PERSONAL PROTECTION ORDER

1. Tribal Police shall be responsible for entering the personal protection order into the law enforcement information network as provided by the L.E.I.N. policy council.
2. A police officer, without a warrant, may arrest and take into custody an individual when there is reasonable cause to believe that the individual named in the personal protection order is in violation of the order. An individual arrested pursuant to this section shall be brought before the Tribal Court within 72 hours after arrest to answer to a charge of contempt for violation of the personal protection order.
3. An individual who refuses or fails to comply with a personal protection order, if found guilty, is subject to:

- (a) The civil contempt powers of the court as defined by Title III of the Tribal Code where a civil personal protection order has been entered by the court; or
- (b) Imprisonment for not more than 90 days and a fine of up to One Thousand Dollars (\$1,000), plus court costs where a criminal personal protection order has been entered by the court.

### **Chapter 1.25**

#### Stalking/Harassment of Non-Family Members

1.2501 Stalking/Harassment as used in this section:

- 1. “Course of conduct” means a pattern of conduct composed of a series of two (2) or more separate non-continuous unconsented contacts evidencing a continuity of purpose.
- 2. “Stalking” means a willful Course of Conduct involving repeated or continuing harassment of another individual 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. Stalking does not include constitutionally protected activity or conduct that serves a legitimate purpose.
- 3. “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 communication to the contacting party that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:
  - (a) Following that individual.
  - (b) Approaching or confronting that individual in a public place or on private property.
  - (c) Appearing at that individual's workplace or residence.
  - (d) Entering onto or remaining on property owned, leased, or occupied by that individual.
  - (e) Contacting that individual by telephone.
  - (f) Sending mail or electronic communications by any means or social media to that individual.
  - (g) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

1.2502 An individual who engages in stalking is guilty of a crime as follows:

- 1. Except as provided in this subdivision (b) and (c), a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not



more than \$500.00, or both.

2. If the victim of Stalking was less than 18 years of age at the time the Stalking occurred and the perpetrator is five (5) or more years older than the victim, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.
3. If the Defendant has one or more prior convictions for Stalking/ a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

1.2503 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 any contempt of court arising from the same conduct.

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### Legislative History

Enacted June 8, 1981, Res. Nos. JA-09-81 & L&O-12-81 (app'd by BIA August 10, 1981); amended February 1, 1982, Res. No. L&O-01-82 (app'd by BIA \_\_/\_\_/\_\_); amended May 9, 1983, Res. No. L&O-06-83 (app'd by BIA \_\_/\_\_/\_\_); amended September 12, 1983, Res. No. L&O-11-83 (app'd by BIA September 27, 1983); amended February 4, 1985, Resolution L&O-01-85 (app'd by BIA February 19, 1985); amended May 2, 1988, Res. No. 88-047; amended January 23, 1989, Res. Nos. 89-025 & 89-029; amended April 9, 1990, Res. No. 90-058; amended February 25, 1992, Res. No. 92-023; amended October 5, 1993, subsection 1.2029 repealed by subsection 3.4 of Title IX (enacted on October , 1993, by Res. No. 94-001); February 3, 1998, Chapter 1.24 enacted by oral motion; December 22, 1998, subsections 1.513, 1.514 and 1.1410 amended, Res. No. 99-024; February 26, 1999, subsections 1.2057–1.2059 enacted by oral motion; July 15, 1999, subsections 1.2057–1.2059 repealed, Res. No. 99-103; subsection 1.510 amended September 2, 1999 by Res. No. 99-223; and Chapter 1.5 amended on November 28, 2001, by Res. No. 02-056; Chapter 1.509 amended on July 14, 2003 by Resolution No. 03-177; Chapter 1.505 amended on July 23, 2003 by Resolution No. 03-181; Section 1.2049 amended on March 25, 2009 by Resolution 09-056; Section 1.2036 amended by Resolution 11-097 on June 22, 2011. Section 1.507 amended by Resolution 12-039 approved on January 12, 2012. Subsections 1.108(l)-1.108(ee); Subsections 1.2018(c) and (d); Subsection 1.2030(c) and Sections 1.02060-1.2071 added; Subsections 1.2018(a) and (b) amended; Sections 1.2005 and 1.2045 repealed by Resolution 13-034 approved on May 29, 2013. Subsection 1.510.2(b)(2) amended by Resolution 15-075 approved on March 19, 2015. Chapter 1.25 added by Resolution 17-062 approved on January 10, 2017. Subsection 1.2036.7 added by Resolution 17-065 approved on January 18, 2017. Section 1.102 amended by Resolution 17-145 approved on August 23, 2017.