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OFFENSES AND PENALTIES  
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TITLE 26

OFFENSES AND PENALTIES

CHAPTER 26.01

General Purposes

26.0101 The general purposes.

The general purposes of this Title are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to an individual or public interests for which tribal protection is appropriate. To this end, the provisions of this Title are intended, and shall be construed, to achieve the following objectives:

1. To ensure the public safety through:
  - a. vindication of public norms by the imposition of merited punishment;
  - b. the deterrent influence of the penalties hereinafter provided;
  - c. the rehabilitation of those convicted of violations of this title; and
  - d. such confinement as may be necessary to prevent likely recurrence of serious criminal behavior.
2. By definition and grading of offenses, to define the limits and systematize the exercise of discretion in punishment and to give fair warning of what is prohibited and of the consequences of violation.
3. To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.
4. To safeguard conduct that is without guilt from condemnation as criminal and to condemn conduct that is with guilt as criminal.
5. To prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

ADOPTED TMBC5619-04-94 AMENDED REMOVED PARAGRAPH 6 BY RESOLUTION TMBC1246-06-18.

CHAPTER 26.02

Proof and Presumptions

26.0201 An accused is presumed innocent until proven guilty.

1. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. A person is presumed innocent until proven guilty. The fact that a person has been arrested, confined, or charged with the offense gives rise to no inference of guilt at his his/her Tribal Court procedure. "Element of an offense" means:
  - a. the forbidden conduct;
  - b. the associated circumstances specified in the definition and grading of the offense;
  - c. the required culpability;
  - d. any required result; and
  - e. the nonexistence of a defense as to which there is evidence in the case sufficient to give rise to a reasonable doubt on the issue.
2. Subsection 1 does not require invalidating a defense:
  - a. by allegation in the charging document; or
  - b. by proof, unless the issue is in the case as a result of evidence sufficient to raise a reasonable doubt on the issue.
3. Unless it is otherwise provided or the context plainly requires otherwise, if an offense outside this Title defining an offense, or a related statute, or rule or regulation thereunder, contains a provision constituting an exception from criminal liability for conduct which would



otherwise be included within the prohibition of the offense, that the defendant came within such exception is a defense. Subsection 1 does not apply to any defense which is explicitly designated an "affirmative defense." An affirmative defense must be proven by the defendant by a preponderance of evidence.

4. When a statute establishes a presumption, it has the following consequences:
  - a. If there is sufficient evidence of the facts which gave rise to the presumption, the presumed fact is deemed sufficiently proved to warrant submission of the issue to a jury unless the court is satisfied that the evidence as a whole clearly refuted the presumed fact.
  - b. In submitting the issue of the existence of the presumed fact to a jury, the court shall charge that, although the evidence as a whole must establish the presumed fact beyond a reasonable doubt, the jury may arrive at that judgment on the basis of the presumption alone, since the law regards the facts giving rise to the presumption as strong evidence or the fact presumed.
5. When a statute declares that given facts constitute a prima facie case, proof of such facts warrants submission of a case to the jury with the usual instructions on burden of proof and without additional instructions attributing any special probative force to the facts proved.

ADOPTED TMBC5619-04-94

#### CHAPTER 26.03

#### General & Sex Crime Definitions

#### 26.0301 Definitions.

1. "ABDUCTION" means to knowingly take away a person by persuasion, by fraud, or by open force or violence. ADOPTED TMBC 686-01-12.
2. "ABUSE" means to make excessive or improper use of a device or to employ it in a manner contrary to the natural or legal rules for its use. ADOPTED TMBC686-01-12.
3. "ABUSIVE SEXUAL CONTACT" means to knowingly engage in sexual-contact with another person without that person's permission or is with an individual who has not attained the age of [14] fourteen years. ADOPTED TMBC 686-01-12.
4. "ABSCONDED" means any sex offender who cannot be located after making reasonable attempts. ADOPTED TMBC 686-01-12.
5. "ACT" or "action" means bodily movement, whether voluntary or involuntary. Act and actions include, where relevant, omitted to act and omissions to act. ADOPTED TMBC5619-04-94
6. "ADJUDICATION" means the formal giving or pronouncing of a judgment or decree in a court proceeding; also the judgment or decision given. The entry of a judgment by a court in regard to the parties in a case, and it implies a hearing by a court, after notice, of legal evidence on the factual issue(s) involved. It indicates that the claims of all the parties thereto have been considered and put to rest. ADOPTED TMBC 686-01-12.
7. "AGGRAVATED SEXUAL ABUSE" means to knowingly cause another person to engage in a sexual act by using force against that person or by threatening or placing that person in fear that any person will be subjected to death, serious bodily injury or kidnapping or attempts to do so. ADOPTED TMBC 686-01-12.
8. "AT RISK" means in danger, endangered, in jeopardy, threatened, vulnerable, susceptible, exposed, helpless, and defenseless; any person may be exposed to a risk of being victimized by a sex offender. ADOPTED TMBC686-01-12

9. "ATTEMPT AND CONSPIRACY" means any person who attempts or conspires to commit any offense under this code shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy. ADOPTED TMBC1246-06-18.

10. "AUXILLARY POLICE" shall mean all officers possessing a special commission from the Turtle Mountain Tribal Council or their designee. ADOPTED TMBC1246-06-18.

11. "BANISHMENT." A person convicted under section 26.1701 or 26.1702 or one of the subdivisions may be referred for the civil penalty of banishment Title 39 Section 39.0105 from the Turtle Mountain Band of Chippewa Indians. ADOPTED TMBC1246-06-18.

12. "BESTIALITY" means a person who performs sex with an animal. ADOPTED TMBC1246-06-18.

13. "BIGAMY" means when a husband has (2) or more wives or when a wife has (2) two or more husbands. ADOPTED TMBC1246-06-18.

14. "BODILY INJURY" means any impairment of physical condition, including bodily pain. ADOPTED TMBC1246-06-18.

15. "BREACH OF AUTHORITY" means an employer, youth leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian, baby sitter, or a substantially similar position, police officer and/or a probation officer whom abuses their position or authority for sexual relations (of trust). ADOPTED TMBC1246-06-18.

16. "BREATHALYZER" means a chemical test of a person's breath to estimate blood alcohol content (BAC) and whether a person is under the influence or impaired. The test is administered by a police officer trained and certified in the use of the equipment. The equipment must be calibrated on a regular basis and will be recognized a legal test and proof of a person's BAC. ADOPTED TMBC1246-06-18.

17. "CARETAKER" means an individual who has responsibility for the care of a child as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a child. ADOPTED TMBC1246-06-18.

18. "CAUSING A CHILD TO VIEW OR LISTEN TO SEXUAL ACTIVITY" means to intentionally cause a child to view or listen to sexually explicit conduct if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or of humiliating or degrading the child. ADOPTED TMBC 686-01-12.

19. "CIVIL FORFEITURE" means a person convicted under 26.1701 or 26.1702 or one of the subdivisions may be referred for civil forfeiture of any property, including, but not limited to home, vehicles, money, jewelry, luxury items, clothing, shoes, furniture, firearms, cell phones, computers, scanners, electronic surveillance systems, etc., if proceeds of sale activity were used for the purchase of any property. ADOPTED TMBC741-05-10.

20. "CHILD PORNOGRAPHY" means any visual image including any photograph, film, video, picture, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct. Also knowingly producing, distributing, receiving, or possessing with the intent to distribute, a visual image of any kind, including a drawing, cartoon, sculpture or painting. Sexually explicit acts defined as real or simulated sexual intercourse containing genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, bestiality, masturbation, sadistic or masochistic abuse, or lascivious exhibition of the genitals or pubic area of any person. ADOPTED TMBC 686-01-12.

21. "COCAINE" means coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine, the salts and isomers of cocaine and ecgonine, July, 2018

and the salts of their isomers and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of those substances, except decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine. ADOPTED TMBC1246-06-18.

22. "COERCING A MINOR TO ENGAGE IN PROSTITUTION" to engage in any sexual activity for which a person can be charged with a criminal offense. ADOPTED TMBC 686-01-12.

23. "COERCION" means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance. ADOPTED TMBC1246-06-18.

24. "CONTEMPT" means any act done in disrespect of the Court or its process or which obstructs the administration of justice. ADOPTED 4/24/1994

25. "CONTROLLED SUBSTANCE" means a drug, substance, or immediate precursor in Schedules I through V of section 26.1702.01. ADOPTED TMBC1246-06-18.

27. "CONTROL OR CUSTODY" means temporary supervision over or responsibility for a juvenile or minor whether legally or illegally obtained. ADOPTED TMBC1246-06-18.

28. "CONVICTION" means that the sex offender has been subject to penal consequences based upon an order from a criminal or delinquency court. This shall include but not be limited to convictions in any tribal, federal, state and foreign courts. A juvenile offender is "convicted" for purposes of this code when prosecuted as an adult. This includes convictions of juveniles who are prosecuted as adults and those adjudicated delinquent; if the offender is 14 years of age or older at the time of the offense and the offense was comparable to or more severe than aggravated sexual abuse (18 USC 2241) or was an attempt or conspiracy to commit such an offense. ADOPTED TMBC 686-01-12

29. "CORROBORATIVE" means evidence which strengthens, adds to, or confirms already existing evidence. ADOPTED TMBC1246-06-18.

30. "CORRUPT" means a wrongful design to acquire or cause some monetary interest or other advantage. ADOPTED TMBC5619-04-94

31. "COUNTERFEIT Substance" means to falsely manufacture, create, distribute, deliver, dispense or possess with intent to deceive or defraud in place of a controlled substance for sale or distribution. ADOPTED TMBC1246-06-18.

32. "CREDIT" means an arrangement or understanding with another for the payment of a debt. ADOPTED TMBC1246-06-18.

33. "CRIMINAL STREET GANG" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity. ADOPTED TMBC1246-06-18.

34. "CRIMINAL STREET GANG MEMBER" is a person who is a member of a criminal street gang. ADOPTED TMBC1246-06-18.

35. "CURFEW HOURS" means 10:00 p.m. until 6:00 a.m. Central Standard Time every day of the week. TMBC863-08-10.

36. "DANCE HALLS" A "DANCE" or "ACTIVITY HALL" shall mean:  
a. a business that charges a rental or admission to the public for use and/or entry into a building for dancing and other activities including weddings and

receptions, private parties, campaign parties and live music entertainment, etc.;

- b. fraternal, church and other halls used for dances, weddings and receptions, private parties, campaign parties, etc. shall be included in this definition.  
ADOPTED 4/24/1994

37. "DANGEROUS DEVICE" means any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or flammable substance, chemical, or compound, or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts, unexpectedly when moved, handled, or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or under conditions or in a manner calculated to endanger health, life, limb, or property. ADOPTED TMBC1246-06-18.

38. "DANGEROUS WEAPONS" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. In determining whether an item, object or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the instrument, object or thing, the character of the wound produced, if any, and the manner in which the instrument, item or thing was used shall be determinative. This includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any throwing star, nunchaku, or other martial arts weapon, any billy club, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any stun gun; and any projector of a bomb or many object containing or capable of producing and emitting any noxious liquid, gas, or substance. ADOPTED TMBC5619-04-94 AND AMENDED BY TMBC1246-06-18.

39. "DEPENDENT SPOUSE" means a spouse, whether husband or wife, who is essentially considerably dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse. ADOPTED TMBC1246-06-18.

40. "DEVIATE SEXUAL ACT" means any form of sexual contact with an animal or dead person. ADOPTED TMBC 686-01-12.

41. "DISTRIBUTE" means administer or bestow, spread, make available, give to several people or circulate. ADOPTED TMBC1246-06-18.

42. "DOMAIN NAME" means a name which locates an organization or other entity on the internet. ADOPTED TMBC1246-06-18.

43. "DRU SJODIN NATIONAL SEX OFFENDER PUBLIC WEBSITE [NSOPW]". The public website maintained by the Attorney General of the United States pursuant to [U.S.C.42 §16920]. ADOPTED TMBC1246-06-18.

44. "DRUG PARAPHERNALIA" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, as defined unlawful under this code. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP methamphetamine, or amphetamines into the human body, such as capsules, balloons, envelopes or other containers used and intended to be used or designed for use in packaging small quantities of controlled substances, hypodermic syringes intended for use of ingesting illegal controlled substances, metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the  
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hand; miniature spoons with level capacities of one-tenth cubic centimeter or less; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongos; ice pipes or chillers; wired cigarette papers; or cocaine freebase kits. ADOPTED TMBC1246-06-18.

45. "EMANCIPATE" means when a juvenile has achieved independence from his/her parents such as getting married before the juvenile reaches the age of 18 or by becoming fully self-supporting. A juvenile who has petitioned a court to free themselves from the control of parents and allow the juvenile to live on his/her own. ADOPTED TMBC 686-01-12.

46. "EMERGENCY" means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life. ADOPTED TMBC1246-06-18.

47. "EMERGENCY COMMUNICATIONS" means and shall include communications to law enforcement agencies or other emergency personnel, or other individuals, relating or intending to relate that an individual is reasonably believed to be, or reasonably believes himself/herself or another person to be, in imminent danger of bodily injury, or that an individual reasonably believes that his/her property or the property of another is in imminent danger of substantial damage, injury or theft. ADOPTED TMBC1246-06-18.

48. "EMOTIONAL DAMAGE" means severe anxiety, depression, withdrawal, or aggressive behavior toward him/herself or others. ADOPTED TMBC1246-06-18.

49. "EMPLOYEE" the term "employee" means as used in this code includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation including but not limited to volunteers, interns, externs, and apprentices. Also includes all employees of the federal, state, and tribal government and any tribally owned properties, businesses and organizations included within the definition of employee for registration purposes. ADOPTED TMBC1246-06-18.

50. "ENGAGING IN ILLICIT CONDUCT IN FOREIGN PLACES" means any U.S. citizen or alien admitted for permanent residence that travels in foreign commerce, and engages in any illicit sexual conduct with another person. ADOPTED TMBC1246-06-18.

51. "ENTRAPMENT" mean a defense to criminal charges based on collaboration between law enforcement officer(s) and defendant earlier or during the alleged crime. ADOPTED TMBC1246-06-18.

52. "ESTABLISHMENT" means any privately or tribally owned place of business operated for a profit or not for profit to which the public is invited including, but not limited to, any place of amusement or entertainment. ADOPTED TMBC1246-06-18.

53. "EXPOSING GENITALS IN PUBLIC AREA" means exposing genitals in public area if he or she, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes his/her genital or pubic area to a child. ADOPTED TMBC 686-01-12.

54. "FAILURE TO APPEAR" means, in this circumstance, the event a sex offender fails to register with the Tribe as required by this Code. ADOPTED TMBC 686-01-12.

55. "FAILURE TO FILE FACTUAL STATEMENT ABOUT AN ALIEN INDIVIDUAL" means whoever keeps, maintains, controls, supports, or harbors in any house or place for the purpose of prostitution, or for any other immoral service any individual, knowing or in reckless disregard of the fact that the individual is an alien, shall file with the local law enforcement a statement in writing setting forth the name of such individual, the place at which that individual is kept, and all facts as to the date of that individual's entry

into the United States. ADOPTED TMBC 686-01-12.

56. "FAILURE TO PROVIDE INFORMATION" means any person who is required to provide information under Title 42, the Sex Offender Registration Code, based on any conviction. ADOPTED TMBC 686-01-12.

57. "FAILURE TO REGISTER" means any sex offender who fails to register within 24 hours of entering the Turtle Mountain Band of Chippewa Indian Reservation. ADOPTED TMBC 686-01-12.

58. "FALSE IMPRISONMENT" means to intentionally restrain another person without having the legal right to do so. This can literally mean physical restraint, such as locking someone in a car or tying the person to a chair. However, it is not necessary that physical force be used; threats or a show of apparent authority are sufficient. ADOPTED TMBC1246-06-18.

59. "FIREARMS" means pistols, revolvers, rifles, shotguns, and any device that is capable of being used as a weapon because it expels a projectile by some means of force. A firearm or other weapon shall be deemed "loaded" when there is an unexpended cartridge, shell or projectile in the firing position, except in the case of pistols and revolvers in which case they shall be deemed "loaded" when an unexpended cartridge, shell or projectile is in such position as could be fired by one or more pulls of the trigger. ADOPTED 4/4/1994.

60. "FOREIGN CONVICTIONS" means the conviction is obtained from outside of the United States. ADOPTED TMBC 686-01-12.

61. "FORCE" means a physical power in motion or in action. ADOPTED TMBC1246-06-18.

62. "GAMING SITE" means any room or premises licensed by the attorney general and by the tribal governing body to conduct legal gaming operations. ADOPTED TMBC1246-06-18.

63. "GOVERNMENT" shall mean:

- a. the governing body of this Tribe or any political subdivision of this Tribe;
- b. any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches;
- c. any corporation or other entity established by law to carry on any governmental function;
- d. any commission, corporation, or agency established by ordinance, compact, or contract between or among governments for the execution of intergovernmental programs. ADOPTED TMBC1246-06-18.

64. "GOVERNMENTAL FUNCTIONS" means any activity which one or more public servants are legally authorized to undertake on behalf of government. ADOPTED TMBC1246-06-18.

65. "GUARDIAN" means:

- a. a person who, under court order, is the caretaker of the person of a juvenile; or in special circumstances and adult.
- b. a public or private agency with whom a juvenile has been placed by a court. ADOPTED TMBC1246-06-18.

66. "HANDGUN" means any firearm having a barrel less than sixteen (16) inches (40.64 centimeters) long that is not designed to be fired from the shoulder. ADOPTED TMBC5619-04-94

67. "HARBORING" means to secretly provide shelter, lodging, protection to conceal

or who knowingly, attempts, or assists by providing false information, shelter or residence to a person who is trying to elude the law or who is harboring a juvenile runaway. ADOPTED TMBC 686-01-12.

68. "HARBORING A SEX OFFENDER" A resident of a Turtle Mountain Housing Complex who knowingly, attempts, or assists to provides shelter or lodging to a sex offender. ADOPTED TMBC 686-01-12.

69. "HIV" means Human Immunodeficiency Virus and/or AIDS means Acquired Immune Deficiency Syndrome that is transmitted through direct contact of a mucous membrane or the bloodstream with a bodily fluid containing HIV that can involve anal, vaginal, or oral sex, blood transfusions, contaminated hypodermic needles. ADOPTED TMBC 686-01-12.

70. "IMMEDIATE" OR "IMMEDIATELY" means within 3 business days of transferring of information to all jurisdictions where the sex offender resides, is an employee, or is a student and each jurisdiction from or to which a change of residence, employment, or student status occurs. This includes notification to any relevant SORNA-registration, jurisdiction, including all 50 States, territories, tribes and the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands, and all federally recognized Indian tribes. ADOPTED TMBC 686-01-12.

71. "IMMEDIATE PRECURSOR" means a substance which has been found to be and is designated as the principal compound commonly used or produced for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture. ADOPTED TMBC 686-01-12.

72. "IMPRISONMENT" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal jail. Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provision of this code during their period of "house arrest". ADOPTED TMBC 686-01-12.

73. "INCAPACITATED PERSON" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person. ADOPTED TMBC5619-04-94

74. "INCEST" means a person who intermarries, cohabits, or engages in a sexual act with another person related to him/her within a degree of consanguinity within which marriages are declared incestuous, knowing such other person to be within said degree of relationship. ADOPTED TMBC 686-01-12.

75. "INCLUDED OFFENSE" means an offense:

- a. which is established by proof of the same or less than all the facts required to establish commission of the offense charged;
- b. which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission. ADOPTED TMBC5619-04-94

76. "INCOMPETENT" means a person who as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the process of a defense in a rational manner. ADOPTED TMBC5619-04-94

77. "INDECENT EXPOSURE" means the display of a person's genitalia to one or more other persons in public view which might be harmless but studies have shown those who commit the crime are at risk of committing more serious crimes. ADOPTED TMBC 686-01-12.

78. "INGESTION" means a person who ingests or takes into the body a controlled substance. ADOPTED TMBC1246-06-18.

79. "INHALANTS" means drugs that are in the form of gas aerosols or solvents that are inhaled as a vapor and include organic solvents, cleaning products, glues, and propellant gases from aerosol cans, contact cement, toluene and acetone, liquid paper, nail polish, nail polish remover, permanent markers, freon, aerosol spray cans, turpentine, gasoline, paint, spray paint and quick-drying adhesives, rubber cement and plastic cement, automotive starting fluid and butane used in home welding kits. ADOPTED TMBC741-05-10.

80. "INTERNET" means to be used broadly to include any sort of online activity. ADOPTED TMBC 686-01-12.

81. "INTOXICATION" means a condition where, by reason of drinking intoxicants or from the introduction of foreign substances in the body, an individual does not have the normal use of his physical or mental faculties, thus rendering him incapable of acting in the manner in which an ordinarily prudent and cautious man, in full possession of his faculties, using reasonable care, would act under like conditions. ADOPTED TMBC5619-04-94

82. "JURISDICTION" means all trust and fee simple land within the boundaries of the Turtle Mountain Indian Reservation and extend to all trust land located in the State of North Dakota, such other lands as may be acquired by or on behalf of said Tribe and be added thereto under the laws of the United States. ADOPTED TMBC 686-01-12.

83. "JUSTIFICATION" means conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of his official powers, duties or functions. ADOPTED TMBC1246-06-18.

84. "JUVENILE" means who is not reached the age of 18 and is not legally emancipated; a juvenile has achieved independence from his or her parents such as getting married before reaching the age of 18 or by becoming fully self-supporting. ADOPTED TMBC1246-06-18.

85. "LACK OF CONSENT" means the acts must be committed either by threat, force and intimidation or through the use of the victim's mental or physical disabilities which can include when the victim is physically or mentally incapacitated by alcohol or drugs. ADOPTED TMBC 686-01-12.

86. "LAW ENFORCEMENT OFFICER" also referred to as "PEACE/POLICE OFFICER" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law. ADOPTED TMBC5619-04-94

87. "LEWD CONDUCT" means any person who intentionally performs any lewd act in a public place knowing that such conduct is likely to cause reasonable affront and alarm. ADOPTED TMBC 686-01-12.

88. "LITTER" as used in this section shall mean any rubbish, waste material, cans, junk, garbage, trash, debris, dead animals, rock, gravel, stone, or discarded materials of every kind and description. ADOPTED TMBC1246-06-18.

89. "LIVESTOCK" means cattle, sheep, horses, goats, and other domestic animals ordinarily raised or used on the farm. ADOPTED TMBC1246-06-18.



90. "MALICE" means a conscious, intentional wrongdoing either of a wrong or a criminal act like assault or murder, with the intention of doing harm to the victim. This intention includes ill-will, hatred or total disregard for the other's well-being. ADOPTED TMBC5619-04-94.

91. "MALICIOUS" means the intentional destroying or damaging of the personal property of another, from actual ill will or resentment towards its owner or possessor. ADOPTED TMBC1246-06-18.

100. "MANUFACTURE" means in places other than a pharmacy; includes the production, cultivation, quality control, and standardization by mechanical, physical, chemical, or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or by other process, of controlled substances. ADOPTED TMBC1246-06-18.

101. "MENTAL DISEASE OR DEFECT" means a person is legally insane when, by reason of mental disease or mental defect he/she was incapable of knowing or understanding the nature and quality of his/her act or incapable of distinguishing right from wrong at the time of the commission of the offense. The word wrong as used in this instruction is not limited to legal wrong but properly includes moral wrong as well. Accordingly, the defendant who is incapable of distinguishing what is morally right from what is morally wrong is insane even though he/she may understand the act is unlawful. ADOPTED TMBC1246-06-18

102. "MINOR" means an individual who has not attained the age of [21] twenty-one years of age. ADOPTED TMBC686-01-12.

103. "MISLEADING DOMAIN NAMES ON THE INTERNET" means to knowingly use a misleading domain name on the internet, embed a source with the intent to deceive a juvenile into viewing material that is harmful to minors on the internet consisting of nudity, sex, or excretion, a prurient interest of juveniles; is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for a minor and lacks serious literary, artistic, political or scientific value for juveniles. ADOPTED TMBC 686-01-12.

104. "MISUSE" means to use incorrectly, improperly or misapply in a method contrary from the accepted medical directions; for example, by crushing medication for the purpose of snorting the medication or liquefying a medication for the purpose of injecting with syringes. ADOPTED TMBC1246-06-18.

105. "MORAL TURPITUDE" means a corrupt or depraved or degenerate act or practice generally refers to conduct that shocks the public conscience. ADOPTED TMBC1246-06-18.

106. "MOTOR VEHICLE" means any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft, or snowmobile. ADOPTED TMBC1246-06-18.

107. "NOISE" means any unnatural manmade sound caused by engine, specifically revving of the engine on a motor vehicle; engine braking on a commercial motor vehicle; exhaust, specifically loud exhaust pipes above 80 decibels; shouting; horns, specifically motor vehicle horns or public announcement horns; musical instruments; discharge of weapons; barking, meowing, or screeching pets such as dogs, cats, and birds; radios; music played through computer or other electronic equipment; car stereos; conversations above 80 decibels; loud whistling; loud banging; slamming of doors; breaking of glass or other items that cause unnecessary noise; unnecessary continuous alarms, specifically a continuous alarm clock ringing, ringing of bells, car alarms, or any other manmade alarms that are not used for smoke, fire, or carbon monoxide; and any other manmade noise or noises that a Law Enforcement Officer would find offensive to a reasonable prudent person during the hours of 10:00 p.m. and 6:00 a.m. Central Standard Time. ADOPTED TMBC863-08-10.

108. "NATIONAL SEX OFFENDER REGISTRY [NSOR]". The national database maintained by the Attorney General of the United States pursuant to [42 U.S.C. § 16919]. ADOPTED TMBC 686-01-12.

109. "NON-INDIAN JUVENILE" means, for the purposes of this ordinance, any non-Indian person 17 years of age and under or who has been declared mentally incompetent by a court of competent jurisdiction and shall be turned over to the nearest non-Indian police department if in violation of this chapter. It is a general rule that the municipal laws of a country do not extend beyond its limits, and cannot be enforced in another, except on the principle of comity. But when those laws clash and interfere with the rights of citizens, or the laws of the countries where the parties to the contract seek to enforce it, as one or the other must give way, those prevailing where the relief is sought must have the preference.

- a. Non-Indian juveniles who submit themselves to the jurisdiction of the Turtle Mountain Band of Chippewa Indians and who violate this chapter shall be subjected to the same penalties as Indian juveniles in the form of warnings, citations and arrest if the violations persist.
- b. However, if Non-Indian juveniles, are cited, are arrested, or are arrested and cited, the Non- Indian juveniles must still be turned over to the nearest non-Indian police department after the citation or arrest has occurred. Until the United States Congress says otherwise via federal law, Indian tribes do not Have jurisdiction over non-Indians and non-Indian juveniles; however, it is the hope of this Tribe that under the law of comity, other non-Indian jurisdictions will honor any and all citations given to non-Indian offenders while the non-Indian offenders voluntarily submit themselves to this jurisdiction. This is an attempt to fill a void and a loophole in the law where non-Indian offenders and repeat non-Indian offenders may otherwise go unpunished and continue to molest and harass the people of the Turtle Mountain Band of Chippewa if not held accountable under the law of comity. ADOPTED TMBC1246-06-18.

110. "OATH" means any form of attestation by which a person signifies that he/she is bound in conscience to perform an act faithfully and truthfully. ADOPTED TMBC5619-04-94

111. "OBJECT" means anything used in the commission of a sexual act other than the person of the actor. ADOPTED TMBC 686-01-12.

112. "OBSCENE" means an object, item, article, gadget that must be prurient in nature, must be completely devoid of scientific, political, educational or social value, and must violate the local community standards. ADOPTED TMBC 686-01-12.

113. "OFFENSE" means a conduct for which a term of imprisonment and/or fine is authorized by ordinance or statute after conviction. ADOPTED TMBC5619-04-94

114. "OFFENSES INVOLVING CONSENSUAL SEXUAL CONDUCT" means offenses involving Sexual conduct are not a sex offense for the purpose of this Code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least (14) years old and the offender was not more than four (4) years older than the victim. ADOPTED TMBC 686-01-12.

115. "OFFICIAL ACTION" means a decision, opinion, recommendation, vote, or other exercise of discretion by any tribal or governmental agency. ADOPTED TMBC5619-04-94

116. "OFFICIAL DETENTION" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings

are held in abeyance, detention for extradition, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, but "official detention" does not include supervision on probation or parole or constraint incidental to release. ADOPTED TMBC5619 AND RENUMBERS FROM 26.1107(3).

117. "OFFICIAL PROCEEDING" means a proceeding heard, or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any judge, referee, hearing examiner, commission, notary, or other person taking testimony or a deposition in connection with any such proceeding. ADOPTED TMBC5619-04-94

118. "OMISSION" means a failure to act. ADOPTED TMBC5619-04-94

119. "ONLINE CHILD PORNOGRAPHY" means by use of the internet whether business, government, personal home computers, or any telecommunication device to send or receive any visual image including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct. Also knowingly, producing, distributing, receiving, or possessing with the intent to distribute, a visual image of any kind, including a drawing, cartoon, sculpture or painting. Sexually explicit conduct is defined as real or simulated sexual intercourse containing genital-genital, oral-genital, or opposite sex, bestiality, masturbation, sadistic or masochistic abuse, or lascivious exhibition of the genitals or pubic area of any person. ADOPTED TMBC 686-01-12.

120. "ORGANIZATION" means a person other than one individual. ADOPTED TMBC 686-01-12.

121. "OPERATOR" means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation. ADOPTED TMBC1246-06-18.

122. "PANDERING" means

- a. The act or crime of recruiting prostitutes or of arranging a situation for another to practice prostitution - pimp
- b. The act or crime of selling or distributing visual or print media (as magazines) designed to appeal to the recipient's sexual interest. ADOPTED TMBC 686-01-12.

123. "PARDON" means an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. ADOPTED TMBC5619-04-94

124. "PARENT" means a person who is:

- a. a natural parent, adoptive parent, or step-parent of another person; or
- b. at least 18 years of age and authorized by a parent or guardian to have the care and custody of a juvenile.

125. "PAROLE" means release from jail, prison or other confinement after actually serving part of sentence. ADOPTED TMBC5619-04-94

126. "PERSON" means any individual over whom the Turtle Mountain Tribal Court may lawfully exercise jurisdiction. This includes a corporation as well as a natural person. When used to designate the party whose property may be the subject of any offense, it includes this tribe, any other government, or country which lawfully own any property within this reservation, and all public and private corporations or joint associations, as well as individuals. ADOPTED TMBC5619-04-94

127. "PERSONAL PROPERTY" includes every description of money, goods, chattels, effects, evidences of right in action, and written instruments by which any monetary obligation,

right, or title to property, real or personal, is created or acknowledged, transferred, increased, defeated, discharged, or diminished. ADOPTED TMBC5619-04-94

128. "POSSESSION" means if the person knows of its presence and has physical control or has the power and intention to control it. More than one person can be in possession of something if each knows of its presence and has the power and intention to use it.

- a. Actual Possession is direct physical control of something on or around his/her person.
- b. Constructive Possession has both the power and the intention to later take control over something either alone or together with someone else. ADOPTED TMBC1246-06-18.

129. "POSSESSION OF CHILD PORNOGRAPHY" means in the privacy of your home is not a protected activity. Accessing child pornography on the internet through peer-to-peer allows individuals to download the material directly from other people's computers by downloading, emailing, storing and sharing even at a first time status to any person faces charges not only for possession or distribution but also for sexual exploitation of a child. ADOPTED TMBC 686-01-12.

130. "PREMISES" means any building which is in addition to its ordinary meaning, including any real property any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, including but not limited to, separate apartment, offices or rented rooms, each unit is, in addition to being a part of such a building a separate building. ADOPTED TMBC1246-06-18

131. "PRESCRIPTIONS" means to be dispensed directly to a person by a doctor, no controlled substance may be dispensed without a written prescription by a doctor. ADOPTED TMBC1246-06-18

132. "PROBABLE CAUSE." shall mean that probable cause exists where the facts and circumstances within the officer's knowledge and of which they have reasonably trustworthy information that is sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. ADOPTED TMBC1246-06-18

133. "PROBATION" means a system of permitting a person convicted of a crime to go free with a suspended sentence, subject to the supervision of a probation officer. ADOPTED TMBC5619-04-94

134. "PRODUCTION" means to make originate or yield, produce, direct, manufacture, issue, publish or advertise. ADOPTED TMBC 686-01-12.

135. "PRURIENT" means characterized by shameful or inordinate sexual arousal or extraordinary sexual urges. ADOPTED TMBC 686-01-12.

136. "PUBLIC DISPLAY" means easily visible from a public road from property of others in any portion of any public facility, park or in any other public place in a manner so obtrusive as to make it difficult for an unwilling person to avoid exposure. ADOPTED TMBC 686-01-12.

137. "PUBLIC PLACE" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, lakes, golf courses, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, shops or any agency, interest, property or activity which is under the authority of the government or which belongs to the people. ADOPTED TMBC1246-06-18.

138. "PUBLIC SERVANT" means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses. ADOPTED TMBC5619-04-94

139. "REAL PROPERTY" includes every estate, interest, and right in lands, tenements, and hereditaments. ADOPTED TMBC5619-04-94

140. "REASONABLE EXPECTATION OF PRIVACY" means the person would not be visible to the public, regardless of whether that person is in a public or private place. ADOPTED TMBC1246-06-18.

141. "RECKLESS ENDANGERMENT" Means any person who creates a physical circumstance or situation that creates a substantial e risk of neglect where sexual abuse occurs, serious bodily injury or death to any other person also included under Reckless Endangerment are Child Endangerment, Elder Endangerment, and Disabled/Handicap Endangerment. ADOPTED TMBC 686-01-12.

142. "RE-ENTERING" means re-entering the justice system as a result of a new conviction for a sex offense or any other crime. ADOPTED TMBC1246-06-18.

143. "RECAPTURE" means the Turtle Mountain Band of Chippewa will recapture sex offenders and those sex offenders who previously have not been required to register, but will now be required to register under the Turtle Mountain Band of Chippewa Sex Offender Registry. To capture again a sex offender shall be taken back into custody due to a conviction for any crime a sex offender who is reentering the justice system due to a conviction for any crime. ADOPTED TMBC 686-01-12.

144. "REMAIN" means to

- (a) linger or stay; or
- (b) fail to leave the premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises. ADOPTED TMBC1246-06-18

145. "REPRIEVE" means a temporary relief from or postponement of execution of criminal punishment or sentence. It does no more than stay the execution of a sentence for a time, and it is ordinarily an act of clemency extended to a prisoner to afford him an opportunity to procure some amelioration of the sentence imposed. ADOPTED TMBC5619-04-94

146. "RESIDENT"/"RESIDES" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps. This includes sex offenders who visit the reservation for a period of 24 hours or more. ADOPTED TMBC 686-01-12.

147. "RETROACTIVE" means the SORNA requirements apply to all sex offenders defined in the Act, including all convictions that predate the enactment of SORNA. Substantial compliance will require registration of offenders who previously have been convicted of a qualifying sex offense. ADOPTED TMBC 686-01-12.

148. "SADOMASOCHISTIC ABUSE" means the infliction of force, pain or violence upon a person for the purpose of sexual gratification. ADOPTED TMBC 686-01-12.

149. "SEIZURE." Probable cause for seizure requires, from the facts available, that a law enforcement officer could reasonably conclude that certain items may be paraphernalia, contraband, stolen property or evidence of a crime. ADOPTED TMBC5619-04-94

150. "SELF-DEFENSE" means the protection of one's person or property against some injury attempted by another, and the right of such protection. A person is justified in the use of force against an aggressor when and to the extent it appears to him and he reasonably

believes that such conduct is necessary to defend himself or another against such aggressor's imminent use of unlawful force. ADOPTED TMBC5619-04-94

151. "SELL" means to give away, barter, deliver, deliver exchange, distribute, or dispose to a person regardless of the amount of remuneration. ADOPTED TMBC1246-06-18.

152. "SERIOUS BODILY INJURY" means a bodily injury, which creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, or permanent loss or impairment of the function of any bodily member or organ. ADOPTED TMBC1246-06-18.

153. "SEX" means acts of masturbation, sexual intercourse, or physical contact with a person's genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal. ADOPTED TMBC 686-01-12.

154. "SEX OFFENDER" means any person convicted of a sex offense, and includes but not limited to any person who has pled guilty, been found guilty of, or who has been found not guilty by reason of insanity of any sex offense under any tribal, federal, state, or foreign laws. This includes sexual offenders, or abusers as persons who committed a sex crime. ADOPTED TMBC 686-01-12.

155. "SEX OFFENSE" means offenses contained in section 111(5) of SORNA, including all tribal, federal, military, and state offenses. "Sex Offense" shall include but not be limited to rape, assault with intent to commit rape, child molestation, sexual assault, sodomy, child abuse resulting from a sexual act, sexual contact, oral copulation and other sex related crimes as set forth in existing tribal, federal, or state law. ADOPTED TMBC 686-01-12.

156. "SEX OFFENDER REGISTRY" means the registry of sex offenders, and a notification program, maintained by the Turtle Mountain Sex Offender Registration and Notification department. ADOPTED TMBC 686-01-12.

157. "SEX SLAVERY" means the organized coercion of unwilling people into different sexual practices. Sexual slavery may include single-owner sexual slavery, ritual slavery sometimes associated with traditional practices, slavery for primarily non-sexual purposes where sex is common or forced prostitution. ADOPTED TMBC 686-01-12.

158. "SEXTING" means combination of sex and texting; it's the act of sending sexually explicit materials through mobile phones. ADOPTED TMBC 686-01-12.

159. "SEXUAL ABUSE" means to knowingly cause another person to engage in a sexual act by threatening or placing that person in fear or engages in a sexual act if that person is incapable of appraising the nature of the conduct or physically incapable of declining participation in or communicating unwillingness to engage in that sexual act. ADOPTED TMBC 686-01-12.

160. "SEXUAL ABUSE OF A CHILD" means a person is guilty of sexual abuse of a child if he or she willfully:

- a. Engages in any sexual contact with a child; or
- b. Persuades, entices, counsels, or procures a child to engage in sexual contact, actual or simulated. ADOPTED TMBC 686-01-12.

161. "SEXUAL ACT" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body; or the use of an object which comes in contact with the victim's anus, vulva, or penis. Emission is not required. ADOPTED TMBC 686-01-12.

162. "SEXUAL BATTERY" means the act of making unwanted and sexually offensive contact with an intimate body part of another person or which causes an immediate apprehension in the

other person that such an act will occur. Intimate body parts include sexual organs, the anus, the groin or buttocks of any person and the breasts of a female. Sexual battery includes situations in which the interactions defined are with a person who is incapable of giving consent or resisting due to alcohol or drugs. ADOPTED TMBC 686-01-12.

163. "SEXUAL CONTACT" means any touching of the sexual or other intimate parts of the person for the purpose of arousing or satisfying sexual or aggressive desires whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires, and shall include any sexual touching of or contact with an individual's intimate very private, personal body parts either directly or through the clothing of the individual. ADOPTED TMBC 686-01-12.

164. "SEXUAL GRATIFICATION" means a behavior or act committed to stimulate the sexual interest or desire of the actor or actors. ADOPTED TMBC 686-01-12.

165. "SEXUAL HARASSMENT" means any unwanted sexual advances, a request for sexual favors, verbal or physical conduct of a sexual nature that alarms or annoys you, interferes with your privacy and creates an intimidating, hostile, or offensive environment. Making unwanted and offensive sexual advances or of sexually offensive remarks or acts, by a person. ADOPTED TMBC 686-01-12.

166. "SEXUAL INTERCOURSE" means genital stimulation of one person with or by another and includes genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between person of the same or opposite sex. ADOPTED TMBC 686-01-12.

167. "SEXUAL MISCONDUCT" means sexual contact without consent by an acquaintance or a stranger and includes sexual touching without consent, either of the victim or when the victim is forced to touch, directly or through clothing another person's genitals, breast, groin, thighs or buttocks. ADOPTED TMBC 686-01-12.

168. "SEXUALLY EXPLICIT CONDUCT" includes sexual conduct, bestiality, masturbation, sadomasochistic abuse including but not limited to flagellation, torture or bondage, or lewd exhibition of the genitals or pubic area. ADOPTED TMBC 686-01-12.

169. "SEXUAL PREDATOR" means the term most often used to describe severe or repeat sex offenders. ADOPTED TMBC 686-01-12.

170. "SEXUALLY VIOLENT OFFENSE" means; for purposes of classifying a sex offense as a sexually violent offense shall include any nonconsensual sexual assault crimes involving penetration, rape or sodomy or similar acts. These offenses shall also include any sexual act perpetrated by violence, threat of serious violence or by rendering unconscious or involuntarily drugging a victim. ADOPTED TMBC 686-01-12.

171. "SIGNATURE" includes any name, mark, symbol, or sign, written or affixed with the intent to authenticate any instrument or writing. ADOPTED TMBC5619-04-94

172. "SIMULATED" means any depictions of the genitals or rectal area or actions that give the appearance of sexual conduct or any means of foreplay. ADOPTED TMBC 686-01-12.

173. "SOLICITATION" means the criminal offense of urging someone to commit an unlawful act and includes any direction, request, enticement, persuasion, or encouragement, of a minor to engage in sexual conduct. ADOPTED TMBC 686-01-12.

174. "SMART OFFICE" means the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the United States pursuant to[42 U.S.C. § 16945]. ADOPTED TMBC 686-01-12.

175. "STALKING" means a person willfully with an intentional course of repeated conduct that is directed at a specific person that would frighten, intimidate, or harass a person of reasonable sensitivities and serves no legitimate purpose nor is a constitutionally protected activity. ADOPTED TMBC1246-06-18.

176. "STUDENT" means a person who enrolls in or attends a Private, Federal, Tribal or Public education institution, including a secondary school, trade or professional school, or an institution of higher education. ADOPTED TMBC 686-01-12.

177. "SUBSTANTIAL STEP" is any conduct which is strongly corroborative of the determination of the person's intent to complete the commission of the crime. "SIGNATURE" includes any name, mark, symbol, or sign, written or affixed with the intent to authenticate any instrument or writing. ADOPTED TMBC1246-06-18.

178. "TERMINOLOGY" means determining substantial implementation.

179. "TIER OFFENSES" is defined as:

- a. "Tier 1 Sex Offender" means one that has been convicted of a "tier 1" sex offense as required in Title 42.
- b. "Tier 2 Sex Offender" means one that has been convicted of a "tier 2" sex offense as required in Title 42.
- c. "Tier 3 Sex Offense" means one that has been convicted of a "tier 3" sex offense as required in Title 42.

ADOPTED TMBC 686-01-12.

180. "THING OF VALUE" means anything of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient. ADOPTED TMBC1246-06-18.

181. "TRANSPORT" or "TRANSPORTING" means the actual constructive or attempted delivery of a controlled substance or a listed chemical.

182. "TRANSMITTING INFORMATION ABOUT A MINOR TO FURTHER CRIMINAL SEXUAL CONDUCT" means using the mail or any facility of interstate or foreign commerce knowing other individuals, or solicit any person to engage in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so. ADOPTED TMBC 686-01-12.

183. "TRAVEL WITH THE INTENT TO ENGAGE IN ILLICIT CONDUCT" means a person who travels in interstate commerce or travels for the purpose of engaging in any illicit sexual conduct with another person. ADOPTED TMBC 686-01-12.

184. "VEHICLE" shall mean any vehicle registered or not registered to the individual offender that is used for transportation. ADOPTED TMBC 686-01-12.

185. "VENEREAL DISEASE" means a sexually transmitted disease. ADOPTED 1968.

186. "VIDEO VOYEURISM" means the voyeur has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy. ADOPTED TMBC 686-01-12.

187. "VISUAL DEPICTION" includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether stored in a permanent format. ADOPTED TMBC 686-01-12.

188. "VOID MARRIAGE" means no marriage shall be contracted while either of the parties has a husband or wife living, nor between persons who are nearer of kin than 2nd cousins except that marriage may be contracted between first cousins where the female has attained the age of 55 years or where either party, at the time of application for a marriage



license, submits an affidavit signed by a physician stating that either party is permanently sterile. Relationship under this section shall be administered by the rule of the civil law whether the parties to the marriage are of the half or of the whole blood. A marriage may not be contracted if either party has such want of understanding as renders him or her incapable of assenting to marriage. ADOPTED TMBC1246-06-18.

189. "WRITING" means handwriting, typewriting, printing, Photostatting, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof. ADOPTED TMBC1246-06-18.

**CHAPTER 26.04**  
**Requirements of Culpability**

**26.0401**     **Purposes of engagement.**

1. For the purposes of this Title, a person engages in conduct:
  - a. "intentionally" if, when he/she engages in the conduct, it is his/her purpose to do so.
  - b. "knowingly" if, when he/she engages in the conduct, he/she knows or has a firm belief, unaccompanied by substantial doubt, that he/she is doing so, whether or not it is his/her purpose to do so.
  - c. "recklessly" if he/she engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
  - d. "negligently" if he/she engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
  - e. "willfully" if he/she engages in the conduct intentionally, knowingly, or recklessly.
  
2. If a statute or regulation under defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.
  - a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is knowingly."
  - b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.
  - c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.
  - d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, otherwise the least kind of culpability required for the offense is required with respect to such facts.
  - e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.
  
3. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.
  
4. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this Title.

ADOPTED IN 1968 "A", "B", AND "E" CODE AND RENUMBERED AND AMENDED FROM SEC. 1.0108 (5); "C" AND "D" ADOPTED TMBC5619-04-94

**CHAPTER 26.05**  
**Justification, Excuse, Defenses**

**26.0501      Ignorance of law.**

Ignorance of a law is not an affirmative defense to a violation of the law.

ADOPTED TMBC5619-04-94

**26.0502      Mistake of law.**

Except as otherwise expressly provided, a person's good faith belief that conduct does not constitute a crime is an affirmative defense if he acted in reasonable reliance upon a statement of the law contained in:

1. A statute or other enactment.
2. A judicial decision, opinion, order, or judgment.
3. An administrative order or grant of permission.
4. An official interpretation of the public servant or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the crime.

ADOPTED TMBC5619-04-94

**26.0503      Insanity or mentally incapacity as a defense.**

1. A criminal act is not punishable when the offender, while committing the crime, was insane or mentally incapacitated.
2. A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law.

ADOPTED TMBC5619-04-94

**26.0504      Intoxication.**

Incapability because of self-inflicted intoxication by drinking intoxicants or the introduction of foreign substances in the body is not an exonerating factor. Evidence of intoxication is admissible whenever it is relevant to negate or establish an element of the offense charged. ADOPTED TMBC5619-04-94

**26.0505      Juvenile prosecution.**

Persons under the age of eight (8) years are deemed incapable of commission of an offense defined by the constitution or Code of this Tribe. A person between the age of eight (8) and fifteen (15) years shall not be tried as an adult.

ADOPTED TMBC5619-04-94

**26.0506      Self Defense.**

A person is justified in using force upon another person to defend himself against danger of imminent unlawful bodily injury, sexual assault, or detention by such other person, except that:

1. A person is not justified in using force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant under color of law, but excessive force may be resisted.
2. The person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense
3. A person is not justified in using force if:
  - a. He/she intentionally provokes unlawful action by another person to

- cause bodily injury of death to such other person; or
- b. He/she has entered into a mutual combat with another person or is excessive in the circumstances. A person's use of defensive force after he/she leaves from an encounter and indicates to the other person that he/she is discontinuing the mutual combat subsequently is justified if the latter nevertheless continues or menaces unlawful action.

ADOPTED TMBC5619-04-94

**26.0507 Defense of others.**

A person is justified in using force upon another assaulted person in order to defend anyone else if:

1. The person defended would be justified in defending himself; and
2. The person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

ADOPTED TMBC5619-04-94

**26.0507.01 Use of Deadly Force**

The use of deadly force is a defense only where the defendant reasonably believes that such force is necessary to protect himself or herself or another person against death, serious bodily harm, kidnapping, burglary of an occupied home, a sexual act compelled by force or threat, or to prevent or terminate the commission or attempted crime of arson. ADOPTED TMBC1246-06-18.

**26.0508 Justification.**

1. Except as otherwise expressly provided, justification or excuse under this Chapter is a defense.
2. If a person is justified or excused in using force against another, but he/she recklessly or negligently injures or creates a risk of injury to other persons, the justifications afforded by this Chapter are unavailable in a prosecution for such recklessness or negligence.
3. That conduct may be justified or excused within the meaning of this Chapter does not abolish or impair any remedy by such conduct which is available in any civil action.
4. No person can be punished for an otherwise illegal act when the act is committed in an emergency or protect life, limb or property.
5. Any damage resulting from such emergency act must be reasonable compared to the person need.

ADOPTED TMBC5619-04-94 PARAGRAPHS 1-5.

6. The person committing the emergency act under the Good Samaritan law which grants immunity, if the Good Samaritan makes an error while delivering emergency medical care, he/she cannot be held legally liable for the damages in Court. However, two conditions usually must be met;
  - a. the aid must be given at the scene of the emergency, and
  - b. if the Good Samaritan has other motives, such as the hope of being paid a fee or reward, then the law will not apply.
7. When law enforcement officers are by, this Chapter, authorized to act in the prevention of public offenses, other persons, who by a law enforcement official's command, act in their aid, are justified in so doing. Such other persons shall be entitled to employ the same degree of force as provided for in of this Chapter herein and shall not be liable.
8. When a person's conduct would otherwise constitute an attempt under Subsection 26.0901 of this section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its

commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

9. Within the meaning of this Chapter, abandonment of criminal purpose is not voluntary if it is motivated, in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increases the probability of detection or apprehension or which make more difficult in the accomplishment of the criminal purpose. Abandonment is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

ADOPTED TMBC1246-06-18, PARAGRAPHS 6,7, AND 9. PREVIOUS PARAGRAPH 6 REPEALED AND REPLACED. PARAGRAPH 7 PREVIOUSLY NUMBERED 26.0902.

**26.0509      Duress.**

1. It is an affirmative defense that the person engaged in the conduct because he was compelled to do so by force or threat of force. Compulsion within the meaning of this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.
2. The defense defined in this section is not available to a person who, by voluntarily entering into a criminal enterprise, or otherwise, willfully placed himself in a situation in which it was foreseeable that he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

ADOPTED TMBC5619-04-94

**26.0510      Entrapment.**

1. It is an affirmative defense that the defendant was entrapped into committing the offense.
2. A law enforcement agent commits an entrapment if, for the purpose of obtaining evidence of the commission of a crime, the law enforcement agent induces or encourages and, as a direct result, causes another person to engage in conduct establishing such a crime by using methods of persuasion or inducement which create a substantial risk that such crime will be committed by a person other than on who is ready to commit it. Conduct simply allowing an opportunity to commit an offense does not establish entrapment.

ADOPTED 4/24/1994

**CHAPTER 26.06**  
**Sentence and Penalties and Classification of Offenses**

**26.0601      Classification of offenses.**

Offenses shall be charged separately and penalties for a crime(s) are defined into [5] five classes which are subject to minimum and maximum penalties, as follows:

1. A Class [1] one offense shall be imprisonment with a minimum penalty of [30] thirty days and a maximum penalty of [45] forty-five days, a fine shall be punishable for not less than \$300.00 and shall not exceed \$500.00 or any combination of both.
2. A Class [2] two offense shall be imprisonment with a minimum penalty of [45] forty-five days and a maximum of [90] ninety days, a fine shall be

punishable for not less than \*\$500.00 and not to exceed \$750.00, or any combination of both. \*AMENDED DUE TO SCRIVENERS ERROR, 4-26-19

3. A Class [3] three offense shall be imprisonment with a minimum penalty of [90] ninety days, and a maximum of [180] one hundred eighty days, a fine shall be punishable for not less than \$750.00 and not to exceed \$1,000.00 or any combination of both.

ADOPTED TMBC5619-04-94 AMENDED BY RES TMBCI 741-05 AND TMBC1246-06-18

- a. Any person found guilty of a Class [3] three offense under Chapter 26.17 and any of the subdivisions shall be prohibited from possessing or owning firearms and/or ammunitions for a period of [10] ten years through Chapter 16.18 section 16.1802.

ADOPTED TMBC5619-04-94 AMENDED BY RES TMBCI 741-05 AND TMBC1246-06-18.

4. A Class [4] four offense shall be imprisonment with a minimum penalty of [180] one hundred eighty days and not to exceed [365] three hundred sixty-five days, a fine shall be punishable for not less than \$1,000.00 and not to exceed \$2,500.00, or any combination of both.

- a. Any person found guilty of a Class [4] four offense under Chapter 26.17 and any of the subdivisions shall be prohibited from possessing or owning firearms and/or ammunitions for a period of [10] ten years under Chapter 26.18 section 26.1802.
- b. Any person found guilty of a Class [5] five offense under Chapter 26.17 and any of the subdivisions may be subjected to the procedure of civil forfeiture, subdivision [15] fifteen and/or banishment Title 39 Section 39.01051, subdivision [16] sixteen from the Turtle Mountain Indian Reservation.

ADOPTED TMBC5619-04-94 AMENDED BY RES TMBCI 741-05 AND TMBC1246-06-18.

5. A Class [5] five offense shall be imprisonment of not less than [365] three hundred sixty-five days and not more than [365] three hundred sixty-five days, a fine punishable for not less than \$2,500.00 and not to exceed \$5,000.00, or any combination of both.

- a. Any person found guilty of a Class [5] five offense under Chapter 26.17 and any of the subdivisions shall be prohibited from possession or owning firearms and/or ammunitions for a period of [10] ten years under Chapter 26.18 section 26.1802.
- b. Any person found guilty of a Class [5] five offense under Chapter 26.17 and any of the subdivisions may be subjected to the procedure of civil forfeiture, subdivision [15] fifteen and/or banishment Title 39 Section 39.01051, subdivision [16] sixteen from the Turtle Mountain Indian Reservation.

ADOPTED TMBC5619-04-94 AMENDED BY RES TMBCI 741-05 AND TMBC1246-06-18.

**26.0602 Penalty for repeated offenses.**

1. Unless otherwise stated within the statute, any person who was previously convicted of a crime and commits a second offense of the same or similar offense within two (2) years may be subject to one higher Class of offense.
2. In order to rehabilitate the offender, the judge may, in his discretion order:
  - a. community service;
  - b. counseling; or
  - c. treatment.
3. These penalties can be imposed in addition to or instead of the penalties provided for a Class [1] one or [2] two offense and may be imposed in

addition to a Class [3] three or [4] four offense.

ADOPTED TMBC5619-04-94 AMENDED BY RES TMBCI 741-05 AND TMBC1246-06-18.

**26.0603 Allowance for time served.**

Allowance, against any sentence for a term of imprisonment, shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct on which such charge was based. "Time shall start from time of the arrest and shall include time spent in custody in or a psychiatric hospital for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.

ADOPTED TMBC5619-04-94

**26.0604 Restitution payment and costs of prosecution.**

Except where otherwise specified in any statute, in combination with the above penalties and those sentencing alternatives permitted in this Chapter, the Tribal Court may impose one or more of the following penalties:

1. The imposition of a restitution order for crime-related losses, which may include: stolen cash or property, medical bills and car repair bills. The Court may order the entire amount of the victim's expenses paid; there is no maximum amount for this type of restitution.
2. If victim's losses are determined after sentencing, the Court can order restitution at a later date.
3. Fees of \$50.00 to the Probation Office for the cost of drug test and confirmation of the drug test; in addition, to a \$25.00 monitoring fee for each guilty plea at arraignment, pre-trial, or conviction whether judge or jury trial or a change of plea.
4. Prosecution fees of \$25.00 for each guilty plea at arraignment, pre-trial, or conviction whether judge or jury trial or a change of plea.

ADOPTED TMBC5619-04-94 AMENDED BY AND TMBC1246-06-18.

**26.0605 Alternative sentences.**

Unless otherwise specified in any statute, upon application or upon its own motion, the court may provide either of the following sentences in any case before it:

1. Suspend, only, the term of imprisonment for class [1] one and class [2] two offense(s) imposed by the court.
2. The court shall order the full fine(s) and fee(s) applicable for all class [3] three, class [4] four or class [5] five offenses.
3. Defer imposition of sentence shall not be allowed for any violent crime or crimes that include children or the sale of drugs.
4. In any deferred prosecution or deferred judgment for any offense re: the following: the pre-trial agreement, the conviction of guilty whether by judge or jury, the admittance of guilt or a change of plea. The deferment of conviction for which imposition of sentence was deferred shall be pleaded and proved due to any violation of the deferment and will have the same effect as if probation had not been granted under subsection. 26.0606.

ADOPTED TMBC5619-04-94 AMENDED BY AND TMBC1246-06-18.

**26.0606 Deviation of Guideline Sentence(s).**

Any deviation from Section 26.2601 standard sentencing guidelines Section 26.06 imposed by a Tribal Court Judge(s) under this Chapter must be accompanied with a written statement explaining the legal reasoning for the deviation from standard sentencing. The Tribal Court Judge(s) shall forward the statement to the Turtle Mountain Law Enforcement, Prosecutor's Office, Public Defender's Office, Probation Office and Victims of Crime Assistance Office when a domestic, sexual, or violent crime has been charged to become a part of the record of the case. ADOPTED BY TMBC1246-06-18.

**26.0607 Fee assessments for funding crime victim programs.**

The Turtle Mountain Tribal Judge(s) shall assess a fee of not less than twenty-five (\$25) dollars and no more than one-hundred dollars (\$100) as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a crime, whether by judge or jury trial, of violating a tribal law for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment.

The fee assessed under this section is, for each criminal offense, in addition to any fine, penalty, costs and or administrative fee prescribed by law. The Tribal Judge(s) shall assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred. All fees paid to the court under this section must be deposited monthly in the General Fund for allocation to one or more of the following programs as determined by the governing body:

1. A domestic violence or sexual assault program,
2. A victim advocacy program of which the primary function is to provide direct services of victims of crime.

ADOPTED BY TMBC1899-03-01.

**CHAPTER 26.07  
Parole, Probation, Pardon Parole**

**26.0701 Eligibility of parole.**

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. Parole will be considered, upon written request from the prisoner requesting consideration. The Tribal Court shall review the prisoner's criminal history and speak with the Prosecutor's Office and the Correctional Department for their opinions before making a decision.

ADOPTED TMBC5619-04-94.

**26.0702 Granting parole.**

Parole may be granted by the Tribal Court with conditional release requirements as the Tribal Court may prescribe including the requirement of personal reports from the parolee.

ADOPTED TMBC5619-04-94

**26.0703 Violation of parole.**

Any paroled person who shall violate any provision of his/her parole, at the discretion of the Court, shall be apprehended and confined to serve the remainder of the original sentence with the reduction for the time the person discretion of the Court, shall be apprehended and confined to serve the remainder of the original sentence with the reduction for the time the person was released on parole.

**Probation**

**26.0704 Conditions of probation.**

The Court may release on probation a person convicted of a crime 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.

ADOPTED TMBC5619-04-94 AND AMENDED BY TMBC1246-06-18.

**26.0705 Violations of conditions of probation.**

Any person who violates the terms and conditions of his/her probation or release may be required to serve the original sentence imposed.

ADOPTED TMBC5619-04-94 AND AMENDED BY TMBC1246-06-18.

**Pardon**

**26.0706 Pardon board definitions.**

1. "COMMUTATION." An exchange or replacement of the punishment to which an individual has been sentenced to a less severe punishment.
2. "CONDITIONAL PARDON." A pardon, commutation, reprieve or remission of a fine, subject to terms and conditions established by the Chairman upon recommendation of the Pardon Advisory Board that does not become effective until the offender fulfills some condition.
3. "DEPARTMENT." shall be defined as the Department of Prisons of any jurisdiction.
4. "PARDON." The removal of punishment or custody imposed upon a person for the commission of an offense. A pardon does not remove that person's conviction or plea or finding of guilt for an offense unless specifically stated in the Certificate of Pardon.
5. "REPRIEVE." The temporary relief from or postponement of the execution of a criminal sentence, analogous to a commutation or a pardon.

For purposes of this code, the terms pardon, expunge, set aside, commutation, etc. shall have the same meaning. These terms shall mean action taken by the Chairman, upon recommendation of the Pardon Board, to ensure that Tribal offenses are set aside and the corresponding criminal records information is expunged with respect to the offense at issue.

ADOPTED BY TMBC284-09-05.

**26.0707 Standards for pardon board.**

1. The Pardon Board will only consider applications from Tribal members with less than 3 total Tribal misdemeanors as covered in Title 26 of the Tribal Code of 1976. The Pardon Board will not consider those with three or more infractions (i.e. habitual offenders).
2. The Pardon Board will not consider any infraction that is less than five years old.
3. The Pardon Board will not consider pardons for any crimes listed in the Indian Major Crimes Act, 18 USC 1153, even if such actions are also crimes under Tribal law.
4. The Pardon Board will not consider pardons for any Misdemeanors related to dealing and/or distributing drugs.
5. The Pardon Board will consider pardons for drug use-related infractions only if they have completed an intensive drug treatment program lasting



at least ninety (90) days prior to application for pardon.

ADOPTED BY TMBC284-09-05.

**26.0708 Pardon review board policies and procedures.**

1. Mission Statement: The mission of the Pardon Review Board is to review and consider requests within its jurisdiction and base its recommendations in keeping with the Turtle Mountain Tribal Constitution and Bylaws, Tribal Code and statutory intent in the best interest of society and tribal members.
2. Authority: Authority for this policy is found in Article IV, Section 2 of the Constitution and Bylaws of the Turtle Mountain Band of Chippewa Indians North Dakota, which states "The Tribal Council shall have the authority to ... appoint subordinate committees, delegates, and employees not otherwise provided for in the constitution, and to provide tenure and duties; provided that any delegation of authority described in this Constitution shall be granted only by written resolution or ordinance and shall be withdrawn in the same manner. (Amendment XIV, Approved February 3, 1995)"; and Chapter 26.07 inclusive of the Turtle Mountain Tribal Code.
3. Pardon Board:
  - a. The Chairman and Tribal Council may appoint a Pardon Board to consist of five (5) members including one (1) Tribal member from each district and a Pardon Board Chairman from at large-selection by the Tribal Chairman.
  - b. The Chairman, with a quorum of the Tribal Council may dissolve the Pardon Board at any time.
  - c. The Chairman may call meetings of the Pardon Board as necessary to allow the Pardon Board to conduct business in a timely manner. The Pardon Board shall also convene at least quarterly to conduct its business in a timely manner.
  - d. The Pardon Board is not an administrative agency and is not subject to administrative agencies practices. However, any rulemaking by the Pardon Board will be published for 30-day comment prior to consideration for inclusion in the Turtle Mountain Tribal Code.
  - e. Pardon Board Members may not engage in ex parte communications with applicants for pardons or any of their representatives or advocates.
4. Meetings and Rules.
  - a. The Board will schedule at least one quarterly meeting to review applications for pardons from Tribal member offenders.
  - b. A simple majority of the Pardon Board members constitutes a quorum.
  - c. The Board may call executive sessions as allowed by the Turtle Mountain Tribal Code.
  - d. The rules and procedures for reviewing requests for pardon relief are contained within this policy.
5. Duties and responsibilities of the Pardon Board.

The sole function of the Pardon Board shall be to provide information and make recommendations to the Tribal Chairman concerning any matters before the Tribal Chairman under this chapter. Recommendations may include commutation of sentence and grant of a pardon. Recommended terms and conditions placed upon any pardon or commutation of sentence shall be so stated on the Certificate of Pardon/Commutation.
6. Duties and responsibilities of the Pardon Board Clerk shall include the following:
  - a. Maintain a register of all applications filed with the Pardon Board as well as a record of any and all proceedings of the Pardon Board.
  - b. Maintain a record of all actions of the Pardon Board.
  - c. Conduct investigations for and provide information to the Pardon Board. All information to be considered by the Pardon Board must be submitted to the Pardon Board Clerk.

- d. Direct officers of the Turtle Mountain Tribal Probation/Parole Division to provide testimony or written comments for the Pardon Board's consideration when an individual is on supervision or has recently been on supervision by a Department.
  - e. Provide written notice of an application for Pardon/Commutation to the Turtle Mountain Tribal Court and Tribal Prosecutor regarding any Judgment of Conviction warranted against the applicants. The date of entry and docket number of the criminal judgment, the crime or crimes stated in the criminal judgment and the date and place for the meeting on the application.
  - f. The Pardon Clerk will ensure that victim rights are protected and that victims have the opportunity to present information to the board in the manner that the board prescribes.
7. Cases eligible for Pardon Board review.
- a. Offenders in custody or on supervision with the Turtle Mountain Tribal Probation/Parole Division.
  - b. Applicants currently incarcerated. Applicants who have no legal remedy through the Parole Board but may be eligible for review by the Pardon Board providing that review does not conflict with any other provisions of this policy.
  - c. Offenders under the supervision of Probation/Parole.
    - (1) The supervising officer of any applicant on supervision may apply for relief on behalf of the applicant with the Pardon Clerk.
  - d. Person not in the custody of or under the supervision and management of the Probation/Parole Department. The applicant must have encountered a significant problem with the consequences of his or her conviction or sentence (e.g. difficulty entering a school or securing employment).
  - e. In very limited circumstances, the board may consider applications from individuals who present a compelling need for relief as a result of unusual circumstances not otherwise specified by the above criteria.
8. Application and Review Process.
- a. Applications for board review must be made with the Pardon Clerk on a form prescribed by the Pardon Clerk.
  - b. The written application must be submitted to the Pardon Clerk at least forty-five (45) days before the Pardon Board convenes.
  - c. The Pardon Clerk will staff each case on the proposed docket with a representative of the Chairman and the Pardon Board.
  - d. The Pardon Clerk will prepare a final docket at least thirty (30) days before the Pardon Board convenes.
  - e. The Pardon Clerk may formulate a recommendation concerning an applicant's request for relief.
  - f. The Pardon Clerk will present a final packet for each application to members of the board at least fifteen (15) days before the board convenes.
  - g. The board may review the application with the applicant or may review the application without a personal appearance. Granting or not granting a personal appearance should not constitute a negative recommendation for relief. The Pardon Clerk will schedule all personal appearances.
  - h. Any request by the Pardon Board Chairman for the personal appearance of an applicant will be honored.
  - i. After appropriate review, the board will make a recommendation to the Chairman regarding each case.
  - j. If the Chairman denies the applicant that requested relief, the applicant may not re-apply for relief for a period of six

(6) months from the date the Chairman denied relief, or if the board has set a later date, the date the board has set. The board is not precluded by this section from considering an emergency application for relief at any time.

- k. Any reapplication will be submitted on a summary form as provided by the Pardon Clerk and must demonstrate specific changes in circumstances since the prior application.
- l. The Chairman may reconsider the decision to grant an applicant relief at any time. If for any reason the applicant violates any of the terms or conditions of the pardon, the Chairman may revoke the pardon on the same manner provided for violation of any of the terms or conditions in all other cases, the Chairman may reconsider a decision or an application of the reconsideration is made within thirty (30) days from the date of the initial decision.

**26.0709 Pardon application form.**

\$50 non-refundable application/processing fee

Notice: This form must be completed by all pardon applicants.

Applications must be typewritten or clearly printed. All questions must be answered if applicable. If not, indicate by N/A (not applicable). If space provided is not sufficient for complete answers, or if you wish to furnish additional information, attach sheets and number answers to correspond with questions. This document must be notarized.

- 1. Full Name: \_\_\_\_\_
- 2. Address: \_\_\_\_\_
- 3. Telephone #: \_\_\_\_\_
- 4. Social Security #: \_\_\_\_\_
- 5. Date of Birth: \_\_\_\_\_
- 6. Place of Birth: \_\_\_\_\_
- 7. Male/Female: \_\_\_\_\_
- 8. Marital Status: \_\_\_\_\_
- 9. No. of children: \_\_\_\_\_ Ages: \_\_\_\_\_
- 10. What is the crime, date of conviction and sentence of the crime for which you are requesting a pardon? \_\_\_\_\_
- 11. Please describe the circumstances of each offense and conviction for which a pardon is sought (attach a separate sheet if more space is needed): \_\_\_\_\_
- 12. Have you requested a pardon before? If yes, when? \_\_\_\_\_
- 13. Why are you requesting this pardon: \_\_\_\_\_ Employment \_\_\_\_\_ Entry into service \_\_\_\_\_ other (explain) \_\_\_\_\_
- 14. Please briefly describe the reasons for this pardon request. A lengthier explanation with supporting documentation may be attached: \_\_\_\_\_

**EDUCATION AND TRAINING**

- 15. Highest Grade Completed: \_\_\_\_\_
- 16. Name of School: \_\_\_\_\_

**MILITARY SERVICE**

- 17. Branch of Service: \_\_\_\_\_
- 18. Service No. Type of discharge: \_\_\_\_\_
- 19. Dates of active duty: \_\_\_\_\_ to \_\_\_\_\_
- 20. Present place of employment: \_\_\_\_\_
- 21. Address and telephone number: \_\_\_\_\_
- 22. How long? \_\_\_\_\_
- 23. Kind of work \_\_\_\_\_
- 24. Previous employment and dates: \_\_\_\_\_
- 25. Have you ever been convicted of an offense (include motor vehicle violations) within tribal jurisdiction since the conviction for which you are requesting a pardon? Yes \_\_\_\_\_ No \_\_\_\_\_
- 26. If the answer to question 25 is yes, please provide details (attach a separate

sheet if more space is needed.

27. Have you ever been arrested by federal authorities or by any other tribal authority other than Turtle Mountain authorities? Yes \_\_\_ No \_\_\_

28. If answer to question 27 is yes, please list each arrest giving the date and disposition of the case (attach a separate sheet if necessary)

29. Do you have a specific and compelling need for a pardon? Yes \_\_\_

30. What is the need? (be specific)\_\_\_

31. Applicants must demonstrate a substantial period of good citizenship and an exemplary life since conviction. Please indicate examples of constructive conduct and specific achievements if any (attach a separate sheet if more space is needed):\_\_\_

32. How will a pardon substantially aid you in improving your life (attach a separate sheet if more space is needed)

33. How will a pardon benefit society?\_\_\_

REFERENCES:

34. Please provide three (3) letters of reference from persons other than you or members of your family, attesting to your good character and reputation. Please list the names of individuals below:

Name/Relationship	Address	Phone No.
1. ___		
2. ___		
3. ___		

Upon granting of a pardon, it is the recipients responsibility to provide this information to Tribal Court and Law Enforcement for processing of expungement.

By virtue of request for pardon, applicant may be subject to the following: Drug testing and ongoing follow-up or future assessments.

I hereby authorize release of my criminal records to the Chairman or the Chairman's representative.

\_\_\_\_\_  
Pardon applicant

Notice: By submitting this application, you are consenting to public release of your name should a pardon be issued by the Chairman.

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Notary Public in and for the State of \_\_\_\_\_

My commission expires:\_\_\_\_\_

**CHAPTER 26.08  
Prevention of Crime**

26.0801 Reserved/Open #  
REPEALED BY TMBC1246-6-18.

26.0802 Reserved/Open #  
REPEALED BY TMBC1246-6-18.

**26.0803 Preserving the peace at public gatherings.**

The law enforcement officials shall have authority to order a force sufficient to preserve the peace or to attend any public gathering or meeting when such official may reasonably anticipate a breach of the peace.

ADOPTED 1968, PREVIOUSLY NUMBERED 1.0203.

**CHAPTER 26.09**  
**Attempt and Accomplice**

**26.0901      Criminal Attempt.**

A person is guilty of criminal attempt and shall be charged the same of the completed crime, if, acting with the kind of culpability otherwise required for commission of a crime, he/she intentionally engages in conduct which, in fact, constitutes a substantial step toward the commission of the crime.

1. Factual or legal impossibility of committing the crime is not a defense, if the crime could have been committed, had the related circumstances been as the person believed them to be.
2. A person who engages in conduct intending to aid Another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under Subsection 26.0904 were the crime committed by the other person, even if the other is not guilty of committing or attempting the crime; for example, because he/she has a defense of justification or entrapment.

ADOPTED TMBC5619-04-94.

26.0902 Reserved/OPEN #  
MOVED TO 26.0508 (8).

26.0903 Reserved/OPEN #  
REPEALED BY TMBC1246-6-18.

**26.0904      Aiding/abetting/acting in concert/accessory before the fact**

1. It shall be unlawful to aid, abet, counsel, command, induce or obtain the commission of any offense against the Turtle Mountain Band of Chippewa Indians and to act in concert with any person committing such an offense.
2. It shall be unlawful to be an accessory before the fact to the commission of any offense.
3. Except as otherwise expressly provided, anyone who violates this section shall be punishable in the same manner as a principal.
4. A person may be charged and convicted, accordingly for which any classification is applicable to this section regardless of whether the principal has been charged or convicted.

AMENDED BY TMBC1262-06-18 ORIGINALLY ADOPTED TMBC5619-04-94.

**26.0905      Accessory after the fact.**

1. Any person who, after a crime has been committed; harbors, conceals or aids an offender in with the intent that the offender may avoid or escape from arrest, trial, conviction or punishment, having knowledge that the offender has committed a crime, been charged with a crime or convicted of a crime is an accessory after the fact and shall be guilty of Class [3] three offense.
2. A person shall be charged and convicted accordingly for which any classification is applicable to this section regardless of whether the principal has been charged or convicted.

ADOPTED TMBC1262-06-18.

**CHAPTER 26.10**  
**Homicide**

**26.1001      Homicide in the first degree.**

Any person who commits any of the following shall be guilty of homicide in the first degree and shall be sentenced to a Class [5] offense:

1. Causes the death of another human being with premeditation and intent to effect the death of the person or of another;
2. Causes the death of a human being while committing or attempting to commit a criminal sexual act in with force or violence, either upon or involving the person or another;
9. Causes the death of a human being with intent to cause the death of the person or another, while committing or attempting to aggravated robbery, burglary, kidnapping, drive-by shooting, tampering with a witness,, arson, or escape from custody;
4. Causes the death of a peace officer, prosecuting attorney, prosecuting attorney, judge or correctional officer either employed by the Turtle Mountain Tribe or the Bureau of Indian Affairs, with intent to cause the death of that person or another, whether the person is engaged in the performance of official duties or off duty;
5. Causes the death of a juvenile while committing child abuse, when the offender has engaged in a past pattern of child abuse upon a child and the death occurs under circumstances manifesting an extreme indifference to human life;
6. Causes the death of a human being while committing domestic violence, when the offender has engaged in a past pattern of domestic violence upon the victim or upon another family or household member and the death occurs under circumstances establishing an extreme indifference to human life; or
7. Causes the death of a human being while committing, conspiring to commit, or attempting to commit a Class [5] five crime to further terrorism and the death occurs under circumstances establishing an extreme indifference to human life.

Adopted TMBC5619-04-94 and Amended TMBC 1246-06-18.

**26.1002 Homicide in the second degree.**

Any person who commits any of the following shall be guilty of Class [5] five offense.

1. Causes the death of a human being, without intent to affect the death of any person, while committing or attempting to commit a criminal sexual act with force or violence or a drive-by shooting; or Class [5] five offense.
2. Causes the death of a human being without intent to affect the death of any person, while intentionally inflicting or attempting to inflict bodily harm upon the victim,
  - a. when the offender is restrained under an order for protection and the victim is the person designated to receive protection. As used in this clause, "order for protection" includes an order for protection issued under Chapter 37;
  - b. a harassment restraining order issued in a court order;
  - c. a court order setting conditions of a conditional release;

- d. a restraining order in a marriage dissolution action;
- e. and any ordered issued by another state that is similar to any of the above orders.

Adopted TMBC1246-06-18 Prior section 26.1002 "Manslaughter" repealed.

**26.1003 Homicide by negligent operation of vehicle.**

- 1. Any person who causes the death of another human being by the negligent operation or handling of a vehicle is guilty of a Class 4 Offense.
- 2. Any person who causes the death of an unborn child by the negligent operation or handling of a vehicle is guilty of a Class 4 Offense.

Adopted TMBC 5619-04-94 and Amended by TMBC1246-06-18.

**26.1004 Homicide by intoxicated use of vehicle.**

- 1. Any person who does any of the following:
  - (a) Causes the death of another by the operation or handling of a vehicle while under the influence of an intoxicant.
  - (b) Causes the death of another by the operation or handling of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.
  - (c) Causes the death of another by the operation or handling of a vehicle while the person has a prohibited alcohol concentration, as defined in Title 38.
  - (d) Causes the death of another by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.
  - (e) Causes the death of an unborn child by the operation or handling of a vehicle while under the influence of an intoxicant.
  - (f) Causes the death of an unborn child by the operation or handling of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.
  - (g) Causes the death of an unborn child by the operation or handling of a vehicle while the person has a prohibited alcohol concentration, as defined in Title 38
  - (h) Causes the death of an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.
- 2. Penalty for violations of this provision shall be Class 5 Offense
- 3. Defenses to the charge:
  - (a) In any action under this section, the defendant has a defense if he or she proves by a preponderance of the evidence that the death would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, did not have a detectable amount of a restricted controlled substance in his or her blood, or did not have an alcohol concentration described herein and in Title 38.
  - (b) In any action that is based on the defendant allegedly having a detectable amount of methamphetamine or gamma-hydroxybutyric acid or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors or gamma-hydroxybutyric acid or delta-9-tetrahydrocannabinol.

Adopted TMBC1246-06-18.

CHAPTER 26.11

Offenses Against Turtle Mountain Band of Chippewa Indians or Any Agency, Organization  
Thereof

26.1101 Criminal Conspiracy.

1. It shall be unlawful to, with one or more persons, to engage in or cause the act of events with the intent to commit any offense punishable by tribal law in which the conduct is agreed to be performed, if any one person commits an overt act in execution of the conspiracy to any other person or business.
2. Conspiracy to commit an offense carries the same possible punishment as the completed offense.
  - a. Class [5] five if an objective of the conspiracy is commission of a Class [5] five offense.
  - b. Class [4] four offense if an objective of the conspiracy is commission of a Class [4] four offense.
  - c. Class [3] three offense if an objective of the conspiracy is commission of a Class [3] three offense.
  - d. Class [2] two offense if an objective of the conspiracy is commission of a Class [2] two offense.

Adopted 1976 renumbered from 1.2010 and amended by TMBC 5619-04-94 and by TMBC1246-06-18.

26.1102 Contempt of court.

Any person who shall willfully disobey any order, subpoena, warrant or command duly issued, made or given by the Turtle Mountain Tribal Court or any officer thereof shall be guilty of a Class 2 offense. When contempt is committed in the immediate view and presence of a judge, that person may be punished immediately.

Adopted TMBC 5619-04-94.

26.1103 Contributing to the delinquency, neglect or abuse of a juvenile.

1. Parent(s) or any adult who is with a juvenile who commits a crime resulting in any damage or loss of property shall be responsible for any damages committed by the juvenile.
2. Any person who shall be guilty of a Class [3] three offense of contributing to the delinquency, neglect, or abuse of a juvenile and who knowingly or willfully causes, encourages, or aids a juvenile to under the influence of alcohol or drugs, or to commit an act whereby the juvenile could be:
  - a. Adjudicated "delinquent" (as defined by Title 5)
  - b. An abused juvenile whose parent, guardian, custodian, caretaker or adult: inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than reckless or irresponsible means.
  - c. Any parent, guardian, custodian, caretaker or adult who causes or allows serious emotional damage to the juvenile by instigating, allowing or subjecting serious emotional damage as evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others;
  - d. Any parent, guardian, custodian, caretaker or adult who encourages, directs or approves of delinquent acts involving moral turpitude committed by the juvenile; or
3. As in Title 5 of the Children's Code and currently defines a neglected juvenile to be a juvenile who does not receive proper care, supervision,



or discipline from the juvenile's parent, guardian, custodian, or caretaker; or

- a. Who has been abandoned; or
- b. Who is not provided necessary medical care; or
- c. Who is not provided necessary corrective care; or
- d. Who lives in an environment harmful to the juvenile's welfare;
- e. Who lives in a circumstance of such a corrupt or a degenerate environment it that would shock the public conscience.

Adopted 1968 Amended by TMBC 5619-04-94 and TMBC1246-06-18.

**26.1104 Cruelty to animals.**

It shall be unlawful for any person and a Class [3] three offense to purposely or knowingly:

1. Fail to provide necessary food, care, or shelter for an animal in one's custody;
2. Leave an animal locked in a vehicle;
3. Abandon an animal in one's custody;
4. Kill, torture, injure, or administer poison to an animal without legal license to do so; or
  - a. Conviction under this section will result of the confiscation of the cruelly treated animal(s) belonging to the accused, and it shall be proper if convicted, for the court in its discretion to order a final determination of the custody of the confiscated animal(s).
  - b. If the animal is to be destroyed, the manner employed will not be unnecessarily cruel and the expense of a veterinarian shall be imposed upon the original owner.
  - c. Any person who shall torture or cruelly mistreat any animal, or fail to take proper care of any domesticated animal, shall be guilty of a Class [3] three offense.
  - d. A person who is convicted of 26.1104 shall be responsible for the cost of impoundment of an animal(s) and will be responsible for the animal(s) food during impoundment during its confinement.
  - e. The Tribal Court shall order, if an animal(s) is impounded under 26.1104, be spayed or neutered, be registered and given rabies vaccinations. The cost of the medical procedures will be paid to the Turtle Mountain Animal Control/Pound if the original owner is found not guilty or a new owner purchases the animal(s).

Adopted 1968 Amended by TMBC 5619-04-94 and TMBC1246-06-18.

**26.1104.01 Cruelty to livestock.**

1. Any person(s) shall be guilty of a Class [3] three offense who does not supply the livestock animal a sufficient quantity of wholesome food and water when causing or confining the livestock animal.
2. This section also provides that any officer of the department of health, environmental control, animal control or law enforcement may lawfully destroy, or cause to be destroyed, any animal found abandoned and not properly cared for, appearing to be infectiously diseased, injured past recovery for any useful purpose.

Adopted TMBC1246-06-18

**26.1104.02 Warrant to seize the animal(s)**

1. On a showing of probable cause to the Tribal Court to believe that the animal has been or is being cruelly treated, the court shall issue the warrant, forthwith, and set a time within [10] ten days of the date of issuance of the warrant for a show cause hearing to determine whether the animal has been cruelly treated.

2. The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the livestock of the time and place of the hearing.

Adopted TMBC1246-06-18.

**26.1104.03 Order of sale or return of animal(s).**

1. Each interested party is entitled to an opportunity to present evidence at the hearing.
2. A finding in Tribal Court that the owner of an animal is guilty of an offense under Section 26.1408, involving the animal as prima facie evidence at a hearing that the animal has been cruelly treated shall be guilty of a Class [4] four offense.
3. If the court finds that the owner has cruelly treated the animal and that the animal is farm livestock, the owner shall be denied ownership and the court shall order a sale of the animal by public notice, order the animal given to a society for the protection of animals, or order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so.
4. The former owner of a cruelly treated animal or the owner's representative will not be accepted.
5. If the animal is unable to sell, the court may give the Animal to a society for the protection of animals.
6. The court shall order the animal returned to the owner if the court does not find that the animal has cruelly treated the animal.
7. Proceeds from the sale of the animal shall be applied first to the expenses incurred in caring for the animal during impoundment and the sale of the animal shall pay any excess proceeds to the court ordering the sale.
8. An owner of an animal ordered to be sold at public auction as provided in this subchapter may appeal the order.
9. While an appeal under this section is pending, the animal will not be sold, destroyed, or given away.

Adopted TMBC1246-06-18.

**26.1104.04 Livestock running at large.**

1. It shall be unlawful and a Class [3] three offense for any owner or person having the control of any such animal to permit the animal to run at large on the jurisdiction of the Turtle Mountain Reservation.
2. Any person who shall knowingly and negligently permit the running at large of any livestock shall be guilty of a Class [4] four offense and shall be responsible for restitution to the person(s) injured and/or the property damages sustained by the wronged person.

Adopted TMBC1246-06-18.

**26.1105 Disturbing lawful meeting.**

1. It shall be unlawful for any person and a Class [2] two offense to intentionally prevent or disrupt a lawful meeting, by committing any physical act intending to obstruct or prevent the meeting physically.
2. It shall be unlawful for any person and a Class [2] two offense by making any utterance, gesture, threat to outrage the sensibilities of the group or prevent the meeting from conducting its business.

Adopted TMBC 5619-04-94 and amended TMBC1246-06-18.

**26.1106 Election tampering.**

Any person who votes more than once at an election, places more than one (1) ballot in the ballot box for the same candidate for office, or issue, or

campaigns within one hundred (100) feet of the building containing the polling place, shall be guilty of a Class [2] two offense. (See Title 13).

**26.1107 Entrapment.**

It shall be unlawful and a Class [3] three offense to entrap a person into a crime so that the person you have tricked can be arrested.

- a. In this section "law enforcement agent" includes personnel of federal and local law enforcement agencies and any person cooperating with such an agency.

ADOPTED TMBC1246-06-18.

**26.1108 Escape.**

1. A person, while in the official custody of the Belcourt Law Enforcement Center, but supervised or housed within the Turtle Mountain jurisdiction, and escapes shall be guilty of Class [3] offense.
2. If any person who has been in official confinement and has been approved by the Tribal Court for work, educational or vocational school release, a substance abuse program, mental health therapy or a family emergency and shall fail to report back to the place of imprisonment after having been ordered to report back at a set date and time shall be guilty of a class [3] three offense.
3. A person who is officially confined who shall escape, break, or otherwise leave the premises of any place of imprisonment, as defined in section 26.0601, where a person has been lawfully confined escapes from the lawful custody of any correctional officer, law enforcement officer or special agent shall be guilty of a Class [4] four offense.
4. Escape is a Class [5] five offense if:
  - a. a person uses a firearm, destructive device, or other dangerous weapon in effecting or attempting to affect his/her removal from official detention;
  - b. a person uses any other force or threat of force against another in effecting or attempting to affect his removal from official detention; or
  - c. the person escaping was in official detention by virtue of his arrest for, or on charge of or according to his conviction, a Class [5] offense.

ADOPTED TMBC 5619-04-94 AND TMBC1246-06-18.

**26.1108.01 Battery by a prisoner.**

It shall be unlawful and a Class [4] four offense for any prisoner in the care, custody or control of the Turtle Mountain Law Enforcement Center or supervised or housed within the Turtle Mountain jurisdiction and willfully and knowingly throws, emits, or causes to be used as a projectile, bodily fluids or excrement at any person who is employed by the Bureau of Indian Affairs or the Turtle Mountain Tribe while that employee is in the performance of his or her duties.

ADOPTED BY TMBC1246-06-18.

**26.1109 Abandonment and failure to support spouse and children.**

1. A supporting spouse is guilty of a Class [3] three offense if the supporting spouse either:
  - a. Willfully abandons a dependent spouse without providing that spouse with adequate support; or
  - b. While living with a dependent spouse, willfully neglects to provide

adequate support for that dependent spouse.

2. Any parent who shall willfully neglect or refuse to provide adequate support for the parent's child, whether natural or adopted and the parent abandons the child, shall be guilty of this offense. Willful neglect or refusal to provide adequate support of a child shall constitute a continuing offense and shall not be barred by any statute of limitations until the youngest living child of the parent shall reach the age of [18] eighteen years.

Adopted 1968 renumber from 1.2024 and amended TMBC1246-06-18.

**26.1109.01 Bigamy marriage.**

Any person who willfully and knowingly contracts in a second marriage (or going through the process of a second marriage) while the first marriage is still valid and undissolved is guilty of a Class [3] three offense. This does not apply or extend to:

1. A person whose spouse has been absent for five (5) successive years and is believed by him or her to be dead; or
2. A person whose spouse has voluntarily absented himself and has continually remained within the United States for a time of five (5) successive years.

Adopted 1968 renumber from 1.2007 and Amended by TMBC686-01-12 and TMBC1246-06-18 renumbered from 26.1203.

**26.1109.02 Spreading sexually transmitted disease(s).**

1. It shall be unlawful and a Class [4] four offense to infect another person with a sexually transmitted disease, if one knows and makes a conscious intent to transmit the disease.
2. The court shall, upon conviction, have the authority to order the medical examination and treatment of the convicted offender and may also order an investigation to determine to what extent others have or may have been infected by the convicted offender.

Adopted 1968 previously numbered 1.2032 Amended by TMBC686-01-12 and by TMBC1246-06-18 renumbered from 26. 1204.

**26.1110 Failure to send children to school.**

1. Any parent, guardian or custodian of a child of school age who shall neglect or refuse to send his/her children or any children under his/her care to school in compliance with the standards for school attendance adopted by the school board shall be deemed guilty of a Class [2] two offense.
2. Documentation that demonstrates that the parents, guardian, or custodian were notified of the threshold limit of unexcused absences and documentation that demonstrates the parents, guardian or custodians failed to comply with remedial measures established by the local school board, shall be prima facie evidence that the parents, guardian, or custodian is in violation of the law and the burden of proof shall be upon the defendant to show the lawful attendance or the excused absences of the child(ren).

Adopted 1968 previously numbered 1.2025 and Amended TMBC1246-06-18.

**26.1111 False arrest.**

It shall be unlawful for any public officer or person pretending to be a law enforcement officer to, under the pretense or involvement of any process or

other legal authority, arrest or detain a person against their will, except where such person reasonably believed he is authorized by law to do so. False arrest shall be punishable as a Class [3] three offense.

Adopted 1968 previously numbered 1.2026 and renumbered TMBC5619-04-94 Amended TMBC1246-06-18.

**26.1112 Forgery.**

1. It shall be unlawful and a Class [3] three offense to alter any writing of another without their authority, or to make, complete, execute, issue, or transfer any writing so that it contends to be the act of another who did not authorize that act, with the intent to defraud or injure anyone. "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.
2. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds \$1,000, the offender shall be guilty of a Class [4] four offense.

Adopted 1968 previously numbered 1.2030 and renumbered TMBC5619-04-94 Amended TMBC1246-06-18.

**26.1112.01 Criminal simulation.**

It shall be unlawful for any person to make, alter, or utter or attempt to circulate or sell as genuine any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess, with intent to defraud anyone and shall be guilty of a Class [3] three offense.

Adopted TMBC1246-06-18.

**26.1113 Injury to public peace.**

Any person who willfully and wrongfully commits an act which grossly disturbs the public peace shall be guilty of a Class [1] one offense.

Adopted 1968 previously numbered 1.2035 and renumbered TMBC5619-04-94 Amended TMBC1246-06-18.

**26.1114 Killing of animal and leave it lay.**

Any person who, while hunting, kills an animal and leaves it lay is guilty of a Class [2] two offense.

Adopted TMBC5619-04-94.

**26.1115 Littering.**

1. Any person, business, or organization who shall intentionally, carelessly, or recklessly throw, scatter, spill, put, or intentionally, carelessly or recklessly cause litter to be blown, scattered, spilled, thrown or placed or otherwise disposed of upon any public property or upon private property within the jurisdiction of the Turtle Mountain Reservation shall be guilty of a Class [2] two offense.
  - a. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway. Trucks, trailers or other vehicles when loaded with rock, gravel, stone or other similar substances which could blow, leak, sift or drop shall not be driven

or moved on any highway unless the height of the load against all four walls does not extend above six inches below their tops when loaded.

- b. The load shall be securely covered by tarpaulin or some other suitable covering, or unless it is otherwise constructed as to prevent any of its load from dropping, sifting, leaking, blowing, or otherwise escaping in that event. Nothing in this subsection shall be applicable to or in any manner restrict the transportation of seed, poultry, livestock, silage or other feed grain used in the feeding of poultry or livestock.
- c. This section shall not apply to lands or property that is designated by the Turtle Mountain Band for the disposal of garbage and refuse where the public is authorized to use such property for such purpose.

Adopted TMBC5619-04-94 and amended TMBC1246-06-18.

**26.1116 Obstructing justice.**

- 1. It shall be unlawful, and a Class [4] four offense for any person with the purpose to hinder the apprehension, prosecution, conviction or punishment of another for the commission of an offense, to:
  - a. Provide or aid in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape;
  - b. Conceal or destroy evidence of the offense, or tamper with a witness, informant, document or other source of information, regardless of its admissibility in evidence;
  - c. Warn the other of impending discovery or apprehension, except if such warning is given in an attempt to get the other person to comply with the law;
  - d. Volunteer false information to a law enforcement officer for the purpose of preventing the apprehension of another; or
  - e. Obstruct by force, threat, bribery or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of another person.

Adopted TMBC1246-06-18.

**26.1116.01 Harboring.**

Whoever harbors a juvenile, runaway or incapable person is guilty of a Class [4] four offense by denying, confines, or covertly or keeps a juvenile or another person incapable of consent from a parent, guardian, or other person responsible for conventional supervision of the welfare of the juvenile or other incapable person will be guilty of harboring; unless the person notifies a law enforcement officer of the juvenile's presence.

Adopted TMBC1246-06-18.

**26.1117 Operating a dance hall for public social dances and other activities.**

Any person who operates or maintains a public dance hall or activities hall within the Jurisdiction of the Turtle Mountain Tribal Court shall comply with the following:

- 1. must possess a valid business license with dance hall permit for each dance activity from the Turtle Mountain Tribal Council;
- 2. shall not operate between the hours of 1:00 a.m. and 8:00 a.m. of any day of any week;
- 3. shall not operate said dance hall on Sunday, Memorial Day, Good Friday, Christmas Day, or on any state, tribal, county, or other election day

affecting the members of this reservation. Operation shall not be allowed after 6:00 p.m. on Christmas Eve;

4. shall employ someone from an auxiliary police force to be present during operation. A private bouncer will not be acceptable to meet the requirement of security. Licensed bars will not be exempted from this provision;
5. fraternal and church owned halls shall comply with dance hall closing hours;
6. shall display in a conspicuous place a certification from Indian Health Services that the building is safe for the public (i.e. public safety features, fire exits, plumbing, bathrooms, handicapped access);
7. any person under the age of 18 years unless accompanied by parents will not be allowed past the hours of 10:00 p.m.;
8. non-profit organizations and charitable organizations shall comply with this ordinance;
9. shall present proof of liability insurance.

Any person violating subsection shall be guilty of a class 2 offense.

Adopted in 1968 Amended TMBC1750-08-00 and Amended TMBC1246-06-18.

**26.1117.01 Regulating the sale of alcohol beverages.**

Any person who shall sell, trade, transport or manufacture any article whatsoever which produces alcoholic intoxication, without first complying with the laws of the Tribe, State of North Dakota and applicable Federal regulations, shall be guilty of a Class [3]three offense.

Adopted TMBC1246-06-18.

**26.1118 Perjury in the first degree.**

1. It shall be unlawful and Class [4] four offense for any person, in any official proceeding, to make a false statement under oath or equivalent affirmation, or swear or affirm the truth of a statement previously made, when the statement is material and he/she does not believe it to be true.
2. Falsification is important regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law to be decided by the Court.
3. It is no defense to prosecution under this section that the oath or affirmation was conducted or taken in an irregular manner or that the declarant was not competent to make the statement. A document claiming to be made on oath or affirmation at any time when the actor presents it as being verified shall be deemed to have been duly sworn or affirmed.
4. No person shall be guilty of an offense under this section if he/she retracted the falsification in the course of the proceeding in which it was made before it became clear that the falsification was or would be exposed and before the falsification substantially affected the proceeding.
5. No person shall be convicted of an offense under this section where proof of deceitfulness rests solely upon contradiction by testimony of a single person other than the defendant.

Adopted in 1968 and amended TMBC1246-06-18.

**26.1118.01 Perjury in the second degree.**

1. It shall be unlawful for any person, with the purpose to mislead a public servant in performing his/her official function, to:
  - a. Make a written false statement which he/she does not believe to be true;
  - b. Purposely create a false impression in a written statement for any benefit by omitting information necessary to prevent statements therein from being misleading;
  - c. Submit or invite trust on any writing which he/she knows to be forged, altered or otherwise lacking in authenticity; or
  - d. Submit or invite trust on any sample, specimen, map, boundary mark, or other object which he/she knows to be false.
2. A person is guilty of perjury in the second degree and shall be guilty of a Class [3] three offense if he/she makes a false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.
3. It is no defense to prosecution under this section that the oath or affirmation was conducted or taken in an irregular manner or that the declarant was not competent to make the statement. A document professing to be made on oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.
4. No person shall be guilty of an offense under this section if he/she retracted the falsification in the course of the proceeding in which it was made before it became important that the falsification was or would be exposed and before the falsification substantially affected the proceeding.
5. No person shall be convicted of an offense under this Section where proof of deceitfulness rests solely upon contradiction by testimony of a single person other than the defendant.

Adopted TMBC1246-06-18.

**26.1118.02 Tampering with a witness(es).**

1. It shall be unlawful and a Class [3] three offense for any person while believing that an official proceeding or investigation is pending or is about to be instituted, to attempt to persuade, threaten, harass or otherwise cause a person to:
  - a. Testify or inform falsely;
  - b. Withhold any testimony, information, document, or object or evidence;
  - c. Avoid legal process summoning him/her to testify or supply evidence;
  - d. Absent him/herself from any proceeding or investigation to which he has been legally summoned;
  - e. To harm another by an unlawful act in retaliation for anything done by another in his/her capacity as a witness or informant; or
  - f. To solicit, accept or agree to accept any monetary payment or thing of value in consideration for doing any of the concepts specified in this section.

Adopted TMBC1246-06-18.

**26.1118.03 Tampering with evidence.**

It shall be unlawful and a Class [4] offense, while believing that an official



proceeding or investigation is pending or is about to be instituted, to:

1. alter, destroy, conceal or remove any record, document, or object with the intent to impair its verity or availability in such proceeding or investigation; or
2. make, present, or use any record, document, or object knowing it to be false with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

Adopted TMBC1246-06-18.

**26.1118.04 Tampering with public records.**

It shall be unlawful and a Class [4] four offense to for any person(s):

1. Knowingly make a false entry in, or false revision of, any record, document, or item belonging to, received by or kept by the Turtle Mountain Band of Chippewa Indians or any government for information or record, or required by law to be kept by others for information of the Turtle Mountain Band of Chippewa Indians.
2. Make, present or use any record, document, item or thing knowing it to be false and with the purpose that it be taken as a genuine part of information or records referred to in the above subsection [1] one; or
3. Purposely and unlawfully destroy, conceal, remove or otherwise damage the truth or availability of any such record, document or thing belonging to or received by or kept by the Turtle Mountain Band of Chippewa Indians or any government.

Adopted TMBC1246-06-18.

**26.1119 False information to a law enforcement official.**

Any person who with intent to obstruct justice shall be guilty of a Class [2] two offense when a person gives a fictitious name, a false date of birth, or a fraudulently altered identification card to a law enforcement officer when a law enforcement officer makes inquiries incident to a lawful investigatory stop, lawful arrest, or inquiries incident to executing any other duty imposed by law.

Adopted 1976 and amended TMBC5619-04-94, TMBC1750-08-00 and TMBC1246-06-18 and renamed.

**26.1119.01 Protection of tribal officials and employees of the Turtle Mountain Band of Chippewa Indians.**

Any person who shall assault, resist, impede, intimidate, or interfere with any duly elected or appointed Tribal official, while engaged in or on account of the performance of his or her official duties, shall be guilty of a Class 2 offense.

Any person who shall commit a battery upon any duly appointed tribal official, while engaged in or on account of the performance of his or her official duties, shall be guilty of a class 4 offense.

Adopted TMBC5619-04-94, Amended TMBC1750-08-00.

**26.1120 Assault on Judge(s), Law Enforcement, Advocates and Court Personnel.**

1. Any person who shall commit an assault, threatens to commit bodily injury, exhibits threatening behavior, knowingly puts a person in fear of bodily injury on a judge, law enforcement officer, probation/parole officer or advocate while the official is performing or attempting to perform his/her official duties shall be guilty of a Class [3] three offense.
2. Any person who shall commit an assault inflicting serious injury on a judge, law enforcement officer, probation officer/parole officer or advocate while the official is performing or attempting to perform his/her

official duties shall be guilty of Class [4] four offense.

3. Any person who shall commit an assault with a firearm or other deadly weapon on a law enforcement officer, judge, probation/parole officer, or advocate while the official is performing or attempting to perform his/her official duties shall be guilty of a Class [5] five offense.

Adopted 1976 Amended TMBC5619-04-94, TMBC1750-08-00, and TMBC1246-06-18 and renamed.

**26.1120.01 Obstructing governmental functions.**

It shall be unlawful to and a Class [4] four offense to:

1. Use force, violence, threats, intimidation, or engage in any other unlawful act with a purpose to interfere with a public servant performing an official function; or
2. Purposely obstruct, impair, or prevent the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act.

Adopted TMBC1246-06-18.

**26.1121 Refusing to aid officer.**

It shall be unlawful and a Class [3] three offense for any person, to knowingly or recklessly refuse to aid a law enforcement officer or fire fighter in the performance of his/her official duties.

Adopted 1968 Penalty amended TMBC1246-06-18.

**26.1122 Resisting lawful arrest.**

Any person with intent to prevent a law enforcement officer from affecting an arrest shall be guilty of a Class [3] three offense when he/she:

flees from a law enforcement officer, after being told by an officer that he or she is under arrest;

1. Or creates a substantial risk of bodily harm to the officer or any other person,
2. or employs justifying substantial force to overcome the resistance is guilty of resisting arrest.
3. if in the course of such resistance or assistance, a law enforcement official incurs any physical injury, the person or persons shall be charged under 26.1120.

Adopted 1968 Amended TMBC1750-08-00 and TMBC1246-06-18.

**26.1122.1 Solicitation.**

It shall be unlawful and a Class 3 Offense to entice advise, incite, order, or otherwise encourage another to commit any offense, with the intent that such other person commit an offense punishable under the laws of the jurisdiction where the conduct was to be performed.

Adopted TMBC 686-01-12 renumbered and amended TMBC1246-06-18.

**26.1123 Unlawful assembly.**

When three (3) or more persons assemble with mutual intent or with the means and preparation to do an unlawful act 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, shall be guilty of a Class [2] offense.

Adopted TMBC 5619-04-94.

**26.1124 Interfering with emergency telephone communication.**

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1. It shall be unlawful for any person and a Class [3] three offense to maliciously disconnect the telephone line, tear down, destroy, or in any way render unfit the transmission of telephone or cell phone communication or other communication equipment.
2. It shall be unlawful for any person, to intentionally interfere with anyone making an emergency communication when an individual reasonably believed to be, or reasonably believes himself/herself or another person to be, in imminent danger of bodily injury, or that an individual reasonably believes that his/her property or the property of another is in imminent danger of substantial damage, injury or theft.

Adopted 1968 and Renumbered from 1.2063 and Amended TMBC5619-04-94, TMBC544-10-97, and TMBC1246-06-18.

**26.1125      Zero Alcohol Tolerance.**

1. It shall be unlawful for any person under the age of twenty-one (21) years to possess or consume any alcohol beverage in the Turtle Mountain jurisdiction. Any person under the age of twenty-one (21) years shall be deemed guilty of a violation of this provision if that person shall have an alcohol concentration above .00 or one percent by weight at the time of performance of a chemical test.
  - a. It shall be a defense to Section 1 above, if the minor's possession or use of alcohol is related to a cultural or religious practice, including, without limitation, the use or possession of alcohol during any religious or cultural ceremony.
2. A person who violates Section 1 above is guilty of a Class [1] one offense, upon conviction or adjudication of guilt.
3. A person who commits a second or subsequent violation of Section 1 above shall be subject to the penalties prescribed in Section 2 above and shall be court ordered to undergo an assessment of alcohol and drug evaluation and follow through with any or all recommendations.
  - a. Failure to complete the court-ordered treatment shall result in doubling of the fines and community service, and may order incarceration for a period of time not to exceed a Class [1] one jail sentence.

ADOPTED TMBC544-10-97 AND AMENDED TMBC2684-09-05.

**26.1126      Regulation on the sale and use of tobacco products by minors.**

1. Any person (including parents and guardians) who shall sell or furnish to a minor under eighteen (18) years of age, cigarette papers, cigars, snuff or tobacco in any form, shall be guilty of an infraction and shall be ordered to pay a fine of not less than one hundred dollars (\$100) and may be ordered to perform not more than forty (40) hours of community service work, or both such fine and community service.
2. A business establishment which knowingly or negligently allows sales of tobacco products as defined in Subsection (1) to minors under eighteen (18) years of age shall be guilty of an infraction and ordered to pay a fine of five hundred dollars (\$500) for conviction of a first violation. Subsequent violations may result in up to a doubling of the fine and may subject the business owner to revocation of business license.
  - a. All business/establishments must keep tobacco products behind the counter to prevent self-service access.

Compliance checks will be conducted to maintain that businesses/establishments are not selling to minors.

3. As used in this subsection "sell" includes dispensing from a Vending machine under the control of an establishment (example: Bowling Alley, Retirement Home, Grocery Stores, Convenient Stores, Restaurants).
4. It shall be a defense to Subsection (1) and (2) if the furnishings of tobacco to a minor was part of a cultural or religious practice, provided: the youth/child who is under the age of eighteen (18) must be supervised by a parent, guardian or elder.
  - a. As used in this subsection an "elder" is defined as grandparent or religious leaders whom are performing the religious or cultural ceremony.

ADOPTED TMBC544-10-97 AND AMENDED TMBC2684-09-05.

**26.1127 Curfews-Restrictions; Exceptions and Enforcement.**

1. In this section, unless the context or subject otherwise requires:
2. Restriction during curfew hours.
  - a. It shall be unlawful for any juvenile to remain in any public place or on the premises of any establishment within the city of Belcourt, North Dakota or any other residential, commercial, or industrial property within the exterior boundaries of the Turtle Mountain Band of Chippewa Indians during curfew hours.
  - b. It shall be unlawful for any parent or guardian of a juvenile to knowingly permit, or by insufficient control allow, the juvenile to remain in any public place or on the premises of any establishment within the city during curfew hours. The term "knowingly" includes knowledge which a parent or guardian should reasonably be expected to have concerning the whereabouts of a juvenile in the legal custody of that parent or guardian.
  - c. It shall be unlawful for any owner, operator, or any employee of an establishment to knowingly allow a juvenile to remain upon the premises of the establishment during curfew hours.
3. Exceptions to curfew.
  - a. The following shall constitute valid exceptions to the operation of the curfew. That the juvenile was:
    1. accompanied by the juvenile's parent or guardian;
    2. on an errand at the direction of the juvenile's parent or guardian, without any detour or stop;
    3. in a motor vehicle involved in interstate travel;
    4. engaged in an employment activity, or going or returning home from an employment activity, without any detour or stop;
    5. involved in an emergency;
    6. on the sidewalk abutting the juvenile's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the juvenile's presence;
    7. attending an official school, religious, or other recreational activity supervised by adults and sponsored by a civic organization, or another similar entity that takes responsibility for the juvenile, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by a civic organization, or another

- similar entity that takes responsibility for the minor;
8. exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly; or,
  9. married or had been married.
- b. It is a defense to prosecution under section (2) that the owner, operator or employee of an establishment promptly notified the BIA police department that a juvenile was present on the premises of the establishment during curfew hours and refused to leave.

4. Enforcement of curfew.

Before taking any enforcement action under this section, a BIA police officer (and any Rolette County Law Enforcement called onto the Turtle Mountain Band of Chippewa Indian Reservation to assist with Non-Indian Juveniles) shall ask the apparent offender's age and reason for being in the public place. The officer(s) shall not issue citations or make arrests under this section unless the officer(s) have probable cause to believe that an offense has occurred and that, based on any response and other circumstances, no defense in section (3) is present.

ADOPTED TMBC544-10-97 AND AMENDED tmbc2684-09-05, TMBC-863-08-10, and TMBC1246-06-18.

26.1128 Reserved OPEN  
Repealed TMBC1246-06-18.

**26.1129 Noisy party or gathering prohibited.**

Generally.

1. It shall be unlawful for any person and a Class [3] three offense to willfully make, cause to be made or continue any loud, raucous or disturbing noise. A loud, raucous or disturbing noise is any sound which, because of its volume level, duration or character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities. The term "loud, raucous or disturbing noise" shall be limited to noises heard upon the public streets, in a public park, school or public building or upon the grounds thereof; in church or hospital or upon the grounds thereof; on a parking lot open to members of the public; or in an occupied residential unit which is not the source of the noise or upon the grounds thereof.
2. Specifically prohibited acts. The following specific acts are declared to be loud, raucous or disturbing noises in violation of this article, but this enumeration shall not be deemed to be exclusive:
  - a. Blowing horns. The sounding of any horn, whistle or signal device on any automobile, motorcycle, bus or other vehicle except as a danger signal or as required by law, or the sounding of such device intermittently or continuously for a period in excess of 60 seconds.
  - b. Radios, amplifiers, phonographs, group gatherings, etc. Singing, yelling, or the using, operating or permitting to be played, used or operated any radio, amplifier, musical instrument, phonograph, interior or exterior loudspeakers, or other device for the producing or reproducing of sound in such manner as to cause loud, raucous or disturbing noise.
  - c. Motor vehicles. All noises coming from motor vehicles not properly equipped with standard mufflers and noise reducing equipment or not in proper operating condition.
  - d. Fireworks and firearms. The explosion of any fireworks unless under a written permit obtained from the proper authority and between the hours of 9 a.m. and 10:30 p.m. Monday through Saturday.
  - e. By this Title, a violation of this section is declared to be a public

nuisance, and may be subject to terminate by a restraining order or injunction issued by the Tribal Court on motion or petition of any person.

3. Exemptions.

The following uses and activities shall be exempt from the noise regulations set forth in this chapter:

- a. A bell or chime from any building clock, school or church.
- b. Any siren, whistle, or bell lawfully used by emergency vehicles or any other alarm systems used in an emergency situation; provided, however, that burglar alarms not terminating within 30 minutes after the responsible person has been notified shall be unlawful.
- c. Warning devices required by any applicable local or federal safety regulations.
- d. Agricultural and horticultural operations conducted in a reasonable manner.
- e. Noise caused by any type of construction equipment while it is being used for the purpose for which it was designed and purchased.
- f. The operation of an automobile race track, except between the hours 11:30 p.m. and 12:00 noon.
- g. Any community or school sponsored athletic event, except between the hours of 11:30 p.m. and 7:00 a.m.
- h. Nothing herein shall be construed to hold a landlord liable, responsible or violation of this section unless the landlord sponsors or participates in.

Adopted TMBC544-10-97, Amended TMBC2684-09-05, TMBC863-08-10, and TMBC1246-06-18.

**26.1130 Order to disperse; Refusal prohibited.**

1. It shall be unlawful for any person who shall refuse to leave the premises of a gathering of people who are creating such unreasonable noise or disturbing the peace when a law enforcement officer has ordered all persons, who do not reside in the dwelling to leave, shall be guilty of a Class [1] one offense.
2. It shall be unlawful to refuse or knowingly fail to obey an order to disperse or leave the immediate vicinity given by a law enforcement officer at the scene of a disturbance, riot or in the course of the investigation of an accident, fire, or other public disorder shall be guilty of a Class [2] two offense.

Adopted TMBC768-06-10.

**26.1131 Tenant or owner; Cooperation required.**

Every owner of such premises, or tenant in charge of the premises and who has knowledge of the disturbance shall cooperate with such police officer and shall make reasonable effort to stop the disturbance. If the owner or tenant refuses to aid the officer's order to disperse shall be guilty of a Class [2] two offense.

Adopted TMBC768-06-10.

**26.1132 Violations; Prima facie evidence.**

1. The following shall be prima facie evidence in any prosecution under this article:
  - a. As to tenants, and owner if owner resides on the premises, if law enforcement has been notified twice or more in day or failure to disperse continues the following day, and law enforcement is

called upon to enforce the terms of this ordinance either by citizen complaint or by personal investigation of peace officer.

- b. If the owner does not reside at the premises, if after owner receives verbal notice of three violations of this ordinance by his/her tenants at any premises owned by owner in the city of Belcourt, North Dakota or any other residential, commercial, or industrial property owned by owner within the exterior boundaries of the Turtle Mountain Band of Chippewa Indians within a six-month period, and after receipt of such written notice, the Belcourt Police Department is called upon to enforce this ordinance either by citizen complaint or by personal investigation of a peace officer.
- c. Noise of such volume as to be clearly audible at a distance of 50 feet from the structure or building in which the party or gathering is occurring, or in the case of apartment buildings, in the adjacent hallway or apartment, shall be prima facie evidence of unreasonable noise in violation of this chapter.

Adopted TMBC768-06-10.

**26.1133      RESERVED/OPEN**

Renumbered and moved to penalty section.

**26.1134      Bail Jumping.**

It shall be unlawful for whoever having been released from custody on bail pursuant to Title 1, and intentionally fails to comply with the terms of his or her bond or conditions of bond is guilty of a Class 3 offense.

Adopted TMBC449-08-17.

**CHAPTER 26.12  
Sexual Offenses**

**26.1201      General provision.**

When the criminality of conduct depends on a child being below the age of sixteen (16), it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than sixteen (16) years of age.

Adopted TMBC5619-04-04.

**26.1202      RESERVED/OPEN #**

Adopted TMBC768-06-10 entire section moved to definition section 26.03.

**26.1203      Harboring a Sex Offender.**

Any person who commits the following will be guilty of a Class [4] four offense:

1. Secretly provides shelter, lodging, or protection to conceal a juvenile, who is at risk of being sexually exploited.
2. A resident of a Turtle Mountain Housing Complex who knowingly attempts or assists to provides shelter or residence to a sex offender.
3. Secretly provide shelter, lodging, protection to conceal or who knowingly, attempts, or assists by providing false information, shelter or residence to any person trying to elude the law.

Adopted TMBC1246-06-18.

**26.1204      Giving sexually transmitted disease to another.**

July, 2018

1. Any person who knows or has reason to believe he/she is infected with a sexually transmitted disease and infects another person with such a disease shall be guilty of a Class [2] two offense.
2. Any person who knows he/she is infected with HIV and/or AIDS and willfully exposes another to the disease or virus is guilty of a Class [4] four offense.
3. The Turtle Mountain Tribal Court shall have authority to order and compel the medical examination and treatment of any person found to be afflicted with any communicable Sexually Transmitted Disease.

Adopted 1968 Amended Adopted TMBC 686-01-12 and TMBC1246-1246-06-18 and renamed.

**26.1205 Gross sexual imposition.**

1. Any person who engages in a sexual act with or who causes another to engage in a sexual act:
  - a. And the person is less than fifteen (15) years old, shall be guilty of a class [5] five offense.
  - b. Compels the any person victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, shall be guilty of a class [5] five offense; or
  - c. Any person who has substantially impaired the victim's power to consent or to appraise or control his/her conduct by administering or employing, without his/her knowledge, intoxicants with intent to prevent resistance shall be guilty of a class [5] five offense.
  - d. Any person who knowingly engages in a sexual act with another when the other person is substantially impaired due to a mental or physical condition shall be guilty of a class [5] five offense.
  - e. Any person who engages in sexual contact with another, or who causes another to engage in sexual contact and commits serious bodily injury upon the victim shall be guilty of a class [5] five offense.

2. A person need not prove physical resistance to the actor in prosecution.

Adopted TMBC5619-04-04 and amended TMBC1246-06-18.

**26.1206 Void Marriage.**

The following marriages are declared incestuous and void as defined in §26.1202 knowing such other person to be within said degree of relationship, shall be guilty of a Class {5} offense.

1. Marriage between parent and children including grandparents and grandchildren of every degree.
  2. Marriage between brothers and sisters of the half as well as whole blood.
  3. Marriage between uncles and nieces of the half as well as the whole blood.
  4. Marriage between aunts and nephews of the half as well as the whole blood.
  5. Marriage between first cousins of the half as well as the whole blood.
- This section applies to illegitimate as well as legitimate children and relatives.

Adopted TMBC1246-06-18, previous provision numbered 26.1206 incorporated in 26.1204.

**26.1207 Incest.**



Any person who intermarries, cohabits, or engages in a sexual act with another person related to him/her within a degree of blood relation within which marriages are declared void by 26.1206, knowing such other person to be within said degree of relationship, is guilty of a class {5} offense.

Adopted TMBC5619-04-04.

**26.1208 Indecent exposure.**

Any person who commits the following shall be guilty of a Class [3] three offense: knowingly expose one's penis, vulva, or anus in a public place with the intent to annoy or harass or causes fear in another person; and/or masturbates in a public place.

Adopted TMBC1246-06-18.

**26.1208.01 Lewd conduct.**

Motives are irrelevant; ignorance of nature no defense; unknowing definition of a crime no defense; obscene publication no defense.

Any person who:

1. Makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatever; or
2. Makes, prints, publishes, distributes, sells or has in his possession for the purposes of publication, distribution or circulation a crime comic.
3. Sells, exposes to public view or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record or other thin whatever;
4. Publicly exhibits a disgusting object or an indecent show;
5. Offers to sell, advertises or publishes an advertisement of, or has for sale or disposal, any means, instruction, medicine, drug or article intended or represented as a method of causing abortion or miscarriage; or
6. Advertises or publishes an advertisement of any means, instruction, medicine, drug or article intended or represented as a method for restoring sexual virility or curing venereal diseases or disease of the generative organs.

Any person who violates this Section shall be guilty of a Class [2] two offense.

Adopted TMBC 686-01-12.

**26.1208.02 Lewd act in public.**

Any person who engages in the following shall be guilty of a Class [2] two offense.

Exposure of any portion of the human anus or genitals, including display

1. including the male genitalia in obvious turgid state, even if completely and opaquely covered; or the exposure of the female breast lower than the upper edge of the areola; however, nothing in this section shall prohibit breast feeding of an infant or child.
2. Touching, caressing or fondling of the male or female genitals whether dressed or not dressed.
3. Simulated acts of human sex including intercourse, oral copulation, sodomy or masturbation of oneself or of one person by another.
4. Simulated acts of sex with imitation body parts.

Adopted TMBC958-1010 and TMBC 686-01-12.

**26.1208.03 Sexual harassment.**

A person who engages with intent to frighten, coerce, or harass another person:

1. By making unwanted sexual advances, requests sexual favors, verbal or physical behavior of a sexual nature that alarms or annoys, interferes with your privacy and creates an intimidating, hostile, or offensive environment; or
2. Makes unwanted and offensive sexual advances or of sexually offensive remarks when agreement to such behavior is a condition of continued employment, promotion, or satisfactory evaluation; or
3. By any unwanted sexual advances, any request for sexual favors, any verbal or physical conduct of a sexual nature that alarms or annoys other person, interferes with their privacy and creates an intimidating, hostile, or offensive environment.
4. Making unwanted and offensive sexual advances or of sexually offensive remarks or acts, by another person.

Any person who violates this section shall be guilty of a Class 3 offense.

Adopted TMBC958-1010 and TMBC 686-01-12.

**26.1208.04 Sexual battery.**

A person who commits the act of making unwanted and sexually offensive contact with an intimate body part of another person or which cause an immediate apprehension in the other person what such an act will occur. Intimate body parts include sexual organs, the anus, the groin or buttocks of any person and the breasts of a female. Sexual Battery includes situations in which the interactions defined are with a person who is incapable of giving consent or resisting due to alcohol or drugs. Any person who violates this section shall be guilty of a Class 3 offense.

Adopted TMBC 686-01-12.

**26.1209 Prostitution.**

1. Any person who engages, or solicits with intention to be hired to engage, in sexual activity as a business or is an inmate of a house of prostitution; or
2. Business in this Subsection shall mean any transaction of sexual activity in exchange of funds or to transfer anything of monetary value.

Any person who violates this Section shall be guilty of a Class 3 offense.

Adopted 1968 Amended TMBC5619-04-04.

**26.1210 Pandering.**

Any person who solicits or procures customers for a prostitute for his/her own profit shall be guilty of a Class [4] four offense.

Adopted TMBC5619-04-94, previously Title Facilitation of sexual favors.

**26.1211 Sexual act with an incapacitated person.**

Any person who:

1. Commits or causes another to commit any act of lewd or indecent sexual conduct with any person who is incapacitated or for any other reason is not able to give express and informed consent, or
2. Commits a sexual act with another who has been rendered unconscious or involuntarily drugged or who is otherwise incapable of appraising the nature of the conduct or declining to participate or consent.

Any person who violates this Section shall be guilty of a Class 4 offense.  
Adopted 5619-04-94 and Amended TMBC1246-06-18.

**26.1212      Sex Trafficking.**

Any person who shall knowingly promote or facilitate prostitution, or causes another to become engaged in sexual activity for the purpose of prostitution as defined in this Chapter, shall be guilty of a Class [4] four offense.

Adopted TMBC 686-01-12.

**26.1213      Aggravated sexual abuse of a juvenile.**

A person who commits an act of sexual penetration with another person under any of the following circumstance:

1. The victim is less than fourteen (14) years of age.
2. The victim is at least fourteen (14) years old but less than sixteen (16) and the offender is related to the victim by blood or has supervisory or disciplinary authority over the victim or the offender is a foster parent, guardian or holds a parental status in the household.
3. The act is committed during the commission or attempted commission, either alone or with one or more persons of robbery, kidnapping, homicide, aggravated assault or another, burglary, arson or criminal escape.
4. The offender is armed with a weapon or any object fashioned as to lead the victim to reasonably believe it is a weapon and threatens by word or gesture to use the weapon or object.
5. The offender is aided by one or more persons and the offender uses physical force or coercion.
6. The offender uses physical force or coercion and severe personal injury is sustained by the victim.
7. The victim is one whom the offender knew or should have known was physically helpless, mentally defective or mentally incapacitated.  
[U.S.C. 2241]

Any person who violates this Section shall be guilty of a Class [5] five offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1214      Sexual abuse of a ward.**

Any person who knowingly engages in a sexual act with another person who is in a detention and/or under the custodial, supervisory, or disciplinary authority of the person engaging in any sexual conduct shall be guilty of a Class [5] offense. [U.S.C. 2243]

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1215      Attempt to commit sexual abuse.**

Any person; who had the intent to cause another person to engage in a sexual act by use of force and has taken a substantial step to do so, can be convicted of attempted aggravated sexual abuse. [U.S.C. § 2241]

Any person who violates this Section shall be guilty of a Class [4] four offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1216      Sex trafficking of a minor.**

1. Any person who tricks, lures, coerces, promotes, recruits, transports, harbors, entices a minor causing the minor to engage in sexual acts or sexual conduct. [U.S.C. 1591]
2. Use a minor to trick, lure, coerce, promote, recruit, transport, harbor or entice another minor for the purpose of causing the minor to engage in sexual acts or sexual conduct.

Any person who violates this Section shall be guilty of a Class [5] five offense.  
Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1217 Use of interstate facilities to transmit information about a minor.**

Any person who uses the mail or any facility or means of commerce to knowingly initiate the transmission of the name, address, telephone number, social security number or electronic mail address of another individual who is a minor with the intent to entice, encourage, offer or solicit a minor to engage in any sexual activity shall be guilty of a Class [5] five offense. [U.S.C. 2425]

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1218 Sexting.**

1. Teenagers texting sexually explicit photographs of themselves, or of their friends or partners, can be charged with distribution of child pornography and those who receive the images can be charged with possession of child pornography.
  - a. the exchange of sexually explicit text messages, including photographs, via cell phone.
2. Adults who text sexually explicit photographs of themselves, or of their friends or partners to any teenager, can be charged with distribution of child pornography and those who receive the images can be charged with possession of child pornography.
  - a. the exchange of sexually explicit text messages, including photographs, via cell phone.

Any person who violates this Section shall be guilty of a Class [4] four offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1219 Sexual abuse.**

1. Any person who commits abusive sexual contact
  - a. By touching and fondling of the genitals of a child or juvenile or using the mouth for sexual arousal.
  - b. By forcing, threatening, intimidating, entices, or coercing a child or juvenile to touch another person's genital area.
  - c. Forcing, threatening, intimidating, entices or coercing a child or juvenile to engage in oral sex.

Any person who violates this Section shall be guilty of a Class 4 offense.

2. Non-Contact sexual abuse
  - a. To intentionally cause a child by threats, intimidation, enticement, or to coerce a child or juvenile to view sexual acts for the purpose of becoming sexually aroused for gratification of the actor, to humiliate or degrade the child.
  - b. To intentionally cause a child by threats, intimidation, enticement, or to coerce a child or juvenile to listen to sex acts, including audio tapes or obscene phone calls for the purpose of becoming sexually aroused for gratification of the actor, to humiliate or degrade the child.
  - c. To intentionally cause a child by threats, intimidation, enticement or coerce a child or juvenile to view any pornographic material such as videos, DVDs, magazines or photographs through any electronic device for the purpose of becoming sexually aroused for gratification of the actor, to humiliate or degrade the child.

Any person who violates this Section shall be guilty of a Class [4] four offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1220 Sexual exploitation of children.**

Any person, who uses, employs, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other minor to engage in or who transports any minor to engage in any sexually explicit conduct:

1. Participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct, or
2. Participation relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward or sex trafficking of children, or the production, possession, receipt, mailing sale, distribution, shipment, or transportation of child pornography shall be guilty of a Class [4] four offense. [U.S.C. 2251]

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1221 Selling or buying of children.**

1. Any parent, legal guardian or any person having custody or control of a minor to sell or transfers custody or control of a minor or offers to sell or offers anything in monetary value to transfer custody or control;
  - a. Who knows as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging or assisting another person to engage in sexually explicit conduct, or
  - b. With the intent to promote either the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.
2. Any person who purchases or otherwise obtains custody or control of a minor, or offers to purchase or offers anything in monetary value otherwise obtain custody or control of a minor;
  - a. With the knowledge that, as a consequence of the purchase or obtaining custody, the minor will be portrayed in a visual depiction engaging or assisting another person to engage in sexually explicit conduct, or
  - b. With the intent to promote either the engaging in sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. [U.S.C. 2251A]. Any person who violates this Section shall be guilty of a Class [4] four offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

26.1222 Reserved OPEN

**26.1223 Child pornography.**

1. Possesses a depiction of a child in sexual intercourse, including genital-genital, oral, genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited: graphic or lascivious simulated, bestiality, masturbation or sadistic or masochistic abuse or graphic or simulated lascivious exhibition of the genitals or pubic area of any person, including
  - a. photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,
  - b. that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or

2. The dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years; or
3. Any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years. [U.S.C. 2252A]

Any person who violates this Section shall be guilty of a Class [4] four offense.  
Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1224 Online child pornography.**

Any person who:

1. Mails or transports or ships in interest or foreign commerce by any means, including by computer, any child pornography; or
2. Receives or distributes;
  - a. Any child pornography that has been mailed or shipped or transported in interstate or foreign commerce by any means, including by computer; or
  - b. Any material that contains child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;
  - c. Reproduces any child pornography for distribution through the mail or in interstate or foreign commerce by any means, including by computer; or
  - d. Advertises, promotes, presents, distributes or solicits through the mail or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is or contains
    - (1) An obscene visual depiction of a minor engaging in sexually explicit conduct; or
    - (2) A visual depiction of an actual minor engaging in sexually explicit conduct; or;
3. The jurisdiction of this Turtle Mountain Band of Chippewa Indian Sex Offender Registration Code shall include all trust and fee simple land within the boundaries of the Turtle Mountain Indian Reservation and to all trust land located in the State of North Dakota, such other lands as may be acquired by or on behalf of said Tribe and be added thereto under the laws of the United States knowingly sells or possesses with the intent to sell any child pornography; or
  - a. Sells or possesses with the intent to sell any child pornography that has been mailed or shipped or transported in interstate or foreign commerce by any means, including any computer, or that was produced using material that have been mailed or shipped or transported in interstate or foreign commerce by any means, including by computer;
4. The jurisdiction of this Turtle Mountain Band of Chippewa Indian Sex Offender Registration Code shall include all trust and fee simple land within the boundaries of the Turtle Mountain Indian Reservation and to all trust land located in the State of North Dakota, such other lands as may be acquired by or on behalf of said Tribe and be added thereto under the laws of the United States knowingly possess any book, magazine, periodical, film, videotape, computer disk or any material that contains an image of child pornography; or
  - a. Possesses in any book, magazine, periodical, film, videotape, computer disk or any other material that contains an image of child pornography that has been mailed or shipped or transported in

interstate or foreign commerce by any means, including by computer;  
or

5. Distributes, offers sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical or other means where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;
  - a. That has been mailed, shipped or transported in interstate or foreign commerce by any means, including by computer;
  - b. That was produced using material that have been mailed, shipped or transported in interstate or foreign commerce by any means, including by computer; or
  - c. Which distribution, offer, sending or provision is accomplished using the mail or by transmitted or causing to be transmitted a wire communication in interstate or foreign commerce, including by computer for purposes of inducing or persuading a minor to participate in any activity that is illegal.

Any violation under this section shall be guilty of a Class 4 offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1225 Online Child Solicitation.**

The use of the internet to contact or attempt to contact someone you know to be a juvenile or should reasonably know is a juvenile for sexual purposes; or to arrange to meet with someone you believe to be a juvenile for sexual purposes; if you arrive at the place and time arranged for the meeting of the juvenile shall be guilty of a Class [4] four offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1226 Travel With The Intent To Engage In Illicit Conduct.**

A person who travels in interstate commerce or travels for the purpose of engaging in any illicit sexual conduct with another person shall be guilty of a Class [4] four offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1227 Misleading domain names on the internet.**

1. Any person who knowingly uses a misleading domain name on the Internet with the intent to deceive a juvenile into viewing material that is harmful to juveniles on the Internet.
  - a. Any communication, consisting of nudity, sex taken as a whole and with reference to its context predominantly appeals to a prurient interest of minors.
  - b. Is patently offensive to prevailing standards in the adult community with respect to what is suitable material to minors.
  - c. Lacks serious literary, artistic, political, or scientific value for minors. [U.S.C. 2252B]

Any violation under this section shall be guilty of a Class [3] three offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1228 Misleading words or digital images on the internet.**

Any person who knowingly embeds a source code, word, or digital images into the source code of a website with the intent to deceive a juvenile into viewing material harmful to minors on the Internet will be guilty of a Class [3] three

offense.[U.S.C. 2252C]

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1229 Video voyeurism.**

Any person who knowingly intends to capture an image of a private area of a person and does so under circumstances in which the person has a reasonable expectation of privacy shall be guilty of a Class [3] three offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1230 Failure to register.**

Failure to comply with the registration requirements or notify law enforcement or the director of Turtle Mountain Sex Registration and Notification Program is a Class [4] four offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1231 Failure To file factual statement about an alien individual.**

A person or persons who keeps, maintains, controls, supports, or harbors in any house or dwelling for the purpose of prostitution, or for any other immoral service. Any individual, knowing or in reckless disregard of the fact that the individual is an alien, shall file with the local law enforcement a statement in writing setting forth the name of such individual, the place at which that individual is kept, and all facts as to the date of that individual's entry into the United States is guilty of a Class 4 offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1232 Failure to provide information.**

Any person who is required to provide information under Title 42, the Sex Offender Registration Code, based on any conviction and violates that section shall be guilty of a Class [4] four offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1233 Failure to appear at scheduled appointments with the Turtle Mountain Sex Offender Registration And Notification Department.**

1. In the event a sex offender fails to appear with the Sex Offender Registration Offender Registration and Notification Department as required by the Sex Offender Registration Code, the Turtle Mountain Sex Offender Registration Department shall immediately inform the Turtle Mountain Law Enforcement Center, and the jurisdiction that provided notification that the sex offender was to commence residency, employment or school with the Turtle Mountain Tribe, that the sex offender failed to appear for registration.

2. Any person who is required to appear for a scheduled appointment with the Turtle Mountain Sex Offender Registration and Notification Department, in violation of the Turtle Mountain Sex Offender Registration Code, Title 42 shall be guilty of a Class 4 offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1234 Recapture.**

The Turtle Mountain Band of Chippewa will recapture a sex offender and those sex offenders who previously have not been required to register, but will now be required to register under the Turtle Mountain Band of Chippewa Sex Offender Registry. To be recaptured will be implemented into three categories.



1. A sex offender who is currently incarcerated or under supervision for the sex offense or for some other crime(s).
2. A sex offender who is already required to pre-existing sex offender registration requirement under the Turtle Mountain Tribal Code.
3. A sex offender will be taken back into custody due to a conviction for any crime whether or not the crime is a sex offense.

The Turtle Mountain Law Enforcement or designee shall ensure recapture of the sex offender within the following time frames; for Tier 1 sex offenders, [1] one year; for Tier 2 sex offenders, [6] six months; and for Tier 3 sex offender, [3] three months.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1235 Absconding.**

Absconding is a Class [4] four offense. If the Turtle Mountain Sex Offender Registration and Notification Department receives information that a sex offender cannot be located, the Turtle Mountain Law Enforcement Center shall be notified, a Turtle Mountain Tribal warrant for arrest will be issued, the U.S Marshall Service will be notified and the sex offender's information will be entered into [NCIC] the National Crime Information Center.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1236 Misuse of registration information.**

Any person who:

1. Misuses or alters public record information related to a sex offender or sexual predator, or
2. Sells or exchanges sex offender information for profit.

Any violation under this section shall be guilty of a Class [3] three offense.

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1237 Persons subject to exclusion and removal.**

Any Tribal member or Non-member may be temporarily or permanently excluded and/or removed from any or all portions of Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, with the exception of property personally owned in fee by the member or non-member as provided herein.

**26.1238 Grounds for exclusion and removal.**

A person subject to exclusion and removal as provided herein may be excluded or removed from any or all portions of Indian Country on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, upon any one or more of the following grounds:

1. Indians and/or non-Indians dealing, transporting (or assisting in the transport of) and/or selling drugs of any kind (and any derivative forms of such drugs), including but not limited to:
  - a. Methamphetamine/Crank
  - b. Cocaine
  - c. Crack Cocaine
  - d. Heroin
  - e. Prescription drugs not prescribed to the person using them
  - f. Marijuana

2. Indian or Non-Indians convicted in any jurisdiction of one or more crimes involving sexual violence (i.e., including but not limited to rape, incest, sexual abuse of a juvenile, etc.)
3. Non-Indians committing frauds, confidence games, or usury against Indian people residing or lawfully present within any or all portions of Indian Country UPDATED 2006 39-5 under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, by inducing them to enter into grossly unconscionable contracts of any kind.
4. Non-Indians doing or threatening to do any act within any or all portions of Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States, that seriously threatens the peace, health, safety, morals or general welfare of the Tribe, its members, or other persons living or lawfully within any or all portions of Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States (i.e., public nuisances).

Adopted TMBC 686-01-12 and Amended TMBC1246-06-18.

**26.1239 Exclusion, removal, and other civil penalties.**

A person convicted of one or more of the above offenses shall be subject to civil exclusion and removal as provided herein from Indian Country under the jurisdiction of the Turtle Mountain Band of Chippewa Indians on all land on the Turtle Mountain Indian Reservation in the State of North Dakota and to such other lands as may be acquired by or in behalf of said Tribe and be added thereto under the laws of the United States for the following added thereto under the laws of the United States for the following periods of time:

UPDATED 2006 39-6:

1. Indians and/or Non-Indians Dealing, Transporting (or assisting in the transport of) and/or Selling Drugs of Any Kind:
  - a. First Offense (Tribal or Federal) - warning
  - b. Second Offense (Tribal or Federal) - three-year exclusion
  - c. Third or further Offense (Tribal or Federal) - lifetime exclusion
2. Other Non-Drug-Related Grounds for Removal of Non-Indians Only:
  - a. First Offense - Warning
  - b. Second Offense - Second Warning
  - c. Third Offense - Six Month Exclusion
  - d. Fourth Offense - One Year Exclusion
  - e. Fifth or further Offense - Five Year Exclusion for each offense
3. Indians and/or Non-Indians Convicted of Repeated Sex Crimes
  - a. First Offense - Warning
  - b. Second Offense - One Year Exclusion
  - c. Third Offense - Lifetime Exclusion

Adopted TMBC 686-01-12 and Amended TMBC1246-06

**CHAPTER 26.13  
Public Violence**

**26.1300 Mutual Combat.**

A person who has entered into mutual combat with another person and is excessive in the circumstances shall be guilty of a Class [2] two offense. A person's use of defensive force after he withdraws from an encounter and indicates to the other person that he has done so is justified if the latter nevertheless, continues or threatens unlawful action.

Adopted TMBC1246-06-18 renamed from Prohibited fighting.

**26.1301 Abduction.**

It shall be unlawful for any person and a Class [4] four offense to willfully seize and knowingly remove another by force or fraud from his/her place of residence, business, or from the area where he/she is found, and intentionally confine and detain that person against their will.

Adopted 1968 and Amended TMBC1246-06-18.

**26.1302 Abduction by parent.**

1. Any person who intentionally removes, causes the removal of, or detains the person's own child(ren) under the age of eighteen years, whether in the boundaries of the Turtle Mountain Reservation or outside the boundaries of the Turtle Mountain Indian Reservation with the intent to deny another person's rights in violation of an existing custody decree is guilty of a class [4] four offense.
2. Holding the child(ren) within the Turtle Mountain Reservation or outside the Turtle Mountain Reservation is in violation of the custody decree for more than seventy-two hours is prima facie evidence that the person charged intended to violate the custody decree at the time of removal shall be guilty of a Class [4] four offense.
3. Should the commission of the offense result in the death or serious bodily injury to any of the child(ren) person shall be guilty of a Class [5] five offense.

Adopted TMBC5619-04-94 revised TMBC1246-06-18.

**26.1303 Kidnapping.**

1. It shall be unlawful and a Class [5] five offense for any person who has abducted or abducts another person, continues to restrain with intent to do the following:
  - a. hold him for ransom or reward;
  - b. use him as a shield or hostage;
  - c. hold him in a condition of involuntary servitude;
  - d. terrorize him or a third person;
  - e. commit a felony or attempt to commit a felony; or
  - f. interfere with the performance of any governmental or political function, is guilty of kidnapping.

Adopted TMBC5619-04-94 revised TMBC1246-06-18.

**26.1303.01 Unreasonable restraint of a child(ren).**

1. A parent, legal guardian, or caretaker who intentionally subjects a child under the age of 18 years to unreasonable physical confinement or restraint by means including but not limited to, tying, locking, caging, or chaining for a prolonged period of time and in a cruel manner which is excessive under the circumstances, is guilty of unreasonable restraint of a child(ren) and, guilty of a Class [4] four offense.
2. If the confinement or restraint results in demonstrable bodily harm, the person shall be sentenced to a Class [5] five offense.

Adopted TMBC1246-06-18.

**26.1304 Assault.**

A person commits the crime of assault if the person intentionally places another in reasonable fear of being physically injured; or who shall threaten bodily harm to another person through unlawful force or violence shall be guilty of a Class 1 offense, and may be required to furnish a satisfactory peace bond for [1] one year.

Adopted 1968 renumbered from 1.2003.

**26.1305 Assault and battery.**

1. It shall be unlawful and a class [2] two offense to "willfully" cause "bodily injury" to another person.

- a. Bodily injury is any impairment, including physical pain.
- b. Substantial bodily injury is any significant, but temporary impairment, loss, or disfigurement.

Adopted 1968 renumbered from 1.2003 and amended TMBC1246-06-18.

**26.1305.01 Aggravated assault.**

1. It shall be unlawful and a Class [3] three offense to "willfully" commit an act that's done intentionally, knowingly, or recklessly to injure another person.

- a. willfully causing serious injury to another person
- b. knowingly causing bodily injury or substantial bodily injury to another person with a weapon under circumstances that indicate an intention to inflict serious injury
- c. causing bodily injury or substantial bodily injury while attempting to inflict serious bodily injury.

Adopted TMBC1246-06-18.

**26.1305.02 Assault resulting in serious bodily injury.**

1. It shall be unlawful to assault another person and inflict serious bodily injury and a Class [4] four offense.

2. An assault that causes serious injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

Adopted TMBC5619-04-94 revised TMBC1246-06-18.

**26.1306 Assault resulting in serious bodily injury or with a dangerous weapon.**

It shall be unlawful and a class [4] four offense to assault another person with a deadly weapon or negligently causes serious bodily injury by means of a firearm, destructive device or another weapon of which would likely cause death or serious and emitting any noxious liquid, gas, or substance bodily injury.

- 1. any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any throwing star, nunchaku, or other martial arts weapon, any billy club, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any stun gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquids, gas, or substance.

Adopted TMBC1246-06-18.

**26.1306.01 Assault by pointing a gun.**

It shall be unlawful and a Class [3] three offense to point any gun or pistol at any person, unless defending oneself, either in fun or otherwise, whether a BB or pellet gun, long gun, shotgun or pistol loaded or not loaded, whether a replica pistol that imitates a genuine gun or pistol and shall be a Class [3] three offense.

Adopted TMBC1246-06-18.

**26.1307 Disorderly conduct.**

Any person who, purposely causes public inconvenience, annoyance or alarm, or recklessly creates a risk by:

1. Threatening or in violent or tumultuous behavior;
2. Making unreasonable noise or offensively coarse utterance, gesture or display or addresses abusive language to any person present; or
3. Creating a hazardous or physically offensive condition by any act, which serves no legitimate purpose of the actor; or
4. Taking control of a building without specific authorization or refusing to vacate a building after being ordered to do so; or
5. Obstructing entrance or exit from a public building or interfering with the normal use of the building by blocking etc.

Shall be guilty of a Class [2] two offense.

Adopted 1968; renumbered from 1.2019 and Revised TMBC1246-06-18.

**26.1308 Failure to disperse.**

Where any numbers of persons, armed or unarmed are unlawfully or riotously assembled, law enforcement shall command such persons by going among them or otherwise to disperse immediately. If such persons do not disperse, they shall be guilty of a Class [2] two offense. Failure to disperse will justify use of necessary force to accomplish the dispersal.

Adopted TMBC5619-04-94.

**26.1309 Reckless endangerment.**

1. Any person is guilty of a Class [4] four offense if that person creates a physical circumstance or situation that creates a substantial risk of serious bodily injury or death to any other person particularly a child(re).
2. The offense is a Class [3] three offense if the circumstances created demonstrate an extreme indifference to the value of human life.
3. To satisfy the "creates a physical circumstance or situation" requirement, no actual person need actually be placed in actual jeopardy of receiving serious bodily injury or death but only the potential of such injury had a person been exposed to the circumstance or situation.

Adopted TMBC5619-04-94; Revised TMBC 1601-02-00 and TMBC1246-06-18.

**26.1310 Riots.**

Any use of force or violence, or any threat to use force or violence, if accompanied by immediate power of execution, by three (3) or more persons acting together and without authority of law, is a riot. Every person guilty of participating in any riot shall be guilty of a Class [2] two offense.

Adopted TMBC5619-04-94 and Revised TMBC1246-06-18.

**26.1311 Threat or intimidation.**

Any person who, directly or indirectly, threatens or intimidates any judicial or ministerial officer, juror, referee, arbitrator, umpire, assessor, person authorized to hear or determine any controversy, witness, court interpreter or persons appointed to assist the Court, with intent to induce performance of any act not authorized by law or to omit or delay the performance of any duty imposed upon such person by law is guilty of a Class [3] three offense.

Adopted 1968 renumbered from 1.2055.1 and Revised TMBC1246-06-18.

**26.1312 Restraining order.**

Any person who conducts himself or herself in violation of Turtle Mountain Tribal Code Chapter 26 provisions 26.1307 Disorderly Conduct, 26.1311 Threat or Intimidation or Title 37 Domestic Violence Code shall be subject to a Temporary Restraining Order. Relief may be sought and granted by the Turtle Mountain Tribal Court irrespective of whether or not the person sought to be restrained has been charged and convicted of the previously enumerated offense. A person who is a victim of any of the previously identified conduct or the parent or guardian of a minor who is a victim of any of the aforementioned conduct may seek a Restraining Order from the Turtle Mountain Tribal Court in the manner provided in this section.

1. The petitioner for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual engaging in the threatening intimidating or disorderly conduct, and allegations sufficient to support the claim that the individual engaged in such conduct. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition. A Temporary Restraining Order may be entered only against the individual named in the petition. The Turtle Mountain Tribal Court may issue the Temporary Restraining Order without giving notice to the respondent. Unless otherwise terminated by the Turtle Mountain Tribal Court, the Temporary Restraining Order shall remain in effect for thirty (30) days or until the Restraining Order is terminated by order of the Turtle Mountain Tribal Court or made permanent upon conclusion of the mandatory hearing.
2. A copy of the Temporary Restraining Order must be served upon the Respondent in the manner provided in this code. A notice of the time, place and date of hearing must accompany the Temporary Restraining Order at the time of service. The Court may grant a restraining order ordering the respondent to cease or avoid the behavior or to have no contact with the applicant. The Tribal Court must schedule a hearing within [30] thirty calendar days of issuance of the Temporary Restraining Order.
3. A restraining order must contain a conspicuous notice to the respondent providing the penalty for violation of the restraining order. The Penalty for violation of a Restraining Order (Temporary or Permanent) is a Class I offense if the Restraining Order is based on violations of Chapters 26.1307 Disorderly Conduct or Title 37 Domestic Violence Code and is a Class 2 Offense if based on a violation of 26.1311 Threat or Intimidation. For second and subsequent violations of the same restraining order, violation based upon Chapters 26.1307, Disorderly Conduct and Title 37 Domestic Violence, Chapter 3 Criminal and Civil Penalties; other Sanctions is a Class 2 Offense. Second and subsequent violations of a restraining order (Temporary or Permanent) is a Class 3 offense if based upon a violation of 26.1311 Threat or Intimidation. Adopted TMBC284-09-05.

The Court is authorized to provide other equitable relief available under the Tribal Code as necessary to accomplish the purpose(s) of the Restraining Order.

**26.1313 Gang enforcement and prevention.**

1. Criminal street gang means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.
2. As defined in subsection (a) and who meets two or more of the following criteria:
  - a. Admits to criminal street gang membership.
  - b. Is identified as a criminal street gang member by a parent or guardian.
  - c. Is identified as a criminal street gang member by a documented reliable informant.
  - d. Resides in or frequents a particular criminal street gang's area and adopts their style of dress, their use of hand signs, or their tattoos, and associates with known criminal street gang members.
  - e. Is identified as a criminal street gang member by an informant of previously untested reliability and such identification is corroborated by independent information.
  - f. Has been arrested more than once in the company of identified criminal street gang members for offenses which are consistent with usual criminal street gang activity.
  - g. Is identified as a criminal street gang member by physical evidence such as photographs or other documentation.
  - h. Has been stopped in the company of known criminal street gang members four or more times.
3. Pattern of criminal street gang activity means the commission or attempted commission of, or solicitation or conspiracy to commit any combination of the following, on separate occasions within a three-year period:
  - a. Two or more felonies defined under the laws of the state in which they occur or offenses defined under the Major Crimes Act, 18 U.S.C. § 1153; or
  - b. Three or more misdemeanors defined under the laws of the state in which they occur or offenses defined in Turtle Mountain Tribal Code; or
  - c. A combination of one felony or Major Crimes Act offense and two misdemeanor or Turtle Mountain Tribal Code offenses; or
  - d. The comparable number of delinquent acts or violations of law which would be classified as above if committed by an adult.

Adopted TMBC 1246-06-18.

**26.1313.01 Criminal street gang activity; enhancement of penalties.**

1. Upon a finding in the Turtle Mountain Tribal Court or any previous court at sentencing that the offender is a member of a criminal street gang, the penalty for any offense in violation of the Turtle Mountain Code, or any delinquent act or violation of law which would be a violation of the Turtle Mountain Code if committed by an adult, may be enhanced if the offender was a member of a criminal street gang at the time of the commission of such offense.
  - a. The burden of proof required for such findings allowing sentence enhancement shall be a "preponderance of the evidence," however, the burden of proof for a conviction of the underlying criminal offense remains "beyond a reasonable doubt."

- b. The enhancement will be sentencing at the maximum punishment for adults shall be a Class [3] three offense and the fine is to be used by Tribal Council to fund gang prevention or enforcement programs.
2. In the case of juvenile offender(s) the disposition may include, but is not limited to:
    - a. Probation for a period of six months to one year;
    - b. Performance of community service hours;
    - c. Restitution to victims/community members;
    - d. Placement in behavior management facilities until completion/graduation from school or a court ordered program;
    - e. Counseling; and,
    - f. Placement in detention facilities for a period of time to be determined by the presiding judge.

Adopted TMBC 1246-06-18.

**26.1313.02 Soliciting or recruiting criminal street gang membership.**

1. It shall be unlawful for a person to intentionally cause, encourage, solicit, or recruit another person to join a criminal street gang that requires as a condition of membership or continued membership the commission of any crime. Any adult person(s) subject to the provisions of this factor shall be guilty of a Class [4] four offense with the fine to be used by Tribal Council to fund gang prevention or enforcement programs.
2. In the case of juvenile offender(s) the disposition may include, but is not limited to:
  - a. Probation for a period of six months to one year;
  - b. Performance of community service hours;
  - c. Restitution to victims/community members;
  - d. Placement in behavior management facilities until completion/graduation from school or a court ordered program;
  - e. Counseling; and,
  - f. Placement in detention facilities for a period of time to be determined by the presiding judge.

Adopted TMBC 1246-06-18.

**26.1313.03 Profits, proceeds and instrumentalities of criminal street gang activities or recruitment; forfeiture.**

All profits, proceeds, and instrumentalities of criminal street gang activity or recruitment and all property used or intended or attempted to be used to facilitate the criminal activity or recruitment of any criminal street gang or of any criminal street gang member, are subject to seizure and forfeiture, with proceeds of said forfeiture to be used by Tribal Council to fund gang prevention or enforcement programs.

Adopted TMBC 1246-06-18.

**26.1314 Harassment.**

It shall be unlawful and a Class [3] three offense with the purpose to annoy or alarm another, to insult, taunt, or challenge another in a manner likely to provoke a violent or disorderly response or to make repeated communications anonymously or at extremely inconvenient hours or in offensively coarse language.

1. Communicates in writing or by telephone a threat to inflict injury to any other person, to any person's reputation, or to any property;
2. Makes a telephone call anonymously or in offensively coarse language;



3. Makes repeated calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
4. Communicates a falsehood in writing or by telephone and causes another mental anguish.

Adopted TMBC284-09-05 and Amended by TMBC1246-06-18.

**26.1315 Menacing.**

1. A person is guilty of menacing and a Class [4] four offense if he/she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. A person is guilty of a Class [3] three offense if he/she commits the crime of menacing in violation of that part of a duly served order of protection, or such order which the defendant has actual knowledge of because he or she was present in court when such order was issued, pursuant to Title 37 of the domestic violence code.
3. A person is guilty of menacing and a Class [2] two offense if he/she repeatedly follows a person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death.

Adopted TMBC284-09-05 and Amended by TMBC1246-06-18.

**26.1316 Terrorizing.**

A person is guilty of terrorizing and a Class [4] four offense if:

1. He/She with intent to place another in fear for that person's or another person's safety or causes in reckless disregard to the risk of causing such terror, disruption, or inconvenience, the person; or
2. He/She threatens to commit any crime of violence or act dangerous to human life; or
3. He/She informs another that a situation dangerous to human life or the commission of a crime of violence is about to occur knowing the information to be false; or
4. He/She attempts to coerce, rule or control another by threat, violence or intimidation.
5. He/She causes evacuation of a building, place of assembly or facility to cause the occupants of a building to be moved to or required to remain in a designated secured area.

Adopted TMBC284-09-05 and Amended by TMBC1246-06-18.

**26.1317 Stalking.**

1. Any person who commits the offense of stalking if the person willfully on more than one occasion follows, harasses or is in the presence of another person without legal purpose shall be guilty of a Class [4] four offense if:
  - a. The person stalked is a juvenile under 16 years of age; or
  - b. Violates a protection order from any court, violates a restraining of the court if the person had notice of the court order; or
  - c. Commits the offense when there is a court order in effect prohibiting similar behavior.

2. In any prosecution for violation of this Section, it is a defense that the accused is a licensed private investigator or licensed peace officer acting within the scope of their employment. Should a claim be made that the activity is constitutionally protected, the court shall determine the validity of the claim as a matter of law, and if found valid, shall exclude evidence of the activity.

Adopted TMBC284-09-05 and Amended by TMBC1246-06-18.

**26.1318 Abandonment of a child.**

1. A person commits the crime of abandonment if being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen (18) years, deserts the child in any place with intent to abandon it. Abandonment is a Class [4] four offense.
2. A person commits the crime of abandonment if a parent, guardian or other person legally charged with the care or custody of a child less than eighteen (18) years, leaves the child with a family member or friend longer than [72] seventy-two hours without consent of the family or friend shall be a Class [3] three offense.

Adopted TMBC284-09-05 and Amended by TMBC1246-06-18.

**26.1319 Failure to protect a child.**

A person commits the offense of failure to protect if having legal care or custody of a child under the age of eighteen (18), the person intentionally or knowingly allows another person to inflict serious bodily injury on the minor, allows another to commit sexual abuse of a minor, allows another to prostitute the minor or allows a child to be used in the production of pornographic material. Failure to protect is a Class 4 offense.

Adopted TMBC284-09-05 and Amended by TMBC1246-06-18.

26.1320 RESERVED/OPEN

Repealed TMBC1246-06-18.

**CHAPTER 26.14  
Profitable Crimes**

**26.1401 Bribery.**

1. Any person who shall give, offer any money, property, services, or anything else of value to another person with corrupt intent to influence another in the discharge of his/her public duties or conduct shall be guilty of a Class [3] three offense.
2. Any person who shall accept, solicit or attempt to solicit any bribe as defined above, shall be guilty of a Class [3] three offense.
3. Any Turtle Mountain Tribal employee who accepts a bribe shall be discharged from their position and guilty of a Class [4] four offense.

Adopted 1968 renumbered from 1.2008 and Revised TMBC1246-06-18.

**26.1402 Burglary.**

1. Any person who willfully enters or conceals themselves to remain in a building or occupied structure, or a separately secured or occupied portion thereof, when at the time the premises are not open to the public and the actor is not licensed, invited, or otherwise privileged to enter or remain as the case may be, with intent to commit a crime therein, is guilty of burglary, a Class 3 offense.
2. Burglary is a Class [3] offense if:

- a. the offense is committed at night, and is perpetrated in the dwelling of another; or
- b. in effecting entry or while in the premises or in immediate flight there from, the actor inflicts or attempts to inflict bodily injury or physical restraint on another, or menaces another with imminent serious bodily injury, or is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.

Adopted TMBC5916-04-94 and Revised TMBC1246-06-18.

**24.1402.01 Home Invasion.**

1. A person who enters the owner's property, day or night, without permission, where people reside, in a structure and willfully enters the dwelling or conceals themselves to remain in a building or occupied structure to commit a theft will be guilty of a class [5] five offense.
2. A person who is armed with a firearm, a dangerous device or other weapon, of which the possession of such a weapon, under the circumstances, indicates intent or readiness to inflict serious bodily injury in making entry of the structure, day or night, or while in the premises or in immediate flight from the structure and inflicts or attempts to inflict bodily injury or physically restrains any person who resides in the dwelling or menaces a person with imminent serious bodily injury to commit a theft will be guilty of a class [5] five offense.

Adopted TMBC1246-06-18.

**26.1403 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 guilty of an offense and upon conviction thereof, shall be guilty of a Class [4] four offense.

Adopted TMBC5916-04-94.

**26.1404 Drawing or uttering instrument on bank without funds or credit.**

1. Any person who shall make or draw or utter or deliver any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that he/she has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft or order in full upon its presentation, shall be guilty of a Class [2] offense for each check, order or draft returned for non-sufficient funds.
2. The making, drawing, uttering or delivering of such check, draft, or order 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.

Adopted TMBC5916-04-94 and amended TMBC 1246-0618.

26.1405 RESERVED

TMBC 1246-06-18 Repealed and superseded in "Theft" Sec. 26.1413 (b, f, and g)

**26.1406 Extortion.**

A person who purposely obtains property of another by threatening to: inflict bodily injury on anyone or commit any other criminal offense, or accuse anyone of a criminal offense, or expose any secret tending to subject any person to hatred, contempt or ridicule or to impair his credit or business repute, or take or withhold action as an official or cause an official to take or withhold

action, or bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act, or testify or provide information or withhold testimony or information with respect to another's legal claim or defense, or inflict any other harm which would not benefit the actor, shall be guilty of a Class [3] three offense.

Adopted TMBC5916-04-94 and amended Penalty TMBC 1246-0618.

**26.1407      Fraud.**

1. Any person who shall by misrepresentation or deceit, or by false interpretation, obtain any money or other property shall be guilty of fraud. The following shall be classified to the amounts:
  - a. Less than \$100.00 shall be guilty of a Class [2] two offense.
  - b. over \$100.00 but less than a \$1,000.00 shall be guilty of a Class [3] three offense.
  - c. greater than \$1,000.00 shall be guilty of a Class [4] four offense.
2. It shall be unlawful to use a credit, debit or bank card for the purpose of obtaining money, property or services with the fraudulent knowledge that use of a credit, debit or bank card or without lawful authority.
  - a. The card was stolen;
  - b. The card has been revoked or canceled; or
  - c. The card has been found; or
  - d. For any other reason his/her use of the credit, debit or bank card is unauthorized by either the issuer or the person to whom the card has been issued.
3. Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do obtains the property of another by such scheme or artifice is guilty of fraud punishable by shall be guilty of a Class 3 offense.
4. Whoever by use of his or her position of authority, employment with the Turtle Mountain Band of Chippewa Indians or one of its entities wholly or partially owned by Turtle Mountain Band of Chippewa Indians having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do obtains the property of Turtle Mountain Band of Chippewa Indians or one of its entities wholly or partially owned by Turtle Mountain Band of Chippewa Indians by such scheme or artifice is guilty of fraud punishable by shall be guilty of a Class 4 offense.

Adopted 1968 and Amended TMBC1246-06-18.

**26.1408      Misbranding in the Livestock Industry.**

July, 2018

1. Any person who shall knowingly and willfully misbrands or alters any brand or mark on any livestock of another person shall be guilty of a Class [3] offense.
2. Any person who knowingly buys and sells livestock that has been misbranded or alters any brand or mark shall be guilty of a Class [4] four offense and shall be responsible for restitution to the original owner.

Adopted in 1968 Renumbered from 1.2042 and Revised TMBC1246-06-18.

**26.1408.01 Dog Fighting.**

1. Any person who is guilty of the following shall be guilty of a Class [4] four offense:
  - a. causes an animal to fight; or
  - b. trains an animal under circumstances showing an intent to have the dog fight; or
  - c. lets an animal fight, or be trained to fight, on premises under one's control; or
  - d. owns or keeps an animal trained to fight on premises used for fighting.
2. Any person who attends, pays an admission fee or makes a bet at a dog fight is guilty of a Class [3] three offense.

Adopted TMBC1246-06-18

**26.1409 Unauthorized use of a motor vehicle.**

1. It shall be unlawful to, with the intent to deprive the owner by taking, driving or operating another's motor vehicle, motorcycle or wheeled conveyance without the consent of the owner and shall be a Class [4] four offense.
2. If the vehicle sustains damages while in the custody, possession, or under the control of the person violating this section, the violator shall be required to make restitution of the amount of the actual damage to the vehicle.

Adopted 1968 Renumbered from 1.2044 and Renamed and Amended TMBC1246-06-18.

**26.1410 Robbery.**

1. A person who unlawfully takes or attempts to take personal property from another, who is possession of a weapon of which under the circumstances indicates intent or readiness to inflict serious bodily injury or in a place of business, residence or banking institution or any other place where there is are people in attendance, at any time, either day or night, or who aids or abets any such person(s) in the commission of a theft crime shall be guilty of robbery, a class [5] five offense.
2. Robbery is a Class [5] five offense if the actor fires a firearm or explodes or hurls a destructive device or directs the force of any other dangerous weapon against another.
3. Robbery is a Class [5] five offense if the robber possesses or pretends to possess a firearm, destructive device, or other dangerous weapon, or menaces another with serious bodily injury, or inflicts bodily injury upon another, or is aided by an accomplice actually present.
  - a. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit a theft crime, whether or not the theft is successfully completed, or in immediate flight from the

commission of, or an unsuccessful effort to commit, the theft.

- b. Dangerous weapon means a weapon as defined in §26.1801 of this Title or a weapon, the Possession of which, under the circumstances indicates an intent or readiness to inflict serious bodily injury.

Adopted TMBC5916-04-94 and Revised TMBC1246-06-18.

**26.1411 Dealing in stolen property.**

Any person who shall receive, possess, sell, receive, buy, or conceal any personal property that has been stolen or otherwise obtained from its true owner in violation of this Code with intent to deprive the true owner shall be guilty of a Class [2] four offense.

Adopted TMBC5916-04-94.

**26.1412 Shoplifting.**

Any person who shall willfully take possession of any goods, wares or merchandise offered for sale by any store or other establishment with the intention of converting the same to his or her use without paying the purchase price thereof, shall be guilty of Shoplifting. The individual found guilty of Shoplifting shall be punished as follows:

1. If the value of the property is equal to or less than \$100 shall be a Class 2 Offense;
2. If the value of the property is greater than \$100 but less than \$1,000 shall be a Class 3 Offense; and
3. If the value of the property is greater than or equal to \$1,000 shall be a Class 4 offense.

Adopted TMBC5914-04-94 Revised TMBC 1246-06-18.

**26.1413 Theft.**

1. Acts. Whoever does any of the following may be penalized as provided in sub. (3):
  - a. Intentionally takes and carries away, uses, transfers, conceals, or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of such property.
  - b. By virtue of his or her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals, or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his or her authority, and with intent to convert to his or her own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his or her possession or custody by virtue of his or her office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his or her own use within the meaning of this paragraph.
  - c. Having a legal interest in movable property, intentionally and without consent, takes such property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of such property.
  - d. Obtains title to property of another person by intentionally deceiving the person with a false representation which is known to be false, made with intent to defraud, and which does defraud the

person to whom it is made. "False representation" includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme.

- e. Intentionally fails to return any personal property which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement after the lease or rental agreement has expired. This paragraph does not apply to a person who returns personal property, except a motor vehicle, which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement, within 10 days after the lease or rental agreement expires.
- f. By virtue of his or her employment position as a caregiver for an adult at risk or legal position as guardian or executor of such estate utilizes his or her position having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals, or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his or her authority, and with intent to convert to his or her own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his or her possession or custody by virtue of his or her office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his or her own use within the meaning of this paragraph.
- g. By virtue of his or her position as an employee of the Turtle Mountain and of Chippewa Indians or an entity wholly or partially owned by the Turtle Mountain Band of Chippewa Indians utilizes his or her position in having possession or custody of money, annual and sick leave, or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals, or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his or her authority, and with intent to convert to his or her own use or to the use of any other person.

2. Definitions. In this section:

- a. "Adult at risk" shall mean any adult who has physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation or is a patient in any health care nursing, or adult placement facility.
- b. "Bodily Harm" shall mean physical pain or injury, illness, or any impairment of physical condition.
- c. "Caregiver" shall mean a person who has assumed responsibility for all or a portion of any individual's care voluntarily, by contract, or by agreement, including a person acting or claiming to act a legal guardian.
- d. "Movable property" is property whose physical location can be changed, without limitation including electricity and gas, growing on, affixed to or found in land documents which represent or embody intangible rights, and things.
- e. "Property" means all forms of tangible property, whether real or personal, without limitation including electricity, gas and documents which represent or embody a chose in action or other intangible rights.

- f. "Property of another" includes property in which the actor is a co-owner and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife.
  - g. Except as otherwise provided in this paragraph, "value" means the market value at the time of the theft or the cost to the victim of replacing the property within a reasonable time after the theft, whichever is less. If the property stolen is a document evidencing a chose in action or other intangible right, "value" means either the market value of the chose in action or other right or the intrinsic value of the document, whichever is greater. "Value" also includes any costs that would be incurred in repairing or replacing any property damaged in the theft or removal of the scrap metal or plastic bulk merchandise container. If the thief gave consideration for, or had a legal interest in, the stolen property, the amount of such consideration or value of such interest shall be deducted from the total value of the property.
- 3. Penalties. Whoever violates these provision:
    - a. If the value of the property does not exceed \$2,500, is guilty of a Class 2 Offense.
    - b. If the value of the property exceeds \$2,500 but does not exceed \$5,000, is guilty of a Class 3 Offense.
    - c. If the value of the property exceeds \$5,000 but does not exceed \$10,000, is guilty of a Class 4 Offense.
    - d. If property is taken from an adult at risk of any value is guilty of a Class 4 Offense.
  - 4. Use of photographs as evidence. In any action or proceeding for a violation of these provisions, a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.

Adopted 1968 Renumbered from 1.2055 and revised TMBC1246-06-18.

**26.1414 Theft of television services.**

A person who:

- 1. knowingly obtains or attempts to obtain television service from another by any means, artifices, trick, deception, or device without payment to the television operator of all lawful compensation for each type of service obtained;
- 2. knowingly assists or instructs any other person in obtaining or attempting to obtain any television service without the payment to the television operator of all lawful compensation for each type of service
- 3. knowingly tampers, diverts from, or connects to by any means, whether mechanical, electrical, acoustical or other means, any cables, wires or other devices used for the distribution of television without authority from the television operator, shall be guilty of a Class [2] offense.

Adopted 5916-04-94 and Amended TMBC1246-06-18.

**26.1414.01 Theft of Services.**

- 1. It shall be unlawful and a Class [3] offense to obtain services known to be available only for compensation by deception, threat, force or any other means with the intent to avoid due payment thereof.
- 2. The value of the service, through the order of the Tribal Court shall be imposed to the victim(s)of the crime, a Tribal program or a business.

Adopted TMBC1246-06-18.



**Destruction of Public and Private Property**

**26.1501      Cutting green timber without a permit.**

Any person who, without first securing a proper permit, cuts and or removes any standing green timber from an Indian Trust Allotment (except for the personal use of the allottee or from tribal land), shall be guilty of a Class [1] one offense.

Adopted 1968.

**26.1502      Damage to public property.**

Any person who shall, without proper authority, use or damage any public, Governmental or Tribal property shall be guilty of a Class [2] two offense.

Adopted TMBC5916-04-94

**26.1503      Criminal Damage to Property.**

1. Any person who shall intentionally destroys, disfigures, injures, or damages any property of another, whether real property or personal shall be guilty of a Class [2] two offense, if the value of the property is less than \$1,000. If the value of the property exceeds \$1,000 then it shall be a Class [3] offense.
2. In all cases, restitution to the victim(s) for all damages shall be ordered.
3. The value of property destroyed, disfigured or injured by the same party as part of a common crime against the same or multiple victims may be aggregated together.

Adopted 1968 renumbered 1.2039, Revised and Renamed TMBC1246-06-18.

**26.1504      Maintaining a public nuisance.**

Any person who shall permit his property to fall into such condition to be offensive to community moral standards or to injure or endanger the safety, health, comfort, or property of his neighbors, shall be guilty of a Class [2] two offense, and may be required to remove such nuisance when so ordered by the court.

Adopted 1968 renumbered 1.2040, Revised and Renamed TMBC1246-06-18.

**CHAPTER 26.16  
Trespassing**

**26.1601      Forcible entry or detainer of lands, buildings or other possessions.**

1. It shall be unlawful to gain entry by any force or violence to enter, in any manner, any dwelling, office, room, apartment, residence, shop, warehouse, store, barn, stable, garage, tent, boat, motor vehicle, trailer or semitrailer, mobile home, or similar structure, of another without consent, with the intent to:
  - a. Cause annoyance or injury to any person therein;
  - b. Cause damage to any property therein;
  - c. Cause, or does cause, whether intentionally or recklessly, fear for the safety of another.
2. Breaking and entering shall be a class [3] three offense and imposition of sentencing shall include restitution.

Adopted 1968 renumbered 1.2027, Revised and Renamed TMBC1246-06-18.

**26.1602 Criminal trespass in the first degree.**

1. A person commits the offense of first degree criminal trespass if, without authorization, he enters or remains:
  - a. On premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or
2. Any person who shall enter upon the land of another person and shall refuse to go immediately therefrom on the request of the owner or occupant thereof, or who shall willfully and knowingly allow livestock and other domestic animals to occupy or graze on the lands of another, shall be guilty of a Class [3] offense.

Adopted TMBC1246-06-18.

**26.1602.01 Criminal trespass in the second degree.**

1. A person who commits the offense of second degree trespass and shall be guilty of a class [2] two offense if, without authorization, enters or remains on the property of another:
  - a. After the person has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person
  - b. property that is posted in a manner that reasonably will come to the attention of intruders/trespassers not to enter the property.

Adopted TMBC1246-06-18.

**26.1603 Trespass at lakes.**

1. All lakes and surrounding premises, under Tribal jurisdiction, shall be closed from 11:00 p.m. to 1/2 hour before sunrise, each day throughout the year.
2. Any person who is found at the lake during the closed hours shall be guilty of a Class [2] two offense.
3. Subsections (1) and (2) do not apply to persons occupying a dwelling or guests of such occupants, or other persons acting under the authority of law.

Adopted TMBC5916-04-94.

**CHAPTER 26.17  
Drug and Alcohol Related Crimes**

**26.1701 Unlawful Ingestion of Marijuana.**

Means all parts of the plant of a species of the genus Cannabis, including all agronomic varieties, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt derivative, mixture, or preparation of such plant, its seeds or resin.

1. For the purpose of unlawful ingestion of marijuana/THC, a controlled person shall be charged with a Class [2] two offense unless, the drug test is positive for any other controlled substance.

Adopted 1968 Renumbered 1.2041 and Renamed; Amended TMBC5619-04-94, TMBC13-12-08, TMBC741-05-10.

**26.1701.01 Unlawful Sale of Marijuana.**

1. Sale Crime. [1] one ounce or less. It is unlawful for any person to sell

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less than [1]one ounce of one or more mixtures containing marijuana or Tetrahydrocannabinols whether sold in bulk or packaged for sale shall be charged with a Class [2] two offense.

2. Sale Crime. One Ounce or more. It is unlawful for any person to sell [1] one ounce or more of one or more mixtures containing marijuana or Tetrahydrocannabinols whether sold in bulk or packaged for sale will be charged with a Class [3] three offense.
3. Sale Crime [1] one pound or more. It is unlawful for any person to sell [1] one pound or more of one or more mixtures containing marijuana or Tetrahydrocannabinols whether sold in bulk or package for sale will be charged with a Class [4] four offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1701.02 Unlawful Possession of Marijuana.**

1. Possession Crime. It is unlawful for any person to possess [1]one ounce or less of one or more mixtures containing marijuana or Tetrahydrocannabinols will be charged with a Class [1] one Offense.
2. Possession Crime [1]one ounce or more. It is unlawful for any person to possess [1]one ounce or more of one or more mixtures containing marijuana or Tetrahydrocannabinols whether in bulk or packaged for sale will be charged with a Class [3] three Offense.
3. Possession Crime [1] one pound or more. It is unlawful for any person to possess [1] one pound or more of one or more mixtures containing marijuana or Tetrahydrocannabinols whether in bulk or packaged for sale will be charged with a Class [4] four offense.

Adopted TMBC13-12-08 and TMBC741-05-10.

**26.1701.03 Unlawful Delivery of Marijuana.**

Delivery Crime. It is unlawful for any person to deliver less than [1] one ounce, [1]one ounce or more, or one pound or more of one or more mixtures containing marijuana or Tetrahydrocannabinols whether in bulk or packaged for sale will be charged with a Class [4] four offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1701.04 Unlawful Ingestion of Controlled Substances.**

If a law enforcement officer has probable cause to believe a person has illegally ingested a controlled substance, a urinalysis drug test or blood test can be requested from the law enforcement officer person. A refusal to submit to a urinalysis or blood test may constitute an admission of ingestion. A person may request a blood test but will be responsible for all costs associated with the hospital.

1. Ingestion Crime. It is unlawful for any person, who has not been prescribed a controlled substance, to ingest any amount of one or more mixtures from the Controlled Substance List (26.1702) from Schedule V will be charged with a Class [3] three offense.
2. Ingestion Crime. It is unlawful for any person, who has not been prescribed a controlled substance, to ingest any amount of one or more mixtures from the Controlled Substance List (26.1702) from Schedule IV will be charged with a Class [4] four offense.
3. Ingestion Crime. It is unlawful for any person, who has not been prescribed a controlled substance, to ingest any amount of one or more mixtures from the Controlled Substance List (26.1702) from Schedule III

will be charged with a Class [4] four offense.

4. Ingestion Crime. It is unlawful for any person, who has not been prescribed a controlled substance, to ingest any amount of one or more mixtures from the Controlled Substance List (26.1702) from Schedule II will be charged with a Class [4] four Offense.
5. Ingestion Crime. It is unlawful for any person, who has not been prescribed a controlled substance, to ingest any amount of one or more mixtures from the Controlled Substance List (26.1702) from Schedule I will be charged with a Class [4] four offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1701.05 Unlawful Inhalation of Volatile Chemicals.**

A law enforcement officer's observation of one or more of the following will be the determination of an inhalant crime. Conditions could be one or more of the following: if a person appears drunk, dazed, dizzy, has a drowsy appearance, gives the impression of anxiousness, excitability, irritability and has a red, runny nose, spots, sores or rash around the mouth or nose, traces of paint on mouth, nose or hands, chemical breath odor, nausea or drooling.

1. It is unlawful for any person who willfully, knowingly or purposefully inhales the vapors of a volatile chemical in a manner designed to affect the person's central nervous system to create or induce a condition of intoxication will be charged with a Class [2] two Offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1702 Controlled Substance List.**

Any drug scheduled as a "controlled substance" under the provision as amended on the date when the offense was committed; along with amendments to Chapter 26.17 section 26.1702 shall be guilty of a Class [4] four offense, and is subject to confiscation and seizure of all property used in furtherance of the offense or purchased with proceeds from any drug tested in Chapter 26.17.

- a. Five schedules. There are established five schedules of controlled substances, to be known as Schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section by whatever official name, common or usual name, chemical name, or trade name designated.

Section 1: Schedule I.

The following items are listed in Schedule I and classified a Class 4 under Chapter 26.06 Sentence and Penalties and Classification of Offenses:

Subsection 1: Any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylambutene; Dimenoxadol; buyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxadine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacylmorphane; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phernoperidine; Piritramide; Proheptazine; Properdine; Racemoramide; Trimerperidine.

Subsection 2: Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Acetylcodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphinol; Methyldesorphine; Methylhydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

Subsection 3: Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: 3,4-methylenedioxy amphetamine; 3,4-methylenedioxymethamphetamine; e4-bromo-2,5-dimethoxyamphetamine; e2,5-dimethoxyamphetamine; e4-methoxyamphetamine; e5-methoxy-3, 4-methylenedioxy amphetamine; Bufotenine ; Diethyltryptamine ; Dimethyltryptamine ; 3,4,5-trimethoxy amphetamine; 4-methyl-2, 5-dimethoxyamphetamine; l-bogaine; Lysergic acid diethylamide; marijuana; Mescaline; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; 1-(1-(2-thienyl) cyclohexyl) piperidine; n-ethyl-1- phenyl-cyclohexylamine; 1-(1-phenylcyclohexyl) pyrrolidine.

Subsection 4: Peyote, providing the listing of peyote as a controlled substance in schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the American Indian Church, and members of the American Indian Church are exempt from registration. Any person who manufactures peyote for or distributes peyote to the American Indian Church, however, is required to obtain federal registration annually and to comply with all other requirements of law.

Subsection 5: Unless specifically exempt or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: Mecloqualone; Flunitrazepam.

Subsection 6: Unless specifically exempt or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: Cathinone; Methcathinone.

## Section 2: Schedule II.

The following items are listed in Schedule II and classified a Class 4 under Chapter 26.06 Sentence and Penalties and Classification of Offenses:

Subsection 1: Unless specifically exempt or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following: raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium, tincture of opium, apomorphine, codeine, ethylmorphine, hydrocodone, hydromorphone, metopon,

- morphine, oxycodone, oxymorphone, thebaine.
- b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (a), except that these substances shall not include the isoquinoline alkaloids of opium.
  - c. Opium poppy and poppy straw.
  - d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine, the salts and isomers of cocaine and ecgonine, and the salts of their isomers.
  - e. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (d), except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

Subsection 2: Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically excepted, or unless listed in another schedule, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation: Alfentanil; Alphaprodine; Anileridine; Bezitramide; Dihydrocodeine; Dihydromorphinone; Diphenoxylate; Fentanyl; Isomethadone; Levomethorphan; Levorphanol; Metazocine; Methadone; Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenylbutane; Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane- carboxylic acid; Pethidine; Pethidine - Intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine; Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate; Pethidine - Intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid; Phenazocine; Piminodine; Racemethorphan; Racemorphan.

Subsection 3: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- a. Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- b. Methamphetamine, its salts, isomers, and salts of its isomers;
- c. Phenmetrazine and its salts;
- d. Methylphenidate.

Subsection 4: Unless specifically exempt or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a) Methaqualone
- b) Amobarbital
- c) Secobarbital
- d) Pentobarbital
- e) Phencyclidine
- f) Phencyclidine immediate precursors:
- g) 1-phenylcyclohexylamine
- h) 1-piperidinocyclohexanecarbonitrile

Section 3: Schedule III.

The following items are listed in Schedule III and classified a Class 4 under Chapter 26.06 Sentence and Penalties and Classification of Offenses:

Subsection 1: Any material, compound, mixture, or preparation which contains any quantity of Amphetamine, its salts, optical isomers, and salts of its optical isomers; Phenmetrazine and its salts; Methamphetamine, its salts, isomers, and salts of isomers; Methylphenidate; and which is required by federal law to be labeled with the symbol prescribed by 21 Code of Federal Regulations Section 1302.03 and in effect on February 1, 1976 designating that the drug is listed as a Schedule III controlled substance under federal law.

Subsection 2: Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- a) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
- b) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.
- c) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules: Chlorhexadol; Glutethimide; Lysergic acid; Lysergic acid amide; Methyprylon; Sulfondiethylmethane; Sulfonethylmethane; Sulfonmethane.
- d) Gamma hydroxybutyrate, any salt, compound, derivative, or preparation of gamma hydroxybutyrate, including any isomers, esters, and ethers and salts of isomers, esters, and ethers of gamma hydroxybutyrate whenever the existence of such isomers, esters, and salts is possible within the specific chemical designation.

Subsection 3: Any material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- a) Benzphetamine
- b) Chlorphentermine
- c) Clortermine
- d) Mazindol
- e) Phendimetrazine.
- f) Nalorphine.

Subsection 4: Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

- (a) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
- (b) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (c) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
- (d) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (e) Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (f) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active,

- nonnarcotic ingredients in recognized therapeutic amounts.
- (g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - (h) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

#### Section 4: Schedule IV.

The following items are listed in Schedule IV and classified a Class 4 under Chapter 26.06 Sentence and Penalties and Classification of Offenses:

Subsection 1: Anabolic substances; Barbitol; Butorphanol; Carisoprodol; Chloral betaine; Chloral hydrate; Chlordiazepoxide; Clonazepam; Clorazepate; Diazepam; Diethylpropion; Ethchlorvynol; Ethinamate; Fenfluramine; Flurazepam; Mebutamate; Methohexital; Meprobamate except when in combination with the following drugs in the following or lower concentrations: conjugated estrogens, 0.4 mg; tridihexethyl chloride, 25mg; pentaerythritol tetranitrate, 20 mg; Methylphenobarbital; Oxazepam; Paraldehyde; Pemoline; Petrichloral; Phenobarbital; and Phentermine.

Subsection 2: For purposes of this subdivision, "anabolic substances" means the naturally occurring androgens or derivatives of androstane (androsterone and testosterone); testosterone and its esters, including, but not limited to, testosterone propionate, and its derivatives, including, but not limited to, methyltestosterone and growth hormones, except that anabolic substances are not included if they are: (1) expressly intended for administration through implants to cattle or other nonhuman species; and (2) approved by the United States Food and Drug Administration for that use.

#### Section 5: Schedule V. 392

The following items are listed in Schedule V and classified a Class 3 under Chapter 26.06 Sentence and Penalties and Classification of Offenses:

Subsection 1: Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone;

- (a) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- (b) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- (c) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (d) Not more than 15 milligrams of anhydrous morphine per 100 milliliters or per 100 grams.

#### Section 6: Periodic Review of List

Subsection 1: The controlled substance schedules I through V may be modified if any substance is designated or rescheduled on the Federal, North Dakota State or Turtle Mountain Band of Chippewa lists. Any changes to the list must consider the following: The actual or relative potential for abuse, the scientific



evidence of its pharmacological effect, if known, the state of current scientific knowledge regarding the substance, the history and current pattern of abuse, the scope, duration, and significance of abuse, the risk to public health, the potential of the substance to produce psychic or physiological dependence liability, and whether the substance is an immediate precursor of a substance already controlled under this section. This may include any non-narcotic drug authorized by federal law for medicinal use in a schedule only if such drug must, under either federal, state or tribal law or rule, be sold only on prescription.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1702.01 Unlawful sale of controlled substances.**

Sale Crime It is unlawful to sell, arrange for sale, solicit for sale, barter, give away, lend, exchange, deliver, or distribute any amount of: cocaine; crack, crack, heroin; methamphetamine, phencyclidine, or hallucinogen including a narcotic or non-narcotic controlled substance in Schedules I through V whether in bulk or packaged for individual sale and will be charged with a Class [5] five offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1702.02 Unlawful possession of controlled substances.**

1. Possession Crime. It is unlawful to possess any amount of: cocaine; heroin; methamphetamine, phencyclidine, or hallucinogen listed in Schedule's I through V and will be charged with a Class [4] four Offense.
2. Possession Crime. It is unlawful to possess any amount of prescription medication except for the person for whom it was prescribed, listed in Schedule's I through V will be charged with a Class [4] four Offense.
3. Possession Crime. It is unlawful for a person to possess more than one immediate precursor of a controlled substance with the intent to adulterate that substance for the manufacturing of a controlled substance and will be charged with a Class [4] four Offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1702.03 Unlawful administration of a controlled substance.**

Someone who knowingly, willfully or purposefully administers a controlled substance with the intent to stupefy, intoxicate, sedate or restrain another person in order to facilitate sexual contact, penetration or causes bodily physical harm, will be charged with a Class [5] five Offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1702.04 Unlawful manufacture of controlled substances.**

Except as authorized by this Title, it is unlawful for an person to possess, with intent to manufacture, distribute or deliver, a controlled substance or a controlled substance analog. Intent under this subsection may be demonstrated by without limitation because of enumeration, evidence of the quantity and monetary value of the substances possess, the possession of manufacturing implements or paraphernalia, and the activities or statements of the person in possession of the controlled substance or a controlled substance analog prior to and after the alleged violation. Violations of this subsection shall be punished as follows:

1. One gram or less of a Schedule I drug is a Class 3 offense.
2. One or more grams of Schedules I-V are Class 4 offenses.
3. Five grams or more of Schedule I-V are Class 5 Offenses.

Adopted TMBC 13-12-08 and TMBC741-05-10.and Amended TMBC1246-06-18

**26.1702.05 Unlawful transportation of a controlled substance.**

Transportation Crime. It is unlawful for a person to transport, carry, deliver any amount of cocaine; crank, crack, heroin; methamphetamine, phencyclidine, or hallucinogen, including any controlled substance in Schedules I through V and will be charged with a Class [4] Four Offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1702.06 Unlawful possession of drug paraphernalia.**

It is unlawful for any person to knowingly or intentionally use, possess, trade, give away, sell or offer for sale any drug paraphernalia and will be charged with a Class [2] two Offense if the paraphernalia has tested positive for any drug from Schedules I through V.

Adopted TMBC 13-12-08 and TMBC741-05-10

**26.1702.07 Child endangered by prohibited drug activity.**

Any person who knowingly causes or permits a child to be present where a person is using, selling, manufacturing, delivering, transporting, misusing a prescription drug, possessing an immediate precursor or chemical substance with which to manufacture, use or possess a controlled substance is guilty of child endangerment by prohibited drug activity and will be charged with a Class [4] four Offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1702.08 Endangering an unborn fetus.**

1. Any pregnant female who has consumed alcohol with BAC of .02% or higher shall be guilty of a Class [4] four offense. If a law enforcement officer has probable cause to believe a pregnant female has consumed any alcohol, a breathalyzer can be requested from that person. A refusal to submit to a breathalyzer test may constitute an admission of guilt.
2. Any pregnant female, who has not been prescribed a controlled substance from Schedule I, Schedule II, Schedule III, Schedule IV or Schedule V misuses a prescription drug, uses inhalants and is found through blood or urine testing to be under the influence of an illegal controlled substance or inhalant will be charged with a Class [4] four Offense. A refusal to submit to a blood or urine test may constitute an admission of guilt.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1702.09 Counterfeit substance.**

It is unlawful for any person to willfully (Chapter 26.04) create, deliver, possess or misrepresent a controlled substance from Schedules I through V and will be charged with a Class [4] Four offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1702.10 Prescription drug.**

It is unlawful for a person who is not a licensed practitioner or pharmacist to willfully change, sell, barter, give away, deliver or exchange a prescription drug from Schedule's I to V and will be charged with a Class [4] Four Offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

**26.1702.11 Misuse of prescription drug.**

1. Even though a prescription drug has been legally prescribed, it is unlawful for a person to misuse or abuse the prescribed drug and will be charged with a Class Four Offense.

2. The willful overmedicating of oneself by not following a licensed practitioner or pharmacist's orders or directions or not following the over the counter drug instructions will be charged with a Class [4] Four Offense.

Adopted TMBC 13-12-08 and TMBC741-05-10.

26.1703 RESERVED/OPEN # NOTHING WAS CHANGED EXCEPT FOR THE MOVING OF THE LAW AND A NEW NUMBER WHICH IS 26.1116.01. It now follows 26.1116 Operating Dance Halls for public social dances.

**Chapter 26.17**  
**Forfeiture Code for Criminal Forfeitures.**

**Section 26.1704.01 Seizures and Forfeitures Related to Drugs.**

The following property is subject to forfeiture to the Turtle Mountain Tribal Court:

1. All drugs seized pursuant to Title 26, or its successor;
2. All money, raw materials, products and equipment of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, production, delivering, importing any drug in violation of in this section;
3. All above property used or intended for use as a container for any item which falls under subsections (a) and/or (b) of this Section;
4. All conveyances which are used or intended for use in this unlawfully transporting or in any manner facilitating the transportation of any item which falls under subsections (a) and/or (b) of this Section;
5. All conveyances in which a drug is unlawfully kept, deposited or concealed;
6. All books, records and research products and materials, including formulas, microfilm, tapes and dates that are used or intended for use in violation of this section;
7. All equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a drug; and
8. Everything of value furnished or intended to be furnished in exchange for a drug in violation of this section, all proceeds traceable to such an exchange, and all money, negotiable instruments and securities used or intended to be used to facilitate any violation of Title 26.
9. All land, improvements to land, and or appurtenances to land used in the furtherance of a violation of Title 26 or its successor.

**26.1704.02 Statute of Limitations and Burden of Proof.**

1. The Tribe shall have six years to commence a Forfeiture action pursuant to this Title.
2. The Tribe's burden of proof in this matter shall be a preponderance of the evidence.

**26.1704.03 Exceptions to forfeiture.**

1. No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under the subsection unless it appears that the owner or other person in charge of the conveyance is a consenting party to or knowledgeable of a violation of this Title 26.

2. No conveyance is subject to forfeiture under this subsection because of any act or omission established by the owner of the conveyance to have been committed or omitted without his/her knowledge or consent.
3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he/she neither had knowledge of nor consented to any violation of this section.

**26.1704.04 When Property May Be Seized.**

1. A law enforcement officer who has probable cause to make an arrest for a violation of Tribal or Federal law, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a drug or probable cause to believe that conveyance has been used to keep, deposit or conceal a drug shall seize the conveyance so used or intended to be used. The officer shall immediately deliver a conveyance that is seized to the Bureau of Indian Affairs, Law Enforcement Services; Turtle Mountain Band of Chippewa Indians, Law Enforcement Services, Belcourt, North Dakota, to be held as evidence until forfeiture is declared or release is ordered.
2. All property subject to forfeiture under this Title 26 may be seized by a law enforcement officer under a search warrant issued by the Tribal Court. Seizure without a warrant may be made if:
  - a. The seizure is made incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;
  - b. The property subject to seizure has been the subject of a prior judgment in favor of the Tribe in a criminal proceeding or a forfeiture proceeding based on this Title;
  - c. The law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety;
  - d. The law enforcement officer has probable cause to believe that the property was issued or is intended to be used in violation of the criminal provisions of this Title; or
  - e. The law enforcement officer has probable cause to believe that the property will be removed from the Turtle Mountain Reservation if not seized at that time.

**26.1704.05 Forfeiture of Property Procedure.**

1. Petition to institute forfeiture proceedings:
  - a. The Tribal Prosecutor may file a petition to institute forfeiture proceedings with the Clerk of the Tribal Court 45 days after receiving notice of the seizure of property subject to forfeiture by law enforcement officers or agents.
  - b. The clerk shall issue a summons at the request of the petitioning party who shall cause the petition and summons to be served upon all owners or claimants of the property pursuant to the requirements of Title 2 Judicial Procedure Civil.
  - c. The Forfeiture is against the property to be forfeited with notice to the interested parties.
2. Hearing concerning forfeiture of property.

At the time the forfeiture petition is filled, the clerk of court shall schedule a hearing on the petition not less than 60 days after date of filing. The hearing shall comply with the provisions of Title 2 Judicial Procedure Civil.

3. Default
  - a. There is a rebuttable presumption of forfeiture of property.
  - b. If the individual who was served with process under subsection (a) of this section fails to appear at the hearing, the Court shall order the property forfeited to the Turtle Mountain Band of Chippewa Indians by default.
4. Proof required or permitted at hearing to rebut the presumption of forfeiture.
  - a. At the hearing scheduled under subsection (b) of this Section, the Court may order a further evidentiary hearing at which:
    - i. An owner of the property must prove that the conveyance was not used for the purpose charged.
    - ii. An owner of the property must prove, in the alternative, that the use of the property occurred with his/her knowledge or consent.
    - iii. A claimant of a secured interest in the property must prove that his/her interest is bona fide and that it was created without the knowledge that the property was being used or was to be used for the purpose charged.
5. Disposition of property following evidentiary hearing.
  - a. If the Court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as the date of the seizure.
  - b. If the Court finds that the property was used for the purpose charged and, that the use was with the knowledge or consent of the owner, the property shall be disposed of as follows:
    - i. If proper proof of his/her claim is presented at the hearing by the holder of a security interest, the Court shall order the property released to the holder of the security interest with all title, right and interest to the owner extinguished. If the value of the property is more than the security interest, the additional value shall be returning to the Turtle Mountain Band of Chippewa Indians.
    - ii. If no claimant exists, and the Turtle Mountain Band of Chippewa Indians wishes to retain the property for its official use, it may do so. If such property is not to be retained, it shall be sold.
6. Disposition of proceeds of sales and/or fines.
  - a. Whenever property is seized, forfeited and sold under the provisions of this Title, the net proceeds of the sale must be remitted to the

Chief Financial Officer of the Turtle Mountain Tribe to be divided as follows:

- i. One-half to the Tribal Court Account; and
- ii. One-half to the Drug Enforcement Team to be used for drug enforcement purposes, to the extent such a Team has been formally established; if no such Team has been formally established.

**CHAPTER 26.18  
Weapon Offenses.**

**26.1800 General penalty.**

Any person who violates any provision of this Chapter, for which another penalty is not specifically provided, is guilty of a Class [4] offense.

**26.1801 General definitions.**

1. "DANGEROUS WEAPON" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any throwing star, nunchaku, or other martial arts weapon, any billy club, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any stun gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
2. "DIRECT SUPERVISION OF AN ADULT" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. "FIREARM" or "WEAPON" means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka or cannon.
4. "PLAIN VIEW" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.
5. "RIFLE" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
6. "SECURED" means the firearm is closed into the trunk or non passenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel- locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.
7. "SHORT-BARRELED RIFLE" means a rifle having one or more barrels less than sixteen (16) inches (40.64 centimeters) in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six (26) inches (66.04 centimeters).
8. "SHORT-BARRELED SHOTGUN" means a shotgun having one or more barrels less than eighteen (18) inches (45.72 centimeters) in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six (26) inches (66.04 centimeters).
9. "SHOTGUN" means a firearm designed or redesigned, made or remade, and

intended to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

10. "SILENCER" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
11. "UNLOADED" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell. Handguns with a removable magazine or clip must have the magazine or clip removed from the firearm if the magazine or clip contains any loaded shells.

Adopted 1968 and substantially Amended TMBC5916-04-94.

#### **Possession of Weapons**

#### **26.1802 Persons prohibited from possessing firearms.**

1. A person who has been convicted of a federal crime, state felony or a Class 3 or 4 Tribal offense is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or release from incarceration or probation, whichever is the latter. Violation of this subsection shall be a Class 3 offense.
2. A person who is or has been diagnosed and confined or committed to a hospital or other institution in North Dakota or elsewhere by a court of competent jurisdiction as a mentally ill or incompetent person as defined in §26.0301(101) of this Title is prohibited from purchasing a firearm or having one in their possession or under their control. This limitation does not apply to a person who has not suffered from the disability in the preceding three years.

Violation of this subsection shall be a Class [3] three offense.

Adopted TMBC5916-04-94 and Amended TMBC1246-06-18 subparagraph 3 removed as redundant to 26.1808.

#### **26.1803 Sale of handgun regulated.**

No person may transfer a handgun to any person who the transferor knows or has reasonable cause to believe is a person prohibited by §26.1802 of this Title from possessing a firearm. Any person who violates this section is guilty of a Class [3] three offense.

Adopted TMBC5916-04-94.

#### **26.1804 Possession or sale of short-barrel rifle or shotgun.**

1. A person, who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun is guilty of a Class [5] offense.
2. This section shall not apply to the following:
  - a. This section does not apply to a law enforcement officer who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun in the course of, or in connection with the officers official duties,
  - b. to a member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations who possesses or uses a short-barreled rifle
  - c. or short-barreled shotgun issued to the member by that organization and while on official duty, or to any person who complies with the National Firearms Act (I.U.S.C. 5801-5872).

Adopted TMBC5916-04-94.

**26.1805 Possession of firearm or dangerous weapon in liquor establishment or gambling site.**

1. It shall be unlawful for any person to carry any gun, rifle, or pistol into any establishment where a fee has been charged for admission or into any establishment in which alcoholic beverages are consumed or a gambling site. Any person violating the provisions of this section shall be guilty of a Class [4] four offense.
2. This section shall not apply to the following:
  - a. The owner or the lessee of the property or business establishment;
  - b. A person participating in the event, if he is carrying a gun, rifle, or pistol with the permission of the owner, lessee or person or organization sponsoring the event; and
  - c. Law Enforcement Officers when acting in the discharge of their official duties.

Adopted TMBC5916-04-94 and Amended TMBC1246-06-18.

**26.1806 Possession of firearm at a public gathering.**

1. A person, without a concealed handgun permit, who possesses a firearm at a public gathering, is guilty of a Class {4} offense. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings. A person who possesses a firearm or dangerous weapon in an establishment engaged in the retail sale of alcoholic beverages or used as a gambling site.
2. This section does not apply to:
  - a. a law enforcement officer;
  - b. the proprietor;
  - c. the proprietor's employee;
  - d. a designee of the proprietor when the designee is displaying an unloaded firearm or dangerous weapon as a prize or sale item in a raffle or auction.

Adopted TMBC5916-04-94 and Amended TMBC1246-06-18.

**26.1807 Discharge of firearm within five hundred (500) yards of an occupied structure.**

A person who discharges a firearm within five hundred (500) yards of an occupied structure is guilty of a Class [3] offense. This section does not apply to the lawful discharge of firearms by law enforcement officers, by citizens in defense of person or property, or by participants in lawful activities in which discharge of firearms is a recognized part of the activity including but not limited to shooting galleries and ranges.

Adopted TMBC5916-04-94.

**26.1807.01 Discharging a firearm into occupied structure.**

It shall be a Class [4] four offense for any person to willfully or wantonly discharge or attempt to discharge any barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second, or a firearm, into any building, structure, vehicle, aircraft, watercraft, or other conveyance.

Adopted TMBC1246-06-18.

**26.1808 Use of dangerous weapon(s) by a juvenile.**

July, 2018



Anyone who is a parent, guardian, or other person having charge or custody of any juvenile under [18] eighteen years of age, and knowingly allows such child to carry or use in public any dangerous weapon as defined in section §26.0101, except when such child is in the company and under the direct control of such parent, guardian, or other adult person authorized by the parent or guardian, is guilty of a Class [3] three offense of use of dangerous weapons by a juvenile.

Adopted TMBC5916-04-94 and Amended TMBC1246-06-18 and renamed.

**26.1809 Illegal firearm ammunition, or explosive materials business.**

1. A person is guilty of a class [4] offense if the person supplies a firearm, ammunition, or explosive material to, or procures or receives a firearm, ammunition, or explosive material if one knows or has reasonable cause to believe that such person is prohibited by §26.1802 of this Title from receiving or possessing it.
  - a. Any person not licensed or otherwise authorized by law to handle, transfer, or engage in transactions with respect to the firearm, destructive device, or explosive material; or
  - b. engaged in the forbidden transaction under circumstances manifesting the actors readiness to supply or procure on other occasions in disregard of lawful restrictions.

Adopted TMBC5916-04-94.

**26.1810 Carrying loaded firearm in vehicle.**

1. No person may keep or carry a loaded firearm in or on any motor vehicle, off road vehicle, snowmobile or boat within the Turtle Mountain Jurisdiction. Any person violating this section is guilty of a Class [4] four offense.
  - a. Carrying a loaded firearm in a vehicle on a public road without lawful authority to do so; or to discharge any kind of firearm from a motor vehicle without lawful authority to do so; or to discharge a firearm from, upon or across any public highway without lawful authority to do so.
2. This prohibition does not apply to:
  - a. a member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organization while possessing the firearm issued to the member by the organization and while on official duty;
  - b. a law enforcement officer;
  - c. a security guard or private investigator who is licensed by the state of North Dakota to carry to carry a firearm by the attorney general, or the Turtle Mountain Tribe.

Adopted TMBC5916-04-94.

**26.1810.01 Possession of dangerous weapon if mentally incompetent, under the influence of alcohol or a controlled substance.**

Any person who has a dangerous weapon in one's actual possession is a Class [5] five offense after having been declared mentally incompetent; or while being under the influence of alcoholic beverages, under the influence of a controlled substance, whether a prescribed drug, or illegal; or while possessing with the intent to unlawfully assault another; or while under the age of 16 years, with or without the consent of his/her parent or guardian.

Adopted TMBC1246-06-18.

**26.1811 Possessing explosive prohibited.**

1. No person may have in their custody, possession, or control, any nitroglycerin, dynamite, or any other dangerous or violent explosive any box, device, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or flammable substance, chemical, or compound, or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts, unexpectedly when moved, handled, or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property. Unless the explosive is carried in the prosecution of or to affect a lawful and legitimate purpose. Any person violating this section is guilty of a Class [5] five offense.

Adopted TMBC5916-04-94 amended TMBC1246-06-18.

**26.1812 Confiscation/Forfeiture and disposal of deadly weapon(s).**

Upon conviction of any offense involving the use of a deadly weapon, the deadly weapon with reference to which the defendant shall have been convicted, shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge:

1. By ordering the weapon returned to its rightful owner, but only when such owner:
  - a. Is a person other than the defendant;
  - b. Was unlawfully deprived of such weapon without his/her consent;
  - c. Has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction; and
  - d. Is entitled to possession of the weapon as determined by the presiding judge.
2. By ordering such weapon turned over to the chief of police of the Belcourt Police Department or his/her duly authorized agent to be destroyed. The Chief of Police shall maintain a record of the destruction thereof. By ordering the weapon, if the weapon has a legible unique identification number, turned over to the Belcourt Police Department for the official use of such agency, but only upon the written request by the Belcourt Chief of Police. The Belcourt Police Department shall maintain a record and inventory of all such weapons received.

Adopted 1968 and TMBC5916-04-94 amended TMBC1246-06-18.

**26.1813 Prohibited modifications in weapons.**

Any person who is in possession of any weapon upon which any such identification mark has been changed, altered, removed, or obliterated creates a rebuttable presumption that the possessor made the alterations. Any person who changes, alters, removes, or obliterates any mark of identification on any weapon, such as the name of the maker, model, or manufacturer's number or knowingly possess a weapon on which such modifications have been made shall be guilty of a Class [4] four offense.

Adopted 1968 and TMBC5916-04-94 amended TMBC1246-06-18.

**Handguns**

**26.1814 Carrying handgun; Restrictions; Exceptions.**

1. A handgun may be carried by a person not prohibited from possessing one by §26.1802 of this Title or any other Tribal statute, in a manner not prohibited by section §26.1810 of this Title if:
  - a. between the hours of one hour before sunrise and one hour after sunset, the handgun is carried unloaded and either in plain view or secured.
  - b. between the hours of one hour after sunset and one hour before

sunrise, the handgun is carried unloaded and secured.

2. The restrictions provided in subdivisions (a) and (b) of subsection 1 do not apply to:
  - a. any person possessing a valid Turtle Mountain or North Dakota concealed weapons license;
  - b. any person on that persons land, or in that persons permanent or temporary residence, or fixed place of business;
  - c. any person while lawfully engaged in target shooting;
  - d. any person while in the field engaging in the lawful pursuit of hunting or trapping. However, nothing in this exception authorizes the carrying of a loaded handgun in a motor vehicle;
  - e. any person permitted by law to possess a handgun while carrying the handgun unloaded and in a secure wrapper from the place of purchase to that persons home or place of business, or to a place of repair or back from those locations;
  - f. any Turtle Mountain law enforcement officer;
  - g. any law enforcement officer of any state or political subdivision thereof if on official duty within this jurisdiction;
  - h. any armed security guard or investigator as authorized by the attorney general when on duty or going to or from duty;
  - i. any member of the armed forces of the United States when on duty or going to or from duty and when carrying the handgun issued to the member;
  - j. any member of the national guard, organized reserves, state defense forces or state guard organizations, when on duty or going to or from duty and when carrying the handgun issued to the member by the organization;
  - k. any officer or employee of the United States duly authorized to carry a handgun;
  - l. any person engaged in manufacturing, repairing, or dealing in handguns or the agent or representative of such person possessing, using, or carrying a handgun in the usual or ordinary course of such business;
  - m. any common carrier, but only when carrying the handgun as part of the cargo in the usual cargo carrying portion of the vehicle.

Adopted 1968 and Amended TMBC5916-04-94.

**26.1815 Copy of federal license submitted to law enforcement officials.**

A retail dealer licensed to sell handguns by the federal government shall send a copy of the license, within seven (7) days after receiving it, to the chief of police and the sheriff of the county in which the dealer is licensed to sell handguns.

Adopted TMBC5916-04-94.

**26.1816 False information prohibited.**

No person, in purchasing or otherwise securing delivery of a handgun or in applying for a license to carry the handgun concealed, may give false information or other false evidence of the person's identity.

Adopted 1968 renumbered from 1.2110.

**Concealed weapons**

**26.1817 Definition of concealed.**

A firearm or dangerous weapon is concealed if it is carried in such a manner as to not be discernible by the ordinary observation of a passerby. There is no

requirement that there be absolute invisibility of the firearm or dangerous weapon merely that it not be ordinarily discernible. A firearm or dangerous weapon is considered concealed if it is not secured and is worn under clothing or carried in a bundle that is held or carried by the individual, or transported in a vehicle under the individual's control or direction and available to the individual, including beneath the seat or in a glove compartment. A firearm or dangerous weapon is not considered concealed if it is:

1. carried in a belt holster which is wholly or substantially visible or carried in a case designed for carrying a firearm or dangerous weapon and which is wholly or substantially visible;
2. in a closed trunk or luggage compartment of a Motor vehicle;
3. carried in the field while lawfully engaged in hunting, trapping, or target shooting, whether visible or not;
4. carried by any person permitted by law to possess a handgun unloaded and in a secure wrapper from the place of purchase to that persons home or place of business, or to a place of repair, or back from those locations; or
5. a bow and arrow, an unloaded rifle or shotgun, or an unloaded weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon commonly referred to as a BB gun, air rifle, or CO2U gun, while carried in a motor vehicle.

Adopted TMBC5916-04-94.

**26.1818 Carrying concealed firearms or dangerous weapons prohibited.**

No person, other than a law enforcement officer, may carry any firearm or dangerous weapon concealed unless the person is licensed to do so or exempted pursuant to this Chapter.

For purposes of this Chapter, dangerous weapon does not mean a spray or aerosol containing CS (orthochlorobenzamalotrile), CN (alpha- chloroacetophenone) or other irritating agent intended for use in the defense of a person.

Adopted TMBC5916-04-94.

**26.1819 License to carry a firearm or dangerous weapon concealed.**

1. The chief of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the chief if the following criteria are met:
  - a. the applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others or work related needs;
  - b. the applicant is not a person specified in §26.1802 of this Title;
  - c. the applicant has the written approval for the issuance of such a license from the Chief of Police and the Senior Criminal Investigator of the Tribe. The approval by the Chief of Police and the Senior Criminal Investigator may not be given unless applicant has successfully completed a background investigation and has attended a testing procedure conducted pursuant to rules established by the Criminal Investigator. The testing procedure for approval of a concealed weapons license must include an open book test to be given from a manual that sets forth weapon safety rules and the deadly force law of North Dakota, including judicial decisions and attorney general opinions, and a proficiency test consisting of a course of fire to be designated by the Federal Law Enforcement Training Center. The purpose of the proficiency test is only to ensure a minimal level of competency in the loading and unloading of the firearm or dangerous weapon, use of safety devices and basic firearm or dangerous weapon functioning, and minimal

accuracy. The agency conducting the testing may assess a charge of up to fifty dollars (\$50) for conducting this testing. The testing procedure is not required for a renewal of a concealed weapons license.

- d. the applicant satisfactorily completes the Bureau of Criminal Investigation application form and has successfully passed a background investigation or criminal records check conducted by that agency.
2. The Chief of Criminal Investigation is required to process the application within thirty (30) days after the completion of the testing portion unless the application is for renewal of a license and in such case, the application must be processed within thirty (30) days after its receipt by the Chief of Criminal Investigation.
3. The Chief of the Bureau of Criminal Investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigation and be accompanied by two sets of classifiable fingerprints. The two sets of classifiable fingerprints are not required for a renewal of a concealed weapons license. The license is valid for three years. The individual shall notify the Chief of the Bureau of Criminal Investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
4. The Chief of the Bureau of Criminal Investigation may deny an application or revoke or cancel such a license after it has been granted for any material mis-statement by an applicant in an application for the license or any violation of this Title.
5. The applicant may appeal a denial or revocation of this license to the court.

Adopted TMBC5916-04-94.

**26.1820 Producing license on demand.**

Every person while carrying a concealed firearm or dangerous weapon for which a license to carry concealed is required, shall have on ones person the license and shall give it to any law enforcement officer for an inspection upon demand by the officer. The failure of any person to give the license to the officer is prima fade evidence that the person is illegally carrying a firearm or dangerous weapon concealed.

Adopted 1968 renumbered from 1.2109.

26.1821 RESERVED/OPEN#

**CHAPTER 26.19  
Fires, Regulation and Penalties**

**26.1901 Setting fires.**

Any person who:

1. Willfully and without authority sets on fire any timber, underbrush, or grass or other inflammable material upon any trust land within the regulatory jurisdiction of the Turtle Mountain Band of Chippewa Indians, shall be guilty of a Class IV offense under Title 26 of the Turtle Mountain Tribal Code. Such person shall be responsible for restitution covering any and all damages, property loss and/or loss of life incurred during such fire. Each person shall also be responsible for reimbursing the appropriate fire authorities for any and all costs associated with fighting such fire, or
2. Negligently 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, shall be guilty of a Class [2] two offense and shall cover costs of damages which have occurred as a result of the fire.

Adopted 1968 renumbered from 1.2201 Adopted TMBC5619-04-94 Revised TMBC581-04-08

**26.1902 Testifying falsely at investigation of fire.**

Any witness involved with at an investigation of a fire conducted by the State Fire Marshal or Deputy Fire Marshal and Bureau of Indian Affairs Law Enforcement Services under the provisions of this Chapter, who gives false testimony at such hearing is guilty of perjury a Class [3] three offense, and shall be sentenced therefore under Title 26 of the Turtle Mountain Tribal Code.

Adopted 1968 renumbered from 1.2203 Adopted 5619-04-94 Revised TMBC581-04-08

**26.1903 Misconduct at fires.**

Every person who, at any burning, interferes with the lawful efforts of any fireman or company of firemen to extinguish the fire, or conducts himself in a manner calculated to prevent the fire from being extinguished or forbids, prevents or dissuades others from assisting to extinguish the fire, shall be guilty of a Class [4] four offense.

Adopted 1968 renumbered from 1.2205 Adopted 5619-04-94

**26.1904 False alarm.**

Any person activating a fire alarm under false pretenses shall be guilty of a Class [2] two offense.

Adopted 1968 renumbered from 1.2206, Adopted 5619-04-94

**26.1905 Arson.**

Any person who starts or maintains a fire or causes an explosion with intent to destroy an entire or any part of a building or inhabited structure of another or a vital public facility, or starts or maintains a fire or causes an explosion with intent to destroy or damage his own real or personal property for the purpose of collecting insurance for the loss, shall be guilty of a Class [4] four offense.

Adopted TMBC5619-04-94

**26.1906 Endangering by fire or explosion.**

1. Any person who starts or maintains a fire or causes an explosion and thereby recklessly:
  - a. places another person in danger of death or bodily injury;
  - b. places an entire or any part of a building or inhabited structure of another or a vital public facility in danger of destruction; or
  - c. causes damage to property of another constituting pecuniary loss in excess of two thousand dollars (\$2,000), is guilty of a Class [4] four offense if the actor places another person in danger of death under circumstances manifesting an extreme indifference to the value of human life, otherwise it is a Class [3] three offense.

Adopted TMBC5619-04-94

**26.1907 Failure to control or report a dangerous fire.**

Any person who knows that a fire which was started or maintained, albeit lawfully, by him or with his assent is endangering life or a substantial amount of property of another is guilty of a Class [3] three offense if he willfully fails either to take reasonable measures to put out or control the fire when he can do so without substantial risk to himself, or to give a prompt fire alarm.

**26.1908 Negligent act resulting in fire.**

1. Any person who negligently causes a fire to be started in any part of any hotel, motel, rooming house, lodging house, or other place of public abode so as to endanger life or property in any way or to any extent shall be guilty of a Class [3] offense.
2. The Fire Chief shall print and distribute copies of this section and such copies shall be conspicuously displayed in each room of every hotel, motel, rooming house, lodging house, and other place of public abode upon any land under the regulatory jurisdiction of the Turtle Mountain Band of Chippewa Indians.

Adopted TMBC5619-04-94

**26.1909 Fireworks regulations.**

1. Fireworks may be sold from June 1st to July 5th,
2. No one under the age of thirteen (13) years old will be allowed to purchase fireworks,
3. Vendors must be inspected by the Fire Department prior to beginning sales,
4. Vendors must have a charged #10 ABC fire extinguisher at their place of business,
5. Vendors must have a "NO SMOKING WITHING 50 FEET" sign posted,
6. Vendors must provide safety brochures to customers with all sales,
7. There shall be no sale or use of fireworks within 50' of a gas station or any other bulk flammable storage.
8. All professional firework displays intended for the public must have the Fire Department present;
9. All vendors must obtain a permanent or temporary business permit from the Tribal Employment Rights Office (TERO).
10. Vendors must be closed by 10:00 p.m., and
11. Penalty for violation is loss of permit and one hundred dollar (\$100) fine.

Adopted TMBC581-04-08.

**26.1910 Burning permits.**

1. Burning permit required. Any person who starts any fire on or adjacent to any forest, grass or brush-covered land without first obtaining a burning permit from the BIA, Turtle Mountain Agency Forestry and Fire Control Department, whether that fire escapes from control or not, is guilty of a Class 2 offense and shall be punished under Title 26 of the Turtle Mountain Tribal Code.
2. Violations of Terms and Conditions of burning Permits. Any person who starts a fire on, or adjacent to; any forest, grass, or brush-covered land in violation of the terms and conditions of a burning permit issued by the BIA, Turtle Mountain Agency Forestry and Fire Control or not, is guilty of a Class [2] two offense and shall be punished under Title 26 of the Turtle Mountain Tribal Code.

Adopted TMBC581-04-08.

**26.1911 Tribal fire wardens.**

1. Appointment. Tribal Fire wardens shall be appointed by the Turtle Mountain Tribal Council and shall have the responsibility to investigate the origin and cause of any wild land fire taking place at a location under the regulatory jurisdiction of the Turtle Mountain band of Chippewa Indians.

2. Eligibility. Only those people trained and certified as at least a Type 3 Wild land Fire Investigator as defined by the National Wildfire Coordination Group, may be appointed as a Tribal Fire Warden. Nothing in this ordinance shall prevent a qualified individual from serving as a Fire Warden volunteer basis.
3. Enforcement authority. Tribal Fire Wardens shall have the authority to issue and/or file a complaint, petition or citation to any person that they have probable cause to believe has violated any section of the Turtle Mountain Tribal Code relating to the control or prevention of wild land fires. Tribal Fire Wardens may also file complaints, petitions and/or citations with the Tribal Prosecutor.
4. Restrictions. Tribal Fire Wardens shall not carry firearms in the course of their duties, but shall have the authority to detain individuals based upon probable cause.

Revised TMBC581-04-08

**26.1912 Financial responsibility.**

1. Any person found to have started a forest, grass or brush fire in violation of any section of the Turtle Mountain Tribal Code shall also, in addition to investigating the fire, and any damages to buildings, improvements, fences, timber, marsh, cattle range, hay or grass upon any range or any other real or personal property.
2. The parent or guardian of any juvenile child found to have started a forest, grass, or brush fire in violation of any section of the Turtle Mountain Tribal Code, shall also, in addition to any penalty imposed above, be subject to a civil penalty to cover the cost extinguishing and investigating the fire, and any damages to building, improvements, fences, timber, marsh, cattle range, hay or grass upon any range or any other real or personal property damaged by the actions of their child(ren).

Adopted TMBC581-04-08

26.1913 RESERVED  
 Repealed as redundant to 26.1910 TMBC1246-08-18.

26.1914 RESERVED/OPEN#

**Chapter 26.20  
 Crimes against Children**

**26.2001 Physical abuse of a child.**

- (1) Definitions. In this section, "recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child.
- (2) Intentional causation of bodily harm.
  - (a) Whoever intentionally causes great bodily harm to a child is guilty of a Class 5 Offense.
  - (b) Whoever intentionally causes bodily harm to a child is guilty of a Class 3 Offense.
  - (c) Whoever intentionally causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class 4 Offense.



- (3) Reckless causation of bodily harm.
  - (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class 4 Offense
  - (b) Whoever recklessly causes bodily harm to a child is guilty of a Class 3 Offense.
  - (c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class 4 Offense.
  
- (4) Failing to act to prevent bodily harm.
  - (a) A person responsible for the child's welfare is guilty of a Class 3 Offense if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by the other person or facilitates the great bodily harm to the child that is caused by the other person.
  - (b) A person responsible for the child's welfare is guilty of a Class 3 Offense if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is caused by the other person.
  
- (5) Engaging in repeated acts of physical abuse of the same child.
  - (a) Whoever commits 3 or more violations under sub. (2), (3), or (4) within a three year period involving the same child is guilty of the following:
    - 1. A Class 5 Offense if at least one violation caused the death of the child.
    - 2. A Class 4 Offense if at least 2 violations were violations of sub. (2) (a).
    - 3. A Class 5 Offense if at least one violation resulted in great bodily harm to the child.
    - 4. A Class 4 Offense if at least one violation created a high probability of great bodily harm to the child.
  - (b) If an action under par. (a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of sub. (2), (3), or (4) occurred within the specified period but need not agree on which acts constitute the requisite number.

Adopted TMBC1155-05-18

**26.2002 Causing mental harm to a child.**

- (1) Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child is guilty of a Class 4 Offense.
- (2) A person responsible for the child's welfare is guilty of a Class 3

Offense if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.

Adopted TMBC1155-05-18

**26.2003 Child enticement.**

Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class 4 Offense:

- (1) Having sexual contact or sexual intercourse with the child in violation of this Title.
- (2) Exposing genitals, pubic area, or intimate parts to the child or causing the child to expose genitals, pubic area, or intimate parts in violation of this Title.
- (3) Recording the child engaging in sexually explicit conduct.
- (4) Causing bodily or mental harm to the child.
- (5) Giving or selling to the child a controlled substance or controlled substance analog in violation of this Title.

**26.2004 Abandonment of a child.**

Whoever, with intent to abandon the child, leaves any child in a place where the child may suffer because of neglect is guilty of a Class 3 offense.

Adopted TMBC1155-05-18

**26.2005 Neglecting a child.**

- (1) Any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of one of the following:
  - (a) A Class 2 Offense.
  - (b) A Class 3 Offense if bodily harm is a consequence.
  - (c) A Class 4 Offense if great bodily harm is a consequence.
  - (d) A Class 5 Offense if death is a consequence.
- (2) Under sub. (1), a person responsible for the child's welfare contributes to the neglect of the child although the child does not actually become neglected if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become neglected.

Adopted TMBC1155-05-18

**26.2006 Concealing or not reporting death of a child; not reporting disappearance of a child.**

- (1) Whoever does any of the following is guilty of a Class 3 Offense:
  - (a) Conceals the corpse of any issue of a woman's body with intent to prevent a determination of whether it was born dead or alive.
  - (b) Unless a physician or an authority of a hospital, sanatorium, public or private institution, convalescent home, or any institution of a like nature is required to report the death or unless a report conflicts with religious tenets or practices, fails to report to law enforcement the death of a child immediately after discovering the death, or as soon as practically possible if immediate reporting is impossible, if the actor is the parent, stepparent, guardian, or legal custodian of the child and if any of the following applies:

1. The death involves unexplained, unusual, or suspicious circumstances.
  2. The death is or appears to be a homicide or a suicide.
  3. The death is due to poisoning.
  4. The death follows an accident, whether the injury is or is not the primary cause of the death.
- (2) Whoever, without authorization under the Tribe's laws other legal authority to move a corpse, hides or buries the corpse of a child is guilty of a Class 3 Offense.
- (3) Missing child.
- (a) In this subsection, "missing" means absent without a reasonable explanation if the absence would raise concern in a reasonable person for the child's well-being.
  - (b) Within the period under par. (b), an individual must report to law enforcement a child as missing if the individual is the parent, stepparent, guardian, or legal custodian of the child.
  - (c)
    1. The report must be made within 24 hours after the child is discovered to be missing if the child is under 13 years of age when the discovery is made.
    2. The report under par. (am) must be made within 48 hours after the child is discovered to be missing if the child is at least 13 years of age but under 16 years of age when the discovery is made.
    3. The report under par. (am) must be made within 72 hours after the child is discovered to be missing if the child is at least 16 years of age when the discovery is made.
  - (d) Whoever violates par. (am) is guilty of the following:
    1. Except as provided in subds. 2. to 3., a Class 3 Offense.
    2. If the child suffers bodily harm or substantial bodily harm while he or she is missing, a Class 4 Offense.
    3. If the child suffers great bodily harm while he or she is missing, or If the child dies while he or she is missing or as a result of an injury he or she suffered while missing, a Class 5 Offense.

Adopted TMBC1155-05-18

**26.2007      Contributing to the delinquency of a child.**

- (1) No person may intentionally encourage or contribute to the delinquency of a child. This subsection includes intentionally encouraging or contributing to an act by a child under the age of 10 which would be a delinquent act if committed by a child 10 years of age or older.
- (2) No person responsible for the child's welfare may, by disregard of the welfare of the child, contribute to the delinquency of the child. This subsection includes disregard that contributes to an act by a child under the age of 10 that would be a delinquent act if committed by a child 10 years of age or older.
- (3) Under this section, a person encourages or contributes to the delinquency of a child although the child does not actually become delinquent if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become delinquent.
- (4) A person who violates this section is guilty of a Class 2 Offense, except for repeat offenses and that shall increase the penalty by a number for subsequent offenses:

- (a) If death is a consequence, the person is guilty of a Class 4 Offense;  
or
- (b) If the child's act which is encouraged or contributed to is a violation of a criminal law which is punishable as a felony, the person is guilty of a Class 5 Offense.

Adopted TMBC1155-05-18

**26.2008      Contributing to truancy.**

- (1) Except as provided in sub. (2), any person 17 years of age or older who, by any act or omission, knowingly encourages or contributes to the truancy, of a person 17 years of age or under is guilty of a Class 1 Offense. If an individual is charged with more than one offense and convicted of more than one offense within a three year period the second offense shall be a Class 2 Offense.
- (2) Subsection does not apply to a person who has under his or her control a child who has been sanctioned under the Tribe's Laws.
- (3) An act or omission contributes to the truancy of a child, whether or not the child is adjudged to be in need of protection or services, if the natural and probable consequences of that act or omission would be to cause the child to be truant.

Adopted TMBC1155-05-18

**26.2009      Hazing.**

- (1) In this section "forced activity" means any activity which is a condition of initiation or admission into or affiliation with an organization, regardless of a student's willingness to participate in the activity.
- (2) No person may intentionally or recklessly engage in acts which endanger the physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating in connection with a school, college or university. Under those circumstances, prohibited acts may include any brutality of a physical nature, such as whipping, beating, branding, forced consumption of any food, liquor, drug or other substance, forced confinement or any other forced activity which endangers the physical health or safety of the student.
- (3) Whoever violates sub. (2) is guilty of:
  - (a) A Class 3 Offense if the act results in or is likely to result in bodily harm to another.
  - (b) A Class 4 Offense if the act results in great bodily harm to another.
  - (c) A Class 5 Offense if the act results in the death of another.

Adopted TMBC1155-05-18

**26.2010      Leaving a Child unattended while in the care of a child care provider.**

- (1) Definitions. In this section:
  - (a) "Child care provider" means a child care center that is licensed by a tribal or state agency, or a child care program that is established or contracted for under tribal law or a home where child care is provided without license.
  - (b) "Child care vehicle" means a vehicle that is owned or leased by a child care provider or a contractor of a child care provider and that is used to transport children to and from the child care provider.
- (2) No child left unattended.
  - (a) No person responsible for a child's welfare while the child is being transported in a child care vehicle may leave the child unattended at any time from the time the child is placed in the care of that

person to the time the child is placed in the care of another person responsible for the child's welfare.

- (b) Any person who violates par. (a) is guilty of one of the following:
  - 1. A Class 1 Offense
  - 2. A Class 3 Offense if bodily harm is a consequence.
  - 3. A Class 4 Offense if great bodily harm is a consequence.
  - 4. A Class 5 Offense if death is a consequence.

Adopted TMBC1155-05-18

**26.2011 Leaving or storing a loaded firearm within the reach or easy access of a child.**

- (1) In this section, "child" means a person who has not attained the age of 14 years.
- (2) Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class 3 Offense if all of the following occur:
  - (a) A child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child.
  - (b) The child under discharges the firearm and the discharge causes bodily harm or death to himself, herself or another.
- (3) Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class 1 Offense if all of the following occur:
  - (a) A child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child.
  - (b) The child under par. (a) possesses or exhibits the firearm in a public place.
- (4) Subsections (2) and (3) do not apply under any of the following circumstances:
  - (a) The firearm is stored or left in a securely locked box or container or in a location that a reasonable person would believe to be secure.
  - (b) The firearm is securely locked with a trigger lock.
  - (c) The firearm is left on the person's body or in such proximity to the person's body that he or she could retrieve it as easily and quickly as if carried on his or her body.
  - (d) The person is a law enforcement officer or a member of the armed forces or national guard and the child obtains the firearm during or incidental to the performance of the person's duties.
  - (e) The child obtains the firearm as a result of an illegal entry by any person.
  - (f) The child gains access to a loaded firearm and uses it in the lawful exercise of a privilege under Title 6.0103.
  - (g) The person who stores or leaves a loaded firearm reasonably believes that a child is not likely to be present where the firearm is stored or left.
  - (h) The firearm is rendered inoperable by the removal of an essential component of the firing mechanism such as the bolt in a breech-loading firearm.
- (5) Subsection (2) does not apply if the bodily harm or death resulted from an accident that occurs while the child is using the firearm in accordance with Title 6.0103.

**26.2012 Receiving stolen property from a child.**

- (1) Whoever intentionally receives stolen property from a child or conceals stolen property received from a child is guilty of:
  - (a) A Class 2 Offense if the value of the property does not exceed \$500.
  - (b) A Class 3 Offense, if the value of the property exceeds \$500 but does not exceed \$2,500.
  - (c) A Class 4 Offense, if the property is a firearm or if the value of the property exceeds \$2,500.
- (2) Under this section, proof of all of the following is prima facie evidence that property received from a child was stolen and that the person receiving the property knew it was stolen:
  - (a) That the value of the property received from the child exceeds \$500.
  - (b) That there was no consent by a person responsible for the child's welfare to the delivery of the property to the person.

Adopted TMBC1155-05-18

**26.2013 Tattooing of children.**

- (1) In this section:
  - (a) "Physician" is an individual who is licensed by any of the States of the United States of America as a physician with a valid license.
  - (b) "Tattoo" means to insert pigment under the surface of the skin of a person, by pricking with a needle or otherwise, so as to produce an indelible mark or figure through the skin.
- (2) Subject to sub. (3), any person who tattoos or offers to tattoo a child is subject to a Class 1 Offense.
- (3) Subsection (2) does not prohibit a physician from tattooing or offering to tattoo a child in the course of his or her professional practice.

Adopted TMBC1155-05-18

**26.2014 Sexual assault of a child by a school staff person or a person who works or volunteers with children.**

- (1) In this section:
  - (a) "School" means a public or private elementary or secondary school, or a tribal school.
  - (b) "School staff" means any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract.
- (2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class 4 Offense if all of the following apply:
  - (a) The child is enrolled as a student in a school or a school district or if the student is a child with a developmental disability which renders the student incapable of consent and is less and 21.
  - (b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.
  - (c) The student or is less than 21 years of age
- (3) Sexual assault by an adult in a caretaking function.
  - (a) A person who has attained the age of 21 years and who engages in an occupation or participates in a volunteer position that requires him or her to work or interact directly with children may not have

sexual contact or sexual intercourse with a child who has attained the age of 16 years, who is not the person's spouse, and with whom the person works or interacts through that occupation or volunteer position.

- (b) Whoever violates this provision is guilty of a Class 4 Offense.
- (c) Paragraph (a) does not apply to an offense to which sub. (2) applies.
- (d) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact directly with children:
  - 1. Teaching children,
  - 2. Child care,
  - 3. Youth counseling,
  - 4. Youth organization,
  - 5. Coaching children,
  - 6. Parks or playground recreation,
  - 7. School bus driving, or
  - 8. School Administrator.

Adopted TMBC1340-07-18

**26.2015 Exposing a child to harmful material or harmful descriptions or narrations.**

- (1) Definitions. In this section:
  - (a) "Harmful description or narrative account" means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children.
  - (b) "Harmful material" means:
    - 1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that is harmful to children; or
    - 2. Any book, pamphlet, magazine, printed matter however reproduced or recording that contains any matter enumerated in the preceding paragraph "1" or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that, taken as a whole, is harmful to children.
  - (c) "Harmful to children" means that quality of any description, narrative account or representation, in whatever form, of nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it:
    - 1. Predominantly appeals to the prurient, shameful or morbid interest of children;
    - 2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children; and
    - 3. Lacks serious literary, artistic, political, scientific or educational value for children, when taken as a whole.
  - (d) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or

the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

- (e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
- (f) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(2) Criminal penalties.

- (a) Whoever, with knowledge of the character and content of the material, sells, rents, exhibits, plays, distributes, or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

- 1. The person knows or reasonably should know that the child has not attained the age of 18 years.
- 2. The person has face-to-face contact with the child before or during the sale, rental, exhibit, playing, distribution, or loan.

- (b) Any person who has attained the age of 17 and who, with knowledge of the character and content of the description or narrative account, verbally communicates, by any means, a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class 3 Offense if any of the following applies:

- 1. The person knows or reasonably should know that the child has not attained the age of 18 years.
- 2. The person has face-to-face contact with the child before or during the communication.

- (c) Whoever, with knowledge of the character and content of the material, possesses harmful material with the intent to sell, rent, exhibit, play, distribute, or loan the material to a child is guilty of a Class 2 Offense.

- 1. The person knows or reasonably should know that the child has not attained the age of 18 years.
- 2. The person has face-to-face contact with the child.

- (d) It is an affirmative defense to a prosecution for a violation of paragraph 2 any subparagraph, if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

- (3) Severability. The provisions of this section, including the provisions are severable. Adopted TMBC1340-07-18