

3-1-37.2 **Proceedings Not Applicable to this Chapter**

- a. Habeas Corpus – These rules do not apply to proceedings on any application for a writ of Habeas Corpus had in the courts of this reservation.
- b. Mental Health Proceedings – These rules do not apply to mental health proceedings.
- c. Other Proceedings – these rules do not apply to:
 - i. Extradition and rendition of fugitives.
 - ii. Forfeiture of property for a violation of a statute of the Three Affiliated Tribes.
 - iii. The collection of fines and penalties.
 - iv. Proceedings under the Juvenile Court Act.
 - v. An action to determine paternity of a child born out of wedlock.

3-1-38 **Appendix of Forms**

3-1-38.1 **Forms** – The forms contained in the Appendix of Forms are mandatory.

3-1-39 **Effective Date: Statutes Superseded**

3-1-39.1 **Effective Date** – These rules will take effect on XXX. They govern all criminal proceedings thereafter commenced and so far, as practicable all proceedings then pending.

3-1-39.2 **Statutes Superseded** – Upon the taking of effect of these rules, all statutes, and parts of statutes in conflict herewith and the statutes listed as superseded in the Table of Statutes affected are superseded.

Chapter 2 – Provisions for Criminal Practice

3-2-1 **Scope**

3-2-1.1 **Governing Provisions** – Except as otherwise provided by this Three Affiliated Tribes Tribal Law and Order Code and as provided by Rule 3-1-37, these provisions govern the practice and procedure in all criminal proceedings in the Tribal Courts of the Fort Berthold Indian Reservation. This code shall be known as the Three Affiliated Tribes Criminal Code and cited as T.A.T.C.C.

3-2-2 **Purpose and Construction**

3-2-2.1 **Regulation of Formal Steps** - These provisions are intended to regulate the formal steps in an action or other judicial proceeding and include the judicial process for enforcing rights and duties recognized by substantive law and for justly administering redress for infraction of them. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

3-2-3 **Provisions and Principles of Construction**

3-2-3.1 **Definition of Offenses** - The general purpose of the provisions governing the definition of offenses are:

- a. To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.
- b. To subject to public control people whose conduct indicates that they are disposed to commit crimes.
- c. To safeguard conduct that is without fault from condemnation as criminal.
- d. To give warning of the nature of the conduct declared to constitute an offense; and
- e. To differentiate on reasonable grounds between serious and minor offenses.

3-2-3.2 **Sentencing and Treatment of Offenders** - The general purpose of the provisions governing the sentencing and treatment of offenders are:

- a. To prevent the commission of offenses.

- b. To promote the correction and rehabilitation of offenders.
- c. To safeguard offenders against excessive, disproportionate, or arbitrary punishment.
- d. To give fair warning of the nature of the sentences that may be imposed on conviction of an offense.
- e. To differentiate among offenders with a view to a just individualization in their treatment.
- f. To define, coordinate, and harmonize the powers, duties and functions of the courts and administrative officers and agencies responsible for dealing with offenders.
- g. To advance the use of the general accepted scientific methods and knowledge in the sentencing and treatment of offenders.
- h. To integrate responsibility for the administration of the correctional system.

3-2-3.3 **Fair Import of Terms** - The provisions of this code shall be construed according to the fair import of their terms but when language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this section and the special purpose conferred by this code shall be exercised in accordance with the criteria stated in this code and, insofar as such criteria are not decisive, to further the general purpose so stated in section 3-2-2.

3-2-4 **Territorial Applicability**

3-2-4.1 Except as otherwise provided in the section, a person may be convicted of an offense under these laws for actions taken within the exterior boundaries of the Fort Berthold Indian Reservation which are committed by his own conduct or the conduct of another for which he is legally accountable if:

- a. Either the conduct which is an element of the offense or the result of such conduct if such an element occurs in the reservation; or
- b. Conduct occurring outside the jurisdiction of the Fort Berthold Indian Reservation is sufficient under the law of this code if such conduct constitutes an attempt to commit an offense within the Fort Berthold Reservation and the conduct shows a substantial step or an overt act in furtherance of that attempt; or
- c. Conduct occurring outside the jurisdiction of the Fort Berthold Reservation is sufficient under the laws of this criminal code to constitute a conspiracy to commit an offense within the Fort Berthold Reservation if such conduct shows a substantial step or an overt act in furtherance of that conspiracy within the Fort Berthold Reservation; or
- d. Conduct occurring within the exterior boundaries of the Fort Berthold Reservation which establishes complicity in the commission of, or an attempt, solicitation, or conspiracy to commit, an offense in another jurisdiction which also is an offense under this code of the Fort Berthold Reservation; or
- e. The offense consists of the omission to perform a legal duty imposed by this code of the fort Berthold Reservation with respect to domicile, residence or a relationship to a person, thing, or transaction on the Fort Berthold Reservation; or
- f. The offense is based on a criminal code of the Fort Berthold Reservation which expressly prohibits conduct outside the exterior boundaries of the Fort Berthold Reservation, when the conduct bears a reasonable relation to a legitimate interest of the Fort Berthold Reservation and actor knows or should know that his conduct is likely to affect that interest.

3-2-4.2 The above subsection 3-2-4.1(a) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the Fort Berthold Reservation which would not constitute an offense if the result had occurred there unless the actor purposely or knowingly caused the result within the Fort Berthold Reservation.

3-2-4.3 When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result", within the meaning of subsection 3-2-4.1(a) and if the body of a homicide

victim is found within the exterior boundaries of the Fort Berthold Reservation, it is presumed that such result occurred within the Fort Berthold Reservation.

3-2-4.4 The Fort Berthold Reservation includes the land and water and together with the air space above such land and water with respect to which the Three Affiliated Tribes have legislative jurisdiction.

3-2-5 **Offenses Defined by Published Statutes**

3-2-5.1 No conduct constitutes an offense unless it is a crime or violation under this code or another ordinance of the Fort Berthold Reservation.

3-2-5.2 The provisions of this code are applicable to offenses defined by other ordinances unless this code otherwise provides.

3-2-5.3 This section does not affect the power of the tribal court to punish for contempt or to utilize any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

3-2-6 **Prior Offenses**

3-2-6.1 The revised code does not apply to offenses committed prior to its effective date and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose, as if this code were not in force. For the purpose of section 3-2-7, an offense was committed prior to the effective date of this code if any of the elements of the offense occurred prior to the effective date of this code. In any case pending on or after the effective date of this code, involving an offense committed prior to the effective date:

- a. Procedural provisions of this code shall govern, as far as they are justly applicable, and their application does not introduce confusion or delay.
- b. Provisions of this code providing a defense or mitigation shall apply, with the consent of the defendant.
- c. The court, with the consent of the defendant, may impose sentence under the previous provision of this code applicable to the offense and the offender.

3-2-7 **Prior Sentences**

3-2-7.1 Provisions of this code governing the treatment and the release or discharge of prisoners, probationers and parolees shall apply to persons under sentence for offenses prior to the effective date of this code, except that the minimum or maximum period of their detention or supervision shall in no case be increased.

3-2-8 **Method of Prosecution When Conduct Constitutes More than One Offense**

3-2-8.1 When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

- a. One offense is included in the other, as defined in subsection 3-2-8.1(d);
- b. One offense consists only of a conspiracy or other form of preparation to commit the other.;
- c. Inconsistent findings of fact are required to establish the commission of the offenses;
- d. The offense differs only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or
- e. The offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute a separate offense.

3-2-9 **Limitation on Separate Trials for Multiple Offenses**

3-2-9.1 Except as provided in section 3-2-10, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of the tribal court.

3-2-10 **Authority of the Court to Order Separate Trials**

3-2-10.1 When a defendant is charged with two or more offenses based on the same conduct or arising from the same criminal episode, the tribal court, on application of the tribal prosecutor or attorney of the defendant, may order any such charge to be tried separately, if it is satisfied that justice so requires.

3-2-11 **Conviction of Lesser Included Offense Permitted**

3-2-11.1 A defendant may be convicted of a lesser included offense of the offense charged in the complaint. An offense is so included when:

- a. It shares some, but not all, of the elements of the charged offense.
- b. It consists of an attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein.
- c. The crimes are of a similar character and based on the same act or common plan; or
- d. It differs from the offense charged only in the respect that a less severe injury or risk of injury to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

3-2-12 **Charging Offenses Together**

3-2-12.1 The prosecutor may charge the lesser included offense together with the greater offense in the complaint, however, only one offense can provide the basis for conviction. The defendant cannot be found guilty of both offenses because the elements of the lesser included offense are part of the greater offense.

3-2-13 **Submission of Lesser Included Offense to Jury**

3-2-13.1 The court shall not be obligated to charge the jury with respect to a lesser included offense unless there is a rational basis for a verdict acquitting the defendant of the greater offense charged and convicting him of the lesser included offense.

3-2-14 **Prosecution Barred by Former Prosecution for the Same Offense**

3-2-14.1 When a prosecution is for a violation of the same provision of this code and is based upon the same facts as a former prosecution, it is barred by such former prosecution under the following circumstances:

- a. The former prosecution resulted in an acquittal unless such acquittal has been set aside because of an error of law prejudicial to the prosecution. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense although the conviction is subsequently set aside.
- b. The former prosecution was terminated, after the complaint had been filed by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated, and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.
- c. The former prosecution was improperly terminated. Except as provided in this subsection there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

- i. The defendant consents to the termination or waives, by motion to dismiss or otherwise, his right to object to the termination.
- ii. The trial court finds that the termination is necessary because:
 1. It is physically impossible to proceed with the trial in conformity with the law.
 2. There is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; or
 3. Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Three Affiliated Tribes; or
 4. The jury is unable to agree upon a verdict; or
 5. False statements of the juror on voir dire prevent a fair trial.

3-2-15 **Prosecution Barred by Former Prosecution for Different Offenses**

3-2-15.1 Although a prosecution is for a violation of a different provision of the statute than a former prosecution which is based on different facts, it is barred by such former prosecution under the following circumstance:

- a. The former prosecution resulted in an acquittal of defendant in a charged offense as defined in section 3-2-14, and the subsequent prosecution is for:
 - i. Any offense conduct of which the defendant should have been charged on the first prosecution; or
 - ii. Any offense conduct for which the defendant should have been tried on the first prosecution under section 3-2-14, unless the court ordered a separate trial of the charges of such offense conduct; or
 - iii. The same offense conduct, unless the subsequent charged offense requires proof of a fact not required by the other previous charged offense, of which the defendant was formerly convicted or acquitted, and the present offense for which he is subsequently prosecuted and the law defining such offenses is intended to prevent a substantially different harm or evil.
- b. The second offense was not consummated when the former trial commenced.
 - i. The former prosecution was terminated, after the complaint was filed by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.
 - ii. The former prosecution was terminated as improper as defined in section 3-2-14, and the subsequent prosecution is for an offense of which the defendant could have been charged had the former prosecution not been improperly terminated.

3-2-16 **Former Prosecution in Another Jurisdiction**

3-2-16.1 When conduct constitutes an offense within the concurrent jurisdiction of the Three Affiliated Tribes and of the United States or other legal entity with jurisdiction, a prosecution in any other jurisdiction is a bar to a subsequent prosecution on the Fort Berthold Reservation under the following circumstances -

- a. The first prosecution resulted in an acquittal or in a conviction as defined in section 3-2-14 and the subsequent prosecution is based on the same conduct, unless:
 - i. The offense of conviction or acquittal and the offense for which he is subsequently charged each require proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a different harm or evil; or
 - ii. The second offense was not consummated when the former trial commenced.
- b. The former prosecution was terminated, after the complaint was filed, by an acquittal or by a final order of judgment for the defendant which has not been set aside, reversed, or vacated and

which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction for the offense of which the defendant is subsequently charged.

3-2-17 **Former Prosecution before Court Lacking Jurisdiction or when Fraudulently Procured by the Defendant**

3-2-17.1 A prosecution is not a bar within the meaning of sections 3-2-14, 3-2-15, and 3-2-16 under any of the following circumstances -

- a. The former prosecution was before a court which lacked jurisdiction over the defendant or the offense.
- b. The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence which might otherwise be imposed; or
- c. The former prosecution resulted in a judgment of conviction which was held invalid in a subsequent proceeding on a writ of habeas corpus, coram nobis or similar process.

3-2-18 **Proof and Presumptions**

3-2-18.1 No person may be convicted of an offense unless each element of such offense is proven beyond a reasonable doubt. A person is presumed innocent until proven guilty. The fact that the accused has been arrested, confined, or charged with the offense gives rise to no inference of guilt at the accused's trial.

3-2-18.2 In this section 3-2-18, the prosecuting attorney shall not be required to:

- a. Negate a defense by allegation in the charging document;
- b. Negate a defense by proof, unless the issue is in the case as a result of evidence sufficient to raise a reasonable doubt on the issue; or
- c. Disprove an affirmative defense unless, and until, there is evidence supporting such defense.

3-2-18.3 A ground of defense is affirmative, within the meaning of section 3-2-18.2(c) when:

- a. It arises under a section of this code which so provides; or
- b. It relates to an offense defined by an ordinance other than this code and such ordinance so provides; or
- c. It involves a matter of excuse or justification peculiarly within the knowledge of the defendant on which he can fairly be required to adduce supporting evidence.

3-2-18.4 When the application of this code depends upon the findings of a fact which is not an element of an offense, unless this code otherwise provides:

- a. The burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and
- b. The fact must be proved to the satisfaction of this court or jury as the case may be.

3-2-18.5 When this code establishes a presumption with the respect to any fact which is an element of an offense, it has the following consequences:

- a. When there is evidence of the facts which give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly regales the presumed fact; and
- b. When the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

3-2-19

General Definitions

3-2-19.1

In this code, unless a different meaning plainly applies:

- a. “Act” or “action” means a bodily movement whether voluntary or involuntary.
- b. “Acted,” “acts,” and “actions” include, where relevant, “omitted to act” and “omissions to act”.
- c. “Actor” includes, where relevant, a person guilty of an omission.
- d. “Bodily Injury” means any impairment of physical condition, including physical pain.
- e. “Conduct” means an action or omission and its accompanying state of mind, or where relevant, a series of acts and omissions.
- f. “Court” means all courts of the Fort Berthold Indian reservation and shall include the District, Juvenile, and Appellate courts.
- g. “Dangerous weapon” has the meaning as described in Chapter 20 Weapons and Explosives in subsection 3-20-1.1(a)
- h. “Person,” “her,” “his” and “actor” include any natural person and, where relevant, a corporation or an unincorporated association.
- i. “Elements of an offense” means:
 - i. The forbidden conduct.
 - ii. The attendant circumstances specified in the definition and grading of the offense.
 - iii. The required culpability; and
 - iv. Any required result; and the nonexistence of a defense as to which there is evidence sufficient to raise reasonable doubt on the issue.
- j. “Involuntary” has the meaning specified in subsection 3-2-20.1(a).
- k. “Material element of an offense” means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue, or to other matter similarly unconnected with:
 - i. The harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or
 - ii. The existence of a justification or excuse for such conduct.
- l. “Purposely” has the meaning specified in subsection 3-2-22.2(a) and equivalent terms such as “with purpose”, “designed”, or “with design” have the same meaning.
- m. “Intentionally” or “with intent” means purposely.
- n. “Knowingly” has the meaning specified in subsection 3-2-22.2(b) and equivalent terms such as “knowing” or “with knowledge” have the same meaning.
- o. “Recklessly” has the meaning specified in subsection 3-2-22.2(c) and equivalent terms such as “recklessness”, or “with recklessness” have the same meaning.
- p. “Negligently” the meaning specified in subsection 3-2-22.2(d) and equivalent terms such as “negligence” or “with negligence” have the same meaning.
- q. “Omission” means a failure to act.
- r. “Ordinance” includes this criminal code and other related ordinances of the Fort Berthold Reservation along with amendatory changes hereafter.
- s. “Reasonably believes” or “reasonable belief” designates a belief which the actor is not reckless or negligent in holding.

3-2-20

General Principles of Liability Requirement of Voluntary Act; Omission as a Basis of Liability for an Act

3-2-20.1

A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

- a. The following are not voluntary acts within the meaning of this section:
 - i. A reflex or convulsion.
 - ii. A bodily movement during unconsciousness or sleep.
 - iii. Conduct during hypnosis or resulting from hypnotic suggestion.
 - iv. A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

- b. Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:
 - i. The omission is expressly made sufficient by the law defining the offense; or
 - ii. A duty to perform the omitted act is otherwise imposed by law.
- c. Possession is an act within the meaning of this section if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

3-2-21 **Absolute Liability**

3-2-21.1 Notwithstanding any other provisions of existing law and unless a subsequent ordinance otherwise provides -

- a. When absolute liability is imposed with respect to any material element of an offense defined by ordinance other than this code and a conviction is based upon such liability, the offense constitutes a violation; and
- b. Although absolute liability is imposed by law with respect to one or more of the material elements of an offense defined by a statute other than this code, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes sufficient culpability and the classification of the offense and the sentence that any imposed therefore upon conviction are determined by subsection 3-9-1.2 and Chapter 9 of this code.

3-2-22 **General Requirement of Culpability**

3-2-22.1 Minimum Requirements - Minimum requirements of culpability must be established. Except as provided in subsection 3-2-23.1, a person is not guilty of an offense unless he acted purposely, knowingly, recklessly, or negligently, as the law may require, with respect to each material element of the offense.

3-2-22.2 Kinds of Culpability Defined

- a. Purposely - a person acts purposely with respect to a material element of an offense when:
 - i. If the element involves the nature of his or her conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
 - ii. If the element involves the attendant circumstance, he is aware of the existence of such circumstances or he believes or hopes that they exist.
- b. Knowingly - a person acts knowingly with respect to a material element of an offense when:
 - i. If the element involves the nature of his or her conduct or the attendant circumstances, he or she is aware that his or her conduct is of that nature or cause such a result; and
 - ii. If the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist.
- c. Recklessly - a person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's omission.
- d. Negligently - a person acts negligently with respect to a material element of an offense when he or she should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct, and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

- 3-2-22.3 Culpability Required Unless Otherwise Provided - When culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly, or recklessly with respect thereto.
- 3-2-22.4 Prescribed Culpability Requirement Applied to all Material Elements - When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears.
- 3-2-22.5 Substitutes for Negligence, Recklessness, and Knowledge - When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely, knowingly, or recklessly. When reckless suffices to establish an element, such element also is established if a person acts purposely.
- 3-2-22.6 Requirement of Purpose Satisfied if Purpose is Conditional - When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negates harm or evil sought to be prevented by the law defining the offense.
- 3-2-22.7 Requirement of Knowledge Satisfied by Knowledge of High Probability - When knowledge or existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless he actually believes that it does not exist.
- 3-2-22.8 Requirement of Willfulness Satisfied by Acting Knowingly - A requirement that an offense be committed willfully is satisfied if a person acts knowingly with respect to the material elements or the offense, unless a purpose to impose further requirements appears.
- 3-2-22.9 Culpability as to Illegality of Conduct - Neither knowledge nor recklessness or negligence as to whether conduct constitutes an offense is an element of such offense unless the definition of the offense or this code so provides.
- 3-2-22.10 Culpability as determinant of grade of offense - When the degree of an offense depends on whether the offense is committed purposely, knowingly, recklessly, or negligently, its severity shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.
- 3-2-23 **Inapplicable Culpability Requirements**
- 3-2-23.1 The requirements of culpability prescribed in section 3-2-22 do not apply to:
- a. Offenses which constitute violations, unless the requirement involved is included in the definition of the offense or the court determines that its application is consistent with effective enforcement of the law defining the offense; or
 - b. Offenses defined by ordinances other than this code, as far as a legislative purpose to impose absolute liability for such offenses with respect to any material element plainly appears.
- 3-2-24 **Causal Relationship Between Conduct and Result**
- 3-2-24.1 Conduct is the cause of result when:
- a. It is an antecedent but for which the result in question would not have occurred; and
 - b. The relationship between the conduct and result satisfies any additional casual requirements imposed by this code or by the law defining the offense.

3-2-25 **Divergence Between Result Designed or Contemplated and Actual Result or Between Probable and Actual Result**

3-2-25.1 When purposely or knowingly causing a particular result is an element of an offense, the element is not established if the actual result is not within the purpose of the contemplation of the actor unless:

- a. The actual result differs from the designed or contemplated result, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm designed or contemplated would have been more serious or more extensive than that caused; or
- b. The actual result involves the same kind of injury or harm designed or contemplated and is not too remote or accidental in its occurrence to have a just bearing on the actor's liability or on the gravity of his offense.

3-2-25.2 When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which he should be aware unless:

- a. The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or
- b. The actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a just bearing on the actor's liability or on the gravity of his offense.

3-2-25.3 When causing a particular result is a material element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

3-2-26 **Liability for Conduct of Another; Complicity**

3-2-26.1 A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both. A person is legally accountable for conduct of another person when:

- a. Acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or
- b. He is made accountable for the conduct of such other person by this code or by the law defining the offense; or
- c. He is an accomplice of such other person in the commission of the offense. A person is an accomplice of such other person in the commission of an offense if:
 - i. With the purpose of promoting or facilitating the commission of the offense, he:
 1. Solicits such other person to commit it; or
 2. Aids or agrees or attempts to aid such other person in planning or committing it; or
 3. Having a legal duty to prevent the commission of the offense, fails to make proper effort to do so; or,
 4. His conduct is expressly declared by law to establish his complicity.
- d. When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to the result that is sufficient for the commission of the offense.
- e. A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

- f. Unless otherwise provided by this code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:
 - i. He is a victim of that offense; or
 - ii. The offense is so defined that his conduct is inevitably incident to its commission; or
 - iii. He terminates his complicity prior to the commission of the offense and
 - 1. Wholly deprives it of its effectiveness in the commission of the offense; or
 - 2. Gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.
- g. An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person accused to have committed the offense has not been prosecuted or convicted or has been convicted of a different degree of offense or has an immunity to prosecution of conviction or has been acquitted.

3-2-27 **Liability of Corporation, Unincorporated Associates and Person Acting, or Under a Duty to Act, in Their Behalf**

3-2-27.1 A Corporation May be Convicted of the Commission of an Offense, if:

- a. The offense is a violation or the offense is defined by a statute other than this code in which a legislative purpose to impose liability on corporations plainly appears and the conduct is performed by an agent of the corporation acting on behalf of the corporation within the scope of his office or employment, except that if the law defining the offense designates the agents for whose conduct the corporation is accountable or the circumstance under which it is accountable, such provisions shall apply;
- b. The offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or
- c. The commission of the offense was authorized, requested, commanded, performed, or recklessly tolerated by the board of directors or by a high managerial agent acting on behalf of the corporation within the scope of his office or employment.
- d. When absolute liability is imposed for the commission of an offense, a legislative purpose to impose liability on a corporation shall be assumed, unless the contrary plainly appears.

3-2-27.2 An Unincorporated Association May be Convicted of the Commission of an Offense, if:

- a. The offense is defined by a statute other than this code which expressly provides for the liability of such an association and the conduct is performed by an agent of the association acting on behalf of the association within the scope of his office of employment, except that if the law defining the offense designates the agents from whose conduct the association is accountable, such provisions shall apply; or
- b. The offense consists of an omission to discharge a specific duty of affirmative performance imposed on associations by law.

3-2-27.3 As Used in this Section

- a. "Corporation" does not include an entity organized as or by a governmental agency for the execution of a governmental program.
- b. "Agent" means any director, officer, servant, employee, or other person authorized to act on behalf of the corporation or association and, in the case of an unincorporated association, a member of such association.
- c. "High managerial agent" means an officer of a corporation or an unincorporated association, or, in the case of a partnership, a partner, or any other agent of a corporation or association having duties of such responsibility that his conduct manifests to fairly be assumed to represent the policy of the corporation or association.

- 3-2-27.4 In any prosecution of a corporation or an unincorporated association for the commission of an offense included within the terms of subsections 3-2-27.1 or 3-2-27.2 of this section, other than an offense for which absolute liability has been imposed, it shall be a defense if the defendant proves a preponderance of evidence that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission. This paragraph shall not apply if it is plainly inconsistent with the legislative purpose in defining the particular offense.
- 3-2-27.5 A person is legally accountable for any conduct he performs or causes to be performed in the name of the corporation or an unincorporated association or on its behalf to the same extent as if it were performed in his own name or behalf.
- 3-2-27.6 Whenever a duty to act is imposed by law upon a corporation or an unincorporated association, any agent of the corporation or the association having primary responsibility for the discharge of the duty, is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.
- 3-2-27.7 When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the same sentence authorized by law as when a natural person is convicted of such an offense of the grade and the degree involved.

Chapter 3 - Criminal Extradition Procedure

- 3-3-1 The TAT Extradition Official, appointed by the Chairman of the Judicial Committee, shall have the authority to have apprehended and delivered up to the executive authority of any Indian tribe, state, or the United States, any person charged with or convicted of a felony, who has fled from justice and is found within the exterior boundaries of the Fort Berthold Reservation.
- 3-3-2 A formal demand for extradition must be made in writing by the demanding sovereign alleging that the individual was present within the jurisdiction of the demanding sovereign at the time of the commission of the alleged crime and that, thereafter, he fled from the jurisdiction of the sovereign. Accompanying the formal demand shall be a copy of any warrant outstanding against the individual, a copy of any judgment of conviction or any sentence imposed in execution thereof, or a statement by an appropriate agent of the demanding sovereign that the individual has escaped from confinement or has violated the terms or conditions of his bail, probation, or parole. Additionally, the TAT Extradition Official shall receive a copy of any indictment, a copy of any information or complaint supported by an affidavit, or a copy of an affidavit made before a magistrate or judge in said jurisdiction. The indictment, information, complaint, or affidavit made before a magistrate or judge must charge the individual whose extradition is demanded with having committed a felony under the laws of that sovereign. The copy of the indictment, information, complaint, affidavit, judgment of conviction, or sentence shall be authenticated by an appropriate agent of the demanding sovereign.
- 3-3-3 If the TAT Extradition Official determines that the demand should be complied with, he shall cause a judge of the Fort Berthold Tribal Court to sign a warrant for apprehension which shall be directed to each Fort Berthold law enforcement office for execution. The warrant shall authorize any Fort Berthold law enforcement officer to apprehend the individual at any time and any place where he may be found within the Fort Berthold Reservation, and to command the aid of all Fort Berthold law enforcement officers in the execution of the warrant.

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- 3-3-4 No individual apprehended under such warrant shall be delivered directly over to an agent of the demanding sovereign. He shall first be taken forthwith before a tribal judge who shall inform him of the demand made for his extradition, the felony with which he has been charged or of which he has been convicted, and his right to demand and secure legal counsel, and his right to a full hearing to challenge the proposed extradition.
- 3-3-5 A full hearing shall be held within seventy-two (72) hours after the individual is apprehended to test the validity of the arrest. It will be presumed that the individual arrested desires a full hearing, unless the individual waives such hearing by executing in the presence of a tribal judge a writing which states that he consents to the return to the demanding sovereign without a full hearing on the proposed extradition.
- 3-3-6 If, from the examination of the evidence presented at a hearing before a tribal court judge, it appears that the individual held is, in fact, the individual whose extradition is demanded and that he has fled from justice, the tribal judge shall, by an order reciting his determination, commit him to a tribal detention facility until such time, not exceeding thirty (30) days, for the TAT Extradition Official to notify and surrender him to an agent of the demanding sovereign.
- 3-3-7 The TAT Extradition Official shall also have the authority to demand the return of an individual charged with a tribal crime, with escaping from confinement, or with violating the terms or conditions of his bail, probation, or parole within the Fort Berthold Reservation, from the executive authority of any other sovereign authorized to receive such demand.
- 3-3-8 When the return to the Fort Berthold Reservation of an individual charged with or convicted of a crime within the Fort Berthold Reservation is required, a tribal judge shall present to the TAT Extradition Official a written application for the return of such individual. The application shall state the name of the individual, the crime with which he has been charged or of which he has been convicted, the approximate time, place and circumstances of its commission, and the jurisdiction in which he is believed to be, including location of the individual in such jurisdiction, at the time the application is made. The application shall certify that, in the opinion of the judge, the ends of justice require the arrest and return of the individual to the Fort Berthold Reservation for trial or other hearing and that the proceeding is not instituted to enforce a private claim.
- 3-3-9 An individual returned to the Fort Berthold Reservation by means of extradition based on a criminal charge shall not be subject to personal service of process in any civil action arising out of the same circumstances involved in the criminal proceeding, until he has been finally convicted or, if acquitted, until he has had reasonable opportunity to return to the jurisdiction from which he was extradited.
- 3-3-10 Nothing contained in these Three Affiliated Tribes Criminal Code Provisions and Procedures shall be deemed to constitute a waiver by the Three Affiliated Tribes of their right, power, or privilege to try such demanded individual for any crime committed within the Fort Berthold Reservation or of their right, power, or privilege to regain custody of such individual by extradition proceedings for the purpose of trial, sentence, or punishment for any crime committed within the Fort Berthold Reservation.

Chapter 4– Statute of Limitations

3-4-1 **Statute of Limitations**

3-4-1.1 No prosecution shall be maintained under this Three Affiliated Tribes Criminal Code unless the action has been commenced within one (1) year after the commission of the offense for Class 2, 3, and 4 misdemeanors and three (3) years for Class 1 Misdemeanor and five (5) years for Felony offenses.

- a. There is no limitation on the time in which a prosecution for murder must be commenced. It may be commenced at any time after the death of the victim.
- b. No statute of limitation shall preclude the prosecution for an offense involving the sexual or physical abuse or assault, or kidnapping, of a child under the age of eighteen (18) years.

3-4-2 **Completed Offense**

3-4-2.1 a. An offense is committed when every element defining an offense occurs. For purposes of the statute of limitations clock, time starts to run on the day after the offense is committed.
b. A prosecution is commenced either when a complaint is filed or when a warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

3-4-3 **Tolling of Limitations**

3-4-3.1 A period of limitation does not run:

- a. During any time when the accused is continuously absent from the reservation or has no reasonably ascertainable place of abode or work within the reservation.
- b. During any time when the prosecution against the accused for the same conduct is pending on this Reservation.

3-4-4 **Concealed Crime**

3-4-4.1 The statute of limitations otherwise applicable to a criminal act is tolled where:

- a. The criminal act is concealed; or
- b. The victim is under the influence of a person in a position of trust.

3-4-5 **Speedy Trial**

3-4-5.1 Trial must be commenced within one (1) year after the arraignment.

Chapter 5 – Bail

3-5-1 **Definitions**

3-5-1.1 As used in this chapter, unless the context otherwise requires:

- a. “Bail Bond Agent” means any person who has been licensed by the Tribal Employment Rights Office (TERO) and appointed by an insurer, by power of attorney, to execute or countersign bail bonds for the insurer in connection with the judicial proceedings and charges and receives money for this service.
- b. “Commissioner” means the Tribal Employment Rights Director.
- c. “Bail” is to obtain release of a person charged with an offense by ensuring future attendance in Three Affiliated Tribes Tribal Court through security being taken and compelling the accused to remain within the jurisdiction of the Three Affiliated Tribes Tribal Court.
- d. “Bail Bond” is a written undertaking, executed by the defendant or one or more sureties, that the defendant will render himself amenable to the processes of the Three Affiliated Tribes Tribal Court, and that in the event he fails to do so, the signers of the bond will pay to the court the amount of money specified in the order fixing bail.

3-5-2 **TERO License Required**

- 3-5-2.1 No individual, partnership, corporation, or limited liability company may engage in the provision of any bail bond without -
- a. Obtaining a license to conduct business on the Fort Berthold Indian Reservation from the Tribal Employment Rights Office; and
 - b. Submitting proof, as part of the TERO licensing process, of appointment by an insurer, by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings and charged offenses; and
 - c. Submitting proof of authority to receive money for such an insurer for the extension of bail bond services.

3-5-3 **Persons Disqualified as Bail Bond Agents**

- 3-5-3.1 The following persons or classes may not be bail bond agents and may not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, magistrates, judges, and court personnel of the Three Affiliated Tribes Tribal Court, sheriffs, deputy sheriffs, or any person having the power to arrest, or having anything to do with the control of tribal, federal, or state prisoners.

3-5-4 **Bail**

- 3-5-4.1 Any person charged with a criminal offense may be eligible for bail by the Three Affiliated Tribes Tribal Court, at any time prior to final judgment or pending appeal to the MHA Supreme Court, in accordance with the provisions of this chapter. If bail is not met, the defendant shall be confined pending the outcome of the criminal proceedings.

3-5-5 **Bail Hearing**

- 3-5-5.1 A bail hearing must be held by a magistrate or judge of the Three Affiliated Tribes Tribal Court when a person is charged with Class 1 Misdemeanor or Felony offense. All Class 2, 3, and 4 Misdemeanor offenses will be set through a tribal bonding schedule which will be set by the chief judge and chief of police with review and approval authority by the Judicial Committee. The tribal bonding schedule shall be reviewed annually and made available to the public.

3-5-6 **Taking of Bail**

- 3-5-6.1 The taking of bail consists of the acceptance by the tribal court of sufficient cash in the form of a money order or cashier's check, or surety bond to ensure the appearance of the defendant. Bond may be posted with law enforcement by means of depositing one hundred percent (100%) of the bond in the form of a money order, cashier's check, or using the services of a licensed bonding agent. Law enforcement shall forward such money order, cashier's check, or notice of bond to the tribal court.

3-5-7 **Bond Forfeiture and Enforcement**

- 3-5-7.1 Bail bond agents shall be notified by the clerk of court, in writing by certified mail, return receipt requested, within five (5) days of the defendant's appearance or failure to appear. The bail bond agent shall then have no more than sixty (60) calendar days to submit one hundred percent (100%) of the established bond schedule amount to the court. However, should the bail bond agent locate and physically bring or cause to be brought to the court the defendant who failed to appear within the sixty (60) day period, the bail bond agent may petition the court for a return of the forfeited bond, but shall be responsible for paying five percent (5%) of the bail amount for court costs. Upon filing, the clerk of court shall enter in the register of actions the date and amount of the bond, and the name or names of the surety thereon for the bond.

- 3-5-7.2 Pursuant to T.A.T.R. Crim. P. 3-1-8.8, the court may direct a forfeiture to be set aside if it appears justice does not require the enforcement of the forfeiture:
- a. Enforcement – If a forfeiture has not been set aside, the court shall enter a judgment of default and execution may issue thereon.
 - b. Exoneration – If the condition of the bond has been satisfied or the forfeiture thereof set aside, the court shall exonerate the obligor and release any bail. A surety may be exonerated by a cash deposit in the amount of the bond or by timely surrender of the defendant into custody.

3-5-8 **Setting of Bail**

- 3-5-8.1 Bail shall be fixed in such amount and in such form as, in the judgment of the Three Affiliated Tribes Tribal Court, will ensure the presence of the defendant in court proceedings of the case. When setting the bail, the judge shall take into consideration:
- a. The nature and circumstances of the offense charged;
 - b. The character and reputation of the defendant.
 - c. The previous criminal record of the defendant.
 - d. The probability of the defendant appearing at the hearing or trial of the case; and
 - e. The safety of the victims, tribal members, and general public.

3-5-8.2 In no case shall bail exceed four (4) times the maximum fine for the offense charged.

3-5-9 **Release of Defendant**

- 3-5-9.1 Upon the execution of the requisite recognizance or bail bond, the Three Affiliated Tribes Tribal Court shall issue an order for the release of the defendant. Upon the delivery of such an order to a law enforcement officer, the defendant shall be released upon the terms and conditions contained in the court order.

3-5-10 **Forfeiture of Bail**

- 3-5-10.1 If the defendant fails to appear in court as lawfully required, the court shall direct an entry of such failure and forfeiture of bail to be made on the record, without further proceedings. The court shall thereafter issue a warrant for the arrest of the defendant.

3-5-11 **Return of Bail**

- 3-5-11.1 Any security, given by the surety or the defendant, must be returned within five (5) working days of a dismissal, not guilty verdict, or upon sentencing, unless the sentence is appealed, then upon five (5) working days of the appellate decision.

Chapter 6 – Defenses

3-6-1 **Definitions**

- 3-6-1.1 In this chapter, unless a different meaning is plainly required:
- a. “Deadly Force” means force which the actor uses with the purpose of causing or which he knows to create a substantial risk or causing death or serious bodily harm. Purposely firing a firearm in the direction of another or another person is believed to constitute deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor’s purpose is limited to creating an apprehension that he will use deadly force, if necessary, does not constitute deadly force.
 - b. “Dwelling” means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the actor’s home or place of lodging.
 - c. “Force” means physical action, threat, or menace against another, and includes confinement.
 - d. “Intoxication” means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.