



**RESOLUTION OF THE GOVERNING BODY  
OF THE  
THREE AFFILIATED TRIBES  
OF THE  
FORT BERTHOLD INDIAN RESERVATION**

***A Resolution Entitled Adoption of a Tribal Code Provision Providing Authority for the Tribal Court to Expunge the Tribal Criminal Record of Tribal Members***

**WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-laws pursuant to said Act; and

**WHEREAS,** Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

**WHEREAS,** The Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Article VI, Section 5 (1) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies and Tribal officials on the Reservation; and

**WHEREAS,** Article VI, Section 3 of the Constitution grants the Tribal Business Council all necessary sovereign authority, both legislative and judicial for the purpose of exercising the jurisdiction granted by Article I of the Constitution ; and

**WHEREAS,** The Tribe has in place a system of criminal laws pursuant to its Tribal Code which provide for criminal convictions for the commission of certain criminal actions;

**WHEREAS,** other jurisdictions, including state and federal governments have laws that allow individuals to have their criminal records expunged or pardoned; however the Three Affiliated Tribes has no such laws allowing for expungement of tribal criminal records; and

**WHEREAS,** tribal members are sometimes prohibited from being employed in certain positions within the Tribe due to prior criminal offenses and due to strict federal requirement regarding background investigations and the Tribal Council believes that tribal members should be granted the opportunity to have their criminal



records expunged under certain circumstances so that they may be employed with the Tribe; and

**WHEREAS,** Title I Section of the of the Tribal Code sets forth the jurisdiction and powers of the Tribal Court; and

**WHEREAS,** The Tribal Council finds that Title I Section 3 of the Tribal Code should be amended by adding a provision that authorizes the Court to expunge the misdemeanor criminal records of tribal members under limited circumstances; and

**NOW, THEREFORE BE IT RESOLVED,** that the Tribal Business Council of the Three Affiliated Tribes pursuant to its constitutional authority hereby amends Title I Section 3 of the Tribal Code of the Three Affiliated Tribes by adding the following provision as Section 3.5:

3.5. Expungement of Criminal records.

The Chief Judge of the Fort Berthold District Court, or an associate Judge assigned by the Chief Judge in the event of a conflict of interest, shall be upon petition, authorized to expunge the criminal record entered in the Fort Berthold District Court of a member of the Tribe under the conditions set out herein.

1. An individual seeking expungement shall petition the Tribal Court for expungement. The Petition shall be verified under oath and shall identify the conviction sought to be expunged, the date of conviction and the reason for the request for expungement. The Petition shall also verify that the individual has not been convicted in any court of a like offense either prior to the date of conviction of the offense sought to be expunged or after the date of conviction of the offense sought to be expunged.
2. An individual is limited to a one time petition and expungement of a tribal criminal record.



3. The Conviction of the offense sought to be expunged must have been entered on the record of the Court at least seven (7) years prior to the date of the petition.
4. Expungement shall be limited to class II misdemeanor offenses and shall not be authorized for any conviction for an offense involving domestic violence or for any felony, class A or class 1 misdemeanor.
5. An individual is not entitled to expungement if the individual has had a like offense either prior to or after the conviction of the offense sought to be expunged.
6. Subject to the limitations set out in this Section, a decision to expunge a criminal record is at the discretion of the Judge considering the petition who shall consider the following factors when deciding a petition for expungement:
  - a) The seriousness of the offense and the facts surrounding the offense
  - b) Whether or not the petitioner was represented by legal counsel during the criminal proceedings that resulted in the conviction
  - c) The length of time elapsed since the date of conviction
  - d) The Petitioners prior criminal history, if any
  - e) Evidence of rehabilitation of the Petitioner
  - f) The reasons for the petitioners request.



- 7. A decision to grant a petition for expungement shall be entered as a judgment by order of the Court
- 8. Upon entry of the Judgment, the criminal record thereby expunged shall be thereafter forever sealed.

**CERTIFICATION**

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 5 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 16<sup>th</sup> day of October 2008; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman [] voting, [] not voting.

Dated this 16<sup>th</sup> day of October 2008.

**ATTEST:**

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Tribal Secretary, V. Judy Brugh  
Tribal Business Council  
Three Affiliated Tribes

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Tribal Chairman, Marcus Wells Jr.  
Tribal Business Council  
Three Affiliated Tribes