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

A Resolution Entitled: *"Adoption of Title IV-A Amended^A Diving Under The Influence Code"*

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 (l) 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, In 1987 the Tribal Business Council adopted a DUI Statute criminalizing driving under the influence on the Reservation and said code has not been updated since that time; and

WHEREAS, in 2004 a Task Force was formed to develop a new DUI Code to combat the increasing problem of drunk driving on the Reservation and address the issue of repeat offenders; and

WHEREAS, said draft DUI Code has been approved by the Judicial Committee for a first reading and has gone through a second reading by the Tribal Business Council and was published in June 2008 for a public comment period; and



Tribal Business Council
Three Affiliated Tribes

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Three Affiliated Tribes

**THREE AFFILIATED TRIBES
TITLE IV A
DRIVING UNDER THE INFLUENCE**

**CHAPTER 1
GENERAL PROVISIONS**

4A-1-1. PURPOSE

The purpose of this Title is to promote an effort to fight the devastating impact that driving under the influence has on all people and to encourage a safe driving environment through aggressive law enforcement, public education, and safety awareness; designed to reduce the number and severity of traffic accidents, preserve and protect human life, design and implement prevention strategies and aggressively enforce the rights of all people in accordance with the Constitution and laws of the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara Nation, and any applicable Federal Law.

This Code is also intended to provide viable alternatives to criminal prosecution against offenders over whom the Tribe does not have criminal jurisdiction.

4A-1-2. LEGISLATIVE INTENT AND FINDINGS

The Tribal Business Council of the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara Nation recognizes the necessity that individual prerogatives be considered secondary to the general welfare and so it is expected that the officials will adopt such reasonable policies, procedures, rules, and regulations as may be necessary, within the authority granted by law, and in so doing shall make appropriate use of recommended standards developed by recognized officials to ensure a desirable level of uniformity.

The Tribal Council finds that drunk driving is a serious public safety concern on the Reservation with alcohol related fatality rates in Indian Country at more than half the national rate. The enforcement of laws related to the operation of motor vehicles under the influence of alcohol is a law enforcement priority in Indian Country. The Tribal Business Council further finds that current tribal and federal laws prohibiting operation of motor vehicles under the influence of alcohol and other drugs are inadequate and need to be amended to include all aspects of fighting the war on drunk driving, including prevention, rehabilitation and enforcement over non-Indian offenders.

The Tribal Business Council further finds that the Tribe has, through its law enforcement agency and law enforcement officers, the inherent sovereign power to stop, investigate, detain, restrain, arrest and eject any individual including non-Indians suspected of violating tribal or federal law.

The Tribal Council further finds that due to federal case law that has denied Indian tribes their sovereign rights to prosecute non-Indian offenders and the failure of other

agencies to adequately respond to such offenders, Indian Tribes must assert their sovereign rights to regulate the conduct of non-members on the Reservation through civil measures. Due to this jurisdictional void, in some instances non-Indians have demonstrated a flagrant disregard for the laws prohibiting drunk driving on the Reservation. Additionally, local units of government who have the power to enforce state drunk driving and other motor vehicles laws against non-Indian offenders in Indian Country have in some cases failed to exercise that power thereby creating a situation of lawlessness that does not exist in any other jurisdiction in the United States. The United States Congress, who has the power to address this issue, has done nothing to correct this inequity in the reservation legal system. Therefore, it is imperative that the Tribe exercise its inherent sovereign authority to address non-Indian drunk driving on the Reservation. The Tribal Council finds that it has the inherent sovereign authority to exercise civil authority over the conduct of non-members when that conduct threatens or has some direct effect on the political integrity, the economic security or welfare of the Tribe and its members. The Tribal Council further finds that drunk driving by any individual, including non-Indians, does threaten and does have a direct effect on the political integrity, the economic security and welfare of the Tribe. Finally, the Tribal Business Council finds that the Tribes have the inherent sovereign authority to eject, exclude and banish non-members from the Reservation. The Tribe, therefore, has the power to regulate through civil measures non-Indians who drive under the influence of alcohol or other drugs on the Reservation.

It is the intent of the Tribal Business Council through the adoption of the civil provisions of this Title set out in Chapter 4 to promote the public safety and welfare on the roads and highways on the Reservation and to facilitate the implementation of a uniform and expeditious system for drunken driving enforcement on the Reservation. The procedures and fines established under the civil provisions are intended to be remedial and not punitive and are designed to compensate the Tribe for damage to the Tribe by drunk drivers and for costs incurred in enforcing traffic laws as well as protecting the public safety and keeping drunk drivers off the road.

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4A-1-3. SOVEREIGN IMMUNITY

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No provision set out in this Title shall be construed or interpreted as a waiver of any sovereign rights or of the sovereign immunity of the Three Affiliated Tribes.

4A-1-4. AUTHORITY AND CONSTRUCTION

This Title is adopted by the Tribal Business Council pursuant to Article VI of the Constitution and By-laws of the Three Affiliated Tribes and pursuant to the Tribe's inherent sovereign authority to regulate the conduct of all individuals on the Reservation, the intent of which is to protect all persons and resources, and to achieve self-sufficiency.

The following principles of construction shall apply all provisions of this Title unless a different construction is obviously intended or explained.

(1) The terms of this Title shall be gender neutral, and singular words shall include the plural, and vice versa.

(2) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.

(3) Whenever a term is defined in a specific part that definition shall apply to all parts unless a contrary meaning is clearly intended.

(4) This Title shall be construed as a whole to give effect to all its parts in a logical and consistent manner.

(5) Any and all inconsistencies in prior resolutions or ordinances of the Tribal Business Council that conflict in any way with the intent and provisions of this Title are hereby repealed. If any law or part of this Title is held invalid by a court of competent jurisdiction, the remainder of the Title shall be severable.

(6) Any typographical errors or omissions shall be ignored when the intended meaning of the provision containing the error is otherwise reasonably certain to the court.

4A-1-4, APPLICABLE LAW

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The application of law to this Title will be in the following priority:

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- (1) Tribal Codes, ordinances, resolutions, and any other laws of the Tribe.
- (2) Treaties and federal laws that apply to the Tribe;
- (3) The customs, usage and jurisprudence of the Tribe.

4A-1-5, DEFINITIONS

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The following definitions shall apply to this Title, unless the context or subject matter otherwise requires:

1. "Actual Physical Control" means the placement of person in a motor vehicle where they may commence or recommence driving while in an intoxicated state, notwithstanding the fact that they are not actually driving at the time they are apprehended.
2. "Appropriate licensed or certified addiction treatment program" means an addiction treatment program conducted by an addiction facility licensed or certified under tribal, state or international certification or conducted by a licensed or certified individual specifically trained in addiction treatment.
3. "Chemical Test" mean any test to determine the alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the Tribally authorized Toxicologist under this Title.
4. "Controlled Substances" means a drug, substance or immediate precursor, as

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defined by the Three Affiliated Tribes Drug Code.

5. "Convicted" means a final judgment on a verdict or finding of guilt, a plea of guilty or a plea of nolo contendere but does not include a final judgment which has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory.
6. "Drugs" means substances recognized as drugs in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary or any supplement to any of them
7. "Drug Court Program" means a court-supervised treatment program which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed or certified treatment program. The Tribal Council may adopt rules, including rules of procedure, for drug courts and the drug court program.
8. "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and of every way privately maintained within a mobile home park, trailer park, or campground containing five or more lots for occupancy by mobile homes, travel trailers, or tents when any part thereof is open for purposes of vehicular travel.
9. "Illegal Substances" means those substances defined and prohibited by tribal and federal laws.
10. "Intoxicating liquor" means and includes any beverage containing alcohol.
11. "Judgment" means any judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state, Indian Tribe or the United States.
12. "Mail" means to deposit mail properly addressed and with postage prepaid with the United States postal service.
13. "Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable person, with due consideration of the totality of circumstances.
14. "Motor vehicle" includes every vehicle that is self-propelled, including but not limited to cars, trucks, pickups, motorcycles, all terrain vehicles (ATV), snowmobiles and every vehicle that is propelled by electric or gas power.
15. "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this Tribe pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, within the boundaries of the Reservation.
16. "Operator" means every person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.
17. "Operator's license", "driver's license", or "license to operate a motor vehicle" means any operator's or driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this Tribe or any state, including:

- a. Any temporary license or instruction permit;

- b. The privilege of any person to drive a motor vehicle whether such person holds a valid license; or
- c. Any nonresident's operating privilege as defined in this section.

18. "Person" includes every natural person, firm, co-partnership, association, corporation, or limited liability company.

19. "Police officer" means every law enforcement officer authorized by tribal or federal law to direct or regulate traffic or to make arrests for violations of criminal or traffic regulations on the Reservation.

20. "Private road or driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

21. "Proof of financial responsibility" means proof of ability to respond in damages.

22. "Reservation" means all lands with the exterior boundaries of the Fort Berthold Indian Reservation as defined in Article I of the Constitution of the Three Affiliated Tribes.

23. "Serious Bodily Injury" means a bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

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CHAPTER 2 CRIMINAL PROHIBITIONS AND PENALTIES

4A-2-1. PERSONS PROHIBITED FROM OPERATING A VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY OTHER DRUGS OR SUBSTANCES

No person shall drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use within the Reservation if any of the following apply:

- a) That person has an alcohol concentration of at least eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle; or
- b) That person is under the influence of intoxicating liquor, which renders that person incapable of safely driving; or
- c) That person is under the influence of any drug or controlled substance or combination of drugs and substances to a degree that renders that person incapable of safely driving; or
- d) That person is under the combined influence of alcohol and any other drugs or substances to a degree that renders that person incapable of safely driving.

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Violation of this section is a class A misdemeanor.

4A-2-2. DEFENSES – NOT APPLICABLE

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

4A-2-3. MAXIMUM PENALTIES

The following maximum penalties for a violation of section 4A-2-1 shall apply:

1. First Offense 15 days jail or imprisonment, fine of five hundred dollars, and alcohol evaluation by an appropriate licensed or certified addiction treatment program, requiring completion of recommended treatment, and loss of driving privileges as set forth in this title.
2. Second & Subsequent offenses – one year in jail or imprisonment, fine of one thousand dollars, and alcohol evaluation by an appropriate licensed or certified addiction treatment program, requiring completion of recommended treatment, and loss of driving privileges as set forth in this title.

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4A-2-4. MINIMUM PENALTY – MANDATORY

A person convicted of violating section 4A-2-1 of this Title shall be sentenced in accordance with the mandatory minimum requirements of this section:

1. First offense: a fine of at least Five Hundred dollars, , and loss of driving privileges as set forth in this title.
2. Second offense within three years: a minimum of two (2) days in jail or imprisonment, a fine of at least seven hundred dollars, and an order for addiction evaluation by an appropriate licensed or certified addiction treatment program, an order prohibiting the entering of any licensed or certified alcohol establishment, and loss of driving privileges as set forth in this title.
3. Third offense within five years: minimum of Thirty (30) days in jail or imprisonment; a fine of at least one Thousand dollars, an order for addiction evaluation by an appropriate licensed or certified addiction treatment program, an order prohibiting the entering of any licensed or certified alcohol establishment, attendance at victim impact panel and loss of driving privileges as set forth in this title.

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4. Fourth or subsequent offense within five years: 90 days in jail or imprisonment, a fine of at least one thousand and five hundred dollars, an order for addiction evaluation by an appropriate licensed or certified addiction treatment program, prohibition on entering any licensed alcohol establishment, attendance at victim impact panel and loss of driving privileges as set forth in this title.

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For purposes of this section, conviction of an offense under a law or ordinance of another Indian Tribe that is equivalent to this chapter must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.

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4A-2-5. BOND REQUIREMENTS

No Person arrested for a violation of Section 4A-2-1 shall be released from custody on a personal recognizance bond under any circumstance. The cash bond amount for the offense shall be set at the same amount as the fine for the offense set out in Section 4A-2-4.

4A-2-6. MOTION FOR EXCEPTION TO MANDATORY MINIMUM SENTENCING REQUIREMENTS.

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Upon conviction for a violation of section 4A-2-1 of this Chapter, a defendant may file with the Court and the Prosecutor within ten (10) days of sentencing, a motion for exception to imposing the mandatory minimum sentence required under section 4A-2-3 of this Chapter. At sentencing, the Defendant shall provide evidence of a clear and convincing nature that imposition of the mandatory minimum sentence would be unreasonably harsh or shocking to the conscience of a reasonable person. The Court shall make a specific finding that imposing the mandatory minimum sentence would be unreasonably harsh or shocking to the conscience of a reasonable person before entering sentence that does not impose the mandatory minimum required under this Chapter. A defendant's failure to file a written motion pursuant to this section waives his opportunity to seek an exception to imposition of the mandatory minimum sentence required under this Chapter.

4A-2-7. EXCEPTIONS TO MANDATORY MINIMUM SENTENCING.

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The court may consider alternative sentencing options if the defendant prevails on its motion for exception to imposing the mandatory minimum sentence required under this Chapter. Alternative sentencing options may include, but are not limited to, community service in lieu of payment of a fine, day-for-day credit for successful completion of a residential chemical dependency treatment program, documented attendance at AA meetings during the probationary period determined by the court, documented participation in cultural ceremonies during the probationary period determined by the court, mental health counseling as recommended by a mental health professional, restitution or reparation to the victim or victims, home confinement, curfew and daily preliminary breath testing performed by law enforcement at the defendant's expense, if any.

4A-2-8, IMPOUNDMENT- MOTOR VEHICLE LICENSE PLATES

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Upon conviction for a violation of section 4A-2-1, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the defendant at the time of the offense to be impounded for the duration of the period of suspension or revocation of the defendant's driving privilege by a Tribal or State Motor Vehicle Department. The impounded number plates may be sent to the tribal court, law enforcement, or Motor Vehicle Department that may retain them for the period of suspension or revocation, subject to disposition by the court.

4A-2-9, RESIDENTIAL TREATMENT – CREDIT TOWARD INCARCERATION

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If the penalty mandated by this chapter includes jail or imprisonment upon conviction of a violation of this chapter, and if a chemical dependency evaluation has indicated that the defendant needs residential chemical dependency treatment, the court may order the defendant to undergo treatment at an appropriate licensed or certified addiction treatment program and the time spent by the defendant in the treatment program may be credited as a portion of a sentence of imprisonment or placement under this chapter.

4A-2-10, PRIOR OFFENSES

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For purposes of this chapter conviction of an offense under a law or ordinance of another Indian Tribe that is equivalent to this chapter shall be considered a prior offense under this chapter if such offense was committed within the time limitations specified in section 4-2-3.

4A-2-11, HOUSE ARREST – DISCRETION OF THE COURT

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The term "jail or imprisonment" as used in this chapter may include house arrest. As a condition of house arrest, a defendant shall not consume alcoholic beverages. The house arrest must include an approved program of electronic home detention monitoring in which the defendant's movement is restricted and monitored and in which the defendant is tested at least twice daily for the consumption of alcohol. The defendant shall be required to assume all costs associated with the electronic home detention.

4A-2-12, SPECIAL PUNISHMENT – CAUSING SERIOUS BODILY INJURY OR DEATH

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The penalty provided in this section applies when a person is convicted of violating section 4A-2-1 of this chapter and such violation resulted in the death or serious bodily injury, as that term is defined in chapter 1, to another person. If this section applies, then the defendant shall be sentenced to a mandatory one year jail sentence.

4A-2-13, IGNITION INTERLOCK DEVICES AND SEIZURE, FORFEITURE, AND

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SALE OF MOTOR VEHICLES.

A motor vehicle located on the Reservation and owned and operated by a person upon a highway or upon public or private areas to which the public has a right of access for vehicular use may be seized, forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of sentencing if the person is convicted of a violation of section 4A-2-1 of this chapter and has been convicted of violating section 4A-2-1 of this chapter at least two other times within the three years preceding the violation.

In addition to other penalties authorized by this chapter, the court may require that an ignition interlock device be installed in the person's vehicle for a period of time that the court deems appropriate. The following shall constitute a criminal offense and subject the offender to the applicable penalties:

1. Driving without an ignition interlock in violation of a court order is a class I misdemeanor with the following penalties for violation:
 - a) First offense – a fine of at least one hundred dollars and imprisonment for thirty (30) days.
 - b) Second offense – a fine of at least two hundred and fifty dollars and imprisonment for a period of sixty (60) days.
 - c) Third offense - a fine of at least five hundred dollars and imprisonment for a period of ninety (90) days.

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2. Tampering with an ignition interlock required by a court order is a class I misdemeanor with the following penalties for violation:
 - a) First offense -- a fine of at least one hundred dollars and imprisonment for thirty (30) days.
 - b) Second offense – a fine of at least two hundred and fifty dollars and imprisonment for a period of sixty (60) days.
 - c) Third offense - a fine of at least five hundred dollars and imprisonment for a period of ninety (90) days.

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~~4A-2-14. DRIVING WHILE UNDER THE INFLUENCE WHILE ACCOMPANIED BY A MINOR~~

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If a person who is at least eighteen years of age is convicted of violating section 4A-2-1 of this chapter, and if the violation occurred while a minor was accompanying the individual in a motor vehicle, the sentence shall include an additional term of jail or imprisonment of not less than ten days.

**4A-2-14. DRIVING UNDER SUSPENSION – ALCOHOL RELATED
SUSPENSIONS**

If a person commits the offense of driving a motor vehicle under suspension of driving privileges and the suspension of driving privileges was imposed for violation of this Title, or an equivalent statute, the sentence imposed by the court shall include a minimum of five days in jail, in addition to other penalties imposed by the Court.

Deleted: 4A-2-14. ENHANCEMENT OF PENALTY BASED ON BLOOD ALCOHOL CONCENTRATION¶
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If a violation of section 4A-2-1 of this chapter was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight or greater, then the Court shall impose a sentence of an additional 5 days in jail, in addition to the minimum sentence set by law.
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**4A-2-15. ALTERNATIVE DISPOSITIONS-DRUG COURTS AND TRADITIONAL
SENTENCING**

For any violation of this Chapter, the Court is authorized to consider as a sentencing option to place a defendant into an alternative program for treatment, including drug court and culturally based traditional sentencing or rehabilitation, provided that such alternative program has been established by resolution or statute and the defendant meets the criteria and requirements for participation in such program.

**CHAPTER 3
DRIVING PRIVILEGES AND IMPLIED CONSENT**

4A-3-1. DRIVING PRIVILEGES

Any individual who has a current, valid driver's or motor vehicle operator's license issued by any governmental agency authorized by law to issue such licenses shall be granted and shall enjoy the privilege of operating a motor vehicle on the Fort Berthold Indian Reservation. The driving privilege granted by this section is subject to suspension and revocation as set out in this Chapter.

4A-3-2. IMPLIED CONSENT

Any person who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use within the Reservation is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcohol, other drug, or combination thereof, content of the blood.

The test or tests required by this chapter must be administered at the direction of a law enforcement officer only after placing the person under arrest for violation of chapter 2 of this Title and informing that person that the person is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child or a person

under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for up to one year of the person's driving privileges on the Reservation. The law enforcement officer shall determine which of the tests is to be used. When a person under the age of eighteen years is taken into custody for violating chapter 2, the law enforcement officer shall attempt to contact the person's parent or legal guardian to explain the cause for the custody, and to read to the parent or legal guardian the implied consent advisory.

Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the person in custody.

4A-3-3. CHEMICAL TEST OF DRIVERS IN ACCIDENTS INVOLVING DEATH OR SERIOUS BODILY INJURY.

When the driver of a vehicle is involved in an accident resulting in the death or serious bodily injury, as defined in chapter 1, of another person, and there is probable cause to believe that the driver is in violation of section 4A-2-1 of this Code, the driver may be compelled by a law enforcement officer to submit to chemical testing of the driver's blood, breath, saliva, or urine to determine the alcohol concentration or the presence of other drugs or substances.

4A-3-4. PERSONS QUALIFIED TO ADMINISTER TESTS

Only a person medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, drug, or combination thereof, content therein. The Tribally authorized Toxicologist shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of breath, saliva, or urine specimen.

4A-3-5. OPPORTUNITY FOR ADDITIONAL TEST

The person tested may have an individual of the person's choosing, who is medically qualified to draw blood, administer a chemical test or tests, provided that the test can be conducted within two hours of the time of driving, in addition to any administered at the direction of a law enforcement officer with all costs of an additional test or tests to be the sole responsibility of the person charged. The failure or inability to obtain an additional

test by a person does not preclude the admission of the test or tests taken at the direction of a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the law enforcement officer must be made

4A-3-6. CONSENT OF PERSON INCAPABLE OF REFUSAL

Any person who is dead, unconscious, or otherwise in a condition rendering the person incapable of refusal, must be deemed to have been given the consent provided by section 4A-3-2 of this chapter and the test or tests may be administered.

4A-3-7. REVOCATION OF PRIVILEGE TO DRIVE UPON REFUSAL

If a person refuses to submit to testing, none may be given, but the law enforcement officer shall immediately issue to that person a notice of temporary suspension of driving privileges granted by 4A-3-1 of this Code which shall be effective until such time as the case is disposed of.

Upon conviction for a violation of section 4A-2-1 of this code, a person who has refused to submit to testing under this chapter is subject to the following driving privilege suspensions:

a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license or privilege to drive has not previously been suspended, revoked, or issuance denied for a violation of this Title or equivalent ordinance.

b. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license or privilege to drive has been once previously suspended, revoked, or issuance denied for a violation of this Title or equivalent ordinance.

c. Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license or privilege to drive has at least twice previously been suspended, revoked, or issuance denied under this title, or for a violation of an equivalent ordinance, or any combination of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.

4A-3-8. DRIVING PRIVILEGE SANCTIONS FOR VIOLATION OF 4A-2-1.

Upon conviction for a violation of Section 4A-2-1 of this Title the court shall suspend the individuals driving privileges as follows:

OFFENSE -- LEVEL DAYS	ALCOHOL LEVEL	WORK PERMIT	SUSPENSION	-
First	Over .08% -under .16%	Yes	60 days	
First	Over .16%	Yes	180 days	
Second	Over .08% -under .16%	Yes	180 days	
Second	Over .16%	Yes	365 days	
Third	Over .08% and over	No	365 days	
Fourth	Over .08%	No	2 years	
Fifth and subsequent	additional year for each subsequent offense			

4A-3-9. INTERPRETATION OF CHEMICAL TESTS -- LEVELS OF PRESUMPTION

Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is admissible into evidence. For the purpose of this section:

1. A person, over the age of 21, having at that time, an alcohol concentration of less than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor.
2. Evidence that there was at that time **five** one-hundredths of one percent by weight or higher alcohol concentration in a person is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of intoxicating liquor.
3. A person having an alcohol concentration of at least **eight** one-hundredths of one percent alcohol concentration or a person under age 21 with at least **two** one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after driving or being in physical control of a vehicle is under the influence of intoxicating liquor at the time of driving or being in physical control of a vehicle.
4. A person having an alcohol concentration of at least **five** one-hundredths of one percent alcohol concentration and the presence of marijuana in their system at the time of the performance of a chemical test within two hours after driving or being in physical control of a vehicle is under the influence of intoxicating liquor and drugs at the time of driving or being in physical control of a vehicle.

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5. A person having any controlled substance in their system at the time of the performance of a chemical test within two hours after driving or being in physical control of a vehicle is under the influence of a controlled substance at the time of driving or being in physical control of a vehicle.
6. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of alveolar air or grams of alcohol per sixty-seven milliliters of urine.
7. The results of the chemical analysis must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the Tribally authorized Toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the Tribally authorized Toxicologist. The Tribally authorized Toxicologist is authorized to approve satisfactory devices and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who exhibit the certificate upon demand of the person requested to take the chemical test.
8. The Tribe shall use the services of the North Dakota Toxicologist to appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the tribally authorized Toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the Tribally authorized Toxicologist shall prepare and file written record of the approval with the Hearing Officer/Commissioner and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the tribally authorized Toxicologist in using the devices during the administration of the tests.

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The material filed under this section may be supplemented when the tribally authorized Toxicologist determines it to be necessary, and any supplemental

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material has the same force and effect as the material that it supplements.

9. Copies of the records referred to in subsections 5 and 6, certified by the recorder, or designated official, must be admitted as prima facie evidence of the matters stated in the records.
10. A certified copy of the analytical report of a blood, urine, or saliva analysis referred to in subsection 5 and which is issued by the tribally authorized Toxicologist must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter. The certified copy satisfies the directives of subsection 5. Deleted: Tribally
11. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the person who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act. If the Tribally authorized Toxicologist, the Hearing Officer/Commissioner of the tribally authorized crime laboratory, or any employee of either, is subpoenaed to testify by a defendant who is not indigent, the Court shall order the defendant to pay costs to the witness. Deleted: Tribally
12. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence is required.

4A-3-19 PROOF OF REFUSAL – ADMISSABILITY

If the person under arrest refuses to submit to the test or tests required by this chapter, proof of refusal is admissible in any criminal action or civil proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. Refusal to submit to the tests required by this chapter shall be treated as a rebuttable presumption of intoxication.

4A-3-20 EFFECT OF CHEMICAL TEST ON OTHER EVIDENCE

This chapter does not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the test results show an alcohol concentration of at least **eight** one-hundredths of one percent or, with respect to a person under twenty-one years of age, an alcohol concentration of at least **two** one-hundredths of one percent by weight, the purpose of such evidence must be limited to the issues of probable cause,

whether an arrest was made prior to the administering of the test, and the validity of the test results.

4A-3-21 LIABILITY

Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting officer is not liable in any civil action for damages arising out of said act except for gross negligence.

4A-3-22 EXAMINATION OF SPECIMENS – FATALITIES

In cases of death resulting from a motor vehicle accident or other unnatural death occurring in a motor vehicle, the tribal coroner shall require that specimens of blood, urine, and vitreous humor be withdrawn from the body of the decedent within twenty-four hours after the decedent's death by a coroner, coroner's physician, or other qualified person, prior to embalming. The specimens must be collected and preserved by methods and techniques established by the tribally authorized Toxicologist. The specimens so drawn must be sent to the tribally authorized Toxicologist for analysis for alcohol, carbon monoxide, and other drug content. The Tribally authorized Toxicologist shall keep a record of all such examinations to be used for statistical purposes. The records must be made available for use by the national highway traffic safety administration in analyzing fatal accidents. Except as provided, the results of the examinations referred to in this section must be used only for statistical purposes, except that the results must be released upon the issuance of a subpoena duces tecum by a court of competent jurisdiction in any civil or criminal action. Any person drawing the specimens and any person making any examination under the terms of this section are individual drawing the specimens must be paid a fee of five dollars by the tribally authorized Toxicologist for each acceptable specimen submitted for analysis under the requirements of this section.

4A-3-23 SCREENING TESTS

Any person who operates a motor vehicle upon the public highways of the Reservation is deemed to have given consent to submit to an onsite screening test or tests of the person's breath for the purpose of estimating the alcohol content of the person's blood upon the request of a law enforcement officer who has reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol. A person may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the person's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests must be performed by an enforcement officer certified as a

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When an individual's privilege to operate a motor vehicle within the Reservation has been suspended the Court shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state, Indian Tribe or both of the person's residence and of any Indian Tribe or state in which the person has a license.¶
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chemical test operator by the tribally authorized Toxicologist and according to methods and with devices approved by the tribally authorized Toxicologist. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 4A-3-2. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for up to three years of that person's driving privileges. If such person refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such person's license or permit to drive in the same manner as provided in section 4A-3-7. However, revocation a person's driving privileges shall not be made for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 4A-3-2 for the same incident. For the purposes of this section, "chemical test operator" means a person certified by the tribally authorized Toxicologist as qualified to perform analysis

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4A-3-21 CIVIL PENALTY

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A person who refuses to submit to blood, breath or urine test when operating a motor vehicle may be subject to a civil penalty of five hundred dollars, due and payable within 30 days. A person so cited may within 10 days, request a hearing before the Tribal Court. If the review sustains the penalty then the civil fine must be paid within 30 days after final disposition. It is a criminal offense to operate a motor vehicle prior to paying the fine, conviction of which is punishable by 30 days jail or imprisonment.

CHAPTER 4 ENFORCEMENT OVER NON-INDIANS

4A-4-1. LAW ENFORCEMENT AUTHORITY

Any law enforcement officer authorized by the Tribe or by federal law to enforce tribal or federal law on the Reservation shall have the authority and duty to stop, investigate, restrain, detain, arrest and transport to proper authorities any non-Indian found to be in violation of Section 4A-2-1 of this code. Upon a determination that probable cause exists to believe that the non-Indian is in violation of Section 4A-2-1 of this code or of similar statutes set out in state law, the law enforcement officer shall contact the law enforcement agency that has jurisdiction to arrest and charge the individual for transportation pending charges in State Court. The individual may be detained and turned over at the site of the offense or at a tribal law enforcement center if detention at the site is impractical.

If the law enforcement agency with jurisdiction to arrest and charge the non-Indian offender fails to respond or otherwise assume law enforcement jurisdiction over the non-Indian offender, the law enforcement officer may charge the individual with a federal offense of driving under the influence under state law pursuant to the

Assimilative Crimes Act, 18 U.S.C 13 and the General Crimes Act, 18 U.S.C. 1152 and any other violations of state law. If the offender flees, resists arrest, or otherwise opposes, impedes or interferes with the law enforcement officers performance of his duties set out in this Code or under federal law, the offender may be charged with an additional offense under 18 U.S.C. 111.

4A-4-2 CIVIL ENFORCEMENT

Any non-Indian who violates any of the provisions of this code is deemed to have consented to the jurisdiction of the tribal court and shall be subject to a civil penalty in the tribal court for a civil violation of this code. Such civil penalty shall not exceed the sum of \$1000.00 for each such infraction. In addition to the civil penalty, the individual's privilege to drive on the Reservation shall be suspended in accordance with section 4A-3-8 of this code. Any person who fails or otherwise refuses to submit to the civil jurisdiction of the tribal court or who has been cited for a second violation of this Code shall be banned from residing, entering or otherwise being physical present upon the Reservation. Such banishment shall be by Resolution of the Tribal Council. (Tribal Councils may consider as an option confiscation of either drivers license or vehicle as a means of enforcement-but this may be difficult)

The procedures governing the adjudication in tribal court of such civil infractions shall be those set out in the trial court rules of the tribal code.



WHEREAS, The Tribal Business Council believes that due to the ongoing problem of drunk driving on the reservation and the increase in traffic fatalities due to drunk driving on the Reservation the Tribal Business Council should adopt the amended Driving Under the Influence Code as Title IV-A of the Tribal Criminal Code; and

NOW, THEREFORE BE IT RESOLVED that the Tribal Business Council of the Three Affiliated Tribes pursuant to the authority vested in it by the Tribal Constitution hereby adopts the Threc Affiliated Tribes amended Driving Under the Influence Code as Title IV-A of the Tribal Criminal Code.

BE IT FURTHER RESOLVED, at the Three Affiliated Tribes DUI Statute is hereby repealed and of no further force or effect.

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, 7 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 16th day of March 2008; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 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 16th day of March 2008.

ATTEST:

Tribal Secretary, V. Judy Brugh

Tribal Chairman, Marcus Wells Jr.