

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

- WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and having the authority under said Act; and
- WHEREAS, The Constitution of the Three Affiliated Tribes generally 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 specifically authorizes and empowers the Tribal Business Council to adopt resolutions regulating the procedure of Tribal agencies; and
- WHEREAS, The Tribal Business Council recognizes that the present statute, Chapter IV (A) governing driving while under the influence of intoxicating liquor or controlled substances (DUI) is seriously outdated and lacking in crucial substantive and procedural areas; and
- WHEREAS, The Tribal Business Council recognizes the need for the enactment of a comprehensive and updated DUI statute to meet the needs of the Tribal members; and

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council hereby enacts the Three Affiliated Tribes driving under the influence of intoxicating liquor or controlled substances statute to be incorporated under the Motor Vehicle Code, chapter IV (A) in the Code of Laws of the Three Affiliated Tribes of the Fort Berthold Reservation, and which shall go into effect immediately; and

BE IT FURTHER RESOLVED, That the previous DUI provision of the Three Affiliated Tribes is hereby rescinded and vacated in lieu of the enactment of the driving under the influence of intoxicating liquor or controlled substances which shall be incorporated into the Code of Laws of the Three Affiliated Tribes of the Fort Berthold Reservation, Chapter IV(A).

C E R T I F I C A T I O N

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 11 members of whom 7 constitute a quorum, 7 were present at a SPECIAL Meeting thereof duly called, noticed, convened, and held on the 28 day of OCTOBER, 1986; 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vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 28th day of OCTOBER, 1986.

Dennis Harlin
Secretary, Tribal Business Council

ATTEST:

Alyse Agalloo
Chairman, Tribal Business Council

DUI STATUTE

SECTION I. OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR CONTROLLED SUBSTANCES

1. A person may not drive any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use on this reservation if any of the following apply:

a. That person has a blood alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test.

b. That person is under the influence of intoxicating liquor.

c. That person is a habitual user of narcotic drugs or is under the influence of a narcotic drug.

d. That person is under the influence of any controlled substance to a degree which renders him incapable of safely driving.

e. That person is under the influence of a combination of intoxicating liquor and a controlled substance to a degree which renders that person incapable of safely driving.

2. A person may not be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has as right of access for vehicular use on this reservation if any of the following apply:

a. That person has a blood alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test.

b. That person is under the influence of intoxicating liquor.

c. That person is a habitual user of narcotic drugs or is under the influence of a narcotic drug.

d. That person is under the influence of any controlled substance to a degree which renders him incapable of safely driving.

e. That person is under the influence of a combination of intoxicating liquor and a controlled substance to a degree which renders that person incapable of safely driving.

3. A person convicted of violating this section is guilty of a misdemeanor and must be sentenced in accordance with this subsection.

a. For a first offense, the sentence must include a fine of at least one hundred fifty dollars and/or community service; an order for addiction evaluation by an appropriate tribal or state treatment program; and the court may order a license suspension for up to thirty days.

b. For a second offense within three years, the sentence must include at least four days' imprisonment of which forty-eight hours must be served consecutively, or five days' community service; a fine of at least three hundred dollars; and an order for addiction evaluation by an appropriate tribal or state treatment program; and the court may order a license suspension for up to six months.

c. For a third offense within three years, the sentence must include at least thirty days' imprisonment, of which forty-eight hours must be served consecutively; a fine of four hundred dollars; an order for addiction evaluation by an appropriate tribal or state treatment program; and the court may order a license suspension for up to three years.

d. For a fourth offense or subsequent offense within five years, the sentence must include imprisonment of not less than thirty days or nor more than one hundred eighty days, of which five days must be served consecutively; a fine of five hundred dollars; an order for addiction evaluation by an appropriate tribal or state treatment program; and the court may order a license suspension for up to three years.

e. A sentence or imprisonment of sentence may not be suspended except that a fine or a sentence of imprisonment may be suspended in any of the following instances:

(1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section.

(2) If the defendant is under the age of eighteen a law enforcement officer shall administer the tests provided herein for driving under the influence of intoxicating liquor or controlled substances, except that said matter shall be referred to the juvenile court of the Three Affiliated Tribes for proper disposition thereto. The implied consent provisions contained herein shall be made applicable to anyone under the age of eighteen.

f. If the penalty mandated by this section includes imprisonment upon conviction of violation of this section, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo inpatient treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the inpatient treatment must be credited as a portion of a sentence of imprisonment under this section.

g. Any person who is ordered for treatment shall pay the costs of treatment, or be responsible for treatment as they may qualify. The court shall cooperate with all treatment agencies to see

that those who cannot afford treatment may obtain the same.

h. If a person as ordered for treatment as a result of an evaluation and if such person shall willfully refuse treatment their driving privileges shall be suspended until such treatment is obtained. Such order of revocation shall only be issued after the person is granted all necessary due process notices and opportunities to be heard and present evidence regarding the proposed revocation.

4. In the event the complaint does not include the allegation that, if convicted, such conviction would be the second, third, and/or fourth violations as provided in this section, the court may take judicial notice of such fact if indicated by the records of the Tribal Court or make such finding based on other evidence and/or state highway department records.

5. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the Chief Law Enforcement Officer of the Three Affiliated Tribes or Bureau of Indian Affairs, as is appropriate, for the duration of the period of suspension of the offender's driver's license or driving privilege by the Tribal Court. The impounded motor vehicle number plates may be released, upon the order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title issued by the Registrar of Motor Vehicles.

SECTION II. DEFINITIONS

In this section, unless the context or subject matter otherwise requires:

1. "Driver" means every person who drives or is in actual physical control of a vehicle.

2. "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.

3. "Legal owner" means a person holding the legal title to a vehicle.

4. "Lienholder" means a person holding a security interest in a vehicle.

5. "Motor vehicle" includes every vehicle which is self-propelled, every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and, for purposes of motor vehicle registration, title registration, and operator's licenses, motorized bicycles.

6. "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.

7. "Owner" means a person, other than a lienholder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as

security.

8. "Person" includes every natural person, firm, co-partnership, association, or corporation, subject to the jurisdiction of the Three Affiliated Tribes.

9. "Police Officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

10. "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.

11. "Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

12. "Alcohol Substance" means any liquid suitable for drinking by human beings, which contains alcohol.

13. "Controlled Substance" means a drug, substance or immediate precursor by whatever official, common, usual, chemical or trade name designated in the Drugs Code of the Three Affiliated Tribes, schedules I and V.

SECTION III. INTERPRETATION OF CHEMICAL TESTS

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, evidence of the amount of

alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having, at that time, seven-hundredths of one percent or less by weight of alcohol in his blood is presumed not to be under the influence of intoxicating liquor.

2. Evidence that there was at that time more than seven-hundredths of one percent and less than ten-hundredths of one percent by weight of alcohol in the person's blood 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, at that time, ten one-hundredths of one percent or more by weight of alcohol in his blood shall be presumed to be under the influence of intoxicating liquor.

4. Percent by weight of alcohol in the blood or blood alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of alveolar air or grams of alcohol per sixty-seven cubic centimeters of urine.

5. The results of the chemical analysis must be received in evidence when it is shown that the sample was properly obtained and the test fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist, provided that a test of a person's blood, breath, urine, or other bodily substance and the result thereof is further shown to have been performed according to methods or with devices approved by the Tribe

or State.

The Three Affiliated Tribes herein authorizes the North Dakota state toxicologist to approve satisfactory techniques, devices and methods of chemical analysis and to determine qualifications of individuals to conduct such analysis and to issue a certificate upon demand by the person requested to take the chemical test. Upon approval of the methods or devices, or both, and techniques required to perform such tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of such approval with the clerk of the tribal court which shall include:

a. A quarterly register of the specific testing devices currently approved including serial number, location, and the date and results of last inspection.

b. A quarterly register of currently qualified and certified operators of said devices stating the date of certification and its expiration.

c. The operational check list and forms prescribing the methods and techniques currently approved by the state toxicologist in using such devices during the administration of the tests.

Copies of the above records certified by the clerk of the district court shall be admitted as prima facie evidence of the matters stated herein.

6. A certified copy of the analytical report of a blood analysis signed by the state toxicologist shall be accepted as prima facie evidence of the results of such a chemical analysis performed herein.

7. Notwithstanding any statute or rule to the contrary, the

defendant in any criminal proceeding 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 Court cannot compulsory compel the individual who conducted the chemical analysis to testify, the results of the analysis shall be inadmissible, but the tribe may use other evidence to establish the burden of proof requirements.

8. A signed statement from the nurse or medical technician drawing the blood sample for testing as set for in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

SECTION IV. IMPLIED CONSENT TO DETERMINE ALCOHOL CONTENT OF BLOOD.

1. Any person who operates a motor vehicle upon the public highways within the exterior boundaries of the Fort Berthold Reservation shall be deemed to have given consent subject to the provisions of this chapter to a chemical test, or tests, of his blood, breath, saliva, or urine for the purpose of determining the alcoholic content of his blood. The test or tests shall be administered at the direction of a law enforcement officer only after placing such person, except persons mentioned in section 3, under arrest and informing him that he 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 or controlled substances. The arresting officer shall determine which of the aforesaid tests

shall be used.

2. Persons qualified to administer test. Only a physician, or a qualified technician, chemist, registered nurse, or physician's assistant, acting at the request of a law enforcement officer may withdraw blood for purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath, saliva, or urine specimens. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall 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, full information concerning the test or tests taken at the direction of the law enforcement officer shall be made available to him.

3. Consent of person incapable of refusal not withdrawn. Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by section 1 and the test or tests may be given.

4. Revocation of privilege to drive motor vehicle upon refusal to submit to chemical testing.

If a person under arrest refuses to submit to chemical testing, none shall be given, but the Tribal Judge upon the receipt of a sworn report of the law enforcement officer, forwarded by the arresting officer within five days after refusal, showing that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways

while under the influence of intoxicating liquor, and that the person had refused to submit to the test or tests, may revoke his license or a permit to operate a motor vehicle upon this Reservation the Tribal Judge may deny to the person the issuance of a license or permit for a period of six months after the date of the alleged violation. Such revocation shall not occur until a Hearing before the Tribal Judge had been provided which accords all necessary due process notices and opportunities to be heard and present evidence. This hearing may be held in conjunction and at the same time as any hearing upon the principle driving charge hearing if any.

5. Proof of refusal admissible in any civil or criminal action or proceeding.

If the person under arrest refuses to submit to the test or tests, proof of refusal is admissible in any civil or criminal action or 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.

6. Immunity from liability

Any law enforcement officer, persons conducting the chemical analysis, and persons qualified to administer tests under Section IV, (2), shall be immune from civil liability and criminal prosecution unless said person(s) are proven to have acted in bad faith or with malicious intent.

SECTION V. RECORDS OF THE COURT

1. The Clerk of the Tribal Court shall maintain a registrar or all convictions under this chapter and shall maintain a registrar to whom the court has issued temporary license. The clerk of Tribal court shall also maintain a current list of all offenders whose tribal driving privileges have been suspended or revoked and shall issue a week list of all such suspensions and revocations to all tribally recognized law enforcement agencies. Such list shall include that person's name, address, date of birth, drivers license number, date of suspensions and/or revocation and date eligible for reinstatement.

2. Penalty for allowing persons to drive if suspended or revoked under this chapter.

Any tribally recognized law enforcement officer who willfully or knowingly allows a person to drive a motor vehicle while their tribal driving privileges are suspended or revoked shall be guilty of an offense and shall be subject to a fine of two hundred fifty dollars or five days in jail or both.

3. Penalty for driving while under suspension or revocation pursuant to this chapter.

Any person who shall drive a motor vehicle while under suspension or revocation pursuant to this chapter who shall be convicted shall be sentenced as follows:

a. The court may impose a sentence of six months in jail or a fine of five hundred dollars or both, but the court must impose a minimum sentence of two hundred dollars and ten days in jail. Said jail sentence must be served for forty-eight consecutive hours.

b. The court shall revoke tribal driving privileges for an additional sixty days of which no temporary permits shall be issued.