

## Chapter 25 – Drugs

3-25-1 **General Provisions.**

3-25-1.1 Purpose - The Three Affiliated Tribes of the Fort Berthold Reservation makes the following findings:

- a. Drug abuse is rapidly increasing on the Reservation. Drug abuse seriously impairs an individual, as well as societal, health and well-being;
- b. Drug abuse substantially contributes to crime;
- c. The adverse impact of drug abuse inflicts increasing pain and hardship on individuals, families, and communities, and undermines our institutions; and
- d. The manufacture, distribution, possession, and improper use of controlled substances have a substantial and detrimental effect on the members of the tribe.
- e. To record and maintain accurate data of drug related fatalities, all unattended deaths must have an autopsy performed for medical determination of cause of death.

3-25-1.2 For the reasons listed in subsection 3-25-1.1(a-d), the Three Affiliated Tribes establishes this chapter to prevent and control drug abuse.

3-25-2 **Definitions**

3-25-2.1 As used in this code

- a. “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
  - i. A practitioner (or, in his presence, by his authorized agent,) or
  - ii. The patient or research subject at the direction and in the presence of the practitioner.
- b. “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, a distributor, or dispenser. It does not include a common or contract carrier, public warehouse worker, or employee of the carrier or warehouse worker, when acting in the usual and lawful course of the carrier’s or warehouseman’s business.
- c. “Bureau” means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.
- d. “Controlled Substance” means a drug, substance, or immediate precursor in Schedules I-V as set out in this chapter subsections 3-25-6.1, 3-25-6.2, 3-25-6.3, 3-25-6.4, 3-25-6.5.
- e. “Counterfeit substance” means a controlled substance which, or the container labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who, in fact, manufactured, distributed, or dispensed the substance.
- f. “Deliver” or “Delivery” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there exists an agency relationship.
- g. “Dispense” means to deliver a controlled substance to an ultimate user of research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for the delivery.
- h. “Dispenser” means a practitioner who dispenses.
- i. “Distribute” means to deliver other than by administering or dispensing a controlled substance.
- j. “Distributor” means a person who delivers a controlled substance.
- k. “Drugs” means:
  - i. Substance recognized as drugs in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement of any of the
  - ii. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals.

- iii. Substances (other than food) intended to affect the structure of any function of the body of man or animals; and
  - iv. Substances intended for use as a component of any article specified in subsection 3-30-2.11(a, b, c). It does not include devices or their components, parts, or accessories.
1. “Imitation controlled substance” means a substance that is not a controlled substance, but which by appearance, including color, shape, size, markings, or packaging, or by representations made, would lead a reasonable person to believe that the substance is a controlled substance.
  - m. “Immediate precursor” means a substance which the Tribal Council has found to be and by law designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.
  - n. “Manufacture” means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly, indirectly, or extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance of labeling or relabeling of its container. Except, that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:
    - i. By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or
    - ii. By a practitioner, or by his authorized agent under this supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not fear for sale.
  - o. “Marijuana” means all parts of the plant *Cannabis Sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture, or preparation of mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
  - p. “Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis:
    - i. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
    - ii. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substance referred to in subsection 3-25-2.15(a), but not including the isoquinoline alkaloids of opium (used in drugs for aesthetics, antihypertension, or vasodilations).
    - iii. Opium poppy and poppy straw.
    - iv. Coca leaves and any salt, compound, derivative or preparation of coca leaves, and salt, compound, isomer, derivative, or preparation thereof, which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
  - q. “Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction forming or addiction-sustaining liability. It does not include, unless specified designed as controlled under tribal law, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its sales (dextromethorphan). It does include its racemic and levorotatory forms.
  - r. “Opium poppy” means the plant of the species *Papaver somniferum L.* except for its seeds (poppy seeds used for baking or cooking).

- s. “Person” means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or any other legal entity.
- t. “Poppy straw” means all parts, except the seeds, of the opium poppy, after mowing.
- u. “Practitioner” means:
  - v. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research on this reservation.
  - vi. A pharmacy, hospital, or other institution, licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research on this reservation.
- v. “Production” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.
- w. “Ultimate user” means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.
- x. “Vaping” means using a small, handheld device (like e-cigarettes, vape pens or mods) to inhale a mist of nicotine and flavoring (e liquid). It is similar to smoking a cigarette, but vaping heats tiny particles out of a liquid rather than burning tobacco.

3-25-3

**Jurisdiction**

3-25-3.1

Original Jurisdiction – The Tribal Court of the Three Affiliated Tribes shall have original jurisdiction over all proceedings involving drugs and drug abuse as contained in this code.

3-25-4

**Drug Paraphernalia**

3-25-4.1

Definition – In this section, unless the context or subject matter otherwise requires, “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Drug Code of the Three Affiliated Tribes. Drug paraphernalia includes, but is not limited to:

- a. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;
- b. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- c. Isomerization devices used, intended for use, or designed for use increasing the potency of any species of plant which is a controlled substance;
- d. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substance;
- e. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
- g. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- h. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding-controlled substances;
- i. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

- j. Containers or other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- k. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body; and
- l. Objects uses, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the body, such as:
  - i. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - ii. Water pipes;
  - iii. Carburetion tubes and devices;
  - iv. Smoking and carburation masks;
  - v. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, which has become too small or too short to be held in the hand;
  - vi. Miniature cocaine spoons and cocaine vials;
  - vii. Chamber pipes;
  - viii. Carburetor pipes;
  - ix. Electric pipes;
  - x. Air-driven pipes;
  - xi. Chillums;
  - xii. Bongs; and
  - xiii. Ice pipes or chillers.

3-25-4.2 Drug Paraphernalia – In determining whether an object is drug paraphernalia, the Tribal Court of the Three Affiliated Tribes or other legal authority should consider, in addition to all other logically relevant factors, the following:

- a. Statements by an owner or by anyone in control of the object concerning its use:
  - i. Prior to convictions, if any, of an owner, or of anyone in control of the object, under any tribal, state, or federal law relating to any controlled substance; and
  - ii. The proximity of the object, in time and space, to a direct violation of the drug code of the Three Affiliated Tribes.
  - iii. The proximity of the object to a controlled substance;
  - iv. Direct or circumstantial evidence of the intent of the owner, or of anyone in control of the object, to deliver it to persons whom he knows, or reasonably should know, intend to use the object to facilitate a violation of the drug code of the Three Affiliated Tribes;
  - v. The innocence of the owner, or of anyone in control of the object shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
  - vi. Instructions, oral or written, provided with the object concerning its use;
  - vii. Descriptive materials accompanying the object which explain or depict its use;
  - viii. National and local advertising concerning its use;
  - ix. The way the object is displayed for sale;
  - x. Whether the owner, or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
  - xi. Direct or circumstantial evidence of the ratio or sales of the object or objects to the total sales of the business enterprise;
  - xii. The existence and scope of legitimate uses for the object in the community; and
  - xiii. Expert testimony concerning its use.

3-25-4.3 Unlawful Possession of Drug Paraphernalia

It shall be unlawful for any person to use, or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the drug code of the Three Affiliated Tribes. A person violating this subsection is guilty of a Class 1 Misdemeanor if the drug paraphernalia is used or possessed with intent to be used, to manufacture, compound, convert produce, process, prepare, test, or analyze a controlled substance, classified in Schedule I, II, or III of the drug code of the Three Affiliated Tribes subsections 3-25-6.1, 3-25-6.2, 3-25-6.3. Otherwise, a violation of this subsection is a Class 2 Misdemeanor.

3-25-4.4 Unlawful manufacture of delivery of drug paraphernalia

It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under the circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the drug code of the Three Affiliated Tribes. A person violating this subsection is guilty of a Class 1 Misdemeanor if the drug paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance classified in Schedule I, II or III of the drug code of the Three Affiliated Tribes. Otherwise, a violation of this subsection is a Class 2 Misdemeanor.

3-25-4.5 Unlawful delivery of drug paraphernalia to a minor

It shall be unlawful for any person eighteen (18) years of age or over to deliver drug paraphernalia, in violation of this section, to a person under eighteen (18) years of age who is at least three (3) years his junior. A person violating this subsection is guilty of a Class 1 Misdemeanor.

3-25-4.6 Unlawful advertisement of drug paraphernalia

It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed for or intended for use as drug paraphernalia. A person violating this subsection is guilty of a Class 2 Misdemeanor.

3-25-5 **Nomenclature**

3-25-5.1 The controlled substances listed or to be listed in the below Schedules I, II, III, IV, and V shall, unless and until amended, consist of the drugs or other substances, by whatever official name, common or unusual name, chemical name, or brand name designated.

3-25-6 **Schedules for Drug Code**

3-25-6.1 Schedule I

- a. The drug or other substance has a high potential for abuse.
- b. The drug or other substance has no currently accepted medical use in treatment in the United States.
- c. There is a lack of accepted safety for the use of the drug or other substance under medical supervision.
  - i. The controlled substances listed in this section are included in Schedule I.
  - ii. Any of the following opiates, including their isomers, esters ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of

these isomers, esters, ethers, and salts is possible within the specific chemical designation:

1. Acetylmethadol
  2. Allylprodine
  3. Alphacetylmethadol
  4. Alphameprodine
  5. Alphamethadol;
  6. Benzethidine
  7. Betacetylmethadol;
  8. Betameprodine;
  9. Betamethadol;
  10. Betaprodine;
  11. Clonitazene
  12. Dextromoramide;
  13. Dextrorphan
  14. Diampromide;
  15. Diethylthiambutene;
  16. Dimenoxadol;
  17. Dimepheptanol;
  18. Dimethylthiambutene;
  19. Dioxaphetyl butyrate;
  20. Dipipanone;
  21. Ethylmethylthiambutene;
  22. Etonitazene;
  23. Etoxidine;
  24. Furethidine
  25. Hydroxypethidine;
  26. Ketobemidone;
  27. Levomoramide
  28. Levophenacymorphan;
  29. Morpheridine;
  30. Noracymethadol;
  31. Norlevorphanol;
  32. Normethadone;
  33. Norpipanone;
  34. Phenadoxone;
  35. Phenampromide;
  36. Phenomorphan;
  37. Phenoperdine;
  38. Piritramide
  39. Propheptazine
  40. Properidine;
  41. Racemoramide;
  42. Trimeperidine
- iii. Unless specifically accepted, or unless listed in another schedule any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:
1. Acetorphine
  2. Acetyldihydrocodeine
  3. Benzylmorphine;



4. Codeine methylbromide;
  5. Codeine- N-Oxide
  6. Cyprenorphine
  7. Desomorphine;
  8. Dihydromorphine;
  9. Etorphine;
  10. Heroin;
  11. Hydromorphanol;
  12. Methyldesorphine
  13. Methylhydromorphine
  14. Morphine methylbromide;
  15. Morphine methylsulfonate;
  16. Morphine-N-Oxide
  17. Myrophine;
  18. Nicocodeine;
  19. Nicomorphine
  20. Normorphine
  21. Pholcodine
  22. Thebacon.
- iv. Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any quality of the following hallucinogenic substances their salts, isomers, and salts of isomers, unless specifically excepted, wherever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:
1. 3,4- methylenedioxy amphetamine
  2. 5-methoxy-3,4 methylenedioxy amphetamine
  3. 3,4,5-trimethoxy amphetamine
  4. Bufotenine
  5. Diethyltryptamine
  6. Dimethyltryptamine
  7. 4-methyl-2,5-dimethoxyamphetamine
  8. Ibogaine
  9. Lysergic acid diethylamide (LSD)
  10. Non-medical Marijuana (Medical marijuana is excepted from schedule and use and possession is allowed by prescription from a licensed physician.)
  11. Mescaline
  12. Peyote (Peyote is excepted from schedule and the use for religious purposes is allowed with federal peyote permit.)
  13. N-ethyl-3-piperidyl benzilate
  14. N-methyl-3-piperidyl benzilate
  15. Psilocybin
  16. Psilocyn
  17. Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (As defined under 7 U.S.C. § 1639o)
  18. 4-methylmethcathinone (Mephedrone)
  19. 3,4-methylenedioxypyrovalerone (MDPV)
  20. 2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E)
  21. 2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D)
  22. 2-(4-Chloro-2,5- dimethoxyphenyl) ethanamine (2C-C)
  23. 2-(4-Iodo-2,5-dimethoxyphenyl) ethanamine (2C-I)
  24. 2-[4-(Ethylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-2)

25. 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl] ethanamine (2C-T-4)
  26. 2-(2,5-Dimethoxyphenyl) ethanamine (2C-H)
  27. 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)
  28. 2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P)
- v. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3-25-6.2 Schedule II

- a. The drug or other substance has a high potential for abuse.
- b. The drug or other substance has a currently accepted medical use in treatment in the United States or a currently medical use with severe restrictions.
- c. Abuse of the drug or other substances may lead to severe psychological or physical dependence.
  - i. The controlled substances listed in this section are included in schedule II.
  - ii. Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produces directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
    1. Opium or opiate, and any salt, compound, derivative, or preparation of opium or opiate.
    2. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subsection 3-25-6.2(c)(ii)(1), except that these substances shall not include the isoquinoline alkaloids of opium.
    3. Opium poppy and poppy straw.
    4. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.
  - iii. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever this existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:
    1. Alphaprodine
    2. Anileridine
    3. Bezitramide
    4. Dihydrocodeine
    5. Diphenoxylate
    6. Fentanyl
    7. Isomethadone
    8. Levomethorphan
    9. Levorphanol
    10. Metazocine
    11. Methadone
    12. Methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl-butane



13. Moramide-Intermediate, 2-methyl-3-morpholino-1, and 1-diphenylpropane-carboxylic acid
  14. Pethidine
  15. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenyl-piperidine
  16. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate
  17. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
  18. Phenazocine
  19. Piminodine
  20. Racemethorphan
  21. Racemorphan
- iv. Unless specifically excepted or listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including their salts, isomers, and salts of isomers.

3-25-6.3

Schedule III

- a. The drug or other substances has a potential for abuse less than the drugs or other substances in Schedule I and II.
- b. The drug or other substance has a currently accepted medical use in treatment in the United States.
- c. Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.
  - i. The controlled substances listed in this section are included in schedule III.
  - ii. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect in the central nervous system:
    1. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
    2. Phenmetrazine and its salts;
    3. Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers; or
    4. Methylphenidate.
  - iii. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:
    1. Any substances which contain any quantity of derivative of barbituric acid, or any salt of a derivative of barbituric acid;
    2. Chlorhexadol;
    3. Glutethimide;
    4. Lysergic acid;
    5. Lysergic acid amide;
    6. Methyprylon;
    7. Phencyclidine;
    8. Sulfondiethylmethane;
    9. Sulfonethylmethane;
    10. Sulfomethane; or
    11. Nalorphine
  - iv. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
    1. Not more the 1.8 grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater than quantity of an isoquinoline;

2. Not more than 1.8 grams of codeine, or any of its salts per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;
  3. Not more than three hundred (300) milligrams of dihydrocodeinone or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
  4. Not more than three hundred (300) milligrams of dihydrocodeinone, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  5. Not more than 1.8 grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, a nonnarcotic ingredient in recognized therapeutic amounts;
  6. Not more than three hundred (300) milligrams of ethylmorphine or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  7. Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or
  8. Not more than fifty (50) milligrams of morphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or
  9. The accepted amount of legal use of anabolic steroids depends on the medical purpose with a valid prescription from a licensed physician.
- vi. The Tribal Council may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 3-25-6.3(c)(ii)-(iii) of this section from the application of all or any part of this code if the compound, mixture or preparation contains one or more active medical ingredients not having a stimulant or depressant effect of the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect of the central nervous system.

3-25-6.4

Schedule IV

- a. The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III.
- b. The drug or other substance has a currently accepted medical treatment in the United States.
- c. Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.
  - i. The controlled substances listed in this section are included in schedule IV.
  - ii. Any materials, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse limited to physical dependence or psychological dependence relative to the drugs of substances in Schedule III:
    1. Barbitol
    2. Chloral betaine
    3. Chloral hydrate
    4. Chlordiazepoxide and its salts

5. Diazepam
  6. Ethchlorvynol
  7. Ethinamate
  8. Methohexital
  9. Meprobamate
  10. Methylphenobarbital
  11. Paraldehyde
  12. Petrichloral
  13. Phenobarbital
- d. The Tribal Council may except by rule and compound, mixture, or preparation containing any depressant substance listed in subsections 3-25-6.4(c)(ii) of this section from the application of all or any part of this code if the compound, mixture, or preparation contains one or more active medical ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

3-25-6.5

Schedule V

- a. The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule IV.
- b. The drug or other substance has a currently accepted medical use in treatment in the United States.
- c. Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.
  - i. The controlled substances listed in this section are included in schedule V.
  - ii. Any compound, mixture, or preparation containing limited quantities of any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone.
    1. Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams.
    2. Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams.
    3. Not more than one hundred (100) milligrams of ethylmorphine or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams.
    4. Not more than two and five tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulphate per dosage unit.
    5. Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams.

3-25-7

**Registration of Controlled Substances**

3-25-7.1

Registration Requirements

- a. Every person who manufactures, distributes, or dispenses any controlled substance within the reservation or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within the reservation, must obtain annually a registration issued by the tribal secretary, or his authorized agent, referred to hereafter as tribal secretary.
- b. Persons registered by the tribal secretary under this code to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provision of this code.

- c. The following persons need not register and may lawfully possess controlled substances under this code:
  - i. An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment.
  - ii. A common or contract carrier or warehouse worker, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.
  - iii. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner of a schedule V substance.
- d. The tribal secretary may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.
- e. The tribal secretary may inspect the establishment of a registration or applicant for registration under this code.

3-25-7.2

Registration

- a. The tribal secretary shall register an applicant to manufacture or distribute controlled substances included in subsections 3-30-7.1(a-c) unless he determines that the issuance of that registration would be inconsistent with the public interest, in determine the public interest, the tribal secretary shall consider the following factors:
  - i. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels.
  - ii. Compliance with applicable federal and tribal laws.
  - iii. Any convictions of the applicant under federal and tribal laws relating to any controlled substance.
  - iv. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion.
  - v. Furnishing by the applicant of false and fraudulent material in any application filed under this code.
  - vi. Suspension or revocation of the applicants federal or tribal registration to manufacture, distribute, or dispense controlled substances as authorized by federal and tribal law.
  - vii. Any other factors relevant to and consistent with public health and safety.
  - viii. Registration under subsections 3-30-7.2(a)(i-vii) does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.
- b. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the laws of this reservation. The tribal secretary need not require sperate registration under this code for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under this code in another capacity. Practitioners registered under federal law to conduct research with schedule I substances within this reservation upon furnishing the tribal secretary evidence of that federal registration.
- c. Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this code.

3-25-7.3

Revocation and Suspension of Registration

- a. A registration under subsection 3-30-7.2 to manufacture, distribute or dispense a controlled substance may be suspended or revoked by the tribal secretary upon a finding that the registrant:
  - i. Has furnished false or fraudulent information in any application filed under this code.

- ii. Has been convicted of a felony under any state or federal law relating to any controlled substance; or
  - iii. Has had his federal or state registration suspended or revoked to manufacture, distribute, or dispense controlled substances.
- b. The tribal secretary may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.
  - c. If the tribal secretary suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension, or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded. Unless the tribal proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the tribe.
  - d. The tribal secretary shall promptly notify the bureau of all orders suspending or revoking registration and all forfeitures of controlled substances.

3-25-7.4 Order to Show Cause

- a. Before denying, suspending, or revoking a registration, or refusing a renewal of registration, the tribal secretary shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefore and shall call upon the applicant or registrant to appear before the tribal secretary at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. Proceedings for refused renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.
  - i. The tribal secretary may suspend, without an order to show cause, any registration simultaneously with an institution of proceedings under subsections 3-30-7.3(a-c) or where renewal or registration is refused, if he finds that there is an imminent danger to the public health or safety which warrants this section. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the tribal secretary or dissolved by the tribal court.

3-25-7.5 Record of Registrants

Persons registered to manufacture, distribute, or dispense controlled substances under this code shall keep records and maintain inventories with the record keeping and inventory requirements of federal law and any additional rules the Tribal Council issues.

3-25-7.6 Order Forms

Controlled substances in schedule I and II shall be distributed by one registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

3-25-7.7 Rules

The Tribal Council may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances on this reservation.

3-25-8 **Prescriptions**

3-25-8.1 Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

3-25-8.2 In emergency situations, schedule II drugs subsections 3-30-7.2(c)(ii-iii) may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements in subsection 3-30-7.2(b). No prescription for a schedule II substance may be refilled.

3-25-8.3 Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under this code, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner. Any oral prescription for such drugs shall be promptly reduced to writing by the pharmacist on a new prescription blank and shall be signed within seventy-two (72) hours by the practitioner who issued the same.

3-25-8.4 Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user no controlled substance included in schedule V shall be dispensed without the written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) times after the date thereof or be refilled more than five (5) times unless renewed by a practitioner. Any oral prescription for such compound mixture, or preparation shall be promptly reduced to writing by the pharmacist on a new prescription blank and shall be signed within seventy-two (72) hours by the practitioner who issued the same.

3-25-9 **Penalties**

3-25-9.1 Prohibited Acts

- a. Except as authorized by this code, it is unlawful for any person to knowingly manufacture, deliver, dispense, or possess without a valid prescription in the name of the person in possession, a controlled substance. A person who violates this subsection with respect to any of the controlled substances on schedules I-V is guilty of a Felony level offense.
- b. Except as authorized by this code, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance. A person who violates this subsection with respect to a counterfeit classified in schedule I-V, which is a narcotic drug, is guilty of a Class 2 Misdemeanor.
- c. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from or pursuant to, a valid prescription of order issued by a practitioner while acting in the course of his professional practice, or except as otherwise stated by this code. A person who violates this subsection is guilty of a Class 2 Misdemeanor.

3-25-9.2 Registration Violations

- a. It is unlawful for any person:
  - i. That is subject to the provisions of subsection 3-25-7.2(vi) to distribute or dispense a controlled substance;
  - ii. That is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
  - iii. To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this code;



- iv. To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;
  - v. To acquire or obtain possession of a controlled substance by misrepresentation fraud, forgery, deception, or subterfuge;
  - vi. To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept by this code;
  - vii. To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, tradename, or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug counterfeit substance; or
  - viii. Knowingly to sell controlled substances to persons using or distributing controlled substances in violation of this code.
- b. A person who violates this section is guilty of a Class 1 Misdemeanor.

3-25-10 **Disposing of Needles and Paraphernalia**

3-25-10.1 A registrant who shall use, administer, dispense, or cause to be used, administered, or dispensed any drug or controlled substance in a manner requiring the use of any type of syringe, needle, eyedropper or other similar paraphernalia shall destroy and dispose of said syringe, needle, eyedropper, or other similar paraphernalia in a manner that will prevent its re-use by any person, other than the registrant.

3-25-10.2 The Tribal Council may promulgate rules and regulations setting out the specific manner in which the provisions of this section shall be conducted.

3-25-10.3 A registrant who shall violate the provisions of this section shall be guilty of a crime and upon conviction may not be fined more than one hundred (100) dollars nor less than fifty (50) dollars.

3-25-11 **Penalties Under Other Laws**

3-25-11.1 Any penalty imposed for violation of this code is in addition to and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

3-25-12 **No Bar to Tribal Prosecution**

3-25-12.1 If a violation of this code is a violation of a federal law and is prosecuted in federal court, an acquittal under federal law for the same act, it is a not bar to prosecution under this code.

3-25-13 **First Offense Possession**

3-25-13.1 Conditional Discharge

Whenever any person who has not previously been convicted of any offense under this code or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions:

- a. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided; or
- b. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him.

3-25-13.2 Discharge and Dismissal

The effect of a discharge or dismissal of a criminal charge under this section 3-25-1 shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

3-25-14 **Determination of Imitation Controlled Substance**

3-25-14.1 Imitation Controlled Substance

When the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an “imitation controlled substance” as in the case of a powder or a liquid substance. The court or authority concerned should consider, in addition to all other logically relevant factors, all the following factors as related to “representations made” in determining whether the substance is an “imitation controlled substance”:

- a. Statements made by the owner or anyone else in control of the substance concerning the nature of the substance or its use or effect;
- b. Statements made to the recipient that the substance may be resold for inordinate profit;
- c. Whether the substance is packaged in a manner normally used for illicit controlled substances;
- d. Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;
- e. Prior convictions, if any, of an owner, or anyone in control of the object, under state or federal law related to controlled substances, imitation controlled substances, or fraud; and
- f. The proximity of the substances to controlled substances.

3-25-14.2 The Following Penalties and Exceptions Apply to This Section

- a. It is a Felony offense for any person to manufacture, distribute, or possess with intent to distribute an imitation controlled substance.
- b. It is a Felony offense for a person to place in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances.
- c. It is a Class 3 Misdemeanor for a person to use, or possess with intent to use, an imitation controlled substance.
- d. It is not a defense that the defendant believed the substance actually to be a controlled substance.
- e. No civil or criminal liability may be imposed by virtue of this section on any person lawfully registered who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo by a registered practitioner in the course of professional practice or research.

3-25-15 **Powers of Enforcement Personnel**

3-25-15.1 Search Warrants

Any authorized law enforcement officer for the Three Affiliated Tribes of the Fort Berthold Reservation may:

- a. Execute and serve search warrants, arrest warrants, subpoenas, and summonses, issued under the authority of this reservation.
- b. Make arrests without a warrant for any offense under this code committed in his presence.
- c. Make seizures of property pursuant to this code; or
- d. Perform other law enforcement duties as the Tribal Council designates.

3-25-15.2 Controlled Dangerous Substances

A search relating to offenses involving controlled dangerous substances may be issued and executed at any time of the day or night, if the judge or magistrate issuing the warrant so specified in the warrant.

3-25-15.3 Authorization to Execute Search Warrant

A law enforcement officer authorized to execute a search warrant without notice of his authority and purpose, may break open an outer or inner door or window of a building, or anything therein, if the judge or magistrate issuing the warrant has probable cause to believe that if such notice were to be given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, and has included in the warrant a direction that the officer executing it shall not be required to give such notice. An officer acting under such warrant, as soon as practicable after entering the premises, shall identify himself and state the purpose of entering the premises and his authority for doing so.

3-25-16 **Administrative Inspections and Warrants**

3-25-16.1 Administrative Warrants

Issuance and execution of administrative inspection warrants shall be as follows:

- a. A tribal court judge within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this code and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this code, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstance specified in the application for the warrant.
- b. A warrant shall only be issued upon an affidavit or a designated officer or employee having knowledge, or the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
  - i. State the grounds for the issuance and the name of each person whose affidavit has been taken in support thereof;
  - ii. Be directed to a person authorized to execute it;
  - iii. Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
  - iv. Identify the item or types or property to be seized if any;
  - v. Direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned;
- i. A warrant issued pursuant to this section must be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be made promptly. The inventory shall be made in the presence, of the person executing the warrant and the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant; and
- ii. The judge or magistrate who has issued a warrant shall attach thereto a copy of the return and all papers reasonable in connection therewith and file them with the clerk of the Tribal Court.

3-25-16.2 Administrative Inspection

- a. The Tribal Council may make administrative inspections of controlled premises in accordance with the following provisions:
  - i. For purposes of this section only, "controlled premises" means:
    1. Places where persons registered or exempted from registration requirements under this code are required to keep records.
    2. Places including factories, warehouse, establishments, and conveyances in which persons registered or exempted from registration requirements under this code are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.
- b. When authorized by an administered inspection warrant issued pursuant to subsections 3-25-16.1(a and b) an officer, or employee designated by the Tribal Council, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.
- c. When authorized by an administrative inspection warrant, an officer or employee designated by the Tribal Council may:
  - i. If the owner, operator, or agent in charge of the controlled premises consents.
  - ii. In situations presenting imminent danger to health and safety.
  - iii. In situations involving inspections of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant.
  - iv. In any other exceptional emergency circumstances where time and opportunity to apply for a warrant is lacking; or
  - v. In all other situations in which a warrant is not constitutionally required.
- d. An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

3-25-17 **Injunctions**

3-25-17.1 Jurisdiction

The Tribal Court of the reservation shall have jurisdiction to restrain or enjoin violation of this code.

3-25-17.2 Trial by Jury

The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

3-25-18 **Cooperative Arrangements and Confidentiality**

3-25-18.1 Federal, State, And Local Agencies

The Tribal Council shall cooperate with Federal, State, and local agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances.

3-25-18.2 Medical Practice or Research

A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the Tribal Council nor may he be compelled in any tribal, civil, criminal, or criminal case. administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

3-25-19 **Forfeitures**

3-25-19.1 The Following are Subject to Forfeitures

- a. All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this code;
- b. All raw materials, products and equipment of any kind which are used or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this code;
- c. All property which is used, or intended for use, as a container for property described in subsections 3-25-19.1(a)(b);
- d. All conveyances including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subsections 3-25-19.1(d)(i-ii), but:
  - i. Conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this code;
  - ii. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent; or
  - iii. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.
- e. All books, records, and research products and materials including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this code.
  - i. Property subject to forfeiture under this code may be seized by the Tribal Council or its authorized agent upon process issued by the tribal court having jurisdiction over the property. Seizure without process may be made if:
    1. The seizure is incident to an arrest or a search under a search warrant;
    2. The property subject to seizure has been the subject of a prior judgment in favor of the tribe in a criminal injunction or forfeiture proceeding based upon this code;
    3. The Tribal Council has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
    4. The Tribal Council has probable cause to believe that the property was used or is intended to be used in violation of this code.
  - ii. In the event of seizure pursuant to subsection 3-25-19.1(e)(i-iii), proceedings under subsection (iv) of this section shall be instituted promptly.
  - iii. Property taken or detained under this section shall not be subject to replevin but is deemed to be in custody of the tribal court of a party determined by the tribal court to be lawfully responsible. When property is seized under this code, the tribal court of its authorized agent may:
    1. Place the property under seal;
    2. Remove the property to a place designated by it; or
    3. Require the tribal secretary to take custody of the property and remove it to an appropriate location for disposition in accordance with law.
  - iv. When property is forfeited under this code, the tribal court may:
    1. Retain it for official use;
    2. Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expense of seizure, maintenance of custody, advertising, and court costs;

3. Require the tribal secretary to take custody of property and remove it for disposition in accordance with law; or
  4. Forward it to the Tribal Council for disposition.
- v. Controlled substances listed in schedule I that are possessed, transferred, sold, or offered for sale in violation of this code are contraband and shall be seized and summarily forfeited to the tribe. Controlled substances listed in schedule I. which are seized, the owners of which are unknown, are contraband and shall be summarily forfeited to the tribe.
  - vi. Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this code, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the tribe.
  - vii. The failure, upon demand by the tribal court or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority or the seizure and forfeiture of the plants.

3-25-20 **Liabilities – Burden of Proof**

3-25-20.1 It is not necessary for the tribe to negate any exemption or exception in this code in any complaint, information, indictment, or other pleading under this code. The burden of proof of any exemption or exception is upon the person claiming it.

3-25-20.2 In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this code, he is presumed not to be the holder of the registration or form. The burden of proof is on him to rebut the presumption.

3-25-20.3 No liability is imposed by this code upon any authorized tribal officer engaged in the lawful performance of his duties.

3-25-20.4 In all prosecutions under this code involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by any federal, tribal, or state toxicologist shall be accepted as prima facie evidence of the results of the analytical findings.

3-25-20.5 Notwithstanding any statute or rule to the contrary, the defendant may subpoena the applicable toxicologist to testify at the preliminary hearing and trial of the issue at no cost to the defendant.

3-25-21 **Judicial Review**

3-25-21.1 All final determinations, findings, and conclusions of the tribal court under this code are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain a review of the decision in the appeals court.

3-25-22 **Education and Research**

3-25-22.1 Education

The Tribal Council shall conduct educational programs designated to prevent and deter misuse of controlled substances. In connection with these programs, it may:

- a. Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
- b. Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances; and
- c. Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them.



3-25-22.2 Research

- a. The Tribal Council may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.
- b. The Tribal Council may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from tribal prosecution for possession and distribution of controlled substances to the extent of the authorization.

Fort Berthold Indian Reservation  
Controlled Substances Registration Form

Name \_\_\_\_\_

Address \_\_\_\_\_

Nature of Business \_\_\_\_\_

Other Authorization \_\_\_\_\_ N.D. \_\_\_\_\_ U.S. \_\_\_\_\_

Date of Authorization \_\_\_\_\_

Enclose a detailed statement or summary of the business or research being done and the security steps taken in regard to the controlled substance(s).

Dated \_\_\_\_\_

/s/ \_\_\_\_\_

Upon the facts stated in the above registration form I hereby (grant) (deny) the applicant's request for registration under section \_\_\_\_\_ of the drug statute of the Fort Berthold Reservation.

Dated \_\_\_\_\_

\_\_\_\_\_  
Tribal Secretary

VALID FOR 1 YEAR FROM DATE OF APPROVAL.

**Chapter 26- Criminal Traffic Offenses and Penalties**

3-26-1 **Definitions**

3-26-1.1 In this section - Unless the context or subject matter otherwise requires:

- a. "Actual Physical Control" means being in immediate control or having the ability to operate the motor vehicle while being under the influence or having a blood concentration of eight one hundredths (0.08) of one percent (1%) or more.
- b. "Alcohol Substance" means any liquid suitable for drinking by human beings, which contains alcohol.
- c. "Controlled Substance" means a drug, substance, or immediate precursor by whatever official, common, usual, chemical, or trade name designated in chapter 25 Drug code of this title, Schedules I through V.
- d. "Drive" a person who operates and is in actual physical control of the direction and speed of a motor vehicle.