

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.
- e. “Highway” shall mean 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.
- f. “Judgment” shall mean any order of a court of competent jurisdiction made in respect of a matter which it has adjudicated upon, which determines the rights and liabilities of the parties in respect of which the order was made. A court judgment to be valid must have the reasoning upon which the decision was made.
- g. “Legal Owner” means a person holding the legal title to a vehicle.
- h. “Lienholder” means a person holding a security of a vehicle.
- i. “Motor Vehicle” shall include any road vehicle powered by an internal combustion engine or rechargeable batteries.
- j. “Non-Resident” shall mean any person who does not reside within the Three Affiliated Tribes/MHA Nation jurisdiction.
- k. “Official Traffic-Control Devices” shall mean all signs, signals, and markings placed or erected by the authority of the Three Affiliated Tribe/MHA Nation or officials having jurisdiction, for the purpose of regulating, warning, or guiding traffic.
- l. “Operator” shall mean 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.
- m. “Owner” means a person, other than a lienholder, in whose name the motor vehicle has been registered. If the ownership has been transferred, but the registration record has not been changed, “owner” means the person to whom the ownership has been transferred.
- n. “Pedestrian” shall mean any person on foot and includes mobility-impaired individuals who use wheelchairs or similar devices for mobility.
- o. “Person” shall include every individual human being, firm, corporation, public or private entities subject to the jurisdiction of the Three Affiliated Tribes/MHA nation.
- p. “Police Officer” shall mean every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.
- q. “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.
- r. “Reckless Driving” means with a willful or wanton disregard for safety or showing willful disregard of consequences when operating a motor vehicle.
- s. “Roadway” means the entire width between boundary lines of every way publicly maintained that is open to the use of the public for purposes of vehicular travel and of every way of privately maintained within a mobile home park, trailer park, or campground containing five (5) or more lots for occupancy by mobile homes, travel trailers, or tents when any part is open for vehicular travel.
- t. “Serious Bodily Injury” means 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.

- u. “Vehicle” shall include 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 (bicycles) or used exclusively upon stationary rails or tracks.

3-26-2 **Operating a Motor Vehicle Under the Influence of Intoxicating Liquor or Controlled Substances**

3-26-2.1 Operation of Motor Vehicle – 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 is under the influence of intoxicating liquor with a blood alcohol concentration of at least eight one hundredths (0.08) of one percent (1%) by weight at the time of the performance of a chemical test.
- b. That person is a habitual user of narcotic drugs or is under the influence of a narcotic drug.
- c. That person is under the influence of any controlled substance to a degree that renders him incapable of driving safely.
- d. 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 driving safely.

3-26-2.2 Actual Physical Control – 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 a right of access for vehicular use on this reservation if any of the following apply:

- a. That person is under the influence of intoxicating liquor with a blood alcohol concentration of at least eight one hundredths (0.08) of one percent (1%) by weight at the time of the performance of a chemical test.
- b. That person is a habitual user of narcotic drugs or is under the influence of a narcotic drug.
- c. That person is under the influence of any controlled substance to a degree that renders him incapable of driving safely.
- d. 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 driving safely.

3-26-2.3 Penalties – A person convicted of violating this section is guilty of a misdemeanor and must be sentenced in accordance with this subsection:

- a. For the first (1st) offense, the sentence must include a maximum fine of five hundred (500) dollars and or community service; an order for addiction evaluation by an appropriate tribal or state treatment program; and the court may order the suspension of driving privileges within the reservation for up to thirty (30) days.
- b. For a second (2nd) offense within three (3) years, the sentence must include at least four (4) days imprisonment of which forty-eight (48) hours must be served consecutively, or five (5) days of community service; a maximum fine of seven hundred (700) dollars; and an order for addiction evaluation by an appropriate tribal or state treatment program; and the court may order the suspension of driving privileges within the reservation for up to six (6) months.
- c. For a third (3rd) offense within three (3) years, the sentence must include at least thirty (30) days imprisonment, of which forty-eight (48) hours must be served consecutively; a maximum fine of one thousand (1000) dollars; and order for an addiction evaluation by an appropriate tribal or state treatment program; and the court may order the suspension of driving privileges within the reservation for up to three (3) years.
- d. For a fourth (4th) offense or subsequent offense within five (5) years, the sentence must include imprisonment of not less than ninety (90) days or no more than one hundred eighty (180) days, of which five (5) days must be served consecutively; a maximum fine of one thousand five hundred (1500) dollars; and an order for an addiction evaluation by an

appropriate tribal or state treatment program; and the court may order the suspension of driving privileges within the reservation for up to three (3) years.

- e. A sentence of imprisonment may not be suspended except that a fine or a sentence of imprisonment may be suspended in any of the following instances:
 - i. Upon conviction of being in actual physical control of a vehicle
 - ii. If the defendant is under the age of eighteen (18) years, 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 (18) years.
- f. If the penalty mandated by this section included 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 is ordered for the treatment from the results of an evaluation and if such person shall willfully refuse treatment their driving privileges shall be suspended until such treatment is obtained. Such an 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.

3-26-2.4 **Repeated Violations** – In the event that the complaint does not include the allegation that, if convicted, such conviction would be the second (2nd), third (3rd), and/or fourth (4th) violation as provided in this section, the court may take judicial notice of such fact if indicated by records of the tribal court or make such finding based on other evidence and/or State Highway Department records.

3-26-2.5 **Impounded Motor Vehicle** – Upon conviction, the court may order the motor vehicle license plates, or 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, as is appropriate, for the duration of the period of suspension of the offender's driving privileges by the tribal court. The impounded motor vehicle 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.

3-26-3 **Interpretation of Chemical Tests**

3-26-3.1 **Blood Alcohol Level** – 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 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:

- a. A person having, at that time, seven-hundredths (0.07) of one percent (1%) or less by weight of alcohol in his blood is presumed not to be under the influence of intoxicating liquor.
- b. Evidence that there was at one time more than seven-hundredths (0.07) of one percent (1%) and less than eight one-hundredths (0.08) if one percent (1%) by weight of alcohol in the person's blood is relevant evidence, but it is not to be given prime facie effect in indicating whether the person was under the influence of intoxicating liquor.

- c. A person having, at that time, eight one-hundredths (0.08) of one percent (1%) or more by weight of alcohol in his blood shall be presumed to be under the influence of intoxicating liquor.
- d. Percent by weight of alcohol in the blood or blood alcohol concentration is based upon grams of alcohol per one hundred (100) cubic centimeters of blood or grams of alcohol per two hundred ten (210) liters of alveolar air or grams of alcohol per sixty-seven (67) cubic centimeters of urine.
- e. 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 state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist, provided that the 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 the 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 of devices or chemical analysis, or both, and techniques required to perform such a test and the persons qualified to administer them, the state toxicologist shall prepare and file a written record of such approval with the clerk of the tribal court and shall include:
 - i. A quarterly register of the specific testing devices currently approved including serial number, location, and the date and results of the last inspection.
 - ii. A quarterly register of currently qualified and certified operators of said devices stating the certification and expiration dates.
 - iii. 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.
 - iv. Copies of the above records certified by the clerk of the tribal court shall be admitted as prima facie evidence of the matters stated herein.
- f. 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.
- g. 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 the 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 compulsorily compel the individual who conducted the chemical analysis to testify, the results of the analysis shall be inadmissible, but the court (tribe) may use other evidence to establish the burden of proof requirements.
- h. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection (e) is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

3-26-4
3-26-4.1

Implied Consent to Determine Concentration of Alcohol in Blood

Implied Consent – A person who operates a motor vehicle upon the 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 alcohol concentration 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 subsection 3-26-3.3, under arrest and informing him that he 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.

- 3-26-4.2 Consent of a person incapable of refusal not withdrawn – Any person who is dead, unconscious, or in another condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection 3-26-4.1 and the test or tests may be given.
- 3-26-4.3 Person qualified to administer test – Only a physician, qualified technician, chemist, registered nurse, or physician’s assistant acting at the request of a law enforcement officer may draw blood for purposes of determining the alcohol concentration therein. This information may not apply to the taking of breath, saliva, or urine specimens. The person being assessed may have a physician, 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 the 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 the law enforcement officer. Upon the request of the person who is being assessed, full information concerning the test or tests taken at the direction of the law enforcement officer shall be made available to him.
- 3-26-4.4 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 receipt of a sworn report of the arresting law enforcement officer, within five (5) days after the refusal, showing that the officer 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 or controlled drugs, and that the person has refused to submit to the test or tests, may revoke his driving privileges to operate a motor vehicle upon this reservation. The tribal judge may deny issuing the person a temporary driving privilege for a period of six (6) months after the date of the alleged violation. Such a revocation shall not occur until a hearing before the tribal judge has been provided which accords all necessary due process notices and opportunities to be heard and present evidence.
- 3-26-4.5 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 of proceedings arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor, controlled drugs, or a combination thereof.
- 3-26-4.6 Immunity from liability – Any law enforcement officer, persons conducting the chemical analysis, and the person qualified to administer the test under subsection 3-26-4.3 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.
- 3-26-5 **Record of the Court**
- 3-26-5.1 Registry of Convictions – The clerk of the tribal court shall maintain a registry of all convictions under this chapter and shall maintain a registrar to whom the court has issued temporary driving privileges. The clerk of the tribal court shall also maintain a current list of all offenders whose tribal privileges have been suspended or revoked and shall issue a weekly list of all such suspensions and revocations to all tribally recognized law enforcement agencies. Such a list shall include the person’s name, address, date of birth, driver’s license number, date of suspension and/or revocation and the date eligible for reinstatement.

- 3-26-5.2 Penalty for allowing persons to drive if privileges are 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 (250) dollars or five (5) days in jail or both.
- 3-26-5.3 Penalty for driving while under suspension or revocation of driving privileges pursuant to this chapter – Any person who shall drive a motor vehicle while under suspension or revocation of driving privileges pursuant to this chapter who shall be convicted shall be sentenced as follows:
- a. The court may impose a sentence of six (6) months in jail or a fine of five hundred (500) dollars or both, but the court must impose a minimum sentence of two hundred (200) dollars and ten (10) days in jail. Said jail sentence must be served for forty-eight (48) consecutive hours.
 - b. The court shall revoke tribal driving privileges within the jurisdiction of the reservation for an additional sixty (60) days of which no temporary driving privileges shall be issued.
- 3-26-6 **Vehicular Manslaughter**
- 3-26-6.1 Criminal Vehicular Manslaughter – An individual is guilty of criminal vehicular manslaughter if the individual commits an offense under subsection 3-26-2.1 and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother.
- a. If an individual commits a violation under this subsection, the violation is a Felony; the court shall impose at least three (3) years imprisonment.
 - b. An individual may not be prosecuted and found guilty of this offense and an offense of sections 3-10-2, 3-10-3, or 3-10-4 if the conduct arises out of the same incident.
- 3-26-6.2 Criminal Vehicular Injury – An individual is guilty of criminal vehicular injury if the individual violates subsection 3-26-2.1 or equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual, it is a Class 1 Misdemeanor, and the court shall impose at least one (1) year of imprisonment. If the individual violates this section after having been previously convicted of a violation of subsections 3-26-2.1 or 3-26-7.2(b) or equivalent ordinance the court shall enhance the sentence to a Felony offense.
- 3-26-7 **Duties in the Event of a Motor Vehicle Crash**
- 3-26-7.1 Motor Vehicle Crash – The driver of any vehicle involved in a motor vehicle crash resulting in injury or the death of any person or damage to any vehicle which is driven or attended by any person shall give, upon request of the law enforcement officer:
- a. Driver's name, address;
 - b. Driver's or Chauffeur's license;
 - c. Motor vehicle insurance policy carrier; and
 - d. Registration number of vehicle.
- 3-26-7.2 Scene of Vehicle Crash – The driver of any vehicle involved in a crash resulting in injury to or death of any person shall immediately stop or return with the vehicle as close as possible to the scene of the crash and in every event shall remain at the scene of the crash without obstructing traffic more than is necessary.
- 3-26-7.3 Requirements – Any person negligently failing to comply with the requirements of this section under circumstances involving personal injury is guilty of a Class 1 Misdemeanor.
- a. Any person negligently failing to comply with the requirements of this section under circumstances involving serious personal injury is guilty of a Felony offense.

- b. Any person negligently failing to comply with the requirements of this section under circumstances involving death is guilty of a Felony offense.

3-26-8 **Reckless Driving - Aggravated Reckless Driving - Penalty**

3-26-8.1 Reckless Driving – A person shall be guilty of reckless driving if he drives a vehicle:

- a. Recklessly in disregard of the rights or safety of others; and
- b. Without due caution and circumspection and at a speed or in a manner to endanger or be likely to endanger any person or the property of another.

3-26-8.2 Penalties

- a. Reckless driving is a Class 4 Misdemeanor with a mandatory not less than eight (8) nor more than thirty (30) days in jail, a maximum fine of one thousand (1000) dollars, or both such fine and imprisonment.
- b. Aggravated reckless driving is a Class 1 Misdemeanor with a mandatory not less than eight (8) days nor more than one (1) year in jail, a maximum fine of two thousand (2000) dollars, or both such fine and imprisonment.

3-26-9 **Fleeing or Attempting to Elude a Law Enforcement Officer - Penalty**

3-26-9.1 Failure to Stop – A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who flees or attempts to elude, in any manner, a pursuing police vehicle or law enforcement officer, when given a visual or audible signal to bring a vehicle to a stop, is guilty of:

- a. Class 1 Misdemeanor for a first offense and a Felony offense for a subsequent conviction.
- b. It is a Felony offense if the driver violates this section while willfully fleeing during or after the commission of a felony level offense of the Three Affiliated Tribal Code.
- c. It is a Felony offense if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner creating an inherent risk of death or serious bodily injury to any person.

3-26-9.2 Failure to Comply to Signal – A signal complies with this section if the signal is perceptible to the driver and:

- a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official law enforcement vehicle.
- b. If not given from a vehicle, the signal given by hand, voice, emergency light or siren and the officer is in uniform or promptly displays the officer's badge of office.

3-26-10 **Refusing to Halt**

3-26-10.1 Failure to Stop – A person who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing law enforcement officer, when given a visual or audible signal to stop, is guilty of a Class 2 Misdemeanor for a first or second offense and a Class 1 Misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

- a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official law enforcement vehicle.
- b. If not given from a vehicle, the signal given by hand, voice, emergency light or siren and the officer is in uniform or promptly displays the officer's badge of office.