

- 3-5-7.2 Pursuant to T.A.T.R. Crim. P. 3-1-8.8, the court may direct a forfeiture to be set aside if it appears justice does not require the enforcement of the forfeiture:
- a. Enforcement – If a forfeiture has not been set aside, the court shall enter a judgment of default and execution may issue thereon.
  - b. Exoneration – If the condition of the bond has been satisfied or the forfeiture thereof set aside, the court shall exonerate the obligor and release any bail. A surety may be exonerated by a cash deposit in the amount of the bond or by timely surrender of the defendant into custody.

3-5-8 **Setting of Bail**

- 3-5-8.1 Bail shall be fixed in such amount and in such form as, in the judgment of the Three Affiliated Tribes Tribal Court, will ensure the presence of the defendant in court proceedings of the case. When setting the bail, the judge shall take into consideration:
- a. The nature and circumstances of the offense charged;
  - b. The character and reputation of the defendant.
  - c. The previous criminal record of the defendant.
  - d. The probability of the defendant appearing at the hearing or trial of the case; and
  - e. The safety of the victims, tribal members, and general public.

3-5-8.2 In no case shall bail exceed four (4) times the maximum fine for the offense charged.

3-5-9 **Release of Defendant**

- 3-5-9.1 Upon the execution of the requisite recognizance or bail bond, the Three Affiliated Tribes Tribal Court shall issue an order for the release of the defendant. Upon the delivery of such an order to a law enforcement officer, the defendant shall be released upon the terms and conditions contained in the court order.

3-5-10 **Forfeiture of Bail**

- 3-5-10.1 If the defendant fails to appear in court as lawfully required, the court shall direct an entry of such failure and forfeiture of bail to be made on the record, without further proceedings. The court shall thereafter issue a warrant for the arrest of the defendant.

3-5-11 **Return of Bail**

- 3-5-11.1 Any security, given by the surety or the defendant, must be returned within five (5) working days of a dismissal, not guilty verdict, or upon sentencing, unless the sentence is appealed, then upon five (5) working days of the appellate decision.

## Chapter 6 – Defenses

3-6-1 **Definitions**

- 3-6-1.1 In this chapter, unless a different meaning is plainly required:
- a. “Deadly Force” means force which the actor uses with the purpose of causing or which he knows to create a substantial risk or causing death or serious bodily harm. Purposely firing a firearm in the direction of another or another person is believed to constitute deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the actor’s purpose is limited to creating an apprehension that he will use deadly force, if necessary, does not constitute deadly force.
  - b. “Dwelling” means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the actor’s home or place of lodging.
  - c. “Force” means physical action, threat, or menace against another, and includes confinement.
  - d. “Intoxication” means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

- e. “Premises” means all or any part of a building or real property, or any structure, vehicle watercraft, or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.
- f. “Self-induced intoxication” means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical device or under such circumstance as would afford a defense to a charged crime.
- g. “Unlawful Force” means force, including confinement, which is employed without the consent of the person against whom it is directed, and the employment is of which constitutes an offense or actionable tort or would constitute such offense of except, for a defense not mounting to a privilege to use the force. Assent constitutes consent, within the meaning of this code, whether it otherwise is legally effective, except assent to the infliction of death or serious bodily harm.

3-6-2 **Excuse or Mistake of Law**

3-6-2.1 Excuse - A person’s conduct is excused if he believes that the facts are such that his conduct is necessary and appropriate for any of the purposes which would establish a justification or excuse under this code, even though his belief is mistaken. However, if his belief is negligently or recklessly held, it is not an excuse in a prosecution for an offense, for which negligence or recklessness suffices the established culpability. Excuse under this section is a defense or affirmative defense according to which type of defense would be established had the facts been as the person believed them to be.

3-6-2.2 Mistake of Law - Except as otherwise expressly provided, a person’s good faith belief that conduct does not constitute a crime is an affirmative defense, if he acted in a reasonable reliance upon a statement of the law contained in:

- a. A statute of other enactment.
- b. A judicial decision, opinion, order, or judgment.
- c. An administrative order or grant of permission.

3-6-3 **Intoxication**

3-6-3.1 Except as provided in subsection (4) of this section, intoxication of the actor is not a defense unless it negates an element of the offense.

3-6-3.2 When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

3-6-3.3 Intoxication does not constitute mental disease within the meaning of section 3-7-1.

3-6-3.4 Intoxication which is not self-induced is an affirmative defense if by reason of such intoxication, the actor at the time of his conduct lacked substantial capacity either to appreciate its criminality (wrongfulness) or to conform his conduct to the requirements of law.

3-6-4 **Duress**

3-6-4.1 It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable belief in his situation would have been unable to resist.

- a. The defense provided by this section is unavailable if the actor recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also

unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability of the offense charged.

- b. It is not a defense that the actor acted on the command of a spouse, unless the actor acted under such coercion as would establish a defense under this section.
- c. When the conduct of the actor would otherwise be justifiable under section 3-6-9, this subsection does not preclude such defense.

3-6-5 **Military Orders**

3-6-5.1 It is an affirmative defense that the actor, in engaging in the conduct charged to constitute an offense, did no more than execute an order of his superior in the armed services which he did not reasonably know to be unlawful.

3-6-6 **Consent**

3-6-6.1 The consent of the victim to conduct which constitutes an offense or to the result thereof, is a defense, if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

3-6-6.2 When conduct is charged to constitute an offense because it causes or threatens to cause bodily harm, consent to such conduct or to the infliction of such harm is a defense if:

- a. The bodily harm consented to or threatened by the conduct consented to, is not serious; or
- b. Conduct and harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport, or to any concerted activity of a kind forbidden by law.
- c. The consent establishes a justification for the conduct under subsection 3-6-6.3 of this code.

3-6-6.3 Unless otherwise provided by this code or by the law defining the offense, assent does not constitute consent if:

- a. It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;
- b. It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or
- c. It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

3-6-7 **De Minimis Infractions**

3-6-7.1 The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds the defendant's conduct:

- a. Was within a customary license to tolerate, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense; or
- b. Presents such other extenuations that it cannot reasonably be regarded as foreseen by the legislature in forbidding the offense.
- c. The court shall not dismiss a prosecution under subsection (b) of this section without filing a written statement of its reasons.

3-6-8 **Entrapment**

3-6-8.1 A public law enforcement official or a person acting in cooperation with such an official, perpetuates an entrapment, if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting such offense by either:

- a. Making knowingly false representation designed to induce the belief that such conduct is not prohibited; or

- b. Employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

3-6-8.2 Except as provided in subsection 3-6-8.3 of this section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of evidence that his conduct occurred in response to an entrapment. The defense issue of entrapment shall be tried by the court in the absence of the jury. The defense afforded by this section is unavailable, when causing or threatening bodily injury, is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

3-6-8.3 The defense afforded by this section is unavailable, when causing or threatening bodily injury, is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

3-6-9 **Justification Generally - Choice of Evil**

3-6-9.1 Except as otherwise expressly provided, justification or excuse under this chapter is a defense. Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that:

- a. The harm or evil sought to be avoided by such conduct is not greater than that sought to be prevented by the law defining the offense charged.
- b. Neither the code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and
- c. A legislative purpose to exclude the justification claimed does not otherwise plainly appear.
- d. When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for his conduct, the justification afforded by this chapter is unavailable in a prosecution for any offense for which reckless or negligence, as the case may be, suffices to establish culpability.

3-6-10 **Justification and Affirmative Defense - Civil Remedies Unaffected**

3-6-10.1 In any prosecution based on conduct which is justifiable under this chapter, justification is an affirmative defense.

3-6-10.2 The fact that conduct is justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

3-6-11 **Execution of Public Duty**

3-6-11.1 Conduct engaged in by a public servant in the course of the person's official duties is justified when it is required or authorized by law, or:

- a. The law governing the execution of legal process;
- b. The judgment or order of a competent court or tribunal;
- c. The law governing the armed services of the lawful conduct of war; or
- d. Any other provision of law imposing a public duty.

3-6-11.2 A person who has been directed by a public servant to assist that public servant is justified in using force to carry out the public servant's direction, unless the action directed by the public servant is plainly unlawful.

3-6-11.3 A person is justified in using force upon another to affect that person's arrest or prevent that person's escape when a public servant authorized to make the arrest or prevent the escape is not available if the other person has committed, in the presence of the actor, any crime which the actor

is justified in using force to prevent, or if the other person has committed a felony involving force or violence.

3-6-11.4 Conduct engaged in by an individual at the direction of a public servant, known by that individual to be a law enforcement officer, to assist in the investigation of a criminal offense is justified unless the individual knows or has a firm belief, unaccompanied by substantial doubt, that the conduct is not within the law enforcement officer's official duties or authority. For purposes of this subsection, conduct "not within the law enforcement officer's official duties or authority" is conduct in which the law enforcement officer could not lawfully engage in that officer's official capacity. When practicable, permission must be obtained from a parent or guardian of a minor who is under the age of eighteen (18) years and is neither married nor in the military service of the United States before the minor may engage in conduct, other than the providing of information, to assist in a criminal investigation under the direct supervision of a public servant.

3-6-12 **Use of Force in Self-Defense**

3-6-12.1 Subject to provision of this section, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person in the present encounter.

3-6-12.2 The use of force is not justifiable under this section:

- a. To resist an arrest, to avoid execution of process, or other performance of duty by a public servant under color of law; or
- b. To resist force used by the occupier or possessor of property or by another person on his behalf where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if the actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest.

3-6-12.3 To resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation shall not apply if the actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest. The use of deadly force is not justifiable under this section unless the actor believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping, or sexual assault compelled by force or threat; nor is it justifiable if:

- a. The actor, with the purpose of causing death or serious bodily harm, provoked the use of force against himself in the same encounter; or
- b. The actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with demand that he abstains from any action which he has no duty to undertake except that:
  - i. The actor is not obligated to retreat from his dwelling or place of work unless he was the initial aggressor or is assaulted in his place of work by another person the actor knows to be wrongfully present; or
  - ii. The actor is a public officer justified in using force in the performance of his duties or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing such escape because of resistance or threatened resistance by or on behalf of the person against whom such action is directed; or
  - iii. The actor has entered into mutual combat with another person or is the initial aggressor unless he is resisting force which is clearly excessive in the circumstances. A person's use of defensive force after he withdraws from an encounter and indicates

to the other person that he has done so is justified if the latter nevertheless continues or menaces unlawful action.

3-6-12.4 The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can unless the person confined has been arrested on a charge of crime.

3-6-13 **Use of Force for the Protection of Other Persons**

3-6-13.1 Subject to the provision of this section and of section 3-6-12, the use of force upon or toward the person of another is justifiable to protect a third person when:

- a. The person defended would be justified in defending himself;
- b. The actor believes that his intervention is necessary for the protection of such other person; and
- c. The person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

3-6-14 **Use of Force for the Protection of Property**

3-6-14.1 Subject to the provision of this section and section 3-6-2 the use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

- a. To prevent or terminate an unlawful entry of other trespass upon land or a trespass against or the unlawful carrying away of tangible, moveable property, provided that such land or moveable property is, or is believed by the actor to be, in his possession or in the possession of another person for whose protection he acts; or
- b. To affect an entry or re-entry upon land or to retake tangible moveable property, provided that the actor believes that he or the person by whose authority he acts or a person from whom he or such other person derives title was unlawfully dispossessed of such land or movable property and is entitled to possession, and provided, further, that:
  - i. The force is used immediately or on fresh pursuit after such dispossession; or
  - ii. The actor believes that the person against whom he uses force has no claim of right to the possession of the property and, in the case of land, the circumstances, as the actor believes that to be, are of such urgency that it would be an exceptional hardship to postpone the entry or re-entry until a court order is obtained.

3-6-14.2 For the purposes of subsection 3-6-14.1 of this section:

- a. A person who has parted with the custody of the property to another who refuses to restore it to him is no longer in possession, unless the property is moveable and, was and still is, located on the land of the person's possession.
- b. A person who has been dispossessed of land does not regain possession thereof merely by setting foot thereon.
- c. A person who has a license to use or occupy real property is deemed to be in possession thereof except against the licensor acting under claim or right.

3-6-14.3 Limitations of Justifiable Use of Force

- a. The use of force is justifiable under this section only if the actor first requests the person against whom such force is used to desist from his interference with the property, unless the actor believes that:
  - i. Such request would be useless; or
  - ii. It would be dangerous to himself or another person to make the request.
- b. The use of force to prevent or terminate a trespass is not justifiable under this section if the actor knows that the exclusion of the trespasser will expose him to substantial danger of serious bodily harm.

- c. The use of deadly force is not justifiable under this section unless the actor believes that the person against who the force is used:
  - i. Is attempting to dispossess him of his dwelling other than under a claim of right to its possession; or
  - ii. Is attempting to commit or consummate arson; or
  - iii. Has employed or threatened deadly force against or in the presence of the actor; or
  - iv. The use of force, other than deadly force, is necessary to prevent the commission or the consummation of a crime which would expose the actor or another in his presence to substantial danger of serious bodily harm.
- d. The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he can do so safely unless the person confined has been arrested on a charge of a crime.
- e. The justification afforded by this section extends to the use of a device for the purposes of protecting property only if:
  - i. The device is not designed or used in such a manner to cause or known to create a substantial risk of causing death or serious bodily harm; and
  - ii. The use of the particular device to protect the property from the entry or trespass is reasonable under the circumstances, as the actor believes them to be and
  - iii. The device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.
- f. The use of force to pass a person whom the actor believes to be purposely or knowingly and unjustifiably obstructing the actor from going to a place to which he may lawfully go is justifiable, provided that:
  - i. The actor believes that the person against whom he uses force has no claim of right to obstruct the actor;
  - ii. The actor is not being obstructed from entry or movement on land which he knows to be in the possession or custody of the person obstructing him, or in the possession or custody of another person by whose authority the obstructor acts, unless the circumstances as the actor believes them to be, are of such urgency that it would not be reasonable to postpone the entry or movement on such land until a court order is obtained; and
  - iii. The force used is not greater than would be justifiable if the person obstructing the actor were using force against him to prevent his passage.

**3-6-15 Use of Force in Law Enforcement**

- 3-6-15.1 The use of force by a law enforcement officer upon or toward the person of another is justifiable when the officer is making or assisting in making a lawful arrest and the officer believes that such force is immediately necessary to effect a lawful arrest.
- 3-6-15.2 The use of force is not justifiable under this section unless:
  - a. The officer makes known the purpose of the arrest or believes that it is otherwise known by or can reasonably be made known to the person to be arrested; and
  - b. When the arrest is made under a warrant, and the warrant is valid or believed by the officer to be valid.
- 3-6-15.3 The use of deadly force is not justifiable under this section unless:
  - a. The arrest is for a felony; and
  - b. The officer effecting the arrest is authorized to act as a law enforcement officer.
  - c. The officer believes that the force employed creates no substantial risk of injury to innocent persons; and
  - d. The officer believes that:

- i. The crime for which the arrest is made involved conduct including the use or threatened use of deadly force; or
- ii. There is substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.

3-6-15.4 The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a law enforcement officer is justified in using any force, including deadly force, which he believes to be necessary to prevent escape from a facility used for the detention of persons charged with or convicted of a crime.

3-6-15.5 The use of force upon or toward the person of another is justifiable when the officer believes that such force is immediately necessary to prevent such other person from committing suicide, or threatening bodily harm, damage to or loss of property or a breach of the peace, except that:

- a. Any limitations imposed by the other provisions of this chapter on the justifiable use of force in self-protection of property, the effectuation of an arrest or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and
- b. The use of deadly force is not, in any event, justifiable under this subsection unless:
  - i. The officer believes that there is a substantial risk that the person who he seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of force presents no substantial risk of injury to innocent persons; or
  - ii. The officer believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any particular manner that the law may require, that such force will be used if they do not obey.

3-6-15.6 The justification afforded by this section extends to the use of confinement as preventive force only if the officer takes all reasonable measures to terminate the confinement as soon as he knows that he safely can unless the person confined has been arrested on a charge of a crime.

3-6-16 **Use of Force by Persons with Parental, Custodial, or Similar Responsibilities**

3-6-16.1 The use of reasonable force upon a minor is justified under any of the following circumstances:

- a. Except as provided in section (JUVENILE CODE), the actor being a parent, guardian, or other person responsible for the care and supervision of a minor, or other person responsible for the care and supervision of a minor for a special purpose, or person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting the minor's welfare, including prevention and punishment of the minor's misconduct, and the maintenance of proper discipline.
- b. If the person using reasonable force for the prevention and punishment of the minor's misconduct or the maintenance of proper discipline is a paid caregiver, that person must be acting under written direction of the parent or guardian of the minor.
- c. The reasonable force used may not create a substantial risk of death, serious bodily injury, disfigurement, extreme pain, mental distress, or gross degradation.
- d. A guardian or other person responsible for the care and supervision of an individual who is incompetent, or a person acting at the direction of the guardian or responsible person, may use reasonable force upon the individual for the purpose of safeguarding or promoting the welfare of the individual, including the prevention of the individual's misconduct, or if the individual is in a hospital or other institution for care and custody, for the reasonable discipline in the



institution. The force used may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.

- 3-6-16.2 A person responsible for the maintenance of order in a vehicle, train, vessel, aircraft, or other carrier, or in a place in which others are assembled, or a person acting at the responsible person's direction, may use force to maintain order.
- 3-6-16.3 A duly licensed physician, or a person acting at a duly licensed physician's direction, may use force to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered:
- a. In an emergency.
  - b. With the consent of the patient, or, if the patient is a minor or an individual who is incompetent, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or
  - c. By order of a court of competent jurisdiction.
  - d. A person may use force upon an individual about to commit suicide or suffer serious bodily injury, to prevent the death or serious bodily injury of that individual.

3-6-17 **Justification in Property Crimes**

- 3-6-17.1 Conduct involving the appropriation, seizure, destruction, or damage to, intrusion on or interference with property is justifiable under circumstances which would establish a defense or privilege in a civil action based thereon, unless:
- a. This code or law defining the offense deals with the specified situation involved; or
  - b. A legislative purpose to exclude the justification claimed otherwise plainly appears.

## Chapter 7 – Criminal Responsibility

3-7-1 **Mental Disease or Defect Excluding Responsibility**

- 3-7-1.1 A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or conform his conduct to the requirements of law.

- 3-7-1.2 As used in this chapter, the terms, "mental disease or defect", do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

3-7-2. **Evidence of Mental Disease or Defect Admissible When Relevant to Element of the Offense**

- 3-7-2.1 Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of offense.

3-7-3 **Mental Disease or Defect Excluding Responsibility is Affirmative Defense: Requirement of Notice: from Form of Verdict and Judgment When Finding of Irresponsibility is Made**

- 3-7-3.1 Mental disease or defect excluding responsibility is an affirmative defense.

- 3-7-3.2 Evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of guilty or within ten (10) days thereafter or at such time as the court may for good cause permit, files a written notice of the purpose to rely on such defense.

- 3-7-3.3 When the defendant is acquitted on the grounds of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

3-7-4 **Mental Disease or Defect Excluding Fitness to Proceed**

3-7-4.1 No person who, because of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

3-7-5 **Psychiatric Examination of Defendant with Respect to Mental Disease or Defect**

3-7-5.1 Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the case, the court shall appoint at least one qualified psychiatrist to examine and report the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding sixty (60) days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist, retained by the defendant, be permitted to witness, and participate in the examination.

- a. In such an examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.
- b. The report of the examination shall include the following:
  - i. A description of the nature of the examination.
  - ii. A diagnosis of the mental condition of the examination.
  - iii. If the defendant suffers from a mental disease or defect, psychiatrist shall include an opinion as to the defendant's capacity to understand and assist in his own defense.
  - iv. An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the criminality [wrongfulness] of his conduct or to conform to the requirements of law that was impaired at the time of the criminal conduct charged.
  - v. When directed by the court, an opinion as to the capacity of the defendant to have state of mind which is an element of the offense charged.
- c. If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to where such unwillingness of the defendant was the result of mental disease or defect. The report of the examination shall be filed with the clerk of court who shall cause copies to be delivered to the tribal prosecutor and to counsel for the defendant.

3-7-6 **Determination of Fitness to Proceed; Effect of Finding of Unfitness; Proceeding if Fitness is Regained**

3-7-6.1 When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 3-7-5, the court shall hold a hearing on the issue. If the report is received as evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross examine the psychiatrists who drafted the report and to offer evidence upon the issue.

3-7-6.2 If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended except as provided in subsection 3-7-6.3 of this section, and the court shall commit him to the appropriate institution by order for so long as such unfitness shall endure. When the court, on its own motion or upon the application of the tribal prosecutor, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil

commitment of person suffering from mental disease or defect, order the defendant to be committed to the appropriate institution.

3-7-6.3 The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible of fair determination prior to trial and without the personal participation of the defendant.

3-7-7 **Determination of-Responsibility on Basis of Report; Access to Defendant by Psychiatrist of His Own Choice**

3-7-7.1 If the report filed pursuant to section 3-7-5 finds that the defendant, at the time of the criminal conduct charged, suffered from a mental disease or defect which substantially impaired his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, and the court, after a hearing, if a hearing is requested by the tribal prosecutor or the defendant's attorney, is satisfied that such impairment was sufficient to exclude responsibility, the Court on motion of the defendant's attorney shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

3-7-7.2 When, notwithstanding the report filed pursuant to section 3-6-5, the defendant wishes to be examined by a qualified psychiatrist or other expert of the defendant's own choice, such examiner shall be permitted to have reasonable access to the defendant for the purpose of such examination.

3-7-8 **Form of Expert Testimony When Issue of Responsibility Brought to Trial**

3-7-8.1 Upon the trial, the psychiatrist who reported pursuant to section 3-6-5 may be called as a witness by the prosecution, the defendant's attorney, or the court. On the issue of defendant's responsibility of being tried before a jury, the jury may be informed that the psychiatrist(s) were designated by the court or the superintendent of the hospital at the request of the court, as the case may be. If called by the court, the witness shall be subject to cross-examination by the prosecution and by the defendant's attorney. Both the prosecution and the defendant's attorney may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific proposition stated by, another witness.

3-7-8.2 When a psychiatrist or other expert who has examined the defendant testifies concerning defendant's mental condition, the psychiatrist shall be permitted to make a statement as to the nature of the defendant's mental condition; and the psychiatrist's examination, the psychiatrist's diagnosis of the mental condition of the defendant at the time of the criminality of the defendant's conduct, or for the defendant to conform his conduct to the requirements of law, or for the defendant to have a particular state of mind, which is an element of the offense charged, which may or may not have been impaired as a result of mental disease or defect at that time. The psychiatrist shall be permitted to make an explanation reasonably serving to clarify the psychiatrist's diagnosis and opinion and may be cross-examined as to any matter bearing on the psychiatrist's competency, credibility, or the validity of the psychiatrist's diagnosis or opinion.

3-7-9 **Legal Effect of Acquittal on the Grounds of Mental Disease or Defect Excluding Responsibility; Commitment; Release or Discharge**

3-7-9.1 When a defendant is acquitted on the grounds of mental disease or defect excluding responsibility, the court shall order him to be committed to the custody of the appropriate institution for care and treatment.

- 3-7-9.2 If the director of the custodial institution is of the view that a defendant committed to his custody, pursuant to paragraph (1) of this section, may be discharged or released on conditions without danger to himself or to others, the director shall make an application for the discharge or release of the defendant in a report to the court by which the defendant was committed and shall transmit a copy of such application and report to the court and tribal prosecutor. The court shall thereupon appoint at least two qualified psychiatrists to examine the defendant and to report within sixty (60) days, or a such longer period as the court determines to be necessary for the purpose, of their opinion as to the defendant's mental condition.
- 3-7-9.3 If the court is satisfied by the report filed pursuant to paragraph (2) of this section and such testimony of the reporting psychiatrists as the court deems necessary, that the defendant may be discharged or released on conditions without danger to himself or others, the court shall order the defendant's discharge or release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether the defendant may safely be discharged or released. According to the determination of the court upon the hearing, the defendant shall thereupon be discharged or released on such conditions as the court determines to be necessary or shall be recommitted to the custody of the director of the custodial institution, subject to discharge or release, only in accordance with the procedure prescribed in subsection 3-7-8.2
- 3-7-9.4 If, within one year or sooner as the situation may require, after the conditional release of the defendant, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of others the defendant's conditional release should be revoked, the court shall forthwith order the defendant to be recommitted to the director of the appropriate custodial institution subject to discharge or release only in accordance with the procedure prescribed above in subsection 3-7-8.2.
- 3-7-9.5 A committed defendant may make an application for discharge or release to the court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in subsection 3-6-8.2 However, no such application by the defendant need be considered until he has been confined for not less than one month from the date of the order of commitment; if the determination of the court be adverse to the application, the defendant shall not be permitted to file a further application, until two (2) months have elapsed from the date of any preceding hearing on an application for the defendant's release or discharge.
- 3-7-10 **Statement for Purpose of Examination or Treatment Inadmissible Except on Issue of Mental Condition**
- 3-7-10.1 Any-statements made by the defendant subjected to psychiatric examination or treatment pursuant to sections 3-7-5, 3-7-6, and 3-7-7 for the purposes of such examination or treatment shall not be admissible in evidence against the defendant in any criminal proceeding on any issue other than that of the defendant's mental condition whether or not it would otherwise be deemed privileged communication.
- 3-7-11 **Immaturity Excluding Criminal Conviction; Transfer of Proceeding to Juvenile Court**
- 3-7-11.1 A person shall not be tried for or convicted of an offense if:
- a. At the time of the conduct charged to constitute the offense, he was less than sixteen (16) years of age; or
  - b. At the time of the conduct charged to constitute the offense, he was sixteen (16) or seventeen (17) years of age unless:
    - i. The Juvenile Court has no jurisdiction over him; or

- ii. The Juvenile Court has entered an order waiving jurisdiction and transferring for the institution of adult criminal proceedings against him.
- c. No court shall have jurisdiction to try or convict a person of an offense if criminal proceedings against him are barred by 3-7-11.1(a) or (b) of this section. When it appears that a person charged with the commission of an offense may be of such an age that criminal proceeding may be barred under 3-7-11.1(a) or (b) of this section, the court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the court that the criminal proceeding is not barred upon such grounds. If the court determines that the proceeding is barred, custody of the person charged shall be surrendered to the Juvenile Court, and the case, including all papers and processes relating thereto, shall be transferred.

*(Legislative History: Resolution #10-02-VJB; #01-63-MWJR; #00-197-DSB; #97-111-DSB; #97-109DSB; #96-169-DSB; #88-187-; #87-168-TL; #77-260; #08-103-MP).*

### **Chapter 8 – Inchoate Crimes**

#### **3-8-1 Criminal Attempt**

3-8-1.1 A person is guilty of an attempt to commit a crime if, acting with the kind of culpability otherwise required for commission of the crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime.

- a. A substantial step under this section is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime.
- b. The factual or legal impossibility of committing the crime is not a defense, if the crime could have been committed had the attendant circumstances been as the actor believed them to be.

3-8-1.2 A person who engages in conduct designed to aid another to commit a crime which would establish his complicity under section 3-2-26 if the crime were committed by such other person, is guilty of an attempt to commit the crime, although the crime is not committed or attempted by such other person.

#### **3-8-1.3 Renunciation of Criminal Purpose**

- a. When the actor's conduct would otherwise constitute an attempt under subsection 3-8-1.1 of this section, it is an affirmative defense that he abandoned his effort to commit the crime or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose. The establishment of such a defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.
- b. Within the meaning of this chapter, renunciation of criminal purpose is not voluntary if it is motivated in whole or in part, by circumstances, not present or apparent at the inception of the actor's course of conduct, which increase the probability of detection or apprehension or which make more difficult the accomplishment of the criminal purpose. Renunciation is not complete if it is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.

#### **3-8-2 Criminal Solicitation**

3-8-2.1 A person is guilty of criminal solicitation if he commands, induces, encourages, requests, or persuades another person to commit a crime, whether as principal or accomplice, with intent to promote or facilitate the commission of the offense, under circumstances strongly corroborative of that intent, and if the person solicited commits an overt act in response to the solicitation.

3-8-2.2 It is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

3-8-3 **Criminal Conspiracy**

3-8-3.1 A person is guilty of conspiracy if he agrees with one or more persons to engage in or cause conduct which, in fact, constitutes a criminal offense or offenses, and any one or more of such persons does an overt act to affect an objective of the conspiracy. The agreement need not be explicit in the fact of collaboration or existence of other circumstances.

3-8-3.2 If a person guilty of conspiracy, as defined by subsection 3-8-3.1, knows, or could expect that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, whether or not he knows their identity, to commit such crime.

3-8-3.3 If a person conspires to commit multiple crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

3-8-3.4 A conspiracy shall be deemed to continue until its objectives are accomplished, frustrated, or abandoned. Objectives includes escape from the scene of the crime, distribution of booty, and measures, other than silence, to conceal the crime or obstructing justice in relation to the crime. A conspiracy shall be deemed to be abandoned if no overt act to affect its objectives has been committed by any conspirator during the applicable statute of limitations.

3-8-3.5 Joinder and Venue in Conspiracy Prosecutions

a. Subject to the provisions of subsection 3-8-3.5(b) of this subsection, two or more person charged with criminal conspiracy may be prosecuted jointly if:

- i. They are charged with conspiring with one another; or
- ii. The conspiracies alleged, whether they have the same or different parties, are so related that they constitute various aspects of a scheme of organized criminal conduct.

b. In any joint prosecution under this subsection:

- i. A defendant shall be charged with a conspiracy in the Fort Berthold Reservation if he entered into such conspiracy within the exterior boundaries of the Fort Berthold Reservation or an overt act pursuant to such conspiracy was completed or attempted by him or by a person with whom he conspired within the exterior boundaries of the Fort Berthold Reservation; and
- ii. Neither the liability of any defendant nor the admissibility against him of the evidence of acts or declarations of another shall be enlarged by such joinder; and
- iii. The court shall order a severance or take a special verdict as to any defendant who so requests, if it deems it necessary or appropriate to promote the fair determination of his guilt or innocence and shall take any other proper measures to protect the fairness of the trial.

3-8-3.6 Overt Act - No person may be convicted of conspiracy to commit a crime, other than a misdemeanor unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

3-8-3.7 Renunciation of Criminal Purpose - It is an affirmative defense that the actor, after conspiring to commit a crime, thwarted the success of the conspiracy, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.

- 3-8-4 **Incapacity, Irresponsibility, or Immunity of Party to Solicitation or Conspiracy**
- 3-8-4.1 Except as provided in subsection 3-8-4.2 of this section, it is immaterial to the liability of a person who solicits or conspires with another to commit a crime that:
- a. The person whom he solicits or with whom he conspires does not possess a particular characteristic which is an element of such crime, if he believed that one of them does; or
  - b. The person whom he solicits or with whom he conspires is irresponsible or has immunity from prosecution or conviction for the commission of the crime.
- 3-8-4.2 It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under section 3-2-26.
- 3-8-5 **Grading of Criminal Attempt, Solicitation, and Conspiracy; Mitigation in Offense Conduct, Multiple Convictions Barred**
- 3-8-5.1 Grading - Except as otherwise provided in this section, attempt, solicitation, and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or solicited or an object of the conspiracy, except that, whenever it is established by a preponderance of the evidence at sentencing that the conduct constituting the attempt, solicitation, or conspiracy did not come dangerously close to commission of the crime, the offense level shall be one grade level lower than the attempted crime.
- 3-8-5.2 Mitigation - If the particular conduct charged to constitute a criminal attempt, solicitation, or conspiracy is so inherently unlikely to result or culminate in the commission of a crime that neither such conduct nor the actor presents a public danger warranting the grading of such offense under this section, the court shall exercise its power under subsection 3-8-5.1 to enter judgment or impose sentence for a crime of lower grade or degree or, in extreme cases, may dismiss the prosecution.
- 3-8-5.3 Multiple Conviction - A person may not be convicted of more than one offense defined by this chapter for conduct designed to commit or to culminate in the commission of the same crime.

## **Chapter 9 - Offenses, Penalties, and Sentencing**

- 3-9-1 **Tribal Law and Order Act Enactment**
- 3-9-1.1 Pursuant to the Tribal Law and Order Act of 2010 and the provisions of 25 U.S.C §1302, the Three Affiliated Tribes does herein enact this enhanced penalty provision, together with any amendments which may be made thereto after the date of enactment.
- 3-9-2 **Classification of Offenses – Penalties**
- 3-9-2.1 The following is the classification of imprisonment and fine which may be imposed by the court for sentencing purposes:
- a. Felony, a maximum penalty of three (3) years imprisonment, a maximum fine of five thousand (5,000) dollars, or both. The sentence may not exceed a total sentence of nine (9) years for multiple counts of conviction, a maximum fine of up to fifteen thousand (15,000) dollars or both.
  - b. Class 1 Misdemeanor, a maximum penalty of one (1) year imprisonment, a maximum fine of two thousand five hundred (2,500) dollars, or both.
  - c. Class 2 Misdemeanor a maximum penalty of six (6) months imprisonment, a maximum fine of one thousand (1,000) dollars, or both.
  - d. Class 3 Misdemeanor, a maximum penalty of ninety (90) days imprisonment, a maximum fine of seven hundred fifty (750) dollars, or both.

- e. Class 4 Misdemeanor, a maximum penalty of thirty (30) days imprisonment, a maximum fine of five hundred (500) dollars, or both.

3-9-3 **Authority of Court in Sentencing**

3-9-3.1 The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

- a. The defendant's criminal conduct caused or threatened serious harm to another person or his property;
- b. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property;
- c. The defendant acted under strong provocation;
- d. The victim of the defendant's conduct induced or facilitated its commission;
- e. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained;
- f. The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offence;
- g. The defendant's conduct was the result of circumstances unlikely to recur;
- h. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime;
- i. The defendant is particularly likely to respond affirmatively to probationary treatment;
- j. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
- k. The defendant is elderly or in poor health; and
- l. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

3-9-4 **Authorized Disposition of Offenders**

3-9-4.1 All persons convicted of an offense shall be sentenced in accordance with the provisions of this chapter. The court may suspend the imposition of a sentence on a person who has been convicted of a crime, or may order that he be committed to treatment in lieu of sentence, in accordance with section 3-7-1 or may sentence him as follows:

- a. To pay a fine authorized by subsection 3-9-2.1;
- b. To be placed on probation;
- c. Imprisonment for a term authorized by subsection 3-9-2.1; or
- d. To fine and probation or fine and imprisonment, but not probation and imprisonment.
- e. In all cases, regardless of the sentence, where deemed appropriate by the judge, order payment of restitution for damages resulting from the commission of the offense.

3-9-4.2 The court may suspend the imposition of a sentence on a person who has been convicted of a violation or may sentence him to pay a fine authorized by subsection 3-9-2.1.

3-9-4.3 This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, or impose any other civil penalty. Such judgment or order may be included in the sentence.

3-9-5 **Penalties Against Corporations and Unincorporated Association; Forfeiture of Corporate Charter or Revocation of Certificate Authorizing Foreign Corporation to do Business on the Reservation**

3-9-5.1 The court may suspend the sentence of a corporation or an unincorporated association which has been convicted of an offense or may sentence it to pay a fine authorized by section 3-9-2.



- 3-9-5.2 The tribal prosecutor is authorized to institute civil proceeding in the appropriate court of general jurisdiction to forfeit the charter of a corporation organized under the laws of this reservation or to revoke the certificate authorizing a foreign corporation to conduct business on the reservation. The court may order the charter forfeited or the certificate revoked upon finding:
- a. That the board of directors or a high managerial agent acting on behalf of the corporation has, in conducting the corporation's affairs, purposely engaged in a persistent course of criminal conduct; and
  - b. That for the prevention of future criminal conduct of the same character, the public interest required the charter of the corporation to be forfeited and the corporation to be dissolved or the certificate to be revoked.

- 3-9-5.3 When a corporation is convicted of a crime, or a high managerial agent of a corporation is convicted of a crime, as defined in subsection 3-2-27.3, the court, in sentencing the corporation or the agent, may direct the tribal prosecutor to institute proceedings authorized by subsection 3-9-5.2.

3-9-6 **Place of Imprisonment**

- 3-9-6.1 When a person is sentenced to imprisonment for an indefinite term within a maximum of six (6) months, the court shall commit him to the custody of the appropriate official for the term of his sentence and until released in accordance with law.

- 3-9-6.2 When a person is sentenced to imprisonment for a definite term, the court shall designate the institution or agency to which he is committed for the term of his sentence and until released in accordance with law.

3-9-7 **Reduction of Conviction by Court to Lesser Degree of Misdemeanor**

- 3-9-7.1 If, when a person has been convicted of a misdemeanor, the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the view that it would be unduly harsh to sentence the offender in accordance with this code, the court may enter a judgment of conviction for a lesser degree of a misdemeanor and impose sentence accordingly.

3-9-8 **Civil Commitment in Lieu of Prosecution or of Sentence**

- 3-9-8.1 When a person, prosecuted for a misdemeanor, is a chronic alcoholic, narcotic addict or person suffering from mental abnormality and the court is authorized by law to order the civil commitment of such person to a hospital or other institution for medical, psychiatric, or other rehabilitative treatment, the court may order such commitment and dismiss the prosecution. The order of commitment may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

- 3-9-8.2 The court shall not make an order under subsection 3-9-8.1 of this section unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

3-9-9 **Hearing Prior to Restitution or Reparation Order – Conditions**

- 3-9-9.1 Prior to imposing reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determination as to:
- a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action;
  - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property; and

- c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitation purpose in the case of the offense.

3-9-9.2 The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this section. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, if the court so directs, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner which civil judgments rendered by the courts of this jurisdiction may be enforced.

3-9-9.3 The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged but must be solely for the public benefit.

3-9-10 **Imposition of Fine and Response of Nonpayment**

3-9-10.1 The court deciding of the propriety of imposing a sentence to pay a fine, shall consider the following factors:

- a. The ability of the defendant to pay without undue hardship;
- b. Whether the defendant, other than a defendant organization, gained money or property because of commission of the offense; or
- c. Whether the sentence to pay a fine will serve a valid rehabilitative purpose.
- d. Nothing herein shall be deemed to require explicit reference to these factors in a report by the court at the time of sentencing.

3-9-10.2 The court may allow the defendant to pay any fine imposed in installments. When a defendant is sentenced to pay a fine, the court shall not impose at the same time an alternative sentence to be served if the fine is not paid.

3-9-10.3 If the defendant does not pay the fine, or make any required partial payment, the court, upon motion of the prosecuting attorney or on its own motion, may issue an order to show cause why the defendant should not be imprisoned for nonpayment. Unless the defendant shows that his default is excusable, the court may sentence him to the following periods of imprisonment for failure to pay a fine:

- a. If the defendant was convicted of a misdemeanor, he should have a period not to exceed (30) thirty days.

3-9-11 **Multiple Sentences, Concurrent or Consecutive Terms**

3-9-11.1 Multiple Sentences of Imprisonment – When multiple sentences of imprisonment are imposed on a defendant for more than one crime, including a crime for which a previous suspended sentence or sentence of probation has been revoked, such multiple sentences shall run concurrently or consecutively as the court determines at the time of sentence, except that:

- a. A definite and indefinite term shall run concurrently and both sentences shall be satisfied by service of the indefinite term; and
- b. The aggregate of consecutive indefinite terms shall not exceed in minimum or maximum length the longest extended term authorized for the highest grade and degree of crimes for which the sentence was imposed;

3-9-11.2 Sentences of Imprisonment Imposed at Separate Times – When a defendant who has previously been sentenced to imprisonment is subsequently sentenced to another term for a crime committed prior to the former sentence, other than a crime committed while in custody:

- a. The multiple sentences imposed shall, as far as possible, conform to subsection 3-9-11.1 of this section; and
- b. Whether the court determines that the terms shall run concurrently or consecutively, the defendant shall be credited with time served in imprisonment on the prior sentence in determining the permissible aggregate length of the term remaining to be served.

3-9-11.3 Sentences of Imprisonment for Crime Committed While on Parole – When a defendant is sentenced to imprisonment for a crime committed while on parole on this reservation, such term of imprisonment and any period of reimprisonment that the tribal court may require the defendant to serve upon the revocation of his parole shall run concurrently, unless the court orders them to run consecutively.

3-9-11.4 Multiple Sentences of Imprisonment in Other Cases – Except as otherwise provided in this section, multiple terms of imprisonment shall run concurrently or consecutively as the court determines when the second or subsequent sentence is imposed.

3-9-11.5 Multiple Terms of Suspension and Probation – When a defendant is sentenced for more than one offense or a defendant already under sentence is sentenced for another offense, the court must abide as follows:

- a. The court shall not sentence to probation a defendant who is under a current sentence of imprisonment;
- b. Multiple periods of imprisonment or probation shall run concurrently from the date of the first such disposition; and
- c. When a sentence of imprisonment is imposed, any previously imposed suspended sentence or sentence to probation shall run during the period of such imprisonment.

3-9-12 **The Court may Order a Pre-Sentence Investigation in any Case**

3-9-12.1 Pre-Sentence Investigation – The pre-sentence investigation shall include an analysis of the criminality, physical and mental conditions, family situation and background, economic status, education, occupation, and personal habits and any other matters that the probation officer deems relevant, or the court directs to be included.

3-9-12.2 Psychiatric Observation – Before imposing sentence, the court may order the defendant to submit to psychiatric observation and examination for a period of not exceeding sixty (60) days or such longer period as the court determines to be necessary for the purpose. The defendant may be remanded for this purpose to any available clinic or mental hospital.

3-9-13 **Credit for Time of Detention Prior to Sentence; Credit for Imprisonment Under Earlier Sentence for the Same Crime**

3-9-13.1 When a defendant who is sentenced to imprisonment has previously been detained in any institution following his conviction of the crime for which sentence is to be imposed, and any such period of detention following his arrest shall be deducted from the defendant's term of such sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the defendant prior to sentence in any institution, and the certificate shall be annexed to the official records of the defendant's commitment.

3-9-13.2 When a judgment of conviction is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the maximum term, and the from the minimum, if any, of the new sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence,

showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

## Chapter 10 – Offenses Against the Person

### 3-10-1 **Definitions**

3-10-1.1 Definitions in this chapter – Unless a different meaning plainly is required:

- a. “Abduct” means to restrain a person with the intent to prevent his liberation by:
  - i. Secreting or holding him in a place where he is not likely to be found; or
  - ii. Endangering or threatening to endanger the safety of any human being.
- b. “Bodily injury” means physical pain, illness, or any impairment of the function of any bodily member or organ.
- c. “Coercion” means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.
- d. “Committed Person” means, a person in an addiction treatment facility or anyone committed under judicial warrant order, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person, entrusted to another's custody by or through a recognized social services agency or otherwise by authority of law.
- e. “Deadly weapon” means any firearm, or other weapon device, instrument, material, or substance, whether animate or inanimate, which in the manner used or is intended to be used is known to be capable of producing death or serious bodily injury.
- f. “Human being” means a person who has been born and is alive at the time of the criminal act.
- g. “Restrain” means to restrict the movement of a person unlawfully and without consent as to interfere substantially with his liberty by removing him from his place of residence or business, by moving him a substantial distance from one place to another, or by confining him for a substantial period. Restraint is “without consent” if it is accomplished by:
  - i. force, intimidation, or deception; or
  - ii. any means, including acquiescence of the victim if he is a child less than fourteen years old or an incompetent person, and if the parent, guardian, or person or institution responsible for the general supervision of his welfare has not acquiesced in the movement or confinement.
- h. “Serious bodily injury” means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.
- i. “Stalking” means engaging in a course of conduct directed at a specific person which conduct would cause a reasonable person:
  - i. to fear for that person's safety or the safety of others; or
  - ii. to suffer substantial emotional distress.

### 3-10-2 **Murder**

3-10-2.1 A person is guilty of murder, a Felony offense, if the actor intentionally or knowingly causes the death of another human being by:

- a. Causing the death under circumstances manifesting extreme indifference to the value of human life; or
- b. Acting either alone or with one or more other persons, commits or attempts to commit robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, any felony offense against a child, or escape and, during and in furtherance of such crime or of immediate flight therefrom, the person or any other participant in the crime causes the death of any person.