

TITLE 26
OFFENSES AND PENALTIES
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TITLE 26
OFFENSES AND PENALTIES

Chapter 26.01
General Purposes

26.0101 The general purposes

The general purposes of this Title are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which tribal protection is appropriate. To this end, the provisions of this Title are intended, and shall be construed, to achieve the following objectives:

1. To ensure the public safety through:
 - a. Vindication of public norms by the imposition of merited punishment;
 - b. The deterrent influence of the penalties hereinafter provided;
 - c. The rehabilitation of those convicted of violations of this title; and
 - d. Such confinement as may be necessary to prevent likely recurrence of serious criminal behavior.
2. By definition and grading of offenses, to define the limits and systematize the exercise of discretion in punishment and to give fair warning of what is prohibited and of the consequences of violation.
3. To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.
4. To safeguard conduct that is without guilt from condemnation as criminal and to condemn conduct that is with guilt as criminal.
5. To prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

6. To define the scope of tribal interest in law enforcement against specific offenses and to systematize the exercise of tribal criminal jurisdiction.

Chapter 26.02

Proof and Presumptions

26.0201 An accused is presumed innocent until proven guilty

1. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. An accused is presumed innocent until proven guilty. The fact that he has been arrested, confined, or charged with the offense gives rise to no inference of guilt at his trial. "Element of an offense" means:
 - a. The forbidden conduct;
 - b. The attendant circumstances specified in the definition and grading of the offense;
 - c. The required culpability;
 - d. Any required result; and
 - e. The nonexistence of a defense as to which there is evidence in the case sufficient to give rise to a reasonable doubt on the issue.
2. Subsection 1 does not require negating a defense:
 - a. By allegation in the charging document; or
 - b. By proof, unless the issue is in the case as a result of evidence sufficient to raise a reasonable doubt on the issue.

Unless it is otherwise provided or the context plainly requires otherwise, if a statute outside this Title defining an offense, or a related statute, or rule or regulation thereunder, contains a provision constituting an exception from criminal liability for conduct which would otherwise be included within the prohibition of the offense, that the defendant came within such exception is a defense.

3. Subsection 1 does not apply to any defense which is explicitly designated an "affirmative defense." An affirmative defense must be proven by the defendant by a preponderance of evidence.
4. When a statute establishes a presumption, it has the following consequences:
 - a. If there is sufficient evidence of the facts which gave rise to the presumption, the presumed fact is deemed sufficiently proved to warrant submission of the issue to a jury unless the court is satisfied that the evidence as a whole clearly negated the presumed fact.
 - b. In submitting the issue of the existence of the presumed fact to a jury, the court shall charge that, although the evidence as a whole must establish the presumed fact beyond a reasonable doubt, the jury may arrive at that judgment on the basis of the presumption alone, since the law regards the facts giving rise to the presumption as strong evidence or the fact presumed.
5. When a statute declares that given facts constitute a prima facie case, proof of such facts warrants submission of a case to the jury with the usual instructions on burden of proof and without additional instructions attributing any special probative force to the facts proved.

**Chapter 26.03
General Definitions**

26.0301 Definitions

1. "Act" or "action" means bodily movement, whether voluntary or involuntary. Act and actions include, where relevant, omitted to act and omissions to act.
2. "Auxiliary police" shall mean all officers possessing a special commission from the Turtle Mountain Tribal Council or their designee.
3. "Bodily injury" means any impairment of physical condition, including bodily pain.

4. "Contempt" means any act done in disrespect of the Court or its process or which obstructs the administration of justice.
5. "Corrupt" means a wrongful design to acquire or cause some monetary interest or other advantage.
6. "Credit" means an arrangement or understanding with another for the payment of a debt.
7. Dance Halls. A "dance" or "activity hall" shall mean:
 - a. A business that charges a rental or admission to the public for use and/or entry into a building for dancing and other activities including weddings and receptions, private parties, campaign parties and live music entertainment, etc.;
 - b. Fraternal, church and other halls used for dances, weddings and receptions, private parties, campaign parties, etc. shall be included in this definition.
8. "Force" means a physical power in motion or in action.
9. "Government" shall mean:
 - a. The governing body of this Tribe or any political subdivision of this Tribe;
 - b. Any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches;
 - c. Any corporation or other entity established by law to carry on any governmental function;
 - d. Any commission, corporation, or agency established by ordinance, compact, or contract between or among governments for the execution of intergovernmental programs.
10. "Governmental functions" means any activity which one or more public servants are legally authorized to undertake on behalf of government.

11. "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.
12. "Included offense" means an offense:
 - a. Which is established by proof of the same or less than all the facts required to establish commission of the offense charged;
 - b. Which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
 - c. Which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.
13. "Incompetent" means a person who is insane, an imbecile, or feebleminded, or is not mentally able to manage his own affairs.
14. "Insanity" means a condition which renders the affected person unfit to enjoy liberty of action because of the unreliability of his behavior with concomitant danger to himself and others.
15. "Intoxication" means a condition where, by reason of drinking intoxicants or from the introduction of foreign substances in the body, an individual does not have the normal use of his physical or mental faculties, thus rendering him incapable of acting in the manner in which an ordinarily prudent and cautious man, in full possession of his faculties, using reasonable care, would act under like conditions.

16. "Law enforcement officer" also referred to as "peace/police officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
17. "Malice" and "maliciously" means a condition of mind which prompts a person to do a wrongful act willfully, that is on purpose, to the injury of another, or to do intentionally a wrongful act toward another without justification or excuse.
18. "Oath" means any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully.
19. "Offense" means a conduct for which a term of imprisonment and/or fine is authorized by ordinance or statute after conviction.
20. "Official action" means a decision, opinion, recommendation, vote, or other exercise of discretion by any tribal or governmental agency.
21. "Official proceeding" means a proceeding heard, or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any judge, referee, hearing examiner, commission, notary, or other person taking testimony or a deposition in connection with any such proceeding.
22. "Omission" means a failure to act.
23. "Pardon" means an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed.
24. "Parole" means release from jail, prison or other confinement after actually serving part of sentence.

25. "Person" means any person over whom the Turtle Mountain Tribal Court may lawfully exercise jurisdiction. This includes a corporation as well as a natural person. When used to designate the party whose property may be the subject of any offense, it includes this tribe, any other government, or country which lawfully ay own any property within this reservation, and all public and private corporations or joint associations, as well as individuals.
26. "Probation" means a system of permitting a person convicted of a crime to go free with a suspended sentence, subject to the supervision of a probation officer.
27. "Personal property" includes every description of money, goods, chattels, effects, evidences of right in action, and written instruments by which any monetary obligation, right, or title to property, real or personal, is created or acknowledged, transferred, increased, defeated, discharged, or diminished.
28. "Public servant" means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses.
29. "Real property" includes every estate, interest, and right in lands, tenements, and hereditaments.
30. "Reprieve" means a temporary relief from or postponement of execution of criminal punishment or sentence. It does no more than stay the execution of a sentence for a time, and it is ordinarily an act of clemency extended to a prisoner to afford him an opportunity to procure some amelioration of the sentence imposed.
31. "Self-defense" means the protection of ones person or property against some injury attempted by another, and the right of such protection. A person is justified in the use of force against an aggressor when and to the extent it appears to him and he reasonably believes that such conduct is

necessary to defend himself or another against such aggressors imminent use of unlawful force.

32. "Serious bodily injury" means a bodily injury, which creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, or permanent loss or impairment of the function of any bodily member or organ.
33. "Signature" includes any name, mark, symbol, or sign, written or affixed with the intent to authenticate any instrument or writing.
34. "Thing of value" means any thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.
35. "Venereal disease" means a sexually transmitted disease.
36. "Void marriage" means a marriage with no legal force or binding effect.
37. "Writing" means handwriting, typewriting, printing, photostating, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

Chapter 26.04 Requirements of Culpability

26.0401 Purposes of engagement

1. For the purposes of this Title, a person engages in conduct:
 - a. "intentionally" if, when he engages in the conduct, it is his purpose to do so.
 - b. "knowingly" if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so.

- c. "recklessly" if he engages in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
 - d. "negligently" if he engages in the conduct in unreasonable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.
 - e. "willfully" if he engages in the conduct intentionally, knowingly, or recklessly.
2. If a statute or regulation thereunder defining a crime does not specify any culpability and does not provide explicitly that a person may be guilty without culpability, the culpability that is required is willfully.
- a. Except as otherwise expressly provided, where culpability is required, that kind of culpability is required with respect to every element of the conduct and to those attendant circumstances specified in the definition of the offense, except that where the required culpability is "intentionally", the culpability required as to an attendant circumstance is knowingly."
 - b. Except as otherwise expressly provided, if conduct is an offense if it causes a particular result, the required degree of culpability is required with respect to the result.
 - c. Except as otherwise expressly provided, culpability is not required with respect to any fact which is solely a basis for grading.
 - d. Except as otherwise expressly provided, culpability is not required with respect to facts which establish that a defense does not exist, otherwise the least kind of culpability required for the offense is required with respect to such facts.

- e. A factor as to which it is expressly stated that it must "in fact" exist is a factor for which culpability is not required.
3. Any lesser degree of required culpability is satisfied if the proven degree of culpability is higher.
4. Culpability is not required as to the fact that conduct is an offense, except as otherwise expressly provided in a provision outside this Title.

Chapter 26.05
Justification, Excuse, Defenses

- 26.0501 Ignorance of law
Ignorance of a law is not an affirmative defense to a violation of the law.
- 26.0502 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 reasonable reliance upon a statement of the law contained in:
1. A statute or other enactment.
 2. A judicial decision, opinion, order, or judgment.
 3. An administrative order or grant of permission.
 4. An official interpretation of the public servant or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the crime.
- 26.0503 Insanity or mentally incapacity as a defense
1. A criminal act is not punishable when the offender, while committing the crime, was insane or mentally incapacitated.
 2. 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 (wrongfulness) of his conduct or to conform his conduct to the requirements of law.

26.0504 Intoxication
Incapability because of self-inflicted intoxication by drinking intoxicants or the introduction of foreign substances in the body is not an exonerating factor. Evidence of intoxication is admissible whenever it is relevant to negate or establish an element of the offense charged.

26.0505 Juvenile Prosecution
Persons under the age of eight (8) years are deemed incapable of commission of an offense defined by the constitution or Code of this Tribe. A person between the age of eight (8) and fifteen (15) years shall not be tried as an adult.

26.0506 Self Defense
A person is justified in using force upon another person to defend himself against danger of imminent unlawful bodily injury, sexual assault, or detention by such other person, except that:

1. A person is not justified in using force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant under color of law, but excessive force may be resisted.
2. A person is not justified in using force if:
 - a. He intentionally provokes unlawful action by another person to cause bodily injury or death to such other person; or
 - b. He has entered into a mutual combat with another person or is 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.

26.0507 Defense of others
A person is justified in using force upon another person in order to defend anyone else if:

1. The person defended would be justified in defending himself; and
2. The person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

26.0508 Justification

1. Except as otherwise expressly provided, justification or excuse under this Chapter is a defense.
2. If a person is justified or excused in using force against another, but he recklessly or negligently injures or creates a risk of injury to other persons, the justifications afforded by this Chapter are unavailable in a prosecution for such recklessness or negligence.
3. That conduct may be justified or excused within the meaning of this Chapter does not abolish or impair any remedy by such conduct which is available in any civil action.
4. No person can be punished for an otherwise illegal act when the act is committed in an emergency or protect life, limb or property.
5. Any damage resulting from such emergency act must be reasonable compared to the person need.
6. The person committing the emergency act will be responsible or compensation of any damages a may be charged with an offense for any unreasonable damage.

26.0509 Duress

1. In a prosecution for any offense, it is an affirmative defense that the person engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or to another. In a prosecution for an offense which does not constitute a Class 4 offense, it is an affirmative defense that the person engaged in the proscribed conduct because he was compelled to do so by force or threat of force. Compulsion within the meaning of this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.
2. The defense defined in this section is not available to a person who, by voluntarily entering

into a criminal enterprise, or otherwise, willfully placed himself in a situation in which it was foreseeable that he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

26.0510 Entrapment

1. It is an affirmative defense that the defendant was entrapped into committing the offense.
2. Entrapment occurs when a law enforcement officer induces the commission of an offense, using persuasion or other means likely to cause normally law-abiding persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

Chapter 26.06

Sentence and Penalties and Classification of Offenses

26.0601 Classification of offenses - Penalties

Offenses are divided into four classes which are denominated and subject to minimum and maximum penalties, as follows:

1. Class 1 offense, for which a minimum penalty of one (1) day and a maximum of thirty (30) days imprisonment, a fine of minimum ten (\$10) dollars and a maximum of five hundred (\$500) dollar or both such imprisonment and fine, may be imposed.
2. Class 2 offense, for which a minimum penalty of one (1) day and a maximum penalty of three (3) months imprisonment, a fine of minimum ten (\$10) dollars and a maximum of one thousand dollars (\$1,000), or both such imprisonment and fine, may be imposed.
3. Class 3 offense, for which a minimum penalty of thirty (30) days and a maximum penalty of six (6) months imprisonment, a fine of a minimum one hundred (\$100) dollars and a maximum of two thousand and five hundred dollars (\$2,500), or both such imprisonment and fine, may be imposed.
4. Class 4 offense, for which a minimum penalty of thirty (30) days and a maximum penalty of one (1) year imprisonment, a fine of a minimum one hundred

(\$100) dollars and a maximum of five thousand dollars (\$5,000), or both such imprisonment and fine, may be imposed.

26.0602 Penalty for repeated offenses

1. Unless otherwise stated within the statute, any person who was previously convicted of a crime and commits a second offense of the same or similar offense within two (2) years may be subject to one higher Class of offense.
2. In order to rehabilitate the offender, the judge may, in his discretion order:
 - a. community service;
 - b. counseling; or
 - c. treatment.

These penalties can be imposed in addition to or instead of the penalties provided for a Class 1 or 2 offense and may be imposed in addition to a Class 3 or 4 offense.

26.0603 Allowance for time served

Allowance, against any sentence for a term of imprisonment, shall be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct on which such charge was based. "Time spent in custody" shall include time spent in custody in a jail or a mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.

26.0604 Restitution and Payment of Costs of Prosecution

Except where otherwise specified in any statute, in combination with the above penalties and those sentencing alternatives permitted in this Chapter, the Tribal Court may impose one or more of the following penalties:

1. Payment of the reasonable costs of the person's prosecution;
2. Fees for damages to person or property resulting from the commission of the offense.

26.0605 Alternative Sentences

Unless otherwise specified in any statute, upon application or upon its own motion, the court may provide either of the following sentences in any case before it:

1. Suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension;
2. Defer imposition of sentence. The court must place the defendant on probation during the period of deferment. In any prosecution for any other offense, the prior conviction for which imposition of sentence was deferred may be pleaded and proved, a has the same effect as if probation had not been granted or the charge dismissed following the probation period imposed under this Subsection.

26.0606 Reasons for Sentence to be Explained

All sentences imposed under this or other chapters within this Title must be accompanied by a written statement by the court setting forth the reasons for imposing a particular sentence, to become a part of the record in the case.

26.0607 Fee assessments for Funding Crime Victim Programs

The Turtle Mountain Tribal Judges shall assess a fee of not less than twenty-five (\$25) dollars and no more than one-hundred dollars (\$100) as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a tribal ordinance for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment.

The fee assessed under this section is in addition to any fine, penalty, costs and or administrative fee prescribed by law. The Tribal Judge may assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred. All fees paid to the court under this section must be deposited monthly in the General Fund for allocation to one or more of the following programs as determined by the governing body:

1. A domestic violence or sexual assault program,
2. A victim advocacy program of which the primary function is to provide direct services of victims of crime.

Chapter 26.07
Parole, Probation, Pardon

Parole

- 26.0701 Eligibility of Parole
Any person confined to jail who shall have served, without misconduct, one-half of the sentence imposed, shall be eligible to be considered for parole, upon written application to the Court.
- 26.0702 Granting Parole
Parole may be granted by the Tribal Court upon such terms and conditions, as the Tribal Court may prescribe including the requirement of personal reports from the parolee.
- 26.0703 Violation of Parole
Any paroled person who shall violate any provision of his/her parole, at the discretion of the Court, shall be apprehended and confined to serve the remainder of the original sentence with diminishment for the time the person was released on parole.

Probation

- 26.0704 Conditions of probation.
The Court may release on probation a person convicted of a crime on such terms and conditions as are just and appropriate, taking into consideration the prior criminal record of the defendant, his background, character, financial condition, family obligation and any other pertinent circumstances.
- 26.0705 Violations of Conditions of Probation
Any person who violates the terms and conditions of his/her probation or release shall be required to serve the original sentence imposed.

Pardon

26.0706 Pardon Board Definitions

1. "Commutation:" An exchange or replacement of the punishment to which an individual has been sentenced to a less severe punishment.
2. "Conditional Pardon:" A pardon, commutation, reprieve or remission of a fine, subject to terms and conditions established by the Chairman upon recommendation of the Pardon Advisory Board that does not become effective until the offender fulfills some condition.
3. "Department" shall be defined as the Department of Prisons of any jurisdiction.
4. "Pardon:" The removal of punishment or custody imposed upon a person for the commission of an offense. A pardon does not remove that person's conviction or plea or finding of guilt for an offense unless specifically stated in the Certificate of Pardon.
5. "Reprieve:" The temporary relief from or postponement of the execution of a criminal sentence, analogous to a commutation or a pardon.

For purposes of this code, the terms pardon, expunge, set aside, commutation, etc. shall have the same meaning. These terms shall mean action taken by the Chairman, upon recommendation of the Pardon Board, to ensure that Tribal offenses are set aside and the corresponding criminal records information is expunged with respect to the offense at issue.

26.0707 Standards for Pardon Board

1. The Pardon Board will only consider applications from Tribal members with less than 3 total Tribal misdemeanors as covered in Title 26 of the Tribal Code of 1976. The Pardon Board will not consider those with three or more infractions (i.e. habitual offenders).
2. The Pardon Board will not consider any infraction that is less than five years old.
3. The Pardon Board will not consider pardons for any crimes listed in the Indian Major Crimes Act, 18 USC 1153, even if such actions are also crimes under Tribal law.

4. The Pardon Board will not consider pardons for any Misdemeanors related to dealing and/or distributing drugs.

The Pardon Board will consider pardons for drug use-related infractions only if they have completed an intensive drug treatment program lasting at least 90 days prior to application for pardon.

26.0708 Pardon Review Board Policies and Procedures

1. Mission Statement: The mission of the Pardon Review Board is to review and consider requests within its jurisdiction and base its recommendations in keeping with the Turtle Mountain Tribal Constitution and Bylaws, Tribal Code and statutory intent in the best interest of society and tribal members.
2. Authority: Authority for this policy is found in Article IV, Section 2 of the Constitution and Bylaws of the Turtle Mountain Band of Chippewa Indians North Dakota, which states "The Tribal Council shall have the authority to ... appoint subordinate committees, delegates, and employees not otherwise provided for in the constitution, and to provide tenure and duties; provided that any delegation of authority described in this Constitution shall be granted only by written resolution or ordinance and shall be withdrawn in the same manner. (Amendment XIV, Approved February 3, 1995)"; and Chapter 26.07 inclusive of the Turtle Mountain Tribal Code.
3. Pardon Board:
 - a. The Chairman and Tribal Council may appoint a Pardon Board to consist of five (5) members including one (1) Tribal member from each district and a Pardon Board Chairman from at large-selection by the Tribal Chairman.
 - b. The Chairman, with a quorum of the Tribal Council may dissolve the Pardon Board at any time.
 - c. The Chairman may call meetings of the Pardon Board as necessary to allow the Pardon Board to conduct business in a timely manner. The Pardon Board shall also convene at least quarterly to conduct its business in a timely manner.

- d. The Pardon Board is not an administrative agency and is not subject to administrative agencies practices. However, any rulemaking by the Pardon Board will be published for 30-day comment prior to consideration for inclusion in the Turtle Mountain Tribal Code.
 - e. Pardon Board Members may not engage in ex parte communications with applicants for pardons or any of their representatives or advocates.
4. Meetings and Rules.
- a. The Board will schedule at least one quarterly meeting to review applications for pardons from Tribal member offenders.
 - b. A simple majority of the Pardon Board members constitutes a quorum.
 - c. The Board may call executive sessions as allowed by the Turtle Mountain Tribal Code.
 - d. The rules and procedures for reviewing requests for pardon relief are contained within this policy.
5. Duties and responsibilities of the Pardon Board.
- The sole function of the Pardon Board shall be to provide information and make recommendations to the Tribal Chairman concerning any matters before the Tribal Chairman under this chapter. Recommendations may include commutation of sentence and grant of a pardon. Recommended terms and conditions placed upon any pardon or commutation of sentence shall be so stated on the Certificate of Pardon/Commutation.
6. Duties and responsibilities of the Pardon Board Clerk shall include the following:
- a. Maintain a register of all applications filed with the Pardon Board as well as a record of any and all proceedings of the Pardon Board.
 - b. Maintain a record of all actions of the Pardon Board.
 - c. Conduct investigations for and provide information to the Pardon Board. All information to be considered by the Pardon Board must be submitted to the Pardon Board Clerk.
 - d. Direct officers of the Turtle Mountain Tribal Probation/Parole Division to provide testimony or written comments for the Pardon Board's consideration when an individual is on

- supervision or has recently been on supervision by a Department.
- e. Provide written notice of an application for Pardon/Commutation to the Turtle Mountain Tribal Court and Tribal Prosecutor regarding any Judgment of Conviction warranted against the applicants. The date of entry and docket number of the criminal judgment, the crime or crimes stated in the criminal judgment and the date and place for the meeting on the application.
 - f. The Pardon Clerk will ensure that victim rights are protected and that victims have the opportunity to present information to the board in the manner that the board prescribes.
7. Cases eligible for Pardon Board review.
- a. Offenders in custody or on supervision with the Turtle Mountain Tribal Probation/Parole Division.
 - b. Applicants currently incarcerated. Applicants who have no legal remedy through the Parole Board but may be eligible for review by the Pardon Board providing that review does not conflict with any other provisions of this policy.
 - c. Offenders under the supervision of Probation/Parole.
 - (i) The supervising officer of any applicant on supervision may apply for relief on behalf of the applicant with the Pardon Clerk.
 - d. Person not in the custody of or under the supervision and management of the Probation/Parole Department. The applicant must have encountered a significant problem with the consequences of his or her conviction or sentence (e.g. difficulty entering a school or securing employment).
 - e. In very limited circumstances, the board may consider applications from individuals who present a compelling need for relief as a result of unusual circumstances not otherwise specified by the above criteria.

8. Application and Review Process.

- a. Applications for board review must be made with the Pardon Clerk on a form prescribed by the Pardon Clerk.
- b. The written application must be submitted to the Pardon Clerk at least forty-five (45) days before the Pardon Board convenes.
- c. The Pardon Clerk will staff each case on the proposed docket with a representative of the Chairman and the Pardon Board.
- d. The Pardon Clerk will prepare a final docket at least thirty (30) days before the Pardon Board convenes.
- e. The Pardon Clerk may formulate a recommendation concerning an applicant's request for relief.
- f. The Pardon Clerk will present a final packet for each application to members of the board at least fifteen (15) days before the board convenes.
- g. The board may review the application with the applicant or may review the application without a personal appearance. Granting or not granting a personal appearance should not constitute a negative recommendation for relief. The Pardon Clerk will schedule all personal appearances.
- h. Any request by the Pardon Board Chairman for the personal appearance of an applicant will be honored.
- i. After appropriate review, the board will make a recommendation to the Chairman regarding each case.
- j. If the Chairman denies the applicant that requested relief, the applicant may not re-apply for relief for a period of six (6) months from the date the Chairman denied relief, or if the board has set a later date, the date the board has set. The board is not precluded by this section from considering an emergency application for relief at any time.
- k. Any reapplication will be submitted on a summary form as provided by the Pardon Clerk and must demonstrate specific changes in circumstances since the prior application.

The Chairman may reconsider the decision to grant an applicant relief at any time. If for any reason the applicant violates any of the terms or conditions of the pardon, the Chairman may revoke the pardon on the same manner provided for violation of any of the terms or conditions in all other cases, the Chairman may reconsider a decision or an application of the reconsideration is made within thirty (30) days from the date of the initial decision.

26.0709 Pardon Application Form

\$50 non-refundable application/processing fee

Notice: This form must be completed by all pardon applicants.

Applications must be typewritten or clearly printed. All questions must be answered if applicable. If not, indicate by N/A (not applicable). If space provided is not sufficient for complete answers, or if you wish to furnish additional information, attach sheets and number answers to correspond with questions. This document must be notarized.

1. Full Name: _____
2. Address: _____
3. Telephone #: _____
4. Social Security #: _____
5. Date of Birth: _____
6. Place of Birth: _____
7. Male/Female: _____
8. Marital Status: _____
9. No. of children: _____
Ages: _____
10. What is the crime, date of conviction and sentence of the crime for which you are requesting a pardon?

11. Please describe the circumstances of each offense and conviction for which a pardon is sought (attach a separate sheet if more space is needed): _____

12. Have you requested a pardon before? _____ If yes, when? _____
13. Why are you requesting this pardon: _____ Employment _____ Entry into service _____ other (explain) _____

14. Please briefly describe the reasons for this pardon request. A lengthier explanation with supporting documentation may be attached _____

EDUCATION AND TRAINING

15. Highest Grade Completed: _____
16. Name of School: _____

MILITARY SERVICE

17. Branch of Service: _____
18. Service No. _____ Type of discharge: _____
19. Dates of active duty: _____ to _____
20. Present place of employment: _____
21. Address and telephone number: _____

22. How long? _____
23. Kind of work _____
24. Previous employment and dates: _____

25. Have you ever been convicted of an offense (include motor vehicle violations) within tribal jurisdiction since the conviction for which you are requesting a pardon? Yes _____
No _____
26. If the answer to question 25 is yes, please provide details (attach a separate sheet if more space is needed. _____

27. Have you ever been arrested by federal authorities or by any other tribal authority other than Turtle Mountain authorities? Yes _____ No _____
28. If answer to question 27 is yes, please list each arrest giving the date and disposition of the case (attach a separate sheet if necessary _____

29. Do you have a specific and compelling need for a pardon? Yes _____ No _____
30. What is the need? (be specific _____

31. Applicants must demonstrate a substantial period of good citizenship and an exemplary life since conviction. Please indicate examples of constructive conduct and specific

achievements if any (attach a separate sheet if more space is needed)_____

32. How will a pardon substantially aid you in improving your life (attach a separate sheet if more space is needed)_____

33. How will a pardon benefit society?_____

REFERENCES:

34. Please provide three (3) letters of reference from persons other than you or members of your family, attesting to your good character and reputation. Please list the names of individuals below:

Name	Address	Phone No.	Relationship
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

Upon granting of a pardon, it is the recipients responsibility to provide this information to Tribal Court and Law Enforcement for processing of expungement.

By virtue of request for pardon, applicant may be subject to the following: Drug testing and ongoing follow-up or future assessments.

I hereby authorize release of my criminal records to the Chairman or the Chairman's representative.

Pardon applicant

Notice: By submitting this application, you are consenting to public release of your name should a pardon be issued by the Chairman.

Subscribed and Sworn to before me this____ day of _____, 20____

Notary Public in and for the State of _____
My commission expires:_____

Chapter 26.08
Prevention of Crime

- 26.0801 Lawful resistance by private persons
Any person may lawfully resist the commission at any public offense but the amount of force used in resisting such offense shall not be greater than what is reasonably necessary to prevent the offense.
- 26.0802 Private individuals, justification of actions
When law enforcement officers are by this Code authorized to act in the prevention of public offenses, other persons, who by the law enforcement officials command, act in their aid, are justified in so doing. Such other persons shall be entitled to employ the same degree of force as provided for in §26.0801 of this Chapter herein and shall not be liable in any civil suit or criminal action for reasonable action taken pursuant to this section.
- 26.0803 Preserving the peace at public gatherings
The law enforcement officials shall have authority to order a force sufficient to preserve the peace or to attend any public gathering or meeting when such official may reasonably anticipate a breach of the peace.

Chapter 26.09
Attempt and Accomplice

- 26.0901 Attempt
1. A person is guilty of criminal attempt, if, acting with the kind of culpability otherwise required for commission of a crime, he intentionally engages in conduct which, in fact, constitutes a substantial step toward commission of the crime. A "substantial step" is any conduct which is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime. 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.
 2. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his

complicity under Subsection 26.0904 were the crime committed by the other person, even if the other is not guilty of committing or attempting the crime; for example, because he has a defense of justification or entrapment.

26.0902 Withdrawal

When a person's conduct would otherwise constitute an attempt under Subsection 26.0901 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 defense does not, however, affect the liability of an accomplice who did not join in such abandonment or prevention.

Within the meaning of this Title, 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.

26.0903 Penalty for attempt

A person charged for attempt of an offense of this Title will be punished by the same provision which specifically addresses the offense. The punishment levied for an attempted offense may be a diminishment, by one Class, of the penalty provided for the offense.

26.0904 Accomplices

1. A person may be convicted of an offense based upon the conduct of another person when:
 - a. acting with the kind of culpability required for the offense, he causes the other to engage in such conduct;
 - b. with intent that an offense be committed, he commands, induces, procures, or aids the other to commit it, or, having a statutory duty to prevent its commission, he fails to make proper effort to do so; or

c. he is a co-conspirator and his association with the offense meets the requirements of either of the other subdivisions of this subsection.

A person is not liable under this Subsection for the conduct of another person when he is either expressly or by implication made not accountable for such conduct by the statute defining the offense or related provisions because he is a victim of the offense or otherwise.

2. Unless otherwise provided, in a prosecution in which the liability of the defendant is based upon the conduct of another person, it is no defense that:
 - a. The defendant does not belong to the Class of persons who, because of their official status or other capacity or characteristic, are by definition of the offense the only persons capable of directly committing it; or
 - b. The person for whose conduct the defendant is being held liable has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to the jurisdiction of the court.

Chapter 26.10
Homicide

26.1001 Murder

1. A person is guilty of murder, a Class 4 offense, if, without justification or excuse, he:
 - a. intentionally or knowingly causes the death of another human being;
 - b. causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; or
 - c. acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, any sexual offense, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the

death of any person; except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

- (1) did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof; and
- (2) was not armed with a firearm, destructive device, dangerous weapon, or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury; and
- (3) reasonably believed that no other participant was armed with such a weapon; and
- (4) reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

26.1002 Manslaughter
Any person who recklessly causes the death of another human being is guilty of a Class 4 offense.

26.1003 Negligent homicide
Any person who negligently causes the death of another human being is guilty of a Class 4 offense.

Chapter 26.11

Offenses Against Turtle Mountain Band of Chippewa Indians or Any Agency, Organization Thereof

26.1101 Conspiracy
If two (2) or more persons conspire, to commit any offense enumerated in this Code against either the Tribe or any of its members, or to defraud the Tribe, or any branch thereof in any manner or for any purpose, and one (1) or more of such persons do any act to effect the object of the conspiracy, each shall be guilty of a Class 4 offense.

- 26.1102 Contempt of court
Any person who shall willfully disobey any order, subpoena, warrant or command duly issued, made or given by the Turtle Mountain Tribal Court or any officer thereof shall be guilty of a Class 2 offense. When contempt is committed in the immediate view and presence of a judge, it may be punished summarily.
- 26.1103 Contributing to the delinquency of a juvenile
Any person who shall willfully contribute to the delinquency of a juvenile shall be guilty of a Class 2 offense.
- 26.1104 Cruelty to Animals
Any person who shall torture or cruelly mistreat any animal, or fail to take proper care of any domesticated animal, shall be guilty of a Class 1 offense.
- 26.1105 Disturbing lawful meeting
Any person who without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, shall be guilty of a Class 1 offense.
- 26.1106 Election tampering
Any person who votes more than once at an election, places more than one (1) ballot in the ballot box for the same candidate for office, or issue, or campaigns within one hundred (100) feet of the building containing the polling place, shall be guilty of a Class 1 offense. (See Title 13, Election and Recall)
- 26.1107 Escape
1. A person, without lawful authority, who removes or attempts to remove himself from official detention or fails to return to official detention following temporary leave granted for a specified purpose or limited period, is guilty of escape, a class 1 offense.
2. Escape is a class 3 offense if:
a. The actor uses a firearm, destructive device, or other dangerous weapon in effecting or attempting to effect his removal from official detention;

- b. The actor uses any other force or threat of force against another in effecting or attempting to effect his removal from official detention; or
- c. The person escaping was in official detention by virtue of his arrest for, or on charge of, a felony, or pursuant to his conviction of any offense.

3. Official detention means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, or custody for purposes incident to the foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, but "official detention" does not include supervision on probation or parole or constraint incidental to release.

26.1108 Failure to support dependent persons and abandonment:
Any person who shall, for any reason, refuse or neglect to provide adequate shelter or care, for those dependent upon him or her, including children born out of wedlock, or who shall abandon those dependent upon him or her, shall, be guilty of a Class 2 offense.

26.1109 Failure to send children to school
Any person who, without good cause, shall neglect or refuse to send any children under his care under the age of sixteen (16) years to school shall be guilty of a Class 1 offense.

26.1110 False arrest
Any person who shall willfully and knowingly make, or cause to be made, the unlawful arrest, detention or imprisonment of another person, shall be guilty of a Class 2 offense.

- 26.1111 Forgery
Any person who, with intent to defraud or injure, falsely makes, completes, executes, authenticates, issues, or transfers any writing so that it purports to be the act of another who did not authorize that act is guilty of a Class 2 offense.
- 26.1112 Injury to public peace
Any person who willfully and wrongfully commits an act which grossly disturbs the public peace shall be guilty of a Class 1 offense.
- 26.1113 Killing of animal and leave it lay
Any person who, while hunting, kills an animal and leaves it lay is guilty of a Class 1 offense.
- 26.1114 Littering
It shall be unlawful for a person to willfully deposit any form of waste products within the Turtle Mountain jurisdiction, except in designated waste collection areas. Any person who shall violate this provision shall be guilty of a Class 1 offense.
- 26.1115 Malicious prosecution
Any person who shall knowingly and willfully bring false charges against another person with knowledge at the time of filing that no factual basis for the charge exists shall be guilty of a class 1 offense.
- 26.1116 Operating a Dance Hall for public social dances and other activities
Any person who operates or maintains a public dance hall or activities hall within the Jurisdiction of the Turtle Mountain Tribal Court shall comply with the following:
a. Must possess a valid business license with dance hall permit for each dance activity from the Turtle Mountain Tribal Council;
b. Shall not operate between the hours of 1:00 a.m. and 8:00 a.m. of any day of any week;
c. Shall not operate said dance hall on Sunday, Memorial Day, Good Friday, Christmas Day, or on any state, tribal, county, or other election day affecting the members of this reservation.
Operation shall not be allowed after 6:00 p.m. on Christmas Eve;

- d. Shall employ someone from an auxiliary police force to be present during operation. A private bouncer will not be acceptable to meet the requirement of security. Licensed bars will not be exempted from this provision;
- e. Fraternal and church owned halls shall comply with dance hall closing hours;
- f. Shall display in a conspicuous place a certification from Indian Health Services that the building is safe for the public (i.e. public safety features, fire exits, plumbing, bathrooms, handicapped access);
- g. Any person under the age of 18 years unless accompanied by parents will not be allowed past the hours of 10:00 p.m.;
- h. Non-profit organizations and charitable organizations shall comply with this ordinance;
- i. Shall present proof or liability insurance.

Any person violating subsection (a), (b), (c), (e), (g), and (h) shall be guilty of a class 2 offense. Persons violating subsection (d), (f) and (i) shall be guilty of a class 3 offense.

26.1117 Perjury

Any person, who in any official proceeding of the Turtle Mountain Band of Chippewa Indians, deliberately and falsely swears or affirms or interprets, or shall make a sworn statement or affidavit knowing the same to be untrue, or shall induce to procure another person to do so, shall be guilty of a Class 2 offense.

26.1118 Protection of Law Enforcement Officials of the Turtle Mountain Jurisdiction

Any person who shall assault, resist, impede, intimidate, or interfere with any duly appointed law enforcement official, while engaged in or on account of the performance of his or her duties, shall be guilty of a Class 2 offense.

Any person who shall commit a battery upon any duly appointed law enforcement official, while engaged in

or on account of the performance of his or her official duties, shall be guilty of a class 4 offense.

26.1119 Protection of Tribal officials and employees of the Turtle Mountain Band of Chippewa Indians

Any person who shall assault, resist, impede, intimidate, or interfere with any duly elected or appointed Tribal official, while engaged in or on account of the performance of his or her official duties, shall be guilty of a Class 2 offense.

Any person who shall commit a battery upon any duly appointed tribal official, while engaged in or on account of the performance of his or her official duties, shall be guilty of a class 4 offense.

26.1120 Refusing to aid officer

Any person who shall willfully neglect or refuse, when called upon by an authorized law enforcement official to assist in the arrest of any person or in securing such offender when apprehended or in conveying such offender to the nearest place of confinement shall be guilty of a Class 2 offense.

26.1121 Resisting lawful arrest

Any person who shall willfully and, by force or violence, resist or assist another person to resist a lawful arrest, shall be guilty of a Class 2 offense.

If in the course of such resistance or assistance, a duly appointed law enforcement official incurs any physical injury, the person or persons shall be guilty of a class 4 offense.

26.1122 Unlawful assembly

Whenever three (3) or more persons assemble with intent or with means and preparation to do an unlawful act, but do not act toward the commission thereof, or whenever such persons assemble without authority of law and in such a manner as is adapted to disturb the public peace or excite public alarm, shall be guilty of a Class 1 offense.

26.1123 Party line refusal to surrender- Emergency

Any person who willfully refuses to yield or surrender the use of a party line to another person when the party line is needed by another person requesting it

for the purpose of permitting the other person to report a fire or summon police, medical or other aid in case of emergency, shall be guilty of a Class 1 offense. It is also a Class 1 offense if any person willfully asks for or requests the use of a party line on the pretext that an emergency exists, knowing that no emergency in fact exists.

1. Party line shall mean a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.
2. Emergency shall mean a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

26.1124

Zero Alcohol Tolerance

1. It shall be unlawful for any person under the age of twenty-one (21) years to possess or consume any alcohol beverage in the Turtle Mountain jurisdiction. Any person under the age of twenty-one (21) years shall be deemed guilty of a violation of this provision if that person shall have an alcohol concentration above .00 or one percent by weight at the time of performance of a chemical test.
 - a. It shall be a defense to Section 1 above, if the minor's possession or use of alcohol is related to a cultural or religious practice, including, without limitation, the use or possession of alcohol during any religious or cultural ceremony.
2. A person who violates Section 1 above is guilty of a misdemeanor, and upon conviction or adjudication of guilt, shall be punished by a fine not to exceed two hundred dollars (\$200) and not less than twenty (20) hours nor more than forty (40) hours of community service work, or a combination of fine and community service work as determined by the court.
3. A person who commits a second or subsequent violation of Section 1 above shall be subject to the penalties prescribed in Section 2 above and shall be court ordered to undergo an assessment of alcohol and other drug problems.

- a. The court shall order appropriate supervised treatment or education services in accordance with the clinical alcohol and other drug abuse assessment.
- b. Failure to complete the court-ordered treatment shall result in doubling of the fines and community service, and may order incarceration for a period of time not to exceed thirty (30) days, or any combination thereof, as determined by the court.

26.1125

Regulation on the sale and use of tobacco products by minors

1. Any person (including parents and guardians) who shall sell or furnish to a minor under eighteen (18) years of age, cigarette papers, cigars, snuff or tobacco in any form, shall be guilty of an infraction and shall be ordered to pay a fine of not less than one hundred dollars (\$100) and may be ordered to perform not more than forty (40) hours of community service work, or both such fine and community service.
2. A business establishment which knowingly or negligently allows sales of tobacco products as defined in Subsection (1) to minors under eighteen (18) years of age shall be guilty of an infraction and ordered to pay a fine of five hundred dollars (\$500) for conviction of a first violation. Subsequent violations may result in up to a doubling of the fine and may subject the business owner to revocation of business license.
 - a. All business/establishments must keep tobacco products behind the counter to prevent self service access.
 - b. Compliance checks will be conducted to maintain that businesses/establishments are not selling to minors.
3. As used in this subsection "sell" includes dispensing from a vending machine under the control of an establishment (example: Bowling Alley, Retirement Home, Grocery Stores, Convenient Stores, Restaurants).

4. It shall be a defense to Subsection (1) and (2) if the furnishings of tobacco to a minor was part of a cultural or religious practice, provided: the youth/child who is under the age of eighteen (18) must be supervised by a parent, guardian or elder.

a. As used in this subsection an "elder" is defined as grandparent or religious leaders whom are performing the religious or cultural ceremony.

Chapter 26.12 Sexual Offenses

26.1201 General provision

When the criminality of conduct depends on a child being below the age of sixteen (16), it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than sixteen (16) years of age.

26.1202 Definitions

For the purpose of this chapter:

1. "Deviate sexual act" means any form of sexual Contact with an animal, bird, or dead person.
2. "Object" means anything used in commission of a sexual act other than the person of the actor.
3. "Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the vulva: or the use of an object which comes in contact with the victim's anus, vulva, or penis and the vulva, or between the penis and the anus or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.
4. "Sexual contact" means any touching of the sexual or other intimate parts of the person for the purpose of arousing or satisfying sexual or aggressive desires.

26.1203 Bigamy

1. Any person who willfully and knowingly contracts in a second marriage (or going through the form of second marriage) while the first marriage to the knowledge of the offender, is still existing and not dissolved is guilty of a Class 2 offense. This does not apply or extend to:

- a. a person whose spouse has been absent for five (5) successive years and is believed by him or her to be dead;
- b. a person whose spouse has voluntarily absented himself and has continually remained without the United States for a time of five (5) successive years.
- c. a person whose former marriage has been pronounced void or null by a competent court. The following marriages are incestuous and void:
 - (1) Marriage between parent and children including grandparents and grandchildren of every degree.
 - (2) Marriage between brothers and sisters of the half as well as whole blood.
 - (3) Marriage between uncles and nieces of the half as well as the whole blood.
 - (4) Marriage between aunts and nephews of the half as well as the whole blood.
 - (5) Marriage between first cousins of the half as well as the whole blood.

This section applies to illegitimate as well as legitimate children and relatives.

26.1204 Giving Venereal Disease to Another

Any person who knows or has reason to believe he/she is infected with a venereal disease and infects another person with a venereal disease shall be guilty of a Class 1 offense. The Turtle Mountain Tribal Court shall have authority to order and compel the medical examination and treatment of any person found to be afflicted with any communicable venereal disease.

26.1205 Gross Sexual Imposition

1. Any person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
 - a. He compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
 - b. He or someone with his knowledge has substantially impaired the victim's power to appraise or control his or her conduct by administering or employing without his or her knowledge intoxicants or other means with intent to prevent resistance;
 - c. He knows that the victim is unaware that a sexual act is being committed upon him or her;
 - d. The victim is less than sixteen (16) years old;
or
 - e. He knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his/her conduct.
2. Any person who engages in sexual contact, with another, or who causes another to engage in sexual contact, is guilty of an offense if:
 - a. The victim is less than sixteen (16) years old;
or
 - b. He compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being.
3. An offense under this section is a Class 4 offense if:
 - a. In the course of the offense the actor inflicts serious bodily injury upon the victim, or
 - b. His conduct violates Subdivision (c) of Subsection 1, or

c. The victim is not a voluntary companion of the actor and has not previously permitted him sexual liberties.

Otherwise the offense is a Class 3 offense.

26.1206 HIV and/or Aids

Any person who knows he/she is infected with HIV and/or aids and willfully exposes another to the disease or virus is guilty of a Class 4 offense.

26.1207 Incest

A person who intermarries, or engages in a sexual act with another person related to him within a degree of consanguinity within which marriages are declared incestuous and void as defined in §26.1202 knowing such other person to be within said degree of relationship, shall be guilty of a Class 4 offense.

26.1208 Indecent exposure

1. Any person who:

a. Knowingly exposing one's penis, vulva, or anus in a public place with the intent to annoy or harass another person; and/or

b. Masturbates in a public place, shall be guilty of a Class 1 offense.

26.1209 Prostitution

1. Any person who engages, or solicits with intention to be hired to engage, in sexual activity as a business or is an inmate of a house of prostitution shall be guilty of a Class 1 offense.

2. Business in this Subsection shall mean any transaction of sexual activity in exchange of funds or other thing(s) of value.

26.1210 Facilitation of sexual favors

Any person who shall knowingly promote or facilitate prostitution, or causes another to become engaged in sexual activity for the purpose of prostitution as defined in this Chapter, shall be guilty of a Class 1 offense.

- 26.1211 Sexual act with an incapacitated person
Any person who commits or causes another to commit any act of lewd or indecent sexual conduct with any person being incapacitated or for any other reason is not able to give express and informed consent shall be guilty of a Class 3 offense.
- 26.1212 Prostitution of a child
Any person who provides for prostitution or causes to be prostituted of any person under the age of eighteen (18) commits a Class 4 offense.
- 26.1213 Sexual abuse of a minor
A person who knowingly submits a minor who is less than sixteen (16) years old to sexual contact and the offender is three or more years older than the minor, commits an offense of sexual abuse of a minor. A minor fourteen (14) years of age or younger is incapable of consent to a sexual act. Needs class offense (4)
- 26.1214 Child pornography.
Any person who knowingly films, prints, records, photographs or otherwise produces any obscene matter that contains a visual reproduction of a person under the age of seventeen (17) years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity or other sexual conduct is guilty of a Class 4 offense.

Chapter 26.13
Public Violence

- 26.1301 Prohibiting Fighting
The Tribe Hereby prohibits fighting on the Reservation with the exception of Boxing Matches, and Further that both parties will be charged with the OFFENSE OF FIGHTING, and the penalties for violation of Fighting Offense will be: a maximum fine of five hundred dollars (\$500), and/or six(6) months imprisonment.
- 26.1301 Abduction
Any person who shall willfully take away or detain another person against his will shall be guilty of a Class 4 offense.

26.1302 Abduction by parent

Any parent who willfully takes away or detains their minor child or children without the consent of the custodial parent or person having lawful care or charge of said child shall be guilty of a Class 3 offense.

26.1303 Kidnapping

1. Any person who abducts another or, having abducted, another, continues to restrain him with intent to do the following:
 - a. Hold him for ransom or reward;
 - b. Use him as a shield or hostage;
 - c. Hold him in a condition of involuntary servitude;
 - d. Terrorize him or a third person;
 - e. Commit a felony or attempt to commit a felony; or
 - f. Interfere with the performance of any governmental or political function, is guilty of kidnapping.
2. Kidnapping is a Class 4 offense unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a Class 3 offense.

26.1304 Assault

Any person who shall threaten bodily harm to another person through unlawful force or violence shall be guilty of a Class 1 offense, and may be required to furnish a satisfactory peace bond for one (1) year.

26.1305 Assault & Battery

Any person who shall willfully strike another person or otherwise inflict bodily injury, or who shall by offering violence cause another to harm himself, shall be guilty of a Class 2 offense, and may be required to furnish a satisfactory peace bond for one (1) year.

- 26.1306 Assault resulting in serious bodily injury or with a dangerous weapon
Any person who:
- a. Willfully causes serious bodily injury to another human being; or
 - b. Negligently causes serious bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury, shall be guilty of a Class 4 offense.
- 26.1307 Disorderly conduct
A person who, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creates a risk by:
- a. Engaging in fighting or threatening, or in violent or tumultuous behavior;
 - b. Making unreasonable noise or offensively coarse utterance, gesture or display or addresses abusive language to any person present; or
 - c. Creating a hazardous or physically offensive condition by any act, which serves no legitimate purpose of the actor, shall be guilty of a Class 2 offense.
- 26.1308 Failure to disperse
Where any numbers of persons, armed or unarmed are unlawfully or riotously assembled, law enforcement shall command such persons by going among them or otherwise to disperse immediately. If such persons do not disperse, they shall be guilty of a Class 1 offense. Failure to disperse will justify use of necessary force to accomplish the dispersal.
- 26.1309 Reckless Endangerment
Any person who recklessly does an act, or fails to do an act, which places or may place another person in danger of death or serious bodily injury, shall be guilty of a Class 3 offense.

26.1310 Riots

Any use of force or violence, or any threat to use force or violence, if accompanied by immediate power of execution, by three (3) or more persons acting together and without authority of law, is a riot. Every person guilty of participating in any riot shall be guilty of a Class 2 offense.

26.1311 Threat or Intimidation

Every person who, directly or indirectly, threatens or intimidates any judicial or ministerial officer, juror, referee, arbitrator, umpire, assessor, person authorized to hear or determine any controversy, witness, court interpreter or persons appointed to assist the Court, with intent to induce performance of any act not authorized by law or to omit or delay the performance of any duty imposed upon such person by law is guilty of a Class 2 offense.

26.1313 Restraining Order

Any person who conducts himself or herself in violation of Turtle Mountain Tribal Code Chapter 26 provisions 26.1307 disorderly Conduct, 26.1311 Threat or Intimidation or Title 37 Domestic Violence Code shall be subject to a Temporary Restraining Order. Relief may be sought and granted by the Turtle Mountain Tribal Court irrespective of whether or not the person sought to be restrained has been charged and convicted of the previously enumerated offense. A person who is a victim of any of the previously identified conduct or the parent or guardian of a minor who is a victim of any of the aforementioned conduct may seek a Restraining Order from the Turtle Mountain Tribal Court in the manner provided in this section.

1. The petitioner for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual engaging in the threatening intimidating or disorderly conduct, and allegations sufficient to support the claim that the individual engaged in such conduct. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition. A Temporary Restraining Order may be entered only against the individual named in the

petition. The Turtle Mountain Tribal Court may issue the Temporary Restraining Order without giving notice to the respondent. Unless otherwise terminated by the Turtle Mountain Tribal Court, the Temporary Restraining Order shall remain in effect for thirty (30) days or until the Restraining Order is terminated by order of the Turtle Mountain Tribal Court or made permanent upon conclusion of the mandatory hearing.

2. A copy of the Temporary Restraining Order must be served upon the Respondent in the manner provided in this code. A notice of the time, place and date of hearing must accompany the Temporary Restraining Order at the time of service. The Court may grant a restraining order ordering the respondent to cease or avoid the behavior or to have no contact with the applicant. The Tribal Court must schedule a hearing within thirty (30) calendar days of issuance of the Temporary Restraining Order.
3. A restraining order must contain a conspicuous notice to the respondent providing the penalty for violation of the restraining order. The Penalty for violation of a Restraining Order (Temporary or Permanent) is a Class I offense if the Restraining Order is based on violations of Chapters 26.1307 Disorderly Conduct or Title 37 Domestic Violence Code and is a Class 2 Offense if based on a violation of 26.1311 Threat or Intimidation. For second and subsequent violations of the same restraining order, violation based upon Chapters 26.1307, Disorderly Conduct and Title 37 Domestic Violence, Chapter 3 Criminal and Civil Penalties; other Sanctions is a Class 2 Offense. Second and subsequent violations of a restraining order (Temporary or Permanent) is a Class 3 offense if based upon a violation of 26.1311 Threat or Intimidation.

The Court is authorized to provide other equitable relief available under the Tribal Code as necessary to accomplish the purpose(s) of the Restraining Order.

26.1313 Reckless Endangerment

A person is guilty of the offense if that person creates a physical circumstance or situation that creates a substantial risk of serious bodily injury or death to any other person. The offense is a Class 4

offense if the circumstances created demonstrate an extreme indifference to the value of human life, otherwise it is a Class 3 offense. To satisfy the "creates a physical circumstance or situation" requirement, no actual person need actually be placed in actual jeopardy of receiving serious bodily injury or death but only the potential of such injury had a person been exposed to the circumstance or situation.

26.1314 Harassment

1. A person is guilty of the offense of harassment if, with the intent to frighten, cause significant annoyance, causes undue worry or upset to another, the person:
 - a. Communicates in writing or by telephone a threat to inflict injury to any other person, to any person's reputation, or to any property;
 - b. Makes a telephone call anonymously or in offensively course language;
 - c. Makes repeated calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
 - d. Communicates a falsehood in writing or by telephone and causes another mental anguish.

Harassment is a Class 3 offense for a violation of Subsection (a) otherwise it is a Class 2 offense. The offense of harassment is deemed committed at either the place the phone call or calls are made or received.

26.1315 Menacing

A person is guilty of menacing if he knowingly places or attempts to place another person in fear by threatening him with imminent serious bodily injury. The offense of menacing is a Class 3 offense.

26.1316 Terrorizing

A person is guilty of terrorizing if, with intent to place another in fear for that person's or another person's safety or causes the evacuation of a building, place of assembly, or in reckless disregard of the risk of causing such terror, disruption, or inconvenience, the person:

1. Threatens to commit any crime of violence or act dangerous to human life; or
2. Informs another that a situation dangerous to human life or the commission of a crime of violence is about to occur knowing the information to be false; or
3. Attempts to coerce, rule or control another by threat, violence or intimidation.

Terrorizing is a Class 4 offense. If the violation is based upon subsection (1) of this section, reporting statistics pursuant to Section 26.1411(~~no such section~~) must be complied with.

26.1317 Stalking

Stalking is an intentional course of repeated conduct directed at a specific person that would frighten, intimidate, or harass a person of reasonable sensitivities and serves no legitimate purpose nor is a constitutionally protected activity. Stalking is a Class 4 offense if the person has been previously convicted of violating Section 26.1314, violates a restraining or protection order of the court if the person had notice of the court order or has been previously convicted of violating this Section. Otherwise, a person who violates this Section is guilty of a Class 3 offense.

In any prosecution for violation of this Section, it is a defense that the accused is a licensed private investigator or licensed peace officer acting within the scope of their employment. Should a claim be made that the activity is constitutionally protected, the court shall determine the validity of the claim as a matter of law, and if found valid, shall exclude evidence of the activity.

26.1318 Abandonment of a child

A person commits the crime of abandonment if being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen (18) years, deserts the child in any place with intent to abandon it. Abandonment is a Class 4 offense.

26.1319 Failure to protect a child

A person commits the offense of failure to protect if having legal care or custody of a child under the age of eighteen (18), the person intentionally or knowingly allows another person to inflict serious bodily injury on the minor, allows another to commit sexual abuse of a minor, allows another to prostitute the minor or allows a child to be used in the production of pornographic material. Failure to protect is a Class 4 offense.

26.1320 Restraining Order

Any person who conducts himself or herself in violation of Turtle Mountain Tribal Code Chapter 26 provisions 26.1307 Disorderly Conduct, 26.1311 Threat or Intimidation or Title 37 Domestic Violence, Chapter 3 Code shall be subject to a Temporary Restraining Order. Relief may be sought and granted by the Turtle Mountain Tribal Court irrespective of whether or not the person sought to be restrained has been charged and convicted of the previously enumerated offense. A person who is a victim of any of the previously identified crimes or the parent or guardian of a minor who is a victim of any of the aforementioned crimes may seek a Restraining Order from the Turtle Mountain Tribal Court in the manner provided in this section.

1. The petitioner for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual engaging in the criminal conduct, and allegations sufficient to support the claim that the individual engaged in the criminal conduct. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition. A Temporary Restraining Order may be entered only against the individual named in the petition. The Turtle Mountain Tribal Court may issue the Temporary Restraining Order without giving notice to the respondent. Unless otherwise terminated by the Turtle Mountain Tribal Court, the Temporary Restraining Order shall remain in effect until the Restraining Order is terminated by order of the Turtle Mountain Tribal Court or made permanent upon conclusion of the mandatory hearing.

2. A copy of the Temporary Restraining Order must be served upon the Respondent in the manner provided in this code. A notice of the time, place and date of hearing must accompany the Temporary Restraining Order at the time of service. The Court may grant a restraining order ordering the respondent to cease or avoid the behavior or to have no contact with the applicant. The Tribal Court must schedule a hearing within 21 calendar days of issuance of the Temporary Restraining Order.
3. A restraining order must contain a conspicuous notice to the respondent providing the penalty for violation of the restraining order. The Penalty for violation of a Restraining Order (Temporary or Permanent) is a Class I offense if the Restraining Order is based on violations of Chapters 26.1307 Disorderly Conduct or Title 37 Domestic Violence Code and is a Class 2 Offense if based on a violation of 26.1311 Threat or Intimidation. For second and subsequent violations of the same restraining order, violation based upon Chapters 26.1307, Disorderly Conduct and Title 37 Domestic Violence, Chapter 3 Criminal and Civil Penalties; other sanctions is a Class 2 Offense. Second and subsequent violations of a restraining order (Temporary or Permanent) is a Class 3 offense if based upon a violation of 26.1311 Threat or Intimidation.
4. The Court is authorized to provide other equitable relief as necessary to accomplish the purpose(s) of the Restraining Order including but not limited to the following:
 - a. Evicting the Respondent from the home;
 - b. Transferring the possession of personal property;
 - c. Establishing rules for child visitation;
 - d. Requiring the Respondent to pay fees, expenses, spousal or child support;
 - e. Forbidding the Respondent from possessing a firearm, ammunition, or a deadly weapon; or
 - f. Ordering the Respondent to discontinue prohibited behavior

To order other equitable relief as the Turtle Mountain Tribal Court may deem appropriate

Chapter 26.14
Profitable Crimes

26.1401 Bribery

Any person who shall give or offer any money, or property or services, or anything else of value to another person with corrupt intent to influence another in the discharge of his public duties or conduct and any person who shall accept, solicit or attempt to solicit any bribe as above defined, shall be guilty of a Class 3 offense. Any Tribal Office held by such person shall be forfeited.

26.1402 Burglary

1. Any person who willfully enters or conceals themselves to remain in a building or occupied structure, or a separately secured or occupied portion thereof, when at the time the premises are not open to the public and the actor is not licensed, invited, or otherwise privileged to enter or remain as the case may be, with intent to commit a crime therein, is guilty of burglary, a class 3 offense.

2. Burglary is a Class 4 offense if:

a. The offense is committed at night, and is perpetrated in the dwelling of another; or

b. In effecting entry or while in the premises or in immediate flight there from, the actor inflicts or attempts to inflict bodily injury or physical restraint on another, or menaces another with imminent serious bodily injury, or is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.

26.1403 Disposing of property of an estate

Any person who without proper authority, sells, trades or otherwise disposes of any property of an estate before the determination of the heirs shall be guilty of an offense and upon conviction thereof, shall be guilty of a Class 1 offense.

26.1404 Drawing or uttering instrument on bank without funds or credit

Any person who shall make or draw or utter or deliver any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that he/she has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft or order in full upon its presentation, shall be guilty of a Class 1 offense.

The making, drawing, uttering or delivering of such check, draft, or order as aforesaid, shall be prima facie evidence as against the maker or drawer of knowledge of insufficient funds in or credit with such bank or other depository.

26.1405 Embezzlement

Any person who shall willfully take, or convert to ones own use, the money or property of another, of which the wrongdoer acquired possession lawfully by reason of some office or employment or position of trust, shall be guilty of a Class 3 offense.

26.1406 Extortion

1. A person who purposely obtains property of another by threatening to:
 - a. Inflict bodily injury on anyone or commit any other criminal offense, or
 - b. Accuse anyone of a criminal offense, or
 - c. Expose any secret tending to subject any person to hatred, contempt or ridicule or to impair his credit or business repute, or
 - d. Take or withhold action as an official or cause an official to take or withhold action, or
 - e. Bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act, or
 - f. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense, or
 - g. inflict any other harm which would not benefit the actor, shall be guilty of a Class 3 offense.

- 26.1407 Fraud
Any person who shall by misrepresentation or deceit, or by false interpretation, obtain any money or other property shall be guilty of a Class 3 offense.
- 26.1408 Misbranding
Any person who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person shall be guilty of a Class 2 offense.
- 26.1409 Operation of motor vehicle without Consent of owner
Any person who shall drive, or operate a motor vehicle without the permission of the owner or his authorized agent shall be guilty of a Class 2 offense.
- 26.1410 Robbery
1. Any person who in the course of committing a theft, inflicts or attempts to inflict bodily injury upon another, or threatens or menaces another with imminent bodily injury, is guilty of robbery.
 2. Robbery is a Class 4 offense if the actor fires a firearm or explodes or hurls a destructive device or directs the force of any other dangerous weapon against another. Robbery is a Class 4 offense if the robber possesses or pretends to possess a firearm, destructive device, or other dangerous weapon, or menaces another with serious bodily injury, or inflicts bodily injury upon another, or is aided by an accomplice actually present. Otherwise robbery is a Class 3 offense.
 3. In this section:
 - a. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft, whether or not the theft is successfully completed, or in immediate flight from the commission of, or an unsuccessful effort to commit, the theft.
 - b. Dangerous weapon means a weapon as defined in §26.1801 of this Title or a weapon, the possession of which, under the circumstances indicates an intent or readiness to inflict serious bodily injury.

- 26.1411 Dealing in Stolen Property
Any person who shall receive or conceal or aid in concealing or receiving any property, knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, robbery or burglary, shall be guilty of a Class 2 offense.
- 26.1412 Shoplifting
Any person who shall willfully take possession of any goods, wares or merchandise offered for sale by any store or other establishment with the intention of converting the same to his or her use without paying the purchase price thereof, shall be guilty of a Class 1 offense.
- 26.1413 Theft
Any person who shall willfully and knowingly take the property of another person with the intent to deprive the owner of its use or possession, shall be guilty of a Class 3 offense.
- 26.1414 Theft of television services
1. A person who:
a. knowingly obtains or attempts to obtain television service from another by any means, artifices, trick, deception, or device without payment to the television operator of all lawful compensation for each type of service obtained;
b. knowingly assists or instructs any other person in obtaining or attempting to obtain any television service without the payment to the television operator of all lawful compensation for each type of service obtained or attempted to be obtained; or
c. knowingly tampers, diverts from, or connects to by any means, whether mechanical, electrical, acoustical or other means, any cables, wires or other devices used for the distribution of television without authority from the television operator, shall be guilty of a Class 1 offense.

Chapter 26.15
Destruction of Public and Private Property

- 26.1501 Cutting green timber without a permit
Any person who, without first securing a proper permit, cuts and or removes any standing green timber from an Indian Trust Allotment (except for the personal use of the allottee) or from tribal land, shall be guilty of a Class 1 offense.
- 26.1502 Damage to Public Property
Any person who shall, without proper authority, use or damage any public, Governmental or Tribal property shall be guilty of a Class 1 offense.
- 26.1503 Malicious Mischief
Any person who shall maliciously disturb, injure or destroy any livestock or other domestic animal or property of another, shall be guilty of a Class 2 offense.
- 26.1504 Maintaining a Public Nuisance
Any person who shall permit his property to fall into such condition to be offensive to community moral standards or to injure or endanger the safety, health, comfort, or property of his neighbors, shall be guilty of a Class 1 offense, and may be required to remove such nuisance when so ordered by the court.

Chapter 26.16
Trespassing

- 26.1601 Forcible entry or detainer of lands, buildings or other possessions
Any person who uses, or assists another in using, any force or violence to enter upon, or detain any property owned by the Tribe, any person or other organization, except in the cases and manner prescribed by law, shall be guilty of a Class 2 offense. Imposition of sentencing shall include restitution.

26.1602 Trespass
Any person who shall enter upon the land of another person and shall refuse to go immediately therefrom on the request of the owner or occupant thereof, or who shall willfully and knowingly allow livestock and other domestic animals to occupy or graze on the lands of another, shall be guilty of a Class 1 offense.

26.1603 Trespass at lakes
1. All lakes and surrounding premises, under Tribal jurisdiction, shall be closed from 11:00 p.m. to 1/2 hour before sunrise, each day through out the year.
2. Any person who is found at the lake during the closed hours shall be guilty of a Class 1 offense.
3. Subsections (1) and (2) do not apply to persons occupying a dwelling or guests of such occupants, or other persons acting under the authority of law.

Chapter 26.17
Drug and Alcohol Related Crimes

26.1701 Marijuana
Any person who shall manufacture or have in their possession marijuana or any derivative thereof shall be guilty of a Class 2 offense.

26.1702 Narcotics and Dangerous Drugs
1. Any person who knowingly possesses, sells, trades, transports, gives away, uses or manufactures:
a. Any opium, cocaine, coca leaves, morphine, codeine, heroin, or any derivative thereof, or
b. Any drugs known as hallucinogenic, psychotomimetic, or psychedelics including lysergic acid diethylamide (LSD), mescaline, psilocybin, dimethyltryptamine (DMT), and methydimethoxy methyl-phenylethylamine (STP), or
c. Any drug scheduled as a "controlled substance" under the provisions of Title 21, Chapter 13 of the United States Code, as amended to the date when the offense was committed, is guilty of a Class 4 offense, and is subject to confiscation and seizure of all property used in furtherance

of the offense or purchased with proceeds from the sale of any drug tested in this section or §26.1701.

2. Paragraph (1) of this section shall not apply to any transaction, possession, production, transportation, or use for medical purposes under the prescription or supervision of a person licensed to administer, prescribe, control, or dispense or the prescribed substances in that paragraph, or drugs for medical purposes not FDA approved which will be determined and applicable at the discretion of the Tribal Court system.
3. The use of Peyote for religious or ceremonial purposes shall not be an offense in the Turtle Mountain Jurisdiction.

26.1703

Regulating the sale of alcohol beverages

Any person who shall sell, trade, transport or manufacture any article whatsoever which produces alcoholic intoxication, without first complying with the laws of the Tribe, State of North Dakota and applicable Federal regulations, shall be guilty of a Class 3 offense.

Chapter 26.18

Unlawful Possession or Use of Weapon

26.1800

General Penalty

Any person who violates any provision of this Chapter, for which another penalty is not specifically provided, is guilty of a Class 1 offense.

26.1801

General definitions

1. Dangerous weapon includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any throwing star, nunchaku, or other martial arts weapon, any billy club, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any stun gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

2. Direct supervision of an adult means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. Firearm or weapon means any device which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka or cannon.
4. Gaming site means any room or premises licensed by the attorney general and by the tribal governing body to conduct legal gaming operations.
5. Handgun means any firearm having a barrel less than sixteen (16) inches (40.64 centimeters) long that is not designed to be fired from the shoulder.
6. Plain view means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a ~~gunrack~~ gun rack as long as the handgun is not covered or is in any other way concealed from view.
7. Rifle means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
8. Secured means the firearm is closed into the trunk or non passenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.

9. Short-barreled rifle means a rifle having one or more barrels less than sixteen (16) inches (40.64 centimeters) in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six (26) inches (66.04 centimeters).
10. Short-barreled shotgun means a shotgun having one or more barrels less than eighteen (18) inches (45.72 centimeters) in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six (26) inches (66.04 centimeters).
11. Shotgun means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.
12. Silencer means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
13. Unloaded means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell. Handguns with a removable magazine or clip must have the magazine or clip removed from the firearm if the magazine or clip contains any loaded shells.

Possession of weapons

26.1802 Persons prohibited from possessing firearms

1. A person who has been convicted of a federal crime, state felony or a Class 3 or 4 Tribal offense is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or release from incarceration or probation, whichever is the latter. Violation of this subsection shall be a Class 3 offense.
2. A person who is or has been diagnosed and confined or committed to a hospital or other institution in North Dakota or elsewhere by a court of competent jurisdiction as an insane or incompetent person as defined in §26.0101 of this Title is prohibited from purchasing a firearm or having one in their possession or under their control. This limitation does not apply to a person who has not suffered from the disability in the preceding three years.

Violation of this subsection shall be a Class 1 offense.

3. A person under the age of eighteen years may not possess a handgun except that such a person may, while under the direct supervision of an adult, possess a handgun for the purposes of firearm safety training, target shooting, or hunting. Violation of this subsection shall be a Class 1 offense.

26.1803 Sale of handgun regulated

No person may transfer a handgun to any person who the transferor knows or has reasonable cause to believe is a person prohibited by §26.1802 of this Title from possessing a firearm. Any person who violates this section is guilty of a Class 1 offense.

26.1804 Possession or sale of short-barrel rifle or shotgun

A person, who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun is guilty of a Class 4 offense. This section does not apply to a law enforcement officer who possesses, obtains, receives, sells, or uses a short

barreled rifle or a short-barreled shotgun in the course of, or in connection with the officers official duties, to a member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations who possesses or uses a short-barreled rifle or short - barreled shotgun issued to the member by that organization and while on official duty, or to any person who complies with the National Firearms Act (I.U.S.C. 5801-5872).

26.1805 Possession of firearm or dangerous weapon in liquor establishment or gambling site

1. A person who possesses a firearm or dangerous weapon in an establishment engaged in the retail sale of alcoholic beverages or used as a gambling site is guilty of a Class 2 offense. This section does not apply to:
 - a. A law enforcement officer;
 - b. The proprietor;
 - c. The proprietors employee;
 - d. A designee of the proprietor when the designee is displaying an unloaded firearm or dangerous weapon as a prize or sale item in a raffle or auction.

26.1806 Possession of firearm at a public gathering

A person, without special permission, who possesses a firearm at a public gathering, is guilty of a Class 2 offense. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings.

26.1807 Discharge of firearm within five hundred (500) yards of an occupied structure

A person who discharges a firearm within five hundred (500) yards of an occupied structure is guilty of a Class 1 offense. This section does not apply to the lawful discharge of firearms by law enforcement officers, by citizens in defense of person or

property, or by participants in lawful activities in which discharge of firearms is a recognized part of the activity including but not limited to shooting galleries and ranges.

26.1808 Use of firearm by certain minors prohibited

Any parent, guardian, or other person having charge or custody of any minor under fifteen (15) years of age who permits that minor to carry or use in public any firearm of any description loaded with powder and projectile, except when the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian, is guilty of a Class 1 offense.

26.1809 Illegal firearm ammunition, or explosive materials business

1. A person is guilty of a class 1 offense if the person supplies a firearm, ammunition, or explosive material to, or procures or receives a firearm, ammunition, or explosive material for, a person prohibited by this Title from receiving it if the transferor knows or has reasonable cause to believe that such person is prohibited by §26.1802 of this Title from receiving or possessing it.
2. The case is a Class 4 offense if the actor:
 - a. was not licensed or otherwise authorized by law to handle, transfer, or engage in transactions with respect to the firearm, destructive device, or explosive material; or
 - b. engaged in the forbidden transaction under circumstances manifesting the actors readiness to supply or procure on other occasions in disregard of lawful restrictions.

26.1810 Carrying loaded firearm in vehicle

1. No person may keep or carry a loaded firearm in or on any motor vehicle within the Turtle Mountain Jurisdiction. Any person violating this section is guilty of a Class 1 offense. This prohibition does not apply to:

- a. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organization while possessing the firearm issued to the member by the organization and while on official duty;
- b. A law enforcement officer, except while the officer is engaged in hunting or trapping activities with a rifle or shotgun;
- c. A security guard or private investigator licensed to carry firearms by the attorney general, or the Turtle Mountain Tribe;
- d. Any person possessing a valid special permit issued by the Chief of Police or any person authorized by him.

26.1811 Possessing explosive prohibited
 No person may have in custody, possession, or control, any nitroglycerin, dynamite, or any other dangerous or violent explosive unless the explosive is carried in the prosecution of or to effect a lawful and legitimate purpose. Any person violating this section is guilty of a Class 3 offense.

26.1812 Forfeiture of dangerous weapon or firearm by person arrested and convicted of crime
 Any firearm or dangerous weapon used or possessed while in the commission of a crime involving violence or intimidation must be seized and, upon conviction and by motion, forfeited to the jurisdiction in which the arrest was made or the jurisdiction in which the charge arose. The forfeited firearm or dangerous weapon may be, pursuant to court order sold or traded to other law enforcement agencies, retained for law enforcement use, or destroyed.

26.1813 Prohibited alterations in weapons
 No person may change, alter, remove, or obliterate any mark of identification on any weapon, such as the name of the maker, model, or manufacturer's number or knowingly possess a weapon on which such alterations have been made. Possession of any handgun upon which any such identification mark has been changed, altered, removed, or obliterated creates a rebuttable presumption that the possessor made the alterations.

Handgun

26.1814 Carrying handgun - restrictions - exceptions

1. A handgun may be carried by a person not prohibited from possessing one by §26.1802 of this Title or any other Tribal statute, in a manner not prohibited by section §26.1810 of this Title if:
 - a. Between the hours of one hour before sunrise and one hour after sunset, the handgun is carried unloaded and either in plain view or secured.
 - b. Between the hours of one hour after sunset and one hour before sunrise, the handgun is carried unloaded and secured.
2. The restrictions provided in subdivisions (a) and (b) of subsection 1 do not apply to:
 - a. Any person possessing a valid Turtle Mountain or North Dakota concealed weapons license;
 - b. Any person on that persons land, or in that persons permanent or temporary residence, or fixed place of business;
 - c. Any person while lawfully engaged in target shooting;
 - d. Any person while in the field engaging in the lawful pursuit of hunting or trapping. However, nothing in this exception authorizes the carrying of a loaded handgun in a motor vehicle;
 - e. Any person permitted by law to possess a handgun while carrying the handgun unloaded and in a secure wrapper from the place of purchase to that persons home or place of business, or to a place of repair or back from those locations;
 - f. Any Turtle Mountain law enforcement officer;
 - g. Any law enforcement officer of any state or political subdivision thereof if on official duty within this jurisdiction;
 - h. Any armed security guard or investigator as authorized by the attorney general when on duty or going to or from duty;

- i. Any member of the armed forces of the United States when on duty or going to or from duty and when carrying the handgun issued to the member;
- j. Any member of the national guard, organized reserves, state defense forces or state guard organizations, when on duty or going to or from duty and when carrying the handgun issued to the member by the organization;
- k. Any officer or employee of the United States duly authorized to carry a handgun;
- l. Any person engaged in manufacturing, repairing, or dealing in handguns or the agent or representative of such person possessing, using, or carrying a handgun in the usual or ordinary course of such business;
- m. Any common carrier, but only when carrying the handgun as part of the cargo in the usual cargo carrying portion of the vehicle.

26.1815 Copy of federal license submitted to law enforcement officials

A retail dealer licensed to sell handguns by the federal government shall send a copy of the license, within seven (7) days after receiving it, to the chief of police and the sheriff of the county in which the dealer is licensed to sell handguns.

26.1816 False information prohibited

No person, in purchasing or otherwise securing delivery of a handgun or in applying for a license to carry the handgun concealed, may give false information or other false evidence of the person's identity.

Concealed weapons

26.1817 Definition of Concealed

- 1. A firearm or dangerous weapon is concealed if it is carried in such a manner as to not be discernible by the ordinary observation of a passerby. There is no requirement that there be absolute invisibility of the firearm or dangerous weapon merely that it not be ordinarily discernible. A firearm or

dangerous weapon is considered concealed if it is not secured and is worn under clothing or carried in a bundle that is held or carried by the individual, or transported in a vehicle under the individual's control or direction and available to the individual, including beneath the seat or in a glove compartment. A firearm or dangerous weapon is not considered concealed if it is:

- a. Carried in a belt holster which is wholly or substantially visible or carried in a case designed for carrying a firearm or dangerous weapon and which is wholly or substantially visible;
- b. In a closed trunk or luggage compartment of a Motor vehicle;
- c. Carried in the field while lawfully engaged in hunting, trapping, or target shooting, whether visible or not;
- d. Carried by any person permitted by law to possess a handgun unloaded and in a secure wrapper from the place of purchase to that persons home or place of business, or to a place of repair, or back from those locations; or
- e. A bow and arrow, an unloaded rifle or shotgun, or an unloaded weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon commonly referred to as a BB gun, air rifle, or CO₂U gun, while carried in a motor vehicle.

26.1818 Carrying concealed firearms or dangerous weapons prohibited

No person, other than a law enforcement officer, may carry any firearm or dangerous weapon concealed unless the person is licensed to do so or exempted pursuant to this Chapter.

For purposes of this Chapter, dangerous weapon does not mean a spray or aerosol containing CS (ortho-chlorobenzamalotrile), CN (alpha-chloroacetophenone) or other irritating agent intended for use in the defense of a person.

26.1819 License to carry a firearm or dangerous weapon
concealed

1. The chief of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the chief if the following criteria are met:
 - a. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others or work related needs;
 - b. The applicant is not a person specified in §26.1802 of this Title;
 - c. The applicant has the written approval for the issuance of such a license from the Chief of Police and the Senior Criminal Investigator of the Tribe. The approval by the Chief of Police and the Senior Criminal Investigator may not be given unless applicant has successfully completed a background investigation and has attended a testing procedure conducted pursuant to rules established by the Criminal Investigator. The testing procedure for approval of a concealed weapons license must include an open book test to be given from a manual that sets forth weapon safety rules and the deadly force law of North Dakota, including judicial decisions and attorney general opinions, and a proficiency test consisting of a course of fire to be designated by the Federal Law Enforcement Training Center. The purpose of the proficiency test is only to ensure a minimal level of competency in the loading and unloading of the firearm or dangerous weapon, use of safety devices and basic firearm or dangerous weapon functioning, and minimal accuracy. The agency conducting the testing may assess a charge of up to fifty dollars (\$50) for conducting this testing. The testing procedure is not required for a renewal of a concealed weapons license.

- d. The applicant satisfactorily completes the Bureau of Criminal Investigation application form and has successfully passed a background investigation or criminal records check conducted by that agency.
2. The Chief of Criminal Investigation is required to process the application within thirty (30) days after the completion of the testing portion unless the application is for renewal of a license and in such case, the application must be processed within thirty (30) days after its receipt by the Chief of Criminal Investigation.
3. The Chief of the Bureau of Criminal Investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a background investigation and be accompanied by two sets of classifiable fingerprints. The two sets of classifiable fingerprints are not required for a renewal of a concealed weapons license. The license is valid for three years. The individual shall notify the Chief of the Bureau of Criminal Investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.
4. The Chief of the Bureau of Criminal Investigation may deny an application or revoke or cancel such a license after it has been granted for any material mis-statement by an applicant in an application for the license or any violation of this Title.
5. The applicant may appeal a denial or revocation of this license to the court.

26.1820 Producing license on demand
Every person while carrying a concealed firearm or dangerous weapon for which a license to carry concealed is required, shall have on ones person the license and shall give it to any law enforcement officer for an inspection upon demand by the officer. The failure of any person to give the license to the officer is prima fade evidence that the person is illegally carrying a firearm or dangerous weapon concealed.

26.1821 General penalty
Any person who violates any provision of this Chapter, for which another penalty is not specifically provided, is guilty of a Class 1 offense.

Chapter 26.19
Fires, Regulation and Penalties

26.1901 Setting fires
1. Any person who:
 a. Without authority sets on fire any timber, underbrush, or grass or other inflammable material upon any tribal land within the jurisdiction of the Turtle Mountain reservation, or
 b. Makes a campfire or other fire or causes the same to be made, leaves such fire without having thoroughly extinguished the same and the fire spreads and burns any wood, marsh, or prairie, shall be guilty of a Class 1 offense and shall cover costs of damages which have occurred as a result of the fire.

26.1902 Testifying falsely at Investigation of fire
Any witness at an investigation conducted by the State Fire Marshal or Deputy Fire Marshal and Bureau of Indian Affairs Law Enforcement Services under the provisions of this Chapter, who gives false testimony at such hearing is guilty of perjury and shall be sentenced therefore.

- 26.1903 Misconduct at fires
Every person who, at any burning, interferes with the lawful efforts of any fireman or company of firemen to extinguish the fire, or conducts himself in a manner calculated to prevent the fire from being extinguished or forbids, prevents or dissuades others from assisting to extinguish the fire, shall be guilty of a Class 1 offense.
- 26.1904 False alarm
Any person activating a fire alarm under false pretenses shall be guilty of a Class 1 offense.
- 26.1905 Arson
Any person who starts or maintains a fire or causes an explosion with intent to destroy an entire or any part of a building or inhabited structure of another or a vital public facility, or starts or maintains a fire or causes an explosion with intent to destroy or damage his own real or personal property for the purpose of collecting insurance for the loss, shall be guilty of a Class 4 offense.
- 26.1906 Endangering by fire or explosion
1. Any person who starts or maintains a fire or causes an explosion and thereby recklessly:
a. Places another person in danger of death or bodily injury;
b. Places an entire or any part of a building or inhabited structure of another or a vital public facility in danger of destruction; or
c. Causes damage to property of another constituting pecuniary loss in excess of two thousand dollars (\$2,000), is guilty of a Class 4 offense if the actor places another person in danger of death under circumstances manifesting an extreme indifference to the value of human life, otherwise it is a Class 3 offense.
- 26.1907 Failure to control or report a dangerous fire
Any person who knows that a fire which was started or maintained, albeit lawfully, by him or with his assent is endangering life or a substantial amount of property of another is guilty of a Class 2 offense if he willfully fails either to take reasonable measures

to put out or control the fire when he can do so without substantial risk to himself, or to give a prompt fire alarm.

26.1908 Negligent act resulting in fire

1. Any person who negligently causes a fire to be started in any part of any hotel, motel, rooming house, lodging house, or other place of public abode so as to endanger life or property in any way or to any extent shall be guilty of a Class 2 offense.
2. The Fire Chief shall print and distribute copies of this section and such copies shall be conspicuously displayed in each room of every hotel, motel, rooming house, lodging house, and other place of public abode within the Turtle Mountain Reservation.

26.1909 Fireworks Regulations

1. Fireworks may be sold from June 1st to July 5th,
2. No one under the age of thirteen (13) years old will be allowed to purchase fireworks,
3. Vendors must be inspected by the Fire Department prior to beginning sales,
4. Vendors must have a charged #10 ABC fire extinguisher at their place of business,
5. Vendors must have a "NO SMOKING WITHING 50 FEET" sign posted,
6. Vendors must provide safety brochures with all sales,
7. No sale or use of fireworks within 50' of a gas station or any other bulk flammable storage.
8. Professional firework displays intended for the public must have the Fire Department present;
9. Vendors must be closed at 10:00 p.m., and
10. Penalty for violation is loss of permit and twenty-five dollar \$25.00 fine.