

**Dry Creek Rancheria
Band of Pomo Indians**

Judicial Code

**TITLE 4. CRIMINAL OFFENSES, CRIMINAL
PROCEDURE, AND DOMESTIC RELATIONS**

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CHAPTER 1. CRIMINAL OFFENSES

SECTION 1. General Definitions

Unless a different meaning is clearly apparent from the context, the term:

- (A) "Advisory Jury" means three or four of the oldest members of the Dry Creek Rancheria organized by the court on a case by case basis to give information and assistance to the court.
- (B) "Alarm" means to cause apprehension or fear resulting from the perception of danger.
- (C) "Animal" means any bird, reptile, amphibian, fish, or nonhuman mammal.
- (D) "Any Person" shall be construed so that Dry Creek Rancheria shall exercise jurisdiction only in a manner consistent with federal law, including U.S. Supreme Court holdings limiting the jurisdiction of Tribal Courts.
- (E) "Coerce" means to restrain, compel, or dominate by force or threat.
- (F) "Contact" includes but is not limited to:
 - (1) Coming into the visual or physical presence of the other person;
 - (2) Following the other person;
 - (3) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;
 - (4) Sending or making written communications in any form to the other person;

- (5) Speaking with the other person by any means;
- (6) Communicating with the other person through a third person;
- (7) Committing a crime against the other person;
- (8) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;
- (9) Communicating with business entities with the intent of affecting some right or interest of the other person;
- (10) Damaging the other person's home, property, place of work, or school; or
- (11) Delivering directly or through a third person any object to the home, property, place of work, or school of the other person.

(G) "Deadly Weapon" means any instrument, article, or substance specifically designed for and presently capable of causing death or serious physical injury. A firearm must be loaded (i.e., shell in the firing position or chamber, or in magazine while inside firearm) and be operable to be a deadly weapon.

(H) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious injury.

(I) "Dangerous Weapon" means any instrument, article, or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious injury.

(J) "Dependent Person" means a person who, because of either age or physical or mental disability is dependent upon another to provide for the persons physical needs.

(K) "Exhibition of Fighting" means a public or private display of combat between two or more animals in which the fighting, killing, maiming, or injuring of animals is a significant feature. "Exhibition of Fighting" does not include demonstrations of the hunting or tracking skills of an animal or the lawful use of animals for hunting, tracking, or self protection.

(L) "Firearm" means a weapon by whatever name known, which is designed to expel a projectile by the action of black powder, or smokeless powder, and which is readily capable of use as a weapon.

(M) "Frequents" means repeatedly or habitually visits, goes to, or resorts to.

(N) "Family or Household Member" has the same meaning as in Chapter 3, Section 4(I) of this Ordinance.

(O) "Indian" means any Indian whether or not a member of the Dry Creek Rancheria.

(P) "Law Enforcement Officer" means any person employed by the Tribe, the State of California, or any agency of the federal government as a law enforcement officer.

(Q) "Machine Gun" means a weapon of any description by whatever name known, loaded, or unloaded, from which two or more shots may be fired by a single pressure on the trigger device.

(R) "Official Body" means either the Tribal Council, Board of Directors, or any other Tribal Department or authority of the Dry Creek Rancheria.

(S) "Peace Officer" means a tribal policeman, sheriff, constable, marshal, municipal policeman, and other persons as may be designated by law.

(T) "Permitting" requires that the suspect must have authority to forbid the illegal drug activity involved.

(U) "Person" means a human being, and where appropriate, a Tribe, a public or private corporation, an unincorporated association, a partnership, a government, or a government instrumentality.

(V) "Pistol" means a instrument capable of being concealed upon the person and applies to and includes all firearms having a barrel less than 12 inches in length; also know as a "Revolver."

(W) "Possess" means to have physical possession or otherwise to exercise dominion or control over property.

(X) "Public place" means a place to which the general public has access and

includes but is not limited to hallways, lobbies, and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residences and highways, streets, community centers, schools, places of amusement, parks, playgrounds, and premises used in connection with public passenger transportation.

(Y) "Rancheria" means the Dry Creek Rancheria, and other lands subject to the jurisdiction of the Dry Creek Rancheria Indian Tribe.

(Z) "Reasonable efforts" include the establishment of a system for notice designed to accomplish actual notice to the victim.

(AA) "Repeated" means two or more times.

(BB) "Resist" means the use or threatened use of violence, physical force, or any other means that creates a substantial risk of physical injury to any person.

(CC) "School" means a public or private institution of learning or a child care facility.

(DD) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(EE) "Services" includes labor, professional services, transportation, communication services, (which includes use of telephone, computer and cable television systems), entertainment, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, the supplying of equipment for use, and the supplying of public utility commodities such as gas, electricity, steam, and water.

(FF) "Speaking out" means an act of yelling, screaming, or talking loud enough to drown out the voice of an ordinary person in an attempt to prevent such body from completing business in an orderly manner.

(GG) "Tribal Council" means the Dry Creek Rancheria Tribal Council.

(HH) "Tribal Court" means the Dry Creek Rancheria Tribal Court.

(II) "Tribal employee" means any person employed by the Dry Creek Rancheria.

(JJ) "Tribe" means the Dry Creek Rancheria Band of Pomo Indians.

SECTION 2. Justification

(A) Justification as a Defense. In any prosecution for an offense, justification is a defense which, if raised, the Dry Creek Rancheria must disprove beyond a reasonable doubt.

(B) Use of Physical Force by Peace Officer in Making an Arrest or In Preventing an Escape. Except as provided in Section 1(H), a peace officer is justified in using physical force upon another person only when and to the extent that he/she reasonably believes it necessary:

(1) To make an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unlawful;

(2) To defend himself/herself or a third person from what he/she reasonably believes to be the use or imminent use of physical force while preventing or attempting to prevent an escape.

(C) Use of Deadly Physical Force By Peace Officer in Making An Arrest or in Preventing an Escape. Notwithstanding the provisions Section 1(H), a peace officer may use deadly physical force only when he/she reasonably believes that:

(1) The crime committed by the person was a offense or an attempt to commit a offense involving the use or threatened imminent use of physical force against a person, (e.g., murder, manslaughter, forcible sex offenses, robbery, or offense assault);

(2) The crime committed by the person was kidnapping, arson, escape in the first degree, or any attempt to commit such a crime;

(3) Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the peace officer or another person from the use or threatened imminent use of deadly physical force;

(4) The crime committed by the person was an offense or an attempt to commit an offense and under the totality of the circumstances existing at the time and place, the use of such force is necessary;

(5) The officer's life or personal safety is endangered in the particular circumstances involved.

(D) Duty of Peace Officer When Using Deadly Physical Force.

(1) Nothing in Section (C) above constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he/she is not seeking to arrest or retain in custody.

(2) Before deadly force may be used, if necessary to prevent escape, a peace officer must have probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer, or others, and where practical, some warning must be given.

SECTION 3. Inchoate Crimes

Attempt. Penalty for attempting a crime is generally one degree lower than the penalty for the crime itself. An attempt to commit a crime is committed when a person intentionally engages in conduct which constitutes a substantial step toward the commission of a crime.

Solicitation. Penalty for soliciting a person to commit a crime is generally one degree lower than the penalty for the crime itself. The crime of solicitation is committed when a person, with intent to cause another to commit an offense, commands, or solicits such other person to engage in that conduct.

Conspiracy. Penalty for conspiracy to commit a crime is the same as the penalty for the crime itself. A criminal conspiracy is committed when a person, with intent that an offense or class A offense, be performed, agrees with one or more persons to engage in or cause the performance of such a crime.

SECTION 4. Offenses Against the Tribe, State, and Public Justice

(A) The following are criminal offenses against Dry Creek Rancheria, the State of California, and public justice:

(1) Bribery. The following are offenses of bribery:

(a) Any person, including a member of the Tribal Council or

other tribal official, who shall give, offer to give, receive, or aggress to accept any money, property, or services or anything else of value to or from another person with intent to corrupt or influence another in the discharge of their public duty, action, or decision;

(b) Any person who shall accept, solicit, or attempt to solicit any bribe, as defined in (A)(1) above, shall be deemed guilty of an offense.

(c) Any tribal office, other than a Tribal Council position, held by such person shall be, forfeited. A member of the Tribal Council shall be subjected to the Constitutional provisions to remove such person from office.

(2) Perjury. Any person who shall willfully and deliberately, during a judicial proceeding in the Dry Creek Rancheria Tribal Court, falsely swear and/or interpret, or shall make a sworn statement or affidavit knowing the same to be untrue, or shall induce or procure another person so to do, shall be deemed guilty of perjury.

(3) False Swearing. Making a false sworn statement, knowing it to be false.

(4) Unsworn Falsification. Knowingly making a false written statement to a public servant or tribal employee when applying for any benefit.

(5) Obstructing Governmental Administration. Intentionally obstructing, impairing, or hindering the administration of law or other governmental or judicial function by means of intimidation, force, physical, or economic interference or obstacle.

(a) This section does not apply to obstruction of unlawful governmental or judicial action or to interference with the making of an arrest.

(6) Refusing to Assist a Peace Officer: Any person who shall refuse, by act or omission, to aid a police officer or firefighter of the Bureau of Indian Affairs, Peace Officer of Dry Creek Rancheria in the apprehension or transportation of a person charged with an offense of this chapter of the Criminal Code shall be deemed guilty of an offense.

(7) Resisting Arrest. Intentionally or willfully, by force, or violence, resisting or assisting another person to resist a known peace officer when officer is making a lawful arrest.

(8) Hindering Prosecution. With intent to hinder the apprehension, prosecution, conviction, or punishment of an offense suspect, or profit or benefit from the commission an offense:

(a) Harboring or concealing a person who has committed an offense;

(b) Warning such person of impending discovery or apprehension;

(c) Providing or aiding in providing such person with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;

(d) Preventing or obstructing, by means of force, intimidation, or deception, anyone from performing an act which might aid in the discovery or apprehension of such person;

(e) Aiding such person in securing or protecting the proceeds of the crime.

(9) Simulating Legal Process. Knowingly issuing or delivering any document that in form and substance falsely simulates civil or criminal process.

(10) Criminal Impersonation. Falsely impersonating a public servant by doing an act in such assumed character with the intent to obtain a benefit or to injure or defraud another.

(11) Initiating a False Report. Knowingly initiating a false alarm or report to a fire department, law enforcement agency, or other organization that deals with emergencies involving danger to life or property (i.e. ambulance service).

(12) Giving False Information to Police Officer for a Citation. Knowingly using or giving a false or fictitious name, address, or date of birth to any peace officer for the purpose of issuing or serving the person a citation.

(13) False Arrest. Any person who shall willfully or knowingly cause the false and/or unlawful arrest, detention, or imprisonment of another person shall be deemed guilty of an offense.

(14) Disrupting Public Meeting. Any person who disrupts any public meeting including meetings of the Tribal Council by speaking out without being given the floor to speak by the Chairperson of the official body holding the meeting shall be deemed guilty of an offense.

(15) Failure to Obey Tribal Council Permit. Any person who violates any condition of any permit issued by the Tribal Council or its delegated official shall be deemed guilty of an offense.

(16) Disobedience to Lawful Orders of Court. Any person who shall willfully disobey any order, subpoena, summons, warrant or command duly issued by the Dry Creek Rancheria Tribal Court.

(17) Riot. Participating with five or more other persons in tumultuous and violent conduct and thereby intentionally or recklessly creating a grave risk of causing public alarm.

(18) Disorderly Conduct. With intent to cause public inconvenience, annoyance, or alarm, or recklessly creating risk of such by:

- (a) Fighting, or violent, tumultuous, or threatening behavior;
- (b) Making unreasonable and excessive noise;
- (c) Disturbing any lawful assembly of persons without lawful authority;
- (d) Annoy any public or religious assembly;
- (e) Appearing in a public or private place in an intoxicated manner;
- (f) Obstructing vehicular or pedestrian traffic on a public way;
- (g) Refusing to obey lawful order of the police to disperse from gathering with other persons in a public place;

(h) Initiating or circulating a known false report concerning an alleged or impending fire, explosion, crime, catastrophe, or other emergency;

(i) Creating a hazardous or physically offensive condition by any act which one is not licensed or privileged to do.

(19) Maintaining Public Nuisance. The following are acts of Maintaining Public Nuisance:

(a) Criminal Provisions. Any person who shall set in such a manner, or permit his/her property to fall into such condition as to injure or endanger the safety, health, welfare, or property of his neighbors or the Tribe shall be deemed guilty of an offense.

(b) Civil Provisions. Upon the court finding that property is in such a state of disrepair that it constitutes a serious threat to the health, safety, and welfare to the Tribe or its members or the general public, the court may order the fencing off or destruction of such property by the owner or order such done with all costs of such action to be the responsibility of the person owning such property other than the Dry Creek Rancheria.

(20) Malicious Mischief. Maliciously disturbing, injuring, or destroying any livestock, domestic animal, or other property of another.

(21) Trespass. A person is guilty of trespass if:

(a) He/she knowingly or recklessly enters or remains on property, or knowingly allows his/her livestock to do so, when notice against entry is given by personnel communication, by fencing or other enclosures, or by the posting of signs, may be deemed guilty of an offense; or

(b) A person is guilty of aggravated trespass if he/she knowingly or recklessly enters or remains on the property of another and accomplishes such entry by an act of force or violence, or, if he/she intends to cause or causes annoyance or injury to any person thereon, or if he/she intends to commit or commits another offense thereon, may be deemed guilty of an offense.

(22) Harassment. Intentionally harassing or annoying another person by:

(a) Subjecting such other person to offensive physical conduct;

(b) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;

(c) Subjecting another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm;

(d) Subjecting another to alarm by conveying a telephone or written threat to inflict property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm;

(e) A person who knowingly permits a telephone under his/her control to be used in the ways described in (this section labeled "harassment") also commits harassment.

(23) Telephonic Harassment. Intentionally harassing or annoying another person by:

(a) Causing the telephone of the other person to ring, such caller having no communicative purpose;

(b) Causing such other person's telephone to ring and causing such other person's to answer it, knowing that the caller has been forbidden from doing so by a person exercising lawful authority over the receiving telephone.

(24) Abuse of Venerated Objects. Intentionally abusing a public monument, structure, a place of worship, or burial, or a tribal national or state flag, or other historical, tribal, or religious objects.

(25) Abuse of Corpse. Intentionally abusing a corpse, or disinterring, removing, or carrying away a corpse.

(26) Misconduct with Emergency Telephone Calls. Intentionally refusing to relinquish a party line or public pay telephone after being informed that it is needed for an emergency call; or

(a) Requesting another to relinquish a party line, or public pay telephone to place an emergency call with knowledge that no such emergency exists.

(27) Interfering With Public Transportation. With intent to harass, annoy, or alarm, subjecting the operator of any bus to offensive physical contact when the bus is operated by or under contract to any public body in order to provide public transportation.

(28) Second Degree Intimidation. Because of another person's race, color, religion, or national origin:

(a) Tampering or interfering with such other person's property, having no right to do so, nor reasonable ground to believe that he/she has such right, with the intent to cause substantial inconvenience to the other person;

(b) Intentionally subjecting such other person to offensive physical contact;

(c) Intentionally subjecting such other person or member of his family to alarm by threatening:

i. To inflict serious physical injury upon such other person, or a member of the person's family;

ii. To cause substantial damage to the property of the other person or of a member of the other person's family.

(29) First Degree Intimidation. Because of another person's race, color, religion, or national origin, two or more persons acting together:

(a) Intentionally, knowingly or recklessly causing physical injury to such other person;

(b) With criminal negligence causing physical injury to such

other person by means of a deadly weapon;

(c) Intentionally placing such other person in fear of imminent serious physical injury;

(d) Commit such acts as would violate (A)(28) above, if done by one person acting alone.

(30) Negligently Wounding Another: Unclassified Offense. Wounding another person with a bullet or shot from any firearm or with an arrow from any bow, which results from defendant's failure to use ordinary care under the circumstances.

(31) Pointing Firearm at Another: Unclassified Offense. Being over the age of 12 years, purposely pointing or aiming any loaded or empty firearm at or toward any person within range of the firearm.

(32) Attempting to Use Dangerous Weapon; Carrying Dangerous Weapon With Intent to Use It. Any person attempting to use unlawfully against another person, or carrying or possessing with intent to use unlawfully against another, any dangerous or deadly weapon.

(33) Carrying Concealed Weapon. A person is guilty of carrying a concealed weapon if he/she shall go about in public places armed with a dangerous weapon concealed upon his/her person, or who shall carry in their motor vehicle:

(a) A rifle or pistol with live ammunition in a position to be fired without more than removing the safety and pulling the trigger; Having a blade that projects or swings into position by force of a spring or by centrifugal force and commonly known as a switchblade knife;

(b) Any dirk, dagger, ice pick, sling shot, metal knuckles, or any similar instrument by the use of which injury could be inflicted upon the person or property of any other person.

(c) A person shall be deemed guilty of an offense unless they are in possession of a permit issued by the Tribal Council or its delegated official to so carry such weapon in such condition. The court shall determine whether the weapon is a nuisance to

the public safety and if the weapon is so deemed, the court shall hold a hearing to determine the weapon's fate (destruction, etc.).

(d) This statute does not apply to any peace officer whose duty it is to serve process or make arrests.

(34) Unlawful Possession of Firearms. Knowingly possessing any machine gun not registered under federal law; or

(a) Knowingly carrying any firearm concealed upon the person, without having a license to carry a concealed firearm;

(c) Knowingly carrying concealed and readily accessible about the person within any vehicle which is under the person's control or direction any firearm capable of being concealed upon the person, without having a license to carry such firearm.

(35) Ex-Convict In Possession of Firearms. Prohibits any person Convicted of an offense under the laws of California, any other state, or the United States, from owning, possessing, or having custody of or control over any firearm that is a shot gun, having a barrel less than 18 inches in length, any other firearm having a barrel less than 16 inches in length, any firearm having a total length of less than 26 inches, any firearm designed to be fired other than from the shoulder, or any machine gun.

(36) Ex-Convict in Possession of A Restricted Weapon. Prohibits any person convicted of an offense under the laws of California, any other state, or the United States, from owning, possessing, or having custody of or control over any instrument or weapon having a blade that projects or swings into position by force of a spring or centrifugal force and commonly known as a switchblade knife, or an instrument or weapon commonly known as blackjack, sling shot, sandclub, sandbag, sap glove, or metal knuckles;

(a) This statute does not apply if:

i. At the time of conviction, the offense was made an offense due to the manner of sentence actually imposed;

- ii. The offense was for possession of marijuana;
- iii. The person was convicted of only one offense which did not involve the possession or use of firearms, or switchblade knives, and the person has been discharged from imprisonment, parole, or probation for a period of 15 years prior to the date of the alleged violation of this statute.

(36) Unlawful Possession of Armor Piercing Ammunition. Making or selling, buying or possessing any handgun ammunition, the bullet or projectile or which is coated with Teflon or any chemical compound with properties similar to Teflon and which is intended to penetrate soft body armor, while having the intent that the ammunition be used in the commission of an offense; or

- (a) Carrying any ammunition described above while committing any offense during which the person or accomplice of the person is armed with a firearm.

(37) Possession of Destructive Device or Loaded Firearm In or On Public Building: Unclassified Offense. Prohibits possession of a destructive device or loaded or unloaded firearm on the person in or on a public building.

(38) Discharging Weapon On or Across Highway, Ocean Shore Recreation Area, or Public Utility Facility: Violation. Discharging or attempting to discharge a bow and arrow, air rifle, or any firearm upon or across any highway, public road, or ocean shore or at any public or railroad sign, or any power transmission line, etc. Ocean shore is the land between low tide and the vegetation line.

- (a) Status does not apply to peace officers on duty or to military personnel on military reservation.

(39) Throwing or Shooting At Trains. Knowingly throwing an object at or dropping an object on or discharging a bow and arrow, air rifle, or other firearm at a railroad train or a person or commodity being transported on a train.

(40) Discharging Weapon On or Across Airport Operational Surface. Knowingly or recklessly discharging a bow and arrow, gun, air gun, or any firearm upon or across any airport operational surface.

(41) Unlawful Paramilitary Activity. With intent or knowledge that a firearm, explosive, or incendiary device, or technique capable of causing injury or death will be unlawfully used in a civil disorder:

- (a) Exhibiting, displaying, or demonstrating the use or making of such firearm, explosive, incendiary, or technique;
- (b) Assembling with one or more persons for purpose of training with or practicing with such firearm. etc.

(42) Giving Disease to Another. Any person who infects another person with a venereal disease other than AIDS shall be deemed guilty of an offense; or

- (a) Any person who knowingly or willfully infects another person with AIDS.

(43) Prostitution. Engaging in, or offering, or agreeing to engage in, sexual conduct or sexual contact in return for a fee; or

- (a) Paying or offering or agreeing to pay a fee to engage in sexual conduct or sexual contact.

(44) Promoting Prostitution. Knowingly owning, controlling, keeping, maintaining, renting, or leasing any house, room, tent, or other place for the purpose of prostitution or a prostitution enterprise shall be deemed guilty of an offense; or

- (a) Induces or causes a person to engage in prostitution or to remain in a place of prostitution;
- (b) Receives or agrees to receive money or other property from a prostitution enterprise;
- (c) Institutes, aids, or facilitates an act or enterprise of prostitution.

(45) Compelling Prostitution. A person knowingly:

- (a) Uses force or intimidation to compel another to engage in prostitution;
- (b) Induces or causes one under 18 to become a prostitute;
- (c) Induces or cause spouse, child, or stepchild to engage in prostitution.

(46) Gambling: Any person who participates in, organizes, or attempts to organize any game of chance with cards, dice, or any other device, for money or anything of value shall be deemed guilty of an offense.

- (a) Gambling does not include handgames, bingo, and any gambling activities authorized by the State of California.
- (b) Second Degree Promoting Gambling. Knowingly promoting or profiting from unlawful gambling.
- (c) First Degree Promoting Gambling. Violates (A)(46)(b) above, to the extent that:
 - i. One receives in any one day more than five bets totaling more than \$500.00;
 - ii. One receives from a lottery or numbers scheme money or written records from a person other than a player, or receives more than \$500.00 in one day of money played in the scheme.

(47) Second Degree Possession of Gambling Records. Knowingly possessing any writing, paper, or article:

- (a) Of a kind commonly used in a bookmaking scheme; or
- (b) Of a kind commonly used in a lottery or numbers scheme.

(48) First Degree Possession of Gambling Records. Knowingly possessing any writing, paper, or article of a kind commonly used:

(a) In a bookmaking operation, and representing more than five bets totaling more than \$500.00;

(b) In the operation of a lottery, and representing more than 500 plays of chance.

(49) Possession of A Gambling Device. Any person who knowingly manufacture, sell, transport, place, possess, conduct, or negotiate a transaction affecting or designed to affect ownership, custody or use of:

- (a) A slot machine; or
- (b) Any other gambling device, believing that the device is to be used in promoting unlawful gambling activity.

(B) It is a defense to this charge if the slot machine or gambling device was manufactured prior to 1958, and was not operated for purposes of unlawful gambling.

(C) Sections (A)(46)(47)(48)(49) do not pertain to any Dry Creek Tribal Gaming operation.

SECTION 5. Prohibited Acts Generally

(A) Delivery of Marijuana:

- (1) In any amount for consideration is a Class A offense.
- (2) For no consideration of less than one avoirdupois ounce of the dried leaves, stems, and flowers of the plant Cannabis, family Moraceae, is a Class B offense, except that:

(a) For no consideration of less than five grams of the dried leaves, stems and flowers of the plant Cannabis, family Moraceae, is a violation, punishable by a fine of not more than \$100.00.

(B) Possession of Marijuana:

- (1) Possession of one or more than one avoirdupois ounce of marijuana is a Class A offense.

(2) A person, who knowingly or intentionally possesses less than one avoirdupois ounce of the dried leaves, stems, and flowers of the plant Cannabis, family Moraceae, is guilty of a violation, punishable by a fine of not more than \$100.00.

(C) Prohibited Acts Involving Records and Fraud. To knowingly or intentionally acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

(D) Tampering with Drug Records. If a person knowingly:

(1) Alters, defaces, or removes a controlled substance label affixed by a manufacturer, wholesaler, or apothecary unless an apothecary removes or defaces such a label to fill prescriptions;

(2) Affixes a false or forged label to package or receptacle containing controlled substances;

(3) Makes or utters a false or forged prescription or false or forged official written order for controlled substances;

(4) Makes a false statement in any controlled substance prescription, order, report, or record.

(E) Frequenting A Place Where Controlled Substances Are Used:

(1) A person keeps, maintains, frequents, or remains at a place, while knowingly permitting persons to use controlled substances in such place or to keep or sell them in violation of the Uniform Controlled Substances Act.

(2) Frequenting a place where controlled substances are used is a Class B offense unless the conviction is for knowingly maintaining, frequenting or remaining at a place where one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is found at the time of an arrest under this section, and then it is a violation punishable by a fine of not more than \$100.00.

(F) Maximum sentences for Class A, B, C, D, Unclassified Offense, and Violations:

(1) Class A Offense: One year imprisonment and/or a fine, not exceeding \$5,000.00.

(2) Class B Offense: Six months imprisonment and/or a fine not exceeding \$1,000.00.

(3) Class C Offense: Ninety days imprisonment and/or a fine not exceeding \$500.00.

(4) Class D Offense: Thirty days imprisonment and/or a fine not to exceed \$250.00.

(5) Unclassified Offense: A sentence to pay a fine for an unclassified offense shall be a sentence to pay an amount, to be fixed by the court, as provided in the code defining the offense.

(6) Violation: A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding \$250.00.

SECTION 6. Escape From a Jail or Prison

Any person in the lawful custody of a police officer of the Bureau of Indian Affairs, or a Protection/Peace Officer of Dry Creek Rancheria, or by contract the care of a County, City, or Federal Jail or Prison for any offense convicted in Tribal Court who shall escape or attempt to escape or who shall assist in such escape or attempt to escape shall be deemed guilty of an offense.

(1) Third Degree Escape. Escaping from custody.

(2) Second Degree Escape. Escaping from custody by:

(a) Using or threatening physical force;

(b) Having been found guilty or convicted of an offense and escaping from custody imposed as a result thereof;

(c) Escaping from a correctional facility;

(d) Departing from, absenting from, or failing to return to this

state without authority while under the jurisdiction of the Psychiatric Security Review Board.

(3) First Degree Escape:

(a) Aided by another person actually present, using, or threatening to use physical force to escape from custody or a correctional facility;

(b) Threatening to use or using a dangerous or deadly weapon to escape from custody or a correctional facility.

Aiding Unauthorized Departure means a person not being an inmate aiding a person confined to a juvenile facility to make or attempt to make an unauthorized departure.

Supplying Contraband means:

(1) Knowingly introducing contraband into a juvenile facility, State hospital, or correctional facility;

(2) Knowingly making obtaining, or possessing contraband when confined to a correctional or juvenile facility or state hospital.

SECTION 7. Offenses Against Persons

(A) The following are criminal offenses against persons:

(1) Murder: Class A. Any person who shall unlawfully kill another human being under conditions which the laws of California would deem Murder or Manslaughter or any of its lesser degrees within Dry Creek Rancheria Indian Country on the lands within the State of California shall be deemed guilty of an offense. Any defenses or mitigating factors allowed by the laws of California shall be available to the person so charged if the crime occurred in that state.

(a) Murder is also charged if death to a non-suspect results when suspect is attempting or committing or during the immediate flight from any of the following crimes:

(i) 1st degree arson;

(ii) 1st degree criminal mischief (by means of explosive);

(iii) 1st degree burglary;

(iv) 1st degree escape;

(v) 1st and 2nd degree kidnapping;

(vi) 1st degree robbery;

(vii) Any 1st degree sexual offense;

(viii) Compelling prostitution.

(2) Manslaughter:

(a) First Degree Manslaughter:

(i) Recklessly causing death of another human being circumstances manifesting extreme indifference to the value of life;

(ii) Intentionally causing death of another human being while under the influence of an extreme emotional disturbance.

(b) Second Degree Manslaughter:

(i) Recklessly causing the death of another human being;

(ii) Intentionally causing or aiding another person to commit suicide.

(3) Criminally Negligent Homicide. With criminal negligence, causing the death of another human being.

(4) 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/herself, shall be deemed guilty of battery.

(5) Assault. Any person who shall attempt or threaten bodily harm to another person through the use of unlawful force or violence shall be deemed guilty of assault.

(a) Fourth Degree Assault:

- i. Intentionally, knowingly, or recklessly causing physical injury to another.
- ii. With criminal negligence, causing physical injury to another by means of a deadly weapon.

(b) Third Degree Assault:

- i. Recklessly causing serious physical injury to another by means of deadly or dangerous weapon;
- ii. Recklessly causing serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

(c) Second Degree Assault:

- i. Intentionally or knowingly causing serious physical injury to another;
- ii. Intentionally or knowingly causing physical injury to another by means of a deadly or dangerous weapon;
- iii. Recklessly causing serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

(d) First Degree Assault. Intentionally causing serious physical injury to another by means of a deadly or dangerous weapon.

(e) Assaulting a Police Officer, Range Protection Officer, or Public Safety Officer. Any person who assaults or commits battery, as defined in this chapter, upon any police officer of any

jurisdiction or a Range Protection Officer of Dry Creek Rancheria while such officer is acting within the scope of their authority and in a lawful manner shall be deemed guilty of an offense.

(f) Assaulting Tribal Employee or Official. Any person who assaults or commits battery, as defined in this chapter, upon any tribal employee or Tribal Council Member whether or not such person is assaulted during business hours or while that person is acting within the scope of their authority shall be deemed guilty of an offense.

(6) Menacing. By word or conduct, intentionally attempting to place another imminent serious physical injury.

(7) Recklessly Endangering Another Person. Recklessly engaging in conduct which creates a substantial risk physical injury to another person.

(8) Criminal Mistreatment:

(a) Second Degree Criminal Mistreatment. With criminal negligence and in violation of a legal duty to provide care for another, withholding necessary and adequate food, physical care, or medical attention from that person.

(b) First Degree Criminal Mistreatment. Violating a legal duty to provide care for another person by intentionally or knowingly withholding necessary and adequate food, physical care, or medical attention from that person; or

- (i) Having assumed permanent or temporary care, custody, or responsibility for the supervision of a dependent person, intentionally or knowingly causing physical injury or injuries to the dependent person.

(9) Kidnapping. Any person who shall willfully take away, move, or detain another person against their will or without the consent of the parents or guardians or other persons having legal custody or charge of the person shall be deemed guilty of kidnapping.

(a) Second Degree Kidnapping. With intent to interfere

substantially with another's personal liberty, and without consent or legal authority:

(i) Taking a person from one place to another place;

(ii) Secretly confining another where he/she is not likely to be found.

(iii) This section does not apply to child stealing by a relative when a child is under 16 years of age and the sole purpose is to assume control of the child.

(b) First Degree Kidnapping. Violating (A)(9)(a) above with purpose of:

(i) Compelling someone to pay a ransom;

(ii) Holding victim as shield or hostage;

(iii) Causing physical injury to victim;

(iv) Terrorizing victim or any other person.

(10) Custodial Interference:

(a) Second Degree Custodial Interference. Knowing or with reason to know he has no right to do so, taking, enticing, or keeping a person from the person's lawful custodian with intent to hold the person permanently or for a protracted period.

(b) First Degree Custodial Interference: Violating (A)(10)(a) above, plus:

(i) Taking victim out of the state;

(ii) Exposing victim to substantial risk of illness or physical injury.

(11) Coercion. Compelling or inducing another person to engage in conduct he/she has a right to abstain from, or to abstain from conduct he/she has a right to engage in, by instilling in him/her a fear that if the

demand is not complied with, someone in the future will:

(a) Unlawfully injure some person;

(b) Unlawfully damage property;

(c) Commit some other crime against victim or third person;

(d) Falsely accuse some person of a crime or cause criminal charges to be brought against the person.

(11) Stalking.

(a) A person commits the crime of stalking if:

(i) The person knowingly alarms or coerces another person or a member of that person's family or household by engaging in repeated and unwanted contact with the other person;

(ii) It is objectively reasonable for a person in the victim's situation to be alarmed or coerced by the contact; and

(iii) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's family or household.

(b) Stalking is a Class A offense.

(12) Forgery. Any person who shall, with intent to injure, defraud, falsely sign, execute, or alter any written instrument, or uttering a written instrument known to be forged shall be deemed guilty of forgery.

(a) An instrument may be one of the following:

i. Money, stamps, or other valuable instruments issued by the government;

ii. Stocks, bonds;

iii. Deeds, wills, credit card invoices, or checks, or other commercial instruments;

iv. Public records.

(13) First Degree Criminal Possession of Forged Instrument. Possessing a known forged instrument as described in (A)(12) above, while intending to utter it.

(14) Criminal Possession of A Forgery Device. Making or possessing with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or forging written instruments; or

(a) With intent to use for purposes of forgery, making or possessing any device, apparatus, equipment, or article capable of or adaptable to such forgery use.

(15) Criminal Simulation. With intent to defraud; making or altering any object, in such, as it appears to have antiquity, rarity, source, or authorship that it in fact does not possess; or

(a) With knowledge of its true character and with intent; uttering or possessing an object that is simulated or an imitation.

(16) Fraudulently Obtaining a Signature. Obtaining the signature of a person to a written instrument by knowingly misrepresenting any fact, with intent to defraud or injure another.

(17) Unlawfully Using Slugs. With intent to defraud the supplier of property or a service sold or offered by means of a coin machine, inserting, depositing, or otherwise using a slug in such machine; or

(a) Making, possessing, offering for sale or disposing of a slug with intent to enable a person to use it fraudulently in a coin machine.

(18) Fraudulent Use of Credit Card. Using a credit card, which includes a credit card number, for the purpose of obtaining property or services with the intent to injure or defraud with knowledge that:

(a) The card is stolen or forged;

(b) The card has been revoked or canceled;

(c) For any other reason the use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

(19) Negotiating a Bad Check. Making or uttering a bad check knowing it will not be honored by the drawee bank, (i.e., account closed, or NSF, etc.). It is not necessary that money or property be received. Making or presenting the check is sufficient. No proof of an intent is required.

(20) Misbranding: Any person who shall knowingly or willfully misbrand or alter any brand or mark on any livestock of another person shall be deemed guilty of an offense.

(21) Misrepresentation of Age By A Minor. Being less than a certain, specified age, one knowingly purports to be of any age other than his/her true age with the intent of securing a right, benefit, or privilege which by law is denied to persons under that certain, specified age; or

(a) Being unmarried, one knowingly represents that he/she is married with the intent of securing a right, benefit, or privilege which by law is denied to unmarried persons.

(22) Providing Liquor to Person Under 21 or To Intoxicated Person. Selling, giving, or otherwise making available any alcoholic liquor to any person who is visibly intoxicated, (i.e., drunk); or

(a) Selling, giving, or otherwise making available any alcoholic liquor to a person under the age of 21 years, when not that person's parent or guardian;

(b) Selling, giving or otherwise making available alcoholic liquor to a person with the knowledge that the person to whom the liquor is made available will violate (A)(22) of this statute.

(23) Purchase or Possession of Liquor by Person Under 21; Entry of Licensed Premises by Person Under 21: Violation. Attempting to purchase, purchasing, or acquiring alcoholic liquor by a person under the age of 21 years; or

(a) Having personal possession of alcoholic liquor when under the age of 21 years, unless such minor, is in a private residence accompanied by his parent or guardian, and with such parent's or guardian's consent.

(24) Rape. Any person who shall have carnal knowledge of another person, whether or not his/her spouse, when the person does not consent to such shall be deemed guilty of an offense.

(a) Attempted Rape. Any person who shall attempt to have carnal knowledge of another person, whether or not his/her spouse, when the person does not consent to such but is unable to complete the act of intercourse shall be deemed guilty of an offense

(b) Third Degree Rape. A person having sexual intercourse with a juvenile under 16 years of age.

(c) Second Degree Rape:

(i) A person having sexual intercourse with a juvenile under 14 years of age;

(ii) A person having sexual intercourse with a juvenile of any age who is incapable of consent because of mental defect mental incapacitation or physical helplessness.

(d) First Degree Rape:

(i) A person forcibly compelling a victim of any age to engage in sexual intercourse;

(ii) A person having sexual intercourse with a juvenile under 12 years of age;

(iii) A person having sexual intercourse with his/her sibling, of whole or half blood, a person's children, or step-children, if the victim is under 16 years of age.

(25) Sodomy.

(a) Third Degree Sodomy. Engaging in deviate sexual intercourse with a person under 16 years of age or causing that person to engage in deviate sexual intercourse.

(b) Second Degree Sodomy:

(i) Engaging in deviate sexual intercourse with a person under 14 years of age or causing that person to engage in deviate sexual intercourse

(ii) Engaging in deviate sexual intercourse with a person of any age and the person cannot consent because of mental defect, mental incapacitation, or physical helplessness or causing that person to engage in deviate sexual intercourse.

(c) First Degree Sodomy:

(i) Forcibly compelling or causing a person of any age to engage in deviate sexual intercourse;

(ii) Engaging in deviate sexual intercourse with a person under 12 years of age or causing that person to engage in deviate sexual intercourse;

(iii) Engaging in deviate sexual intercourse with a brother, or sister of the whole or half-blood, or a son or daughter or the spouse's son or daughter, if the victim is under 16 years of age, or causing such person to engage in deviate sexual intercourse.

(26) Second Degree Sexual Penetration With A Foreign Object: Penetration of the vagina, anus, or penis of another, with any object not part of the actor's body, and

(a) Victim cannot consent because of mental defect, mental incapacitation, or physical helplessness;

(b) Victim is under 14 years of age.

(27) First Degree Sexual Penetration With A Foreign Object: Penetration of the vagina, anus, or penis of another, with any object not part of the actor's body, and

(a) Victim is subjected to forcible compulsion;

(b) Victim is under 12 years of age;

(c) The two crimes immediately above do not apply to penetration which is part of a medically recognized treatment, diagnostic procedure, or penetration by a peace officer, or corrections officer, or by medical personnel at the request of such officer in making a search for weapons, contraband, or evidence of a crime.

(28) Second Degree Sexual Abuse. Subjecting another to sexual contact and:

(a) Victim does not consent;

(b) Victim cannot consent because of being under 18 years of age, mental incapacity, mental defect, or physical helplessness.

(c) Affirmative defense for defendant to prove (a) victim's lack of consent due solely to being under 18 years of age, and (b) victim was more than 14 years of age, and (c) defendant was less than 4 years older than victim.

(29) First Degree Sexual Abuse. Subjecting another to sexual contact and:

(a) Victim is under 12 years of age;

(b) Victim of any age is subjected to forcible compulsion;

(c) Subjecting another without consent to sexual intercourse, deviate sexual intercourse, or penetration of the vagina, anus, or penis of another with any object not part of the actor's body.

(30) Contributing to Sexual Delinquency of Minor: A person over 18 years of age having sexual intercourse with an individual under 18 years of age; or

(a) Any person over 18 years of age having deviate sexual intercourse with a person under 18 years of age.

(31) Sexual Misconduct. Any person, regardless of age, having sexual intercourse, or deviate sexual intercourse with a person under 18 years of age.

(32) Public Indecency. Performing one of the following acts in or in view of a public place:

(a) Sexual intercourse;

(b) Deviate sexual intercourse;

(c) Exposing one's genitals with intent of sexually arousing himself/herself or another person.

(33) Bigamy. A person commits the crime of bigamy if the person knowingly marries or purports to marry another person at a time when either is lawfully married.

(34) Incest. Marrying or having sexual intercourse or deviate sexual intercourse with an ancestor, descendent, or brother, or sister of the whole or half-blood, while knowing that they are so related, either legitimately or illegitimately so.

(35) Abandonment of Child. A parent, guardian, or other custodian who deserts, in any place, a child under 15 years of age with intent to abandon him/her.

(36) Child Neglect. A parent or custodian who, with criminal negligence, leaves a child under 10 years of age unattended in, or at any place, for such period of time as may be likely to endanger the health or welfare of such child.

(37) Failure to Support Dependents. A person commits the crime of criminal nonsupport if, being the parent, lawful guardian, or other person lawfully charged with the support of a child under 18 years of age, born in or out of wedlock, the person refuses, or neglects without lawful excuse to provide support for such child.

(38) Child Abuse. Any person who shall cause any child under the age of 18 years to suffer mental, emotional, or physical abuse or who shall fail to secure proper clothing or nourishment for a child in their care, custody, and control, in a manner that is medically threatening to such child.

(39) Failure to Send Children to School. Any person, parent, guardian, or relative, having the care, custody, and control of a child or children under the age of 17, who fails to take proper, efficient, and necessary steps to ensure the child or children are afforded a public education by seeing them off to school and taking proper steps to ensure they remain in school, shall, after the child has missed 8 absences, be deemed guilty of an offense.

(40) Endangering Welfare of Minor. The following are offenses of endangering welfare of a minor or minors:

- (a) Knowingly inducing, causing, or permitting an unmarried person under 18 to view an act of sexual conduct or sadomasochistic abuse;
- (b) Knowingly permitting a person under 18 to enter or remain at a place where unlawful activity involving controlled substance is conducted or maintained;
- (c) Knowingly inducing, causing or permitting a person under 18 to participate in gambling;
- (d) Knowingly selling, or causing to be sold, tobacco in any form to a person under 18;
- (e) Knowingly selling to a person under 18 any device designed to be used for smoking tobacco, marijuana, cocaine, or any controlled substance, including pipes, carburetion tubes, bongs, cigarette rolling papers, and machines, etc.

(41) Posting of Signs Concerning Sale of Smoking Devices: Violation. Failure by a person who sells any of the smoking devices listed in (A)(40) above, to display a sign clearly stating that the sale of such devices to persons under 18 is prohibited by law.

(42) Using Child in Display of Sexually Explicit Conduct. Employing, authorizing, permitting, compelling or inducing a child under 18 years of age to participate or engage in sexually explicit conduct, for any person to observe or to record in a photograph or other visual recording.

SECTION 8. Offenses Against Property

(A) The following are criminal offenses against property:

(1) "Theft". Any person who shall take the property of another person, with intent to permanently deprive the owner or to appropriate property to oneself or to a third person shall be deemed guilty of theft. Theft may be committed in the following ways:

- (a) Taking, obtaining, appropriation, or withholding property of another;
- (b) Wrongfully keeping property that is lost, mislaid, or delivered by mistake;
- (c) Threatening another with future harm so he/she gives up property because of fear of that future harm occurring;
- (d) Deceiving another, by means of a false document, or fraudulent statement to part with his property;
- (e) Receiving, concealing, or disposing of stolen property.

(2) Aggravated First Degree Theft. The person violates Section (A)(1) above - First Degree Theft - with respect to property, other than a motor vehicle used primarily for personal, rather than commercial transportation, and the value of the property in a single, or aggregate transaction is \$10,000.00 or more.

(3) Theft of Lost, Mislaid Property. With intent to deprive the owner of lost, mislaid, or mistakenly delivered property, failing to take reasonable measures to restore the property to the owner.

(4) Theft by Extortion. Any person who shall willfully, by threatening, or compelling another to deliver by instilling fear in him/her, or making false charges against another person, extort or attempt to extort any money,

goods, property, or anything else of any value shall be deemed guilty of extortion.

(5) Theft by Deception. With intent to defraud, obtaining property of another by:

- (a) Creating or confirming another's false impression of law, value, or intent while not believing it himself/herself;
- (b) Failing to correct a false impression of another which he/she previously created or confirmed;
- (c) Preventing another from acquiring information pertinent to the involved property's disposition;
- (d) Selling property without disclosing a lien or other adverse claim against it;
- (e) Promising performance he/she does not intend or knows will not be performed:
 - i. Defendant's intention or belief that a promise would not be performed cannot be established by or inferred from the fact alone that a such promise was not performed.
 - ii. Theft by deception can be committed by means of a bad check (i.e. account closed or NSF).

(6) Theft by Receiving or Receiving Stolen Property. Receiving, retaining, concealing, or disposing any property of another, or aid in concealing of property or receiving any property of another with knowledge or having good reason to know that the property was stolen, embezzled, or obtained by fraud or false pretenses, robbery or burglary, shall be deemed guilty of an offense.

- (a) Actual knowledge or belief that the property was stolen is required to be proven, not merely good reason to know.

(7) Theft of Services. With intent to avoid payment therefore, a person obtains services that are available only for compensation, by force, threat,

deception, or other means to avoid payment for the services.

(8) Fraud. Any person who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures, obtain any money or other property shall be deemed guilty of fraud.

(9) Embezzlement: Any person who shall, having lawful custody of property not his/her own, appropriate the same to his/her own use with intent to deprive the owner thereof of any financial gain achieved shall be deemed guilty of embezzlement.

(10) Unlawful Distribution of Cable Television Equipment. Knowingly manufacturing, importing into Dry Creek Rancheria, distributing, seeking, offering for sale, rental or use, possessing for sale, rental or use, any device designed to make available the unauthorized reception of cable television signals.

(11) Criminal Possession of Rented or Leased Personal Property. Knowingly failing to return rented or leased equipment after written demand; if

- (a) The aggregate total value of equipment not returned is under \$500.00, it is a Class B offense;
- (b) The aggregate total value of equipment not returned is \$500.00 or more it is a Class A offense.

(12) Burglary:

(a) Second Degree Burglary. Entering or remaining, unlawfully, in a building with the intent to commit a crime therein.

(b) First Degree Burglary. Includes violation of Second Degree Burglary Section (A)(12)(a) immediately above, and;

- (i) The building is a dwelling;
- (ii) If in effecting entry or while in a building, or in immediate flight therefrom the person:

(AA) Is armed with a burglar's tool or a

deadly weapon;

(BB) Causes or attempts to cause physical injury to any person;

(CC) Uses or threatens to use a dangerous weapon.

(13) Possession of Burglar's Tools. Possessing a burglar tool with intent to use it or knowing someone else who intends to use it to commit or facilitate a forcible entry into premises or a theft by physical taking.

(14) Criminal Trespass:

(a) Second Degree Criminal Trespass. Entering or remaining in or upon premises without permission. This crime also includes a person who without written permission drives, or rides in a vehicle upon private premises which have been posted. However, emergency or law enforcement vehicles are not prevented from entering onto posted premises.

i. This crime includes a guest or anyone with the guest, who intentionally remains unlawfully in a transient lodging (e.g., hotel, inn, or rented condominium), after the departure date of the guest's reservation without approval.

(b) First Degree Criminal Trespass. Entering or remaining unlawfully in a dwelling.

(c) Criminal Trespass While in Possession of A Firearm. Entering or remaining unlawfully in or upon premises while in possession of a firearm.

(15) Robbery. Any person who shall take from any other person any money, or property of any value, with the intent to permanently deprive the owner or possessor thereof, by threat of violence or with the use of any weapon shall be deemed guilty of an offense.

(a) Third Degree Robbery. In the course of committing or attempting to commit theft, using or threatening the immediate

use of physical force upon another person with intent to:

(i) Prevent or overcome resistance to his unlawful taking of property;

(ii) Prevent or overcome resistance to his keeping property immediately after the unlawful taking;

(iii) Compel another to deliver property or to engage in some other conduct which might aid the theft.

(b) Second Degree Robbery. Violation of Section (A)(15)(a) above, plus:

(i) Representing by work or conduct that he is armed with what purports to be a deadly or dangerous weapon;

(ii) Is aided by another person actually present.

(c) First Degree Robbery. Violation of Section (A)(15)(a) above, plus:

(i) Is armed with a deadly weapon;

(ii) Uses or attempts to use a dangerous weapon, or causes, or attempts to cause, serious physical injury to any person.

(16) First Degree Arson. Intentionally damaging another's protected property by starting a fire or causing an explosion; or

(a) Intentionally damaging any property, including his/her own, or another's by fire or explosion and such acts recklessly places another person in danger of physical injury or protected property of another in danger of damage.

(17) Reckless Burning. Recklessly damaging another's property by fire or explosion.

(18) Criminal Mischief:

(a) Third Degree Criminal Mischief. Tampering or interfering with another's property, when he/she has no right to do so, nor reasonable ground to believe that he/she has such right, with intent to cause substantial inconvenience to owner or to another person.

(b) Second Degree Criminal Mischief. Intentionally damaging or destroying another's property, while having no right to do so, nor reasonable ground to believe he/she has such right:

- i. In an amount over \$500.00;
- ii. By means of an explosion;
- iii. The property is a livestock animal;
- iv. The property belongs to a public utility, railroad, or public transportation facility used in direct service to the public.

(19) Tampering with Cable Television Equipment. Knowingly tampering or otherwise interfering with or connecting to by any means any cable, wire, or other device used for the distribution of cable television service, without authority of the provider of such service; or

(a) Knowingly permitting another person to tamper or otherwise interfere with, or connect to by any means any cable, wire, or other device used for the distribution of cable television service, such tampering, interfering or connecting being upon premises under the control of such first person or intended for the benefit of such first person, without authority of the provider of such service.

(20) Computer Crime. Any person who knowingly and without authorization uses, access, or attempts to access, or alters, damages, or destroys, any computer system, computer network, or any computer software, program documentation, or data contained in such computer, computer system, or computer network, commits computer crime.

(21) Offensive Littering. A person commits the crime of offensive littering if the person intentionally creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property.

(22) Endangering Aircraft:

- (a) Knowingly throwing object at or dropping object on aircraft;
- (b) Knowingly discharging bow and arrow, gun, airgun, or firearm at or toward aircraft;
- (c) Knowingly tampering with aircraft, aircraft equipment, or parts so as to impair safety or operation without consent;
- (d) Knowingly placing or causing to be discharged any spring gun or explosive with intent to damage or discourage operation of any aircraft.

SECTION 9. Offenses Against Animals

(A) The following are criminal offenses against animals:

(1) Animal Abuse in The Second Degree. Except as otherwise authorized by law, a person intentionally, knowingly, or recklessly causes physical injury to an animal, mistreats or tortures an animal, or fails to feed an animals under their care and custody.

(2) Animal Abuse in the First Degree. Except as otherwise authorized by law, a person intentionally, knowingly, recklessly:

- (a) Causes serious physical injury to an animal;
- (b) Cruelly causes the death of an animal.

(3) Animal Neglect In the Second Degree. Except as otherwise authorized by law, a person intentionally, knowingly, recklessly, or with criminal negligence, fails to provide minimum care for an animal in such person's custody or control.

(4) Animal Neglect In the First Degree. Except as otherwise authorized

by law, a person intentionally, knowingly, recklessly, or with criminal negligence:

- (a) Fails to provide minimum care for an animal in such person's custody or control;
- (b) Such failure to provide care results in serious physical injury or death to the animal.

(5) Animal Abandonment. Intentionally, knowingly, recklessly, or with criminal negligence leaving a domesticated animal at a location without providing for the animal's continued care.

(6) Involvement In Animal Fighting: A person commits the crime of involvement in animal fighting if the person:

- (a) Owns or trains an animal with the intention that engage in an exhibition of fighting;
- (b) Promote, conducts, participates in or is present as a spectator at an exhibition of fighting or preparations thereto;
- (c) Keeps or uses, or in any way is connected with or interested in the management of, or receives money for the admission of any person to any place kept or used for the purpose of an exhibition of fighting;
- (d) Knowingly suffers or permits any place over which the person as possession or control to be occupied, kept or used for the purpose of an exhibition of fighting.
- (e) Nothing in this section applies to or prohibits any customary practice of breeding or rearing game cocks even though those cocks may be subsequently used in cock fighting exhibitions outside the territorial jurisdiction of the Dry Creek Rancheria.

(7) Dog Fighting: Class A. A person commits the crime of dog fighting if the person knowingly does any of the following:

- (a) Owns, possesses, keeps, breeds, trains, buys, sells, or offers to sell a fighting dog, including but not limited to, any

advertisement by the person to sell such a dog.

(b) Promotes, conducts, or participates in, or performs any service in the furtherance of, an exhibition of dog fighting, including but not limited to, refereeing a dog fight, handling of dogs at a dogfight, transportation of spectators to a dogfight, organizing a dogfight, advertising a dogfight, providing or serving as a stakes holder for any money wagered on a fight.

(c) Keeps, uses, or manages, or accepts payment of admission to, any place kept or used for the purpose of dog fighting.

(8) Participation in Dog Fighting: Class B. A person commits the crime of participation in dog fighting if the person knowingly:

- (a) Attends or has paid admission at any place for the purpose of viewing or betting upon a dogfight.
- (b) Advertises or otherwise offers to sell equipment for the training and handling of a fighting dog.

CHAPTER 2. CRIMINAL PROCEDURE

SECTION 1. Scope of the Rules

- (A) These rules shall govern the procedure in all criminal proceedings in the Dry Creek Tribal Court and all preliminary and additional procedures as specified herein.
- (B) Every proceeding in which a person is charged with an offense or crime and brought to trial therefore is a criminal proceeding.
- (C) These rules shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unjustifiable expense, and delay in the just determination of criminal proceedings.

SECTION 2. Authority and Basis of Decisions

(A) In cases otherwise properly brought before the Dry Creek Rancheria Tribal Court and Court of Appeal decisions on matters of both substance and procedure will be based, in sequence, upon the following:

- (1) The Article of Association of the Dry Creek Rancheria;
- (2) The Indian Civil Rights Act, 25 U.S.C. Sect. 1302 et. Seq.;
- (3) Ordinances and Codes of the Dry Creek Rancheria;
- (4) Resolutions of the Dry Creek Rancheria;
- (5) The customs, traditions, and culture of Dry Creek Rancheria;
- (6) Laws, rules, and regulations of the United States, the State of California, other states, and Indian Tribes, and cases interpreting such laws, rules, and regulations; and
- (7) The Common Law.

(B) The Dry Creek Tribal Court and Courts of Appeals shall not recognize or apply any federal, state, or common law, rule, or procedure which is inconsistent with either the spirit or the letter of either the Articles of Association, approved ordinances, codes, resolutions, or with the customs, traditions or culture of Dry Creek Rancheria, unless otherwise required by Federal Law.

SECTION 3. Preliminary Provisions

(A) Prosecution of Offenses.

- (1) No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt in open court, by a court of competent jurisdiction. No incarceration or other disposition of one accused but not convicted of an offense, under these rules shall be deemed, a punishment.
- (2) All criminal proceedings shall be prosecuted in the name of the Dry Creel Rancheria as Plaintiff, against the person charged with an offense, referred to as the Defendant.

(B) Rights of the Defendant. In all criminal proceedings the defendant shall have the following rights:

- (1) To appear and defend in person or by counsel:

(a) The Defendant has the right to represent himself/herself or be represented by an attorney or any other person admitted to practice before the Dry Creek Rancheria Tribal Court, but no Defendant shall have the right to have a professional counsel provided at the Tribe's expense. However, the Presiding Judge may order such fees to be paid, if it is determined to be necessary to protect that persons civil rights in a criminal or civil matter, and the Court or Tribal Council determined such funds are available. The determinations will be on a case by case basis.

(b) To be informed of the charges against him/her and to have a copy of the complaint.

(c) To testify in his/her own behalf, or to refuse to testify about the charges against him/her; provided, however, that once the defendant takes the stand to testify to any matter relevant to the immediate proceedings against him/her, he/she shall be deemed to have waived all right: to refuse to testify in that criminal proceeding.

(d) To confront and examine all witnesses against him/her, subject to the rules or evidence.

(e) To compel by subpoena the attendance of witnesses in his/her own behalf.

(f) To have a speedy and public trial by an impartial judge or jury.

(g) The right to appeal any final order, commitment, or judgment.

(h) To prevent his/her present spouse from testifying against him/her, except:

- (i) In any case when the offense charged is alleged to have been committed against the spouse, or the children of either the spouse or the defendant, or against the marital relationship.

(ii) Any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.

(2) Not to be twice put in jeopardy for the same offense by the Dry Creek Rancheria Tribal Court or the State of California who under Public Law 280 has concurrent jurisdiction.

(C) Limitations.

(1) A complaint shall be filed within the periods specified following the commission of an offense:

- (A) Class A offenses within three years;
- (B) Class B Offenses within two years;
- (C) Class C Offenses within one year;
- (D) Class D offenses within one year;
- (E) Class E unclassified offenses within six months;

(2) The period of limitations shall begin upon the commission of the offense. The period begins to run on the date when the offense occurred or the date when any member of the Dry Creek Rancheria Law Enforcement Division learned of such offense, or forever thereafter be bared. Provided, that the prosecution of the offense by a separate sovereign shall toll this statute for the duration of that proceeding, including all appeals.

(D) The Complaint.

(1) The prosecution for a criminal violation of the Dry Creek Rancheria Law shall be initiated by a written complaint. Each complaint shall contain the name of the defendant, a short description of the facts constituting the offense charged, and the date, time, and place the offense occurred.

(2) No complaint shall be valid unless signed by the complainant or tribal prosecutor and witnessed by a tribal judge, court clerk, or notary public, except in cases where a tribal police officer has issued a citation in lieu of arrest.

(3) No minor omission or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

(E) Arrest/Hot Pursuit.

(1) No police officer shall arrest any person for any offense defined by this Code or by federal law, except when the offense shall occur in the presence of the arresting officer or he shall have probable cause to believe that the person arrested has committed an offense, or he/she shall have a warrant commanding him to apprehend the person.

(2) Any police officer who observes any person within the Tribe's jurisdiction, as provided by the Dry Creek Rancheria Tribal Court Rules of Procedure, committing an offense defined by this Code or by state or federal law or who has probable cause to believe that the person has committed an offense; may pursue and capture the person or seize and impound the property in his possession if he attempts to flee the geographical jurisdiction of the Dry Creek Rancheria.

(F) Warrant or Summons.

(1) Except when a citation is issued under these rules, upon the issuance of a complaint, a warrant of arrest, or a summons shall issue to bring the named defendant before a Judge of the Dry Creek Rancheria Tribal Court.

(2) A summons shall name the defendant, the offense charged, and order the defendant to appear before a Tribal Court Judge within ten (10) days from the date of service or within such other time as is provided on the summons to enter a plea to the charge. If a defendant fails to appear in response to the summons, a warrant of arrest shall be issued.

(3) Warrants and summons may be served by any Tribal Police officer or any person over the age of eighteen (18) years designated to perform that function by the Chief of Police or a Tribal Court Judge.

(a) Service may be made anywhere concurrent with the Tribal Court's civil personal jurisdiction..

(b) The date, time, and place of service or arrest shall be endorsed on the warrant or summons along with the name of the

person serving it. A copy will be left, with the person served and a copy shall be returned to the Court.

(c) In the event a person is arrested pursuant to a warrant issued under this section, the officer need not have the warrant in his possession at the time of arrest, but if he doesn't he shall notify the defendant that a warrant has been issued and the nature of the charge, and shall provide the defendant with a copy of the warrant and complaint no later than the time of arraignment.

(d) If a defendant refuses service of a summons or if the defendant's whereabouts remains unknown after a reasonable search an arrest warrant shall issue.

(G) Search Warrants.

(1) Every judge of the Tribal Court shall have authority to issue warrants for search and seizure of premises and property of any person under the jurisdiction of the Court. However, no warrant of search and seizure shall be issued except upon a presentation of a written or oral complaint based upon probable cause, supported by oath or affirmation and charging the commission of an offense against the Tribe. No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and seized and bears the signature of a judge of competent jurisdiction. Service of warrants of search and seizure shall be made by an officer.

(2) An officer may search or seize property without a warrant in circumstances under which warrantless searches are permitted by federal criminal law.

(H) Citations, Contents, Effects, and Procedures.

(1) Whenever a person is arrested for a violation of Dry Creek Rancheria Tribal law, the arresting officer, or any other officer, may serve upon the arrested person a citation and notice to appear in Court, in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the officer may consider the following factors:

(a) Whether the person has identified himself/herself

satisfactorily;

(b) Whether detention appears reasonably necessary to prevent imminent bodily harm to himself/herself or to another, injury to property, or breach of the peace;

(c) Whether the person has ties to the Tribes or is a local resident, so as to provide reasonable assurance of his appearance before the Court, or whether there is substantial likelihood that he will refuse to respond to the citation;

(d) Whether the person previously has failed to appear in response to a citation issued pursuant to this section or to other lawful process of the Court.

(2) The citation written to the offender by the officer shall include the name of the person, his/her address, the date of birth and sex, the date, time and place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person to sign a promise to appear.

(3) The citation shall also state the time and place at which the person is to appear in Court to hear the charges against him/her and post bail, which shall be not less than 72 hours after the date of the citation, nor more than 15 days after the date of citation.

(4) If a defendant fails to appear, the judge may issue a warrant of arrest and may order any bail deposited by the defendant as hereinafter set forth forfeited.

(I) Arraignment.

(1) As soon as reasonably possible after arrest but not more than twenty-four (24) hours thereafter excluding Saturdays, Sundays, and holidays or within the period designated on a summons, the defendant shall appear or be brought before a Tribal Court Judge, and the defendant shall be advised of his/her right to counsel, and his/her rights under the Indian Civil Rights Act of 1968, USCA 25-1302. If the defendant desires but does not presently have counsel, he/she will be given a reasonable time to secure counsel at his/her own expense, before entering his/her plea.

(2) At that time, the complaint will be read to the defendant and the defendant will be asked to enter a plea.

(3) The defendant will enter a plea or the Court will enter one for him/her, then he/she will be advised regarding bail or sentencing; whichever is appropriate.

(4) If the defendant has not received a copy of the complaint, one will be given him/her.

(J) Commitment Orders.

(1) No person shall be detained or jailed under this code for a period longer than 36 hours, exclusive of Saturdays, Sundays, and holidays, unless a commitment order signed a judge has been issued.

(2) A temporary commitment order may be issued pending charges or investigation of charges.

(3) A final commitment order shall be issued for persons jailed as a result of a sentence by the Court.

(4) Dry Creek Rancheria will jail all detainees at County or State jails or prisons by agreement with the County or State.

(K) Joinder of Offenses and Defendants.

(1) Two or more offenses may be charged in the same complaint in a separate count for each offense if the offenses are of the same character or based on the same act or transaction or if they constitute part of a common scheme or plan.

(2) Two or more defendants may be charged in the same complaint if it is alleged that they have taken part in the same act or transaction constituting the offense or offenses.

(3) Such defendants may be charged in one or more counts together or separately but all need not be charged on each count.

(L) Pleas.

(1) A defendant may plead guilty, not guilty, or no contest. The Court will not accept a guilty plea without first determining that the defendant made the plea voluntarily with an understanding of the charges against him/her and the possible penalties. If the defendant refuses to plead or if the Court refuses to accept a guilty plea, the Court shall enter a plea of not guilty. The Court shall not enter a judgment on a guilty plea unless there is a factual basis for the plea.

(2) The defendant, with the consent of the prosecuting attorney and the Court, may plead guilty to any lesser offense included in the complaint or to any lesser degree of the offense charged.

(M) Time of Trial.

(1) When the defendant is brought before the judge upon a warrant of arrest, the cause shall be set for trial, within 90 days unless continued for cause or at the request of the defendant. Bail shall then be set in accordance with the section on Bail, Bonds, and Fines under these Rules.

(2) When the defendant is summoned before the judge pursuant to a citation as provided herein, the defendant shall appear on the date indicated on the citation to hear the charges against him/her, post bail, enter a plea, and be assigned a trial date. Trial shall be set within 90 days unless continued for cause or at the request of the defendant.

(3) A defendant may post bail, enter a plea, and request a trial date prior to the return date or the citation if the defendant so desires, provided, that bail or other bond satisfactory to the judge is posted. A trial date shall be set within 90 days of the return date on the citation unless continued for cause or at the request of the defendant.

(4) Provided, a defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment.

(N) Bail and Bonds.

(1) Except as provided herein, every person charged with any offense before the Court may be admitted to bail. Bail shall be by cash deposit or by assurance of two reliable members of the Dry Creek Rancheria who

reside within the boundaries of the Tribe's geographical jurisdiction who shall execute an agreement in compliance with the form provided therefore to the effect that they will pay any bail forfeited. In no case shall the bail specified in the agreement exceed twice the maximum penalty set by the section of the Dry Creek Tribal ordinance for the offense for which the accused has been charged. The cash or bond agreement shall be executed before the clerk or any bonded employee authorized by the Court to accept bail. All such bonds shall be promptly filed with the clerk.

(2) In lieu of bail, a person charged with any offense may be released on his/her personal recognizance ("PR") without posting bail or bond, pursuant to the discretion of the judge. In determining whether to grant PR, the judge may consider the following factors:

(a) Whether such person has identified himself/herself satisfactorily;

(b) Whether detention appears necessary to prevent imminent bodily harm to such person or to another, injury to property, or breach of the peace;

(c) Whether the person has ties to the Tribe or is a local resident, so as to provide reasonable assurance of his appearance before the Court, or whether there is substantial likelihood that he/she will refuse to appear for trial; and

(d). In any case, to secure his/her release, the person must give written promise to appear in Court as required by the citation.

(3) The Chief Judge may establish a bail schedule for all offenses under Dry Creek Rancheria Tribal law. Any person arrested and taken into custody for violation of such code may be released upon posting the specified bail with the clerk, or other person authorized by the Court to receive bail, unless released on personal recognizance or detention is ordered by the Court.

(4) The judge may deny a person release on bail if it appears reasonably certain that the person will pose a serious threat to the safety and well-being or himself/herself, the Tribe, or the public, if released, or if there is a substantial likelihood that the person will not appear or trial.

(O) Fine Schedule. The Chief Judge may also establish a schedule for fines for specified violations of this Code, within the limits prescribed by this Code and the Section establishing the offense.

(P) Pleadings and Pre-Trial Motions; Defenses and Objections.

(1) Pleadings in criminal proceedings shall consist of the complaint and the plea of guilty, not guilty, or no contest. All other pleas and motions shall be made as follows:

(a) All defenses or objections capable of determination other than at trial may be raised by motion before trial.

(b) Defenses and objections based on defects in the complaint other than it fails to show jurisdiction in the Court or fails to charge an offense may be raised only by a pre-trial motion or it shall be deemed waived, unless the Court on a showing of good cause grants relief from the waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses, or noted by the Court on its own motion, at any stage of the proceedings.

(c) Pre-trial motions shall be made in writing and filed with the Court at least five (5) working days before the trial date. The motions will be argued before trial on the trial date unless the Court directs otherwise.

(d) If a motion is decided against the defendant, the trial shall proceed as scheduled. If a motion is decided for the defendant, the Court shall proceed or enter judgment as is appropriate.

(Q) Discovery and Inspection.

(1) The Prosecutor and/or the tribal police, shall upon request, allow the defendant or his/her representative to inspect and copy any statements or confessions, or copies thereof, made by the defendant which are reasonably obtainable or in their possession or control. They shall also make available copies of reports of physical, mental, or scientific tests or examinations relating to or done on the defendant.

(2) The defendant or his/her representative shall present to the prosecutor and the Court written notice at least five (5) working days before trial the

names of any witnesses they intend to call to provide an alibi for the defendant. Failure to provide this notice will bar the defense from using the witnesses unless it can be shown that prior notice was impossible or that no prejudice to the prosecution will result, in this case the Court may order the trial delayed or make such orders as will tend to assure a just determination of the case.

(R) Subpoenas.

(1) Any party to a proceeding before the Tribal Court shall have the right to request the Court to issue a subpoena to compel witnesses to appear in court on his/her behalf.

(2) Upon the request of a party or his/her representative, the Court shall issue a subpoena which commands a named person to appear in court and/or to bring certain evidence or documents to court.

(3) Every subpoena commanding a witness to appear shall be in writing and shall include the name of the court, the names of the parties, the time and place the witness must appear and a clear and detailed description of any documents or evidence which the witness is required to bring.

(4) A subpoena issued as provided in this rule shall be delivered to the witness by a person designated by the Court for that purpose. The subpoena may be delivered either by giving it to the witness directly or by leaving it at the witness's residence or place of employment with a person at least fourteen (14) years old who lives or works there.

(5) A person who serves a subpoena on a witness shall promptly file with the Court a copy of the subpoena and a signed written statement describing where, when, how, and to whom service was made.

(6) The failure of a witness to obey a subpoena shall be grounds for holding the witness in contempt of court.

(7) The Tribal Council may establish witness fees. The Court may order witness fees, if any are paid, to be assessed as costs in criminal actions and appeals.

SECTION 4. Trial

(A) Judge or Jury Trial.

(1) All trials of criminal offenses shall be by the Court without a jury unless the defendant files a request for a jury trial at his/her arraignment or no later than two (2) weeks prior to the date set for trial.

(2) The right to a jury trial is limited to criminal prosecutions in which the offense is punishable by imprisonment.

(3) In a case tried without a jury, the judge shall determine both questions of law and of facts and shall make a finding of guilt or innocence. A judge shall upon the request, of either party, make specific findings which may be embodied in a written decision.

(B) Juries.

(1) Members of the Dry Creek Rancheria who are at least 18 years of age are eligible to serve as jurors. However, no person shall be eligible to sit on a jury in any case in which he/she has a direct interest or is related to a party by blood or marriage in the first or second degree. Law enforcement officers and court personnel are not eligible to serve as jurors.

(2) When a defendant asks for a jury, the Court Clerk shall draw the names of at least twelve (12) persons, at random, from the Elections Board's list of qualified voters, which list constitutes the list of eligible jurors. The Clerk shall then send a summons to each person whose name is drawn. The summons shall order the person to appear in court at the time set for trial of the case. The summons shall contain the name of the Court, the title of the case, the offense charged and the defendant's name.

(3) At the trial six of the jurors summoned shall be called and then seated in the courtroom. The parties shall alternately question the jurors as to their impartiality and fairness. A party may challenge any juror for cause and the judge shall excuse any juror whom he/she feels would not be completely fair and impartial. As a juror is excused, the Court Clerk shall draw the name of another juror to be seated and each party shall have an opportunity to examine the juror for fairness and impartiality. There shall be no limit on challenges for cause.

(4) Each side shall be entitled to three (3) peremptory challenges.

(5) An alternate juror shall be treated as a regular juror for purposes of challenges.

(6) The alternate juror shall be dismissed prior to the jury's retiring to deliberate if he/she has not been called to replace an original juror who has become for any reason unable or disqualified to serve.

(C) Judges Disability.

(1) If by reason of death, sickness, or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other Tribal Judge may, upon certifying that he or she has familiarized himself or herself with the record of the trial, proceed with the trial.

(2) If by reason of death, sickness, or other disability, the Judge before whom the defendant has been tried is unable to perform the required duties of a Judge after the verdict or a finding of guilty, any other Tribal judge may perform those duties unless such judge feels he cannot fairly perform those duties, then a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of the defendant.

(D) Evidence.

(1) Evidence presented must be relevant to the issue in dispute. A witness, including a party, may testify as to a statement made by a person not before the court if the witness heard the statement when it was uttered by the person alleged to have made the statement. The Court may inquire into the circumstances surrounding the failure of the party offering the statement to present the actual speaker and such circumstances may be considered in determining the credibility of the evidence.

(2) Whenever practical, documents presented as evidence shall be the originals. All issues regarding the admissibility of evidence shall be determined by the Chief Judge, who shall have the discretion to exclude any evidence or good cause.

(E) Continuances. At any stage of the proceeding, the Court may grant a reasonable continuance upon its own motion or the request of a party after a showing of good cause. The Court shall consider the objections of any party to a continuance.

(F) Open Proceedings. All proceedings shall be open to the public and the press unless the Presiding Judge determines that, due to the highly sensitive nature of the testimony of young children or the circumstances which could cause extreme embarrassment to witnesses or parties, the proceeding should be closed.

(G) Exclusion of Witnesses. Upon the motion of either party, the Presiding Judge shall exclude witnesses not actually testifying from the room where proceedings are being held.

(H) Expert Witnesses. The parties may each call expert witnesses of their own choosing and they shall bear the expense for the expert witnesses they call.

(I) Interpreters. The Court may select and appoint an interpreter and each party may provide their own interpreters and shall bear the costs. An interpreter through whom testimony is received shall be put under oath to faithfully and accurately translate and communicate as the Court requires.

(J) Motions for Acquittal.

(1) The Court on a motion of the Defendant or on its own motion, shall order an entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of the offenses charged. A motion by the defendant for acquittal does not affect his right to present evidence.

(2) If a motion for acquittal is made at the close of all evidence, the Court may reserve making a decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

(K) Instructions. At the close of the evidence or at an earlier time during the trial as the Court may reasonably direct, any party may file written requests that the Court instruct the jury on the law as it is set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform Counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after arguments by counsel are completed. No party may assign as error any portion of the charge or an omission there from unless they make an objection thereto prior to the time the Jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of the objection. Opportunity to make the objection shall be made out of the hearing

or if necessary out of the presence of the jury.

(L) Verdict.

- (1) The verdict of the jury shall be unanimous. It shall be returned to the judge by the jury in open court.
- (2) If there are two or more defendants, the jury may at a time during its deliberations return a verdict or verdicts with respect to the defendant or defendants as to whom it has agreed; if the jury cannot agree as to all, the defendant or defendants as to whom the jury does not agree may be tried again.
- (3) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit the offense charged or of an offense necessarily included therein if the attempt is an offense, without the necessity of the defendant having been formerly charged with such lesser included offenses or with attempt.
- (4) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the Courts own motion. If upon being polled the jury does not unanimously concur, they may be directed to retire for further deliberations or may be discharged.

SECTION 5. Judgment

(A) Judgment. A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence when imposed. If the defendant is found not guilty or for any other reason entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the Judge and entered by the Clerk.

(B) Sentencing.

- (1) The Judges of the Dry Creek Tribal Court shall have broad latitude in the sentencing of persons convicted of offenses. In determining sentences, judges shall be guided by both the welfare of the Tribal Community particular needs of the convicted person. Sentences may be of a nature customary with other systems or law, or may reflect traditional tribal remedies.

(2) Whether a trial is by a jury or the Court, upon conviction the presiding judge shall determine the sentence. The following shall guide the judge when imposing sentence:

- (a) A defendant may be sentenced to jail or to community service, or both at the discretion of the judge;
- (b) Fines may be paid pursuant to a payment schedule, to be determined by the judge, who shall carefully consider the person's financial resources;
- (c) In serving jail time in lieu of paying a fine, the convicted person shall be credited at the rate of twenty five dollars (\$25.00) per day;
- (d) The Court may direct that all or part of a fine be paid to the victim as restitution for a wrong, provided; that in no event shall a fine and restitution, taken together, exceed five thousand dollars (\$5,000.00) per offense;
- (e) In the event that restitution is ordered, a separate hearing must be held to determine the amount of the victim's damages;
- (f) A defendant who testifies at a hearing determining restitution does not waive his right against self incrimination in the event of a new trial;
- (g) The fact that restitution shall be ordered as part of a criminal proceeding shall not preclude a civil action for damages to recover remaining damages;
- (h) Upon conviction of any offense, the Court may order that costs be paid, provided that in no event shall a defendant pay more than a total of five thousand dollars per offense, including fines, restitution, costs, or other assessments;
- (i) In determining the nature and duration of a sentence, the Court shall consider the previous conduct of the defendant, the circumstances of the crime, whether the defendant is likely to reform, whether the defendant represents a danger to the community, and the extent of the defendant's resources and the

needs of his dependents;

(j) The penalties prescribed in any criminal offense under a Dry Creek Rancheria Tribal Ordinance are maximum penalties, and should be imposed only in extreme cases.

(C) Probation.

(1) In its discretion, the Court may suspend a sentence and allow the convicted person his freedom on probation upon the condition of signing a pledge of good conduct. The Court may impose such terms as are fitting and just as conditions of probation.

(2) A person found by the Court to be violating their conditions of probation may be required to serve all or part of the original sentence.

(D) Parole.

(1) A person is eligible for parole when they have served one-half of the sentence imposed without misconduct. At that point a hearing may be held by the Judge who imposed the sentence to determine whether parole shall be granted, and if so, what conditions shall attach.

(2) A person found by the Court to be violating the conditions of his parole may be required to serve the remainder of the original sentence.

(E) Vacating Sentence. Upon a motion brought to vacate, the judge who imposed the sentence may vacate any portion of a remaining sentence. A hearing on the motion shall be had in which all interested parties may present evidence or bring related facts to the attention of the Court;

(F) Disposition of Fines. All fines and fees collected by the Court under the provisions of this Ordinance shall be paid to the Clerk of the Court, who shall in turn deliver then to the Tribal Treasurer for deposit in a special account of the Tribe to be used for maintenance of the Court and Law Enforcement program. Provided, however, that the clerk may maintain petty cash fund up to Fifty dollars (\$50.00), with a full and accurate accounting of such fund to be made available to the Tribal Council upon request.

(G) Default on Fine. When a defendant defaults in the payment of a fine or any

installment thereof, the Court on its own motion shall order the defendant to show cause why he is not in contempt and may issue a summons or an arrest warrant for the defendant's appearance. If good faith is shown, the Court may allow additional time for payment or revoke all or part of the unpaid fine; otherwise, the Court may order his/her imprisonment until the fine is paid. The Court may order the seizure and sale of any personal property of the defendant found within the territorial jurisdiction of the Dry Creek Rancheria.

(H) Disposition of Property Confiscated by the Court. Any property, including equipment, which may have been confiscated by lawful order of the Court under the provisions of any Tribal ordinance shall be sold at public auction and the proceeds therefrom deposited by the Clergy of the Court into the Dry Creek Rancheria's General Fund. The funds shall be recorded upon the accounts of the Tribe and shall be available for expenditure upon order of the Chief Judge and for such other purposes as Dry Creek Rancheria Tribal Council may direct.

(I) New Trial. The grounds for a new trial are as follows:

- (1) Receipt by the jury of evidence not authorized by the Court;
- (2) Determination of a verdict by lot, through intimidation, or without a fair expression of opinion;
- (3) Refusal by the Court to instruct the jury correctly as to the law;
- (4) Failure of the defendant to receive a fair and impartial trial; and
- (5) New evidence discovered and not available at time of the original trial.

SECTION 6. Appeal

(A) Right of appeal.

- (1) The defendant has the right to appeal from the following:
 - (a) A final judgment of conviction;
 - (b) From an order made, after judgment, affecting his/her substantial rights.

(2) The Tribe has the right to appeal from the following:

(a) A judgment in dismissal in favor of the defendant upon a motion to dismiss based on any procedural irregularity occurring before trial.

(b) An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;

(c) An order of the Court directing the jury to find for the defendant;

(d) An order made after judgment affecting the substantial rights of the Tribe.

(3) A notice of appeal must be filed within ten (10) days of the entry of final judgment or other appealable order and must be served on all parties except the party filing the appeal.

(4) The Clerk of the Tribal Court will prepare and transmit to the Appellate Court the record of the case appealed including a transcript or copy of the recordings taken in all the proceedings relevant thereto.

(5) The party taking the appeal shall be referred to as the appellant and the other party as the respondent. The number and name of the case will be the same as the case number and name used at trial except the name of parties not involved in the appeal may be omitted.

(6) Within ten (10) after the receipt by the Appellate Court of the Trial Court record, the appellant shall file a brief supporting his position on appeal. Within twenty (20) days after receipt of a copy of the appellant's brief, the respondent shall file its brief. As soon thereafter as possible, the Appellate Court shall decide the case and may schedule and hold a hearing on the appeal. Each party shall file four copies of its brief with the Court.

(B) Stay of Judgment and Relief Pending Appeal.

(1) A sentence of imprisonment may be stayed if an appeal is taken and the defendant may be given an opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have

time spent incarceration counted towards his sentence in the matter under appeal.

(2) A sentence to pay a fine, or a fine and costs, may be stayed pending appeal upon motion of the defendant but the Court may require the defendant to pay such money subject to his/her return if the appeal should favor the defendant and relieve his obligation to pay a fine or a fine and costs.

(3) An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

(C) Appellate Court Review.

(1) If the appeal is irregular in any substantial matter, the Appellate Court may order, upon motion of the respondent, either the correction of the defects or the dismissal of the appeal.

(2) The Appellate Court will decide the appeal on the basis of the briefs submitted without oral argument unless oral argument is requested by any party to the appeal or by the Court on its own motion.

(3) The Appellate Court will issue a written opinion or separate opinions as may be required to fully explain the Court's disposition of the case.

(4) The Appellate Court shall make one of the following determinations of the appeal:

(a) Affirm the Trial Court's result.

(b) Reverse or vacate the Trial judgment and remand for disposition in accordance with the order of the Appellate Court.

(c). The judgment of the Trial Court will be deemed affirmed if no disposition can be reached by the Appellate Court.

SECTION 7. Stalking Protective Order

(A) Citation; Form.

(1) Upon a complaint initiated as provided in Section 7(D), a law

enforcement officer must issue a citation ordering the person to appear in Court within three (3) judicial days and show cause why the Court should not enter a Court's stalking protective order when the officer has probable cause to believe that:

- (a) The person intentionally, knowingly, or recklessly engages in repeated and unwanted contact with the other person or a member of that person's family or household thereby alarming or coercing the other person;
- (b) It is objectively reasonable for a person in the victim's situation to be alarmed or coerced by the contact; and
- (c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's family or household.

(2) The Police Department must develop and distribute a form for the citation.

(B) Effect of Citation: Contents: Hearing: Court's Stalking Protective Order.

(1) A citation must notify the respondent of a Tribal Court hearing where the respondent must appear at the place and time set forth in the citation. The citation must contain:

- (a) The name of the respondent;
- (b) A copy of the stalking complaint;
- (c) The date, time, and place at which the citation was issued;
- (d) The name of the law enforcement officer who issued the citation;
- (e) The time, date, and place at which the respondent is to appear in court; and
- (f) Notice to the respondent that failure to appear at the time, date, and place set forth in the citation will result in the respondent's arrest and entry of a Court's stalking protective

order.

(2) The officer must notify the petitioner in writing of the time, date, and place set for the hearing.

(3) The hearing must be held as indicated in the citation. At the hearing, the petitioner may appear in person or by telephone. The respondent must be given the opportunity to show cause why a Court's stalking protective order should not be entered. The hearing may be continued for up to 30 days. The Court may enter:

(1) A temporary stalking protective order pending further proceedings; or

(2) A Court's stalking protective order if the Court finds by a preponderance of the evidence that:

(A) The person intentionally, knowingly, or recklessly engages in repeated and unwanted contact with the other person or a member of that person's family or household thereby alarming or coercing the other person;

(B) It is objectively reasonable for a person in the victim's situation to be alarmed or coerced by the contact; and

(C) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's family or household.

(4) In the order, the Court must specify the conduct from which the respondent is to refrain, which may include all contact listed in Chapter 1, Section 7(A)(11) and any attempt to make contact listed in Chapter 1, Section 7(A)(11). The order is of unlimited duration unless limited by law.

(5) If the respondent fails to appear at the time, date, and place specified in the citation, the Court must issue a warrant of arrest in order to ensure the appearance of the respondent at Court and must enter a Court's stalking

protective order.

(6) The Court may also order the respondent to undergo a mental health evaluation and, if indicated by the evaluation, treatment.

(7) A law enforcement officer must report the results of any investigation arising from a complaint under Section 7(D) to the Tribal Prosecutor within three (3) days after presentation of the complaint.

(C) Service of Order. Whenever a stalking protective order is issued and the person to be restrained has actual notice thereof, the person serving the order must deliver forthwith to the tribal police department a true copy of the order and a certificate of service on which it is stated that personal service of the order was made on the respondent. If an order entered by the Court recites that the respondent appeared in person before the Court, the necessity for further service of the order is waived and the accompanying certificate of service is not necessary.

(D) Initiation of Action to Obtain a Citation.

(1) A person may initiate an action seeking a citation under Section 7(A) by presenting a complaint to a law enforcement officer or to any law enforcement agency. The complaint must be a statement setting forth with particularity the conduct that is the basis for the complaint. The petitioner must affirm the truth of the facts in the complaint.

(2) The Tribal Police Department must develop and distribute the form of the complaint. The form must include the standards for reviewing the complaint and for action.

(3) A parent may present a complaint to protect a minor child. A guardian may present a complaint to protect a dependent person.

(4) By signing the complaint, a person is making a sworn statement.

(E) Violating a Court's Stalking Protective Order.

(1) A person commits the crime of violating a Court's stalking protective order when:

(1) The person has been served with a Court's stalking protective order as provided in Section 7(C) or if further service was

waived because the person appeared before the Court;

(2) The person, subsequent to the service of the order, has engaged intentionally, knowingly, or recklessly in conduct prohibited by the order; and

(3) If the conduct is prohibited contact as defined Chapter 1, Section 1(F), the subsequent conduct has created reasonable apprehension regarding the personal safety of a person protected by the order.

(2) A person convicted of violating a Court's stalking protective order is guilty of a Class B Offense unless the person has a prior conviction for stalking or violating a Court's stalking protective order, in which case the person is guilty of a Class A Offense.

(F) Action for Issuance or Violation of a Stalking Protective Order.

(1) A person may bring a civil action in Tribal Court for a Court's stalking protective order or for damages, or both, against a person if:

(a) The person intentionally, knowingly, or recklessly engages in repeated and unwanted contact with the other person or a member of that person's immediate family or household thereby alarming or coercing the other person;

(b) It is objectively reasonable for a person in the victim's situation to be alarmed or coerced by the contact; and

(3) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's family or household.

(2) At the time the petition is filed, the Court, upon a finding of probable cause based on the allegations in the petition, must enter a temporary Court's stalking protective order that may include, but is not limited to, all contact defined in Chapter 1, Section 1(F). The petition and the temporary order must be served upon the respondent with an order requiring the respondent to personally appear before the Court to show cause why the temporary order should not be continued for an indefinite period.

(3) At the hearing, whether or not the respondent appears, the Court may continue the hearing for up to 30 days or may proceed to enter a Court's stalking protective order and take other action as provided in Section 7(B). If the respondent fails to appear after being served, the Court may issue a warrant of arrest in order to ensure the appearance of the respondent in Court.

(4) The plaintiff may recover:

(a) Both special and general damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Reasonable attorneys' fees and costs.

(5) An action under this section must be commenced within two years of the conduct that is the basis of the claim.

(6) Proof of the claim must be by a preponderance of the evidence.

(7) The remedy provided by this section is in addition to any other remedy, civil or criminal, provided by law for the conduct that is the basis of the claim. No filing fee, service fee, or hearing fee will be charged for a proceeding under this section if a Court's stalking protective order is the only relief sought.

SECTION 8. Civil Orders for Protection

(A) Jurisdiction. The Dry Creek Rancheria Tribal Court has jurisdiction to hear a cause of action for an order for protection and issue such an order if either the petitioner or the respondent resides within the territorial jurisdiction of the Tribal Court, or if the acts and/or transaction giving rise to the cause of action fall within the Civil Jurisdiction of the Tribal Court.

(B) Eligible Petitioners for Order for Protection.

(1) A person who is subject to the jurisdiction of the Dry Creek Rancheria Tribal Court and/or who has been a victim of a criminal offense may file a Petition for an Order for Protection against a perpetrator.

(2) A parent, guardian, or other representative may file a petition for a protective order on behalf of a minor or dependent person against the perpetrator who commits an act of violence or dangerous aggression. Minors who are at least 16 years of age or are legally married or emancipated may seek relief for themselves.

(3) No filing fee, bond, or other payment shall be required from the victim for the filing of a Petition for an Order for Protection under this Code.

(C) Required Standard Form and Statements for Petitions and Orders.

(1) The Dry Creek Rancheria Tribal Court must:

(a) Develop and adopt standard forms for petitions and protective orders; and

(b) Provide the forms to the Clerk of the Court.

(2) In addition to any other required information, the petition for an order for protection must contain a statement listing each civil or criminal action involving both parties filed within the preceding five years.

(3) To ensure knowledge of consequences and guidelines, the following statements must be printed in bold-faced type or in capital letters on the protective order:

(a) Violation of this order may be punished by confinement in jail for as long as (insert time period) and by a fine of (as much as insert amount).

(b) If so ordered by the Court, the respondent is forbidden to enter or stay at the petitioner's residence and a reasonable area surrounding the residence, even if invited to do so by the petitioner or any other person. In no event is the order for protection voided.

(4) The Clerk of the Court must provide to a person requesting an order for protection:

(a) The forms adopted pursuant to Section (C)(1) above;

(b) All other forms required to petition for an order for protection; and

(c) Clerical assistance in filling out the forms and filing the petition.

(D) Contents of Petition.

(1) The Petition shall include:

(a) Membership status or any other information necessary to establish jurisdiction of the Court;

(b) The Petitioner's name and address at the time of the incident of the violence or criminal offense;

(c) The name, address; a description of the specific facts and circumstances justifying the relief requested; the relief requested; and the current location of the Respondent, if known.

(2) Unless a written request is made from the Petitioner, the current location of the Petitioner shall not be released by the Court.

(3) The Petition shall also state the nature of any other legal matter pending regarding the Petitioner or the Respondent; for example, criminal charges, child protection proceeding, divorce, etc.

(4) The Petition may include a request that the Court arrange for law enforcement to be present at the time of the hearing.

(E) Duties of Court Personnel.

(1) The Clerk of Court or other designated person shall provide to a person requesting an Order for Protection:

(a) A standard Petition form with instructions for completion,

(b) All other forms required to petition for an Order for Protection, such as those needed for service of process,

(c) Clerical assistance in filling out the forms and filing the Petition for an Order for Protection, and

(d) Provide written notice to the victim identifying the nearest available provider of shelter and advocacy services.

(2) In order to facilitate enforcement under full faith and credit provisions of state law, the Clerk of Court or other designated person shall send an authenticated copy of the Emergency Order for Protection and the Order for Protection to the circuit court clerk for the county where Respondent is located within one business day of the issuance of the Order.

(F) Emergency Protective Orders.

(1) The Court shall immediately grant an ex-parte Emergency Order for Protection if, based on the specific facts stated in the Petition, there are reasonable grounds to believe that the Petitioner is in danger of violence occurring prior to a hearing on the Petition. An allegation of a recent incident of violence constitutes reasonable grounds to believe the Petitioner is in danger.

(2) The Emergency Order for Protection may include the following relief:

(a) Prohibit the Respondent from committing or threatening to commit acts of violence against the Petitioner and the Petitioner's family and household members;

(b) Prohibiting the Respondent from contacting or communicating with the Petitioner directly or indirectly;

(c) Removing and excluding Respondent from the Petitioner's residence, regardless of ownership;

(d) Removing and excluding Respondent from the Petitioner's place of employment and other locations frequented by Petitioner; and

(e) Such other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.

(3) The Emergency Order for Protection shall be served with the notice of hearing on the Respondent and shall expire at the time of the hearing.

(G) Notice to Respondent and Other Interested Parties. Respondent shall be served a notice of hearing along with a copy of the Petition and a copy of any Emergency Order for Protection at least forty-eight (48) hours prior to the time of the hearing.

(H) Hearing.

(1) The Court shall hold a hearing on the Petition for an Order for Protection within seven (7) days of the Petition's filing date.

(2) The Court may extend the time for a hearing once for up to fourteen (14) days upon consent of the parties or upon finding that Respondent has not been timely served a notice of hearing.

(I) Relief Available in an Order for Protection.

(1) The Court may grant the following remedies in an Order for Protection if requested by the Petitioner and after notice and hearing, whether or not the Respondent appears:

(a) Prohibit the Respondent from threatening to commit or committing acts of violence against the Petitioner;

(b) Prohibit the Respondent from harassing, telephoning, contacting, or otherwise communicating with the Petitioner directly or indirectly, or through others;

(c) Remove and exclude Respondent from Petitioner's residence, or if Respondent owns or leases the residence and the Petitioner has no legal interest in the residence, then the Court may order the Respondent to avoid the residence for a reasonable length of time until the Petitioner relocates;

(d) Remove and exclude Respondent from Petitioner's place of employment at any time Petitioner is present;

(e) Remove and exclude Respondent from other specified locations frequented by Petitioner;

(f) Remove and exclude Respondent from specified public social events and activities;

(g) Limit or prohibit contact with minor children of Respondent where necessary to protect the safety of the Petitioner or child;

(h) Refer minors who are family or household members for assessments and services through the Indian Child Welfare office, mental health program, or other tribal program;

(i) Require Respondent to participate in alcohol and other assessments and to participate in treatment where the treatment program meets the State of California's batterer's treatment standards;

(j) Limit or prohibit Respondent from using or possessing a firearm or other weapon as specified by the Court;

(k) Require Respondent to reimburse the Petitioner or any other person for any expenses associated with the violence, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property;

(l) Require Respondent participate in community service, such as cutting wood or providing other services for elderly members of the Tribe;

(m) Require that notice of Respondent's act(s) of domestic and family violence be publicly posted; and

(n) Any other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.

(2) An Order for Protection shall not contain any provisions which impose requirements on a victim of violence. The Court may recommend services for the victim and shall verify that the victim is aware of locally available shelter facilities.

(3) The Court shall cause the Order for Protection to be delivered for service of process; make reasonable efforts to ensure that the Order is

understood by the Petitioner, and Respondent if present at the hearing; and transmit a copy of the Order for Protection to the local law enforcement agency or agencies within one business day after the Order is issued if requested by the Petitioner.

(4) The Court shall not grant a mutual Order for Protection to opposing parties.

(5) The Court shall not deny a Petitioner the relief requested solely because of a lapse of time between an act of violence and the filing of the Petition.

(J) Duration, Extension, and Modification of Protective Orders.

(1) An Order for Protection or a modification of an Order for Protection is effective until further order of the Court.

(2) An Order for Protection may be modified or withdrawn following notice and hearing, on the Court's own motion or upon the request of either Petitioner or Respondent if:

(a) Assessments or treatments ordered by the Court have been completed;

(b) Respondent demonstrates behavioral changes which eliminate the risk of a recurrence of acts of domestic and family violence as verified by treatment providers or other independent sources identified by the Court; or

(c) The Court determines the safety needs of the Petitioner and other family or household members are provided for by the modification or withdrawal of the Order for Protection.

(3) If Respondent is excluded from Petitioner's residence, or ordered to stay away from Petitioner, an invitation by the Petitioner to do so does not waive or nullify an Order for Protection.

(K) Enforcement and Penalties for Violation. Where Respondent has violated an Order for Protection, the Court may order additional and other remedies and may impose such penalties as are deemed necessary by the Court given the severity of the violation of the Order. Penalties include, but are not limited to those available for

contempt, fines, assessments of court costs and fees, and exclusion from tribal offices and businesses.

(L) Full Faith and Credit.

(1) Any protective order that is consistent with Section 7 and 8 of this Section by the court of California or Dry Creek Rancheria shall be accorded full faith and credit by this Tribe and enforced as if it were the order of this Tribal Court.

(2) A protective order issued by a State or Tribal Court is consistent with this Section if:

(a) Such court has jurisdiction over the parties and matter under the law of California or Dry Creek Rancheria; and

(b) Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the issuing state's or tribe's law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(3) A protective order issued by a state or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:

(a) No cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(b) A cross or counter petitioner has been filed and the court did not make specific findings that each party was entitled to such an order.

SECTION 9. Filing of a Criminal Complaint

The enforcement officer making an arrest for a criminal offense must sign a criminal complaint charging the crime. If the defendant is not in custody, the prosecutor or the victim may sign the complaint. Any complaint signed by the victim must be

delivered to the prosecutor. If the defendant is not in custody at the time the complaint is charged, the prosecutor must seek a warrant of arrest.

SECTION 10. Conditions of Release

(A) In making a decision concerning pretrial release of a person who is arrested and/or charged with a crime or a violation of an order for protection, the Court must review the facts of the arrest and determine whether the person:

- (1) Is a threat to the alleged victim or other family or household member;
- (2) Is a threat to public safety; and
- (3) Is reasonably likely to appear in court.

(B) In making the determination required by Section (A)(1), the Court will consider whether the arrested person's pattern of violent or threatening behavior towards the victim is chronic, and whether the seriousness of the behavior has been escalating, indicating a heightened danger of severe or lethal injury to the victim.

(C) Before releasing a person arrested for or charged with a criminal offense or a violation of an order for protection, the Court must make findings on the record, if possible, concerning the determination made in accordance with Section (A), and may impose conditions of release or bail on the defendant to protect the alleged victim of domestic or family violence and to ensure the defendant's appearance at a subsequent court proceeding. The conditions may include, but are not limited to:

- (1) An order enjoining the defendant from threatening to commit or committing a criminal offense against the alleged victim or other family or household member;
- (2) Use all reasonable means to immediately notify the victim of the release; and
- (3) Furnish the victim a certified copy of any conditions of release at no cost to the victim.

SECTION 11. Mandatory Arrest for Violations of Protective Orders or Violations of Conditions of Release

(A) When a law enforcement officer has probable cause to believe that a person has

violated a protective order in accordance with this Title, the officer must arrest the apparent violator, even if a warrant has not been issued and the offense was committed outside the presence of the officer:

SECTION 12. Authority of Law Enforcement Officer to Seize Weapons

(A) Incident to an arrest of a criminal offense, violation of an order for protection, or violation of conditions of release, a law enforcement officer:

- (1) Must seize all weapons that are alleged to have been involved or threatened to be used in the commission of the crime; and
- (2) May seize any weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

(B) When an officer seizes a weapon pursuant to Section (A)(2), the alleged perpetrator of a criminal offense may request that the weapon be returned. The Court will grant such a request only if the alleged perpetrator of a crime shows by clear and convincing evidence:

- (1) That he or she has a compelling need for the weapon, such as a need to hunt for subsistence; and
- (2) That the return of the weapon will not increase the risk of harm to the alleged victim.

(C) The Court may place any conditions on the return and use of the weapon that are necessary to protect the alleged victim of the criminal offense.

SECTION 13. Victim's Rights

(A) A victim of a criminal offense or act of violence is entitled to:

- (1) Be informed of all hearing dates and continuances;
- (2) Request a copy of the law enforcement officer's report at no cost;
- (3) Provide the Court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm;

- (4) Be present at sentencing and address the Court;
- (5) Advise the Court of conditions of probation and parole required to ensure the safety of the victim and other family or household members;
- (6) Receive restitution for losses sustained as a direct consequence of any criminal conduct; and
- (7) Receive notice from the prosecutor in accordance with this Title.

(B) The prosecutor must notify the victim of a criminal offense of the victim's rights set forth in this section.

SECTION 14. Duty of Prosecutor to Notify Victim

A prosecutor must make reasonable efforts to notify a victim of an alleged crime when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement. Reasonable efforts to notify the victim must be documented, and must be made promptly after the decision to decline prosecution, dismiss criminal charges, or enter into a plea agreement.

SECTION 15. Notice of Dismissal

When the Court dismisses criminal charges or the prosecutor moves to dismiss charges against a defendant accused of a criminal offense, the specific reasons for the dismissal must be recorded in the Court file. Where the prosecutor has entered into a plea bargain or moved to dismiss charges, the prosecutor must provide written reasons the case cannot be prosecuted, and must indicate the specific reason why any witness is unavailable.

SECTION 16. Conditions of Probation or Parole for Perpetrator

(A) The Court must consider the safety and protection of the victim and any member of the victim's family or household before placing on probation or granting parole to a perpetrator who has been convicted of a criminal offense.

(B) The Court may condition the placing on probation or granting of parole upon compliance with one or more orders of the Court, including but not limited to the following:

- (1) Enjoining the perpetrator from threatening to commit or committing acts of violence against the victim or other family or household member;
- (2) Prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with the victim, directly or indirectly;
- (3) Requiring the perpetrator to vacate or stay away from the residence, school, place of employment, or a specified place frequented by the victim;
- (4) Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;
- (5) Prohibiting the perpetrator from using or possessing a firearm or other specified weapon;
- (6) Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator;
- (7) Directing the perpetrator to participate in and complete, to the satisfaction of the Court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;
- (8) Directing the perpetrator to pay restitution to the victim; and
- (9) Imposing any other condition necessary to protect the safety of the victim and his or her family or household members, or to rehabilitate the perpetrator.

(C) The perpetrator must pay the costs of any condition of probation or parole, to the extent that he or she is able to do so. The Court will carefully consider the perpetrator's income in assessing these costs, and may establish a payment schedule for the costs payable by the perpetrator.

(D) The Court must establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probation or parole imposed pursuant to Section (B) above.

(E) The police department must immediately report to the Court any assault by the

perpetrator, the perpetrator's failure to comply with any condition imposed by the Court, and any threat of harm made by the perpetrator.

(F) The police department must establish policies and procedures:

(1) For the exchange of information concerning the perpetrator with the Court and the victim; and

(2) For responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to Section (B).

SECTION 17. Required Hearings; Duty of Court when Order for Protection Denied

(A) Except as otherwise provided, if the Court issues an order for protection or a modification of an order for protection ex parte, the Court must set a date for a hearing on the petition upon a request by either party made within thirty (30) days after service of the order or modification. The hearing must be held within 30 days after the request for a hearing is filed unless continued by the Court for good cause shown. The Court must notify both parties by first class mail of the date and time of the hearing.

(B) The Court must set a date for a hearing on the petition within fifteen (15) days after the filing of the petition if the Court issues an order for protection or a modification of an order ex parte, and the ex parte order awards temporary custody of a minor child to the petitioner, excludes the respondent from the residence of the petitioner, or awards possession and use of an automobile to the petitioner. Such a hearing must be given precedence over all matters except older matters of the same character.

(C) In a hearing held pursuant to Section (A) or (B), relief in accordance with Section 8(F) and (J) is available. If the respondent seeks relief concerning an issue not raised by the petitioner, the Court may continue the hearing at the petitioner's request.

(D) If the Court denies a petition for an order ex parte or a petition to modify an order for protection that is requested without notice to the respondent, the Court must inform the petitioner of his or her right to request a hearing upon notice to the respondent.

SECTION 18. Registration and Enforcement of Foreign Orders for Protection; Duties of Court Clerk

(A) A certified copy of an order for protection issued in another tribal or state court may be filed in the office of the Clerk of the Dry Creek Rancheria Tribal Court. The Tribal Court will afford full faith and credit to the order for protection if the order is consistent with 18 U.S.C. § 2265(b).

(B) An order for protection filed in accordance with Section (A) above has the same effect and must be enforced in the same manner as an order for protection issued by the Dry Creek Rancheria Tribal Court.

(C) The Clerk of the Court must:

(1) Maintain a registry in which to enter certified orders for protection issued by other tribal or state courts that are received for filing; and

(2) At the request of another tribal or state court or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party.

(D) The Court will enforce all provisions of a registered foreign order for protection whether or not such relief is available in the Court.

CHAPTER 3. DOMESTIC RELATIONS

SECTION 1. Purpose

The Domestic Relations Code shall be liberally interpreted and construed to fulfill the following:

(A) Eliminate barriers to meeting the safety and other needs of victims of family violence;

(B) To hold batterers accountable for their actions;

(C) To enhance the provision of services to victims and their batterers;

(D) To provide for the welfare, care, and protection of family and domestic relationships within the jurisdiction of Dry Creek Rancheria;

(E) To ensure the rights of family members;

(F) To recognize domestic and family violence as a serious crime against society, the Tribe, and the family;

(G) To provide the victim of domestic or family violence the maximum protection from further violence which the law, and those who enforce the law, can provide.

(H) To recognize that the strength of the Tribe is founded on healthy families, and that the safety of victims domestic violence, especially women and children, must be ensured by immediate intervention of law enforcement, prosecution, education, counseling, and other appropriate services;

(I) To strengthen and preserve the institution of marriage and safeguard family relationships;

(J) To promote the peaceful and fair settlement of disputes between parties to a marriage or relationship;

(K) To make reasonable provisions for spouse and minor children during and after Tribal Court intervention;

(L) It is the intent of the Dry Creek Rancheria Tribal Council that the official response to cases of domestic and family violence will be that violent behavior will not be excused or tolerated. The fact that a perpetrator is intoxicated will not excuse violent behavior or lessen the criminal justice system's response to the violence.

(M) It is the intent of the Dry Creek Rancheria Tribal Council that the laws against domestic and family violence be enforced without requiring that the persons be married, cohabitating, or presently involved in a relationship.

SECTION 2. Construction

(A) This Chapter shall be liberally construed to effect the purposes stated above and shall be interpreted to comport with the customs and traditions of Dry Creek Rancheria. If tribal law, customs, and traditions are inconclusive in any matter arising under this chapter, then federal law and, as a last resort, the law of the State of California, may be used for guidance.

(B) This Chapter must be construed to promote:

(1) The protection and safety of all victims of domestic and family violence in a fair, prompt, and effective manner; and

(2) The prevention of future violence in all families.

SECTION 3. Definitions

(A) "Domestic or family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense by the victim:

(1) Intentional infliction of physical harm to a family or household member;

(2) Attempting to cause or causing physical harm, bodily injury, or assault to another family or household member;

(3) Placing a family or household member in fear of the infliction of physical harm, bodily injury, or assault; or

(4) An act, word, gesture, or any other behavior that places a family or household member in fear of imminent physical harm;

(5) Intentional use of force, coercion, threat, intimidation, humiliation, or confinement which results in mental or emotional harm to a family or household member;

(4) Causing a family or household member to engage involuntarily in sexual activity by force, coercion, threat, intimidation, humiliation, confinement, or administering alcohol or drugs to the family or household member without their knowledge.

(B) "Advocate" means an employee of or volunteer for a program for victims of domestic or family violence who has a primary function of rendering advice, counseling, or assistance to victims of domestic or family violence, supervising the employees or volunteers of the program, or administering the program.

(C) "Bodily injury" means physical pain, illness, or an impairment of a physical condition.

(D) "Causing apprehension of bodily injury" means any physical act, including the

utterance of verbal threats, which causes another person reasonably to fear serious bodily injury or death.

(E) "Causing emotional distress" means engaging in conduct that would cause a reasonable person emotional distress and does in fact cause emotional distress to the person. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct will be presumed to cause emotional distress:

- (1) Creating a disturbance at a person's place of employment or school;
- (2) Repeatedly telephoning a person's place of employment or residence;
- (3) Repeatedly following a person in a public place or places;
- (4) Repeatedly keeping a person under surveillance by remaining present outside his or her home, school, place of employment, vehicle, or other place occupied by the person or by peering in the person's windows;
- (5) Improperly concealing a minor child from a person with sole or joint custody of the minor, repeatedly threatening to improperly remove the person's minor child from the jurisdiction or from his or her physical care, repeatedly threatening to conceal the person's minor child, or making a single such threat following an actual or attempted improper removal or concealment, unless the removal or attempted removal was made while fleeing from an incident or pattern of domestic violence; or
- (6) Threatening physical force, confinement, or restraint on one or more occasions.

(F) "Family or household member" includes:

- (1) Current or former spouses;
- (2) Persons who live together or have lived together;
- (3) Persons who are engaged in or have engaged in a sexual relationship;
- (4) Persons who have a child in common or who are expecting a child together;
- (5) Persons related by blood, adoption, or marriage; and

(6) Minor children, foster children, or adopted children of persons described in (1) through (5) above.

(G) "Imminent physical harm" refers to such physical harm that is close or near at hand, that is impending, perilous, or on the point of happening. It does not require that such physical harm be immediate or without delay after the behavior that places the victim in fear.

(H) "Program of intervention for perpetrators" means a specialized program that:

- (1) Accepts perpetrators of domestic or family violence into treatment or educational classes to satisfy court orders;
- (2) Offers treatment to perpetrators of domestic or family violence; or
- (3) Offers classes or instruction to perpetrators of domestic or family violence.

(I) "Prosecutor" means a person employed by the Tribe to prosecute offenses in the Dry Creek Rancheria Tribal Court.

(J) "Rancheria" means the Dry Creek Rancheria, and other lands subject to the jurisdiction of the Dry Creek Rancheria Indian Tribe.

(K) "Tribe" means the Dry Creek Rancheria Band of Pomo Indians.

SECTION 4. "Crime Involving Domestic or Family Violence" Defined

(A) A "crime involving domestic or family violence" occurs when a family or household member:

- (1) Purposely or knowingly causes bodily injury to a family or household member;
- (2) Purposely or knowingly causes apprehension of bodily injury to a family or household member;
- (3) Purposely or knowingly causes emotional distress of a family or household member; or
- (4) Commits one or more of the following offenses, as defined by the Dry

Creek Rancheria Criminal Code, against another family or household member:

- (a) Assault (First, Second, Third or Fourth Degree Assault);
- (b) Menacing;
- (c) Intimidation (First or Second Degree);
- (d) Harassment;
- (e) Burglary (First or Second Degree);
- (f) Criminal Trespass (First or Second Degree);
- (g) Criminal Mischief (First, Second or Third Degree);
- (h) Custodial Interference (First or Second Degree);
- (i) Theft (First, Second, or Third Degree, and Aggravated First Degree);
- (j) Disorderly Conduct;
- (k) Stalking;
- (l) Arson;
- (m) Homicide (Murder, First or Second Degree Manslaughter, Criminally Negligent Homicide);
- (n) Kidnapping (First or Second Degree);
- (o) Any Sex Offense contained in Chapter 1 of the Dry Creek Rancheria Criminal Code;
- (p) Any Weapon Law Violation contained in Chapter 1 of the Dry Creek Rancheria Criminal Code;

(5) Voluntary intoxication, which is available as a legal defense only in cases involving specific intent crimes, is not available as a defense to a

charge of domestic or family violence.

(6) Voluntary intoxication will not be utilized by law enforcement, prosecution or the Court to mitigate the severity of the violence or lessen the legal consequences of the charge.

SECTION 5. Jurisdiction and Civil Nature of this Code

(A) Jurisdiction of the Court and Civil Nature of This Code. The jurisdiction of the Dry Creek Rancheria Tribal Court shall be civil in nature and shall include the power to issue all orders necessary to insure the purposes and provisions of this Code are put into effect. This includes the power to enforce subpoenas, orders of contempt, and any other orders as appropriate.

(B) Availability of Criminal Penalties. The provisions of this Code do not replace the criminal penalties and procedures available under California state law for an act of domestic and family violence.

SECTION 6. Civil Orders for Protection

(A) Jurisdiction. The Tribal Court has jurisdiction to hear a cause of action for an order for protection and issue such an order if either the petitioner or the respondent resides within the territorial jurisdiction of the Tribal Court if the acts and/or transaction giving rise to the cause of action fall within the Civil Jurisdiction of the Tribal Court.

(B) Eligible Petitioners for Order.

(1) A person who is subject to the jurisdiction of the Dry Creek Rancheria Tribal Court and who has been a victim of domestic and family violence may file a Petition for an Order for Protection against a family or household member who commits an act of domestic and family violence.

(2) A parent, guardian, or other representative may file a petition for an order for protection on behalf of a minor or dependent person against a family or household member who commits an act of domestic or family violence. Minors who are at least 16 years of age or are legally married or emancipated may seek relief for themselves.

(3) No filing fee, bond, or other payment shall be required from the victim for the filing of a Petition for an Order for Protection under this Code.

(C) Contents of Petition.

- (1) The Petition shall include membership status or any other information necessary to establish jurisdiction of the Court; the Petitioner's name and address at the time of the incident of domestic and family violence; the name, address, and relationship of the family or household member who is the Respondent; a description of the specific facts and circumstances justifying the relief requested; the relief requested; and the current location of the Respondent, if known.
- (2) The current location of the Petitioner shall not be released by the Court except on Petitioner's written request.
- (3) The Petition shall also state the nature of any other legal matter pending regarding the Petitioner or the Respondent; for example, criminal charges, child protection proceeding, and divorce.
- (4) The Petition may include a request that the Court arrange for law enforcement to be present at the time of the hearing.

(D) Duty of Court Personnel to Provide Forms and Clerical Assistance.

- (1) The Clerk of Court or other designated person shall provide to a person requesting an Order for Protection:
 - (a) A standard Petition form with instructions for completion,
 - (b) All other forms required to petition for an Order for Protection, such as those needed for service of process,
 - (c) Clerical assistance in filling out the forms and filing the Petition for an Order for Protection, and
 - (d) Provide written notice to the victim identifying the nearest available provider of shelter and advocacy services.
- (2) In order to facilitate enforcement under full faith and credit provisions of state law, the Clerk of Court or other designated person shall send an authenticated copy of the Emergency Order for Protection and the Order for Protection to the circuit court clerk for the county where Respondent is

located within one business day of the issuance of the Order.

(E) Emergency Orders for Protection.

(1) The Court shall immediately grant an ex-parte Emergency Order for Protection if, based on the specific facts stated in the Petition, there are reasonable grounds to believe that the Petitioner is in danger of domestic and family violence occurring prior to a hearing on the Petition. An allegation of a recent incident of domestic and family violence constitutes reasonable grounds to believe the Petitioner is in danger.

(2) The Emergency Order for Protection may include the following relief:

- (a) Prohibit the Respondent from committing or threatening to commit acts of domestic and family violence against the Petitioner and the Petitioner's family and household members;
- (b) Prohibiting the Respondent from contacting or communicating with the Petitioner directly or indirectly;
- (c) Removing and excluding Respondent from the Petitioner's residence, regardless of ownership;
- (d) Removing and excluding Respondent from the Petitioner's place of employment and other locations frequented by Petitioner; and
- (e) Such other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.

(3) The Emergency Order for Protection shall be served with the notice of hearing on the Respondent and shall expire at the time of the hearing.

(F) Notice to Respondent & Other Interested Parties. Respondent shall be served a notice of hearing along with a copy of the Petition and a copy of any Emergency Order for Protection at least forty-eight (48) hours prior to the time of the hearing.

(G) Hearing.

(1) The Court shall hold a hearing on the Petition for an Order for

Protection within seven (7) days of the filing date of the Petition.

(2) The Court may extend the time for a hearing once for up to fourteen (14) days upon consent of the parties or upon finding that Respondent has not been timely served a notice of hearing.

(H) Remedies Available in an Order for Protection.

(1) The Court may grant the following relief in an Order for Protection if requested by the Petitioner and after notice and hearing, whether or not the Respondent appears:

(a) Prohibit the Respondent from threatening to commit or committing acts of domestic or family violence against the Petitioner;

(b) Prohibit the Respondent from harassing, telephoning, contacting, or otherwise communicating with the Petitioner directly or indirectly, or through others;

(c) Remove an excluded Respondent from Petitioner's residence, or if Respondent owns or leases the residence and the Petitioner has no legal interest in the residence, then the Court may order the Respondent to avoid the residence for a reasonable length of time until the Petitioner relocates;

(d) Remove and exclude Respondent from Petitioner's place of employment at any time Petitioner is present;

(e) Remove and exclude Respondent from other specified locations frequented by Petitioner;

(f) Remove and exclude Respondent from specified public social events and activities;

(g) Limit or prohibit contact with minor children of Respondent where necessary to protect the safety of the Petitioner or child;

(h) Refer minors who are family or household members for assessments and services through the Indian Child Welfare office, mental health program, or other tribal program;

(i) Require Respondent to participate in alcohol and other assessments and to participate in treatment where the treatment program meets the State of Wisconsin's batterer's treatment standards;

(j) Limit or prohibit Respondent from using or possessing a firearm or other weapon as specified by the Court;

(k) Require Respondent to reimburse the Petitioner or any other person for any expenses associated with the domestic or family violence, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property;

(l) Require Respondent participate in community service, such as cutting wood or providing other services for elderly members of the Tribe;

(m) Require that notice of Respondent's act(s) of domestic and family violence be publicly posted; and

(n) Any other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.

(2) An Order for Protection shall not contain any provisions which impose requirements on a victim of domestic and family violence. The Court may recommend services for the victim and shall verify that the victim is aware of locally available shelter facilities.

(3) The Court shall cause the Order for Protection to be delivered for service of process; make reasonable efforts to ensure that the Order is understood by the Petitioner, and Respondent if present at the hearing; and transmit a copy of the Order for Protection to the local law enforcement agency or agencies within one business day after the Order is issued if requested by the Petitioner.

(4) The Court shall not grant a mutual Order for Protection to opposing parties.

(5) The Court shall not deny a Petitioner the relief requested solely because of a lapse of time between an act of domestic or family violence and the filing of the Petition.

(I) Duration, Extension, and Modification of Orders for Protection.

(1) An Order for Protection or a modification of an Order for Protection is effective until further order of the Court.

(2) An Order for Protection may be modified or withdrawn following notice and hearing, on the Court's own motion or upon the request of either Petitioner or Respondent if:

(a) Assessments or treatments ordered by the Court have been completed;

(b) Respondent demonstrates behavioral changes which eliminate the risk of a recurrence of acts of domestic and family violence as verified by treatment providers or other independent sources identified by the Court; or

(c) The Court determines the safety needs of the Petitioner and other family or household members are provided for by the modification or withdrawal of the Order for Protection.

(3) If Respondent is excluded from Petitioner's residence, or ordered to stay away from Petitioner, an invitation by the Petitioner to do so does not waive or nullify an Order for Protection.

(J) Enforcement and Penalties for Violation. Where Respondent has violated an Order for Protection, the Court may order additional and other remedies provided above and may impose such penalties as are deemed necessary by the Court given the severity of the violation of the Order. Penalties include, but are not limited to those available for contempt, fines, assessments of court costs and fees, and exclusion from tribal offices and businesses. Violation of one of the following orders issued in accordance with this Ordinance is an offense of domestic or family violence:

(1) An order enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against a family or household member;

(2) An order prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with a family or household member, directly or indirectly;

(3) An order removing and excluding the perpetrator from the residence of a family or household member and a reasonable area surrounding the residence;

(4) An order requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by a family or household member;

(5) An order prohibiting the perpetrator from using or possessing a firearm or other weapon specified by the Court; or

(6) An order granting temporary custody of a minor child to the person protected by the order.

(K) Denial of Relief Prohibited. The Court must not deny a petitioner relief under a petition for an order for protection solely because of a lapse of time between an act of domestic or family violence and the filing of the petition. Previous reconciliation prior to filing the current action must not be grounds for denying or terminating an order for protection.

(L) Court-Ordered and Court-Referred Mediation, Marriage Counseling, or Reconciliation of Cases Involving Domestic or Family Violence Prohibited. The Court must not order or refer parties into mediation, marriage counseling, or reconciliation for resolution of the issues in a petition for an order for protection.

(M) Full Faith & Credit.

(1) Any protection order that is consistent with Section (2) (below) of this section by the court of one state or Indian tribe (the issuing state or Indian tribe) shall be accorded full faith and credit by this Tribe and enforced as if it were the order of this Tribal Court.

(2) A protection order issued by a state or tribal court is consistent with this Section if:

(a) Such court has jurisdiction over the parties and matter under the law of such state or Tribe; and

(b) Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the issuing state's or tribe's law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(3) A protection order issued by a state or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:

(a) No cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(b) A cross or counter petitioner has been filed and the court did not make specific findings that each party was entitled to such an order.

SECTION 7. Mandatory Arrest for Offense Involving Domestic or Family Violence; Determination of Primary Aggressor; Required Report

(A) A law enforcement officer must arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed an offense involving domestic or family violence, even if a warrant has not been issued and the offense was committed outside the presence of the officer.

(B) If a law enforcement officer receives complaints of domestic or family violence from two or more opposing persons, the officer must evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed an offense of domestic or family violence. In determining whether a person is the primary aggressor, the officer must consider:

(1) Dry Creek Rancheria's intent to protect victims of domestic or family violence;

(2) Prior complaints of domestic or family violence;

(3) The relative severity of the injuries inflicted on each person, or serious threats creating reasonable fear of bodily injury;

(4) The likelihood of future injury to each person;

(5) The officer's experience in handling domestic and family violence cases; and

(6) Whether one of the persons acted in self-defense.

(C) A law enforcement officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party.

(D) In addition to any other report required in the usual course of duties, a law enforcement officer who does not make an arrest after investigating a complaint of domestic or family violence, or who arrests two or more persons for a crime involving domestic or family violence, must submit a detailed, written report setting forth the grounds for not arresting or arresting both parties. This mandatory report must contain:

(1) A description of the circumstances of the persons and their surrounding environment when the officer responded to the call;

(2) A description of the injuries or harm inflicted upon either or both persons; and

(3) Summaries of the comments from the persons describing the circumstances leading to the call for law enforcement.

SECTION 8. Duties of Law Enforcement Officer of Domestic or Family Violence; Required to Notice Victim

(A) A law enforcement officer who responds to an allegation of domestic or family violence must use all reasonable means to protect the victim and prevent further violence, including but not limited to:

(1) Taking any action necessary to provide for the safety of the victim and any other family or household member;

(2) Confiscating weapons pursuant to Section 10 below;

(3) Transporting or obtaining transportation for the victim and any minor child to a shelter or other place of safety;

(4) Assisting the victim in removing essential personal effects from the place where the alleged offense occurred;

(5) Assisting the victim and any minor child in obtaining medical treatment, including obtaining transportation to a medical facility; or

(6) Giving the victim immediate and adequate notice of the rights of victims and the remedies and services available to victims of domestic or family violence.

(B) As part of the notice required by Section (A)(6), the law enforcement officer must give a written notice to the victim, which must include at a minimum the following:

(1) If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety. You may request an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, such as a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the officer's report at no cost to you.

(2) You have the right to ask the prosecutor to file a criminal complaint. You also have the right to file a petition in the Dry Creek Rancheria Tribal Court requesting an order for protection from domestic or family violence, which could include any of the following orders:

(1) An order enjoining the perpetrator from threatening to commit or committing further acts of domestic or family violence;

(2) An order prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with you, directly or

indirectly;

(3) An order removing the perpetrator from your residence and a reasonable area surrounding the residence;

(4) An order directing the perpetrator to stay away from your residence, school, place of employment, or any other specified place frequented by you or another family or household member;

(5) An order prohibiting the perpetrator from using or possessing any firearm or other weapon specified by the Court;

(6) An order granting you possession and use of the automobile and other essential personal effects;

(7) An order granting you custody of your minor child or children;

(8) An order denying the perpetrator visitation;

(9) An order specifying arrangements for visitation, including requiring supervised visitation; and

(10) An order requiring the perpetrator to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

(C) The forms you need to obtain an order for protection are available from the Clerk of the Dry Creek Rancheria Tribal Court.

(D) You also have the right to seek reimbursement for losses suffered as a result of the domestic or family violence, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney or advocate in the Dry Creek Rancheria Tribal Court.

(E) The written notice must not include the addresses of shelters, unless the location is public knowledge.

SECTION 9. Mandatory Arrest for Violations of Orders for Protection or Violations of Conditions of Release

(A) When a law enforcement officer has probable cause to believe that a person has violated one of the following orders issued in accordance with Section 13 (conditions of release), Section 23 (conditions of probation or parole), Section 6(E) (emergency order for protection) or Section 6 (orders for protection), and verifies the existence of the order, the officer must arrest the apparent violator, even if a warrant has not been issued and the offense was committed outside the presence of the officer:

- (1) An order enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against a family or household member;
- (2) An order prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with a family or household member, directly or indirectly;
- (3) An order removing and excluding the perpetrator from the residence of a family or household member and a reasonable area surrounding the residence;
- (4) An order requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented by a family or household member;
- (5) An order prohibiting the perpetrator from using or possessing a firearm or other weapon specified by the Court; or
- (6) An order granting temporary custody of a minor child to the person protected by the order. Following arrest, the officer must deliver the minor child to the care and custody of the person having legal custody.

SECTION 10. Authority of Law Enforcement Officer to Seize Weapons

(A) Incident to an arrest for a crime involving domestic or family violence, violation of an order for protection, or violation of conditions of release, a law enforcement officer:

- (1) Must seize all weapons that are alleged to have been involved or

threatened to be used in the commission of the crime; and

- (2) May seize any weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

(B) When an officer seizes a weapon pursuant to Section (A)(2), the alleged perpetrator of domestic or family violence may request that the weapon be returned. The Court will grant such a request only if the alleged perpetrator of domestic or family violence shows by clear and convincing evidence:

- (1) That he or she has a compelling need for the weapon, such as a need to hunt for subsistence; and
- (2) That the return of the weapon will not increase the risk of harm to the alleged victim.

The Court may place any conditions on the return and use of the weapon that are necessary to protect the alleged victim of domestic or family violence.

SECTION 11. Filing of Criminal Complaint for Domestic or Family Violence

The enforcement officer making an arrest for domestic or family violence must sign a criminal complaint charging the crime of domestic or family violence. If the defendant is not in custody, the prosecutor or the victim may sign the complaint. Any complaint signed by the victim must be delivered to the prosecutor. If the defendant is not in custody at the time the complaint is charged, the prosecutor must seek a warrant of arrest.

SECTION 12. Conditions of Release

(A) In making a decision concerning pretrial release of a person who is arrested and/or charged with a crime involving domestic or family violence or a violation of an order for protection, the Court must review the facts of the arrest and determine whether the person:

- (1) Is a threat to the alleged victim or other family or household member;
- (2) Is a threat to public safety; and
- (3) Is reasonably likely to appear in court.

(B) In making the determination required by Section (A)(1) above, the Court will consider whether the arrested person's pattern of violent or threatening behavior towards a family or household member is chronic, and whether the seriousness of the behavior has been escalating, indicating a heightened danger of severe or lethal injury to the victim.

(C) Before releasing a person arrested for or charged with a crime involving domestic or family violence or a violation of an order for protection, the Court must make findings on the record, if possible, concerning the determination made in accordance with Section (A) above, and may impose conditions of release or bail on the defendant to protect the alleged victim of domestic or family violence and to ensure the defendant's appearance at a subsequent court proceeding. The conditions may include, but are not limited to:

- (1) An order enjoining the defendant from threatening to commit or committing acts of domestic or family violence against the alleged victim or other family or household member;
- (2) Use all reasonable means to immediately notify the victim of the release; and
- (3) Furnish the victim a certified copy of any conditions of release at no cost to the victim.

SECTION 13. Mandatory Arrest for Violation of Conditions of Release

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with Section 12 and verifies that the defendant received notice of the conditions, the officer must arrest the defendant even if a warrant has not been issued and the offense was committed outside the presence of the officer.

SECTION 14. Prosecutor's Duty to Notify Victim

(A) A prosecutor must make reasonable efforts to notify a victim of an alleged crime involving domestic or family violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement. Reasonable efforts to notify the victim must be documented, and must be made promptly after the decision to decline prosecution, dismiss criminal charges, or enter into a plea agreement.

(B) For purposes of this Section, "reasonable efforts" must include the establishment of a system for notice designed to accomplish actual notice to the victim. The duty of the prosecutor to make reasonable efforts to notify the victim will be satisfied if the victim cannot be located at the last known address provided to the prosecutor or any address available to other Tribal Agencies.

SECTION 15. Record of Dismissal Required in Court File

When the Court dismisses criminal charges or the prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic or family violence, the specific reasons for the dismissal must be recorded in the Court file. Where the prosecutor has entered into a plea bargain or moved to dismiss charges, the prosecutor must provide written reasons the case cannot be prosecuted, and must indicate the specific reason why any witness is unavailable.

SECTION 16. Criminal Case May Not Be Dismissed Because Civil Compromise is Reached

The Court must not dismiss a criminal complaint charging domestic or family violence or the sole reason that a civil compromise or settlement is reached.

SECTION 17. Rights of Victims of Domestic or Family Violence; Duty of Prosecutor to Inform Victim of Rights

(A) A victim of domestic or family violence is entitled to:

- (1) Be informed of all hearing dates and continuances;
- (2) Request a copy of the law enforcement officer's report at no cost;
- (3) Provide the Court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm;
- (4) Be present at sentencing and address the Court;
- (5) Advise the Court of conditions of probation and parole required to ensure the safety of the victim and other family or household members;
- (6) Receive restitution for losses sustained as a direct consequence of any criminal conduct; and

(7) Receive notice from the prosecutor in accordance with § 8.112.

(B) The prosecutor must notify the victim of domestic or family violence of the victim's rights set forth in this section.

SECTION 18. Spousal Privileges Inapplicable to Protect the Defendant in Criminal Proceedings Involving Domestic or Family

(A) The following evidentiary privileges do not apply to protect the defendant in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving domestic or family violence perpetrated by the other spouse:

- (1) The privilege of confidential communication between spouses; and
- (2) The testimonial privileges of spouses.

SECTION 19. Advocate-Victim Privilege Applicable in Cases Involving Domestic or Family Violence

(A) Except as otherwise provided in Section (B), confidential oral communications between a victim of domestic or family violence and an advocate, and written records and reports concerning the victim are privileged, the privilege can be claimed by:

- (1) The victim; or
- (2) The person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if the victim is deceased or if the privilege has been waived by the victim.

(B) The privilege does not relieve a person from any duty imposed pursuant to the Child Abuse Reporting Requirement contained in the Dry Creek Rancheria Children's Code. A person may not claim the privilege when providing evidence in proceedings concerning child abuse pursuant to the Dry Creek Children's Code.

SECTION 20. Residential Confinement in Home of Victim Prohibited

In cases involving domestic or family violence, the Court must not order residential confinement for a perpetrator in the home of the victim.

SECTION 21. Court Discretion in Sentencing Perpetrators of Domestic or Family Violence

(A) The Court may not sentence a perpetrator of domestic or family violence to community service in lieu of jail unless:

- (1) The perpetrator has not been accused of violating an Order for Protection while the criminal matter was pending;
- (2) The perpetrator has no previous conviction for domestic or family violence;
- (3) The perpetrator meets other eligibility criteria established pursuant to Section (B);
- (4) Consent of the prosecutor is obtained after consultation with the victim, when the victim is available;
- (5) A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
- (6) The Court orders conditions of the sentence to community service that are necessary to protect the victim, prevent future violence, and rehabilitate the perpetrator.

(B) The Court must establish criteria for determination of:

- (1) A perpetrator's eligibility for a sentence of community service in lieu of jail;
- (2) A perpetrator's successful completion of the conditions imposed by the Court; and
- (3) Penalties for violation of the conditions imposed by the Court.

SECTION 22. Conditions of Probation or Parole for Perpetrator Convicted of Crime Involving Domestic or Family Violence; Required Reports by Police Department

(A) The Court must consider the safety and protection of the victim and any member

of the victim's family or household before placing on probation or granting parole to a perpetrator who has been convicted of a crime involving domestic or family violence.

(B) The Court may condition the placing on probation or granting of parole upon compliance with one or more orders of the Court, including but not limited to the following:

- (1) Enjoining the perpetrator from threatening to commit or committing acts of domestic or family violence against the victim or other family or household member;
- (2) Prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with the victim, directly or indirectly;
- (3) Requiring the perpetrator to vacate or stay away from the residence, school, place of employment, or a specified place frequented by the victim and any designated family or household member;
- (4) Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;
- (5) Prohibiting the perpetrator from using or possessing a firearm or other specified weapon;
- (6) Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator;
- (7) Directing the perpetrator to participate in and complete, to the satisfaction of the Court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;
- (8) Directing the perpetrator to pay restitution to the victim; and
- (9) Imposing any other condition necessary to protect the safety of the victim and his or her family or household members, or to rehabilitate the perpetrator.

(C) The perpetrator must pay the costs of any condition of probation or parole, to the

extent that he or she is able to do so. The Court will carefully consider the perpetrator's income in assessing these costs, and may establish a payment schedule for the costs payable by the perpetrator.

(D) The Court must establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probation or parole imposed pursuant to Section (B).

(E) The police department must immediately report to the Court any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the Court, and any threat of harm made by the perpetrator.

(F) The police department must establish policies and procedures:

- (1) For the exchange of information concerning the perpetrator with the Court and the victim; and
- (2) For responding to reports of nonattendance or noncompliance by the perpetrator with conditions imposed pursuant to Section (B).

SECTION 23. Penalties for Crime of Domestic or Family Violence

(A) A person convicted of a crime of domestic or family violence is guilty of an Offense, and will be sentenced in accordance with the Dry Creek Rancheria Criminal Code, as follows:

- (1) A person convicted of a first offense of domestic or family violence as defined by Section 5(A)(4)(a)-(j) is guilty of a Class C Offense.
- (2) A person convicted of a second offense of domestic or family violence as defined by Section 5(A)(4)(a)-(j) is guilty of a Class B Offense.
- (3) A person convicted of a first offense of domestic or family violence as defined by Section 5(A)(4)(k)-(p), or a person convicted of a third or subsequent offense of domestic or family violence as defined by Section 5(A)(4)(a)-(j) is guilty of a Class A Offense.
- (4) If the Court finds that the respondent has violated the conditions of release, probation or parole contained in an order issued in accordance with Section 13 or 23, or has violated an order for protection issued in accordance with Section 7(E) or 7(I), and that there is reason to believe that the respondent will commit a further violation of the provisions of the

order, the Court may require the violator to acknowledge an obligation to comply with the order on the record. The Court may require a bond sufficient to deter the violator from committing further violations of the order, considering the financial resources of the violator, and not to exceed \$5000. If the violator refuses to comply with an order to acknowledge the obligation or post a bond under this paragraph, the Court must commit the violator to be imprisoned for the term of the order or until the violator complies with the order under this paragraph, but in no case for a term exceeding one year. The warrant must state the cause of the commitment, with the sum and time for which any bond is required. An order under this paragraph is appealable.

SECTION 24. Court-Ordered and Court-Referred Mediation, Marriage Counseling, or Reconciliation of Cases Involving Domestic of Family Violence Prohibited

The Court must not order or refer parties into mediation, marriage counseling, or reconciliation for resolution of the issues in a petition for an order for protection.

SECTION 25. Registration and Enforcement of Foreign Orders for Protection; Duties of Court Clerk

(A) A certified copy of an order for protection issued in another tribal or state court may be filed in the office of the Clerk of the Tribal Court. The Tribal Court will afford full faith and credit to the order for protection if the order is consistent with 18 U.S.C. § 2265(b).

(B) An order for protection filed in accordance with Section (A) has the same effect and must be enforced in the same manner as an order for protection issued by the Tribal Court.

(C) The Clerk of the Court must:

- (1) Maintain a registry in which to enter certified orders for protection issued by other tribal or state courts that are received for filing; and
- (2) At the request of another tribal or state court or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party.

(D) The Court will enforce all provisions of a registered foreign order for protection whether or not such relief is available in the Court.

SECTION 26. Intervention and Referrals

(A) Confidentiality for Victims.

- (1) A victim of domestic abuse may refuse to disclose and may prevent any volunteer or employee of a program for victims of domestic abuse from disclosing, the content of oral communication and written records and reports concerning the victim.
- (2) This privilege may be waived only by the victim. It must be in writing and must identify what information may be disclosed, to whom, and for what purpose. Such a waiver is not valid after thirty (30) days or after the victim revokes the waiver.
- (3) These provisions on confidentiality for victims shall not prevent the disclosure of information compiled about incidents of domestic and family violence which protects the identity of the victim and family or household members of the victim.

(B) Intervention for Batterers.

- (1) Where services are provided for batterers pursuant to an Order for Protection, the batterer who is ordered into the program shall be required by the Court to sign the following releases:
 - (a) Allowing the provider of services to inform the victim and victim's advocate whether or not the batterer is in treatment pursuant to the Order, whether or not the batterer is in compliance with treatment provisions, and whether or not the safety of the victim is at risk;
 - (b) Allowing prior and current treating agencies to provide information about the batterer to the service provider; and
 - (c) Allowing the service provider to provide information about the batterer to relevant legal entities including courts, parole and probation officers, and child protective services.

(C) Written policies and procedures developed pursuant to this Chapter may include requiring tribal programs and other entities within the jurisdiction of this Tribe to provide information about the rights of victims and about remedies and services available, may set standards for service providers concerning domestic and family violence, and may establish protocols for intervention and referrals for services for suspected victims or batterers, and their household and family members.

SECTION 27. Prevention, Treatment, and Education Services

(A) The Dry Creek Rancheria Social Services Department is responsible for coordinating and involving various agencies present in the community in order to;

- (1) Eliminate barriers to meeting the safety and other needs of victims of family violence,
- (1) To hold batterers accountable for their actions, and
- (2) To enhance the provision of services to victims and their batterers.

(B) Program Responsibilities:

- (1) The tribal programs and other organizations within the jurisdiction of the Tribe and listed below shall develop and put into effect written policies and procedures concerning its effective response to the occurrence of domestic abuse within ninety (90) days of the effective date of this enactment.
- (2) This requirement applies to the following programs and organizations:
 - (a) Human/Social Services
 - (b) Housing
 - (c) Health Care Providers
 - (d) Tribal Council
 - (e) Employment Assistance Program
 - (f) Tribal Court

- (g) Domestic Abuse/Shelter Program
- (h) Law Enforcement
- (i) Schools and Day Care

(3) A copy of these policies and procedures shall be provided to the Domestic Abuse Response Team and to the program responsible for coordinating or providing services to victims and perpetrators of domestic abuse within ninety (90) days of the effective date of this enactment.

(4) All tribal programs and other organizations within the jurisdiction of the Tribe shall post notice as provided by the Domestic Abuse Response Team in a location in view of all employees identifying where victims of domestic and family violence can receive assistance.

(D) Continuing Education.

(1) The policies and procedures developed under the above section shall provide for continuing education of employees concerning domestic and family violence on the following topics:

- (a) The nature, extent and causes of domestic and family violence
- (b) Practices designed to promote safety of the victim and other family and household members, including safety plans;
- (c) Resources available to victims, perpetrators and families such as advocacy, health care, alcohol and mental health treatment, and shelter programs;
- (d) Sensitivity to gender bias and cultural, racial, and sexual issues; and
- (e) The lethality of domestic and family violence.

SECTION 28. Sovereign Immunity Preserved.

Nothing in Chapter 1 through Chapter 3 of this Criminal Code shall be deemed to constitute a waiver by the Dry Creek Rancheria of its sovereign immunity, rights, powers, or privileges.

SECTION 29. Inconsistent Provisions of Other Law

It is the intent of the Tribal Council to enact this Title to supplement the Dry Creek Tribal Code, and other provisions of tribal law. If any provision of the Title is found to be inconsistent with this Title, the provisions of this Title shall govern in domestic relations proceedings, unless there is good cause shown that application of this Title would not be in the best interests of the child(ren). The Children's Code remains in full force and effect for dependency proceedings initiated by the Tribe for the welfare of Indian children.

SECTION 30. Severability

If any part or parts, or the application of any part, of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter. The Dry Creek Rancheria hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts or the application of any part would be declared invalid.