

## JUDICIARY

### *120 Attachment 1*

#### **Menominee Indian Tribe of Wisconsin**

#### **25 CFR Adoptions under Ordinance No. 79-14**

(Current as of September 30, 1992)

#### APPLICATION OF JURISDICTION

##### SECTION 11.2 JURISDICTION

##### COURTS OF INDIAN OFFENSES

SECTION 11.8	WITNESSES
SECTION 11.11	RECORDS
SECTION 11.12	COPIES OF LAWS
SECTION 11.14	WARRANTS TO APPREHEND
SECTION 11.15	ARRESTS
SECTION 11.16	SEARCH WARRANTS
SECTION 11.17	COMMITMENTS
SECTION 11.18	BAIL OR BOND
SECTION 11.19	DEFINITION OF SIGNATURE
SECTION 11.20	DEFINITION OF TRIBAL COUNCIL
SECTION 11.21	COOPERATION BY FEDERAL EMPLOYEES

##### CIVIL ACTIONS

SECTION 11.23	LAW APPLICABLE TO CIVIL ACTIONS
SECTION 11.24	JUDGMENTS IN CIVIL ACTIONS
SECTION 11.25	COSTS IN CIVIL ACTIONS
SECTION 11.26	PAYMENT OF JUDGMENTS FROM INDIVIDUAL INDIAN MONEYS

##### DOMESTIC RELATIONS

SECTION 11.27	RECORDING OF MARRIAGES AND DIVORCES
SECTION 11.28	TRIBAL CUSTOM MARRIAGE AND DIVORCE
SECTION 11.29	TRIBAL CUSTOM ADOPTION
SECTION 11.30	DETERMINATION OF PATERNITY AND SUPPORT

## MENOMINEE TRIBAL CODE

SECTION 11.31      DETERMINATION OF HEIRS  
SECTION 11.32      APPROVAL OF WILLS

### SENTENCES

SECTION 11.33      NATURE OF SENTENCES  
SECTION 11.34      PROBATION  
SECTION 11.35      PAROLE  
SECTION 11.36      JUVENILE DELINQUENCY  
SECTION 11.37      DISPOSITION OF FINES

### CODE OF INDIAN TRIBAL OFFENSES

SECTION 11.40      CARRYING CONCEALED WEAPONS  
SECTION 11.41      ABDUCTION  
SECTION 11.42      THEFT  
SECTION 11.43      EMBEZZLEMENT  
SECTION 11.44      FRAUD  
SECTION 11.45      FORGERY  
SECTION 11.46      MISBRANDING  
SECTION 11.47      RECEIVING STOLEN PROPERTY  
SECTION 11.48      EXTORTION  
SECTION 11.51      MALICIOUS MISCHIEF  
SECTION 11.52      TRESPASS  
SECTION 11.53      INJURY TO PUBLIC PROPERTY  
SECTION 11.54      MAINTAINING A PUBLIC NUISANCE  
SECTION 11.55ME      LIQUOR VIOLATIONS  
SECTION 11.56      CRUELTY TO ANIMALS  
SECTION 11.57      GAME VIOLATIONS  
SECTION 11.58      GAMBLING  
SECTION 11.59      ADULTERY  
SECTION 11.62      PROSTITUTION  
SECTION 11.63      GIVING VENEREAL DISEASE TO ANOTHER  
SECTION 11.65      FAILURE TO SEND CHILDREN TO SCHOOL  
SECTION 11.66      CONTRIBUTING TO THE DELINQUENCY OF A MINOR

## JUDICIARY

SECTION 11.67	BRIBERY
SECTION 11.68	PERJURY
SECTION 11.71	REFUSING TO AID OFFICER
SECTION 11.72	ESCAPE
SECTION 11.73	DISOBEDIENCE TO LAWFUL ORDERS OF COURT
SECTION 11.74	VIOLATION OF AN APPROVED TRIBAL ORDINANCE
SECTION 11.90ME	KEEPING OF LIVESTOCK
SECTION 11.92ME	FOREST FIRE PREVENTION
SECTION 11.94ME	GARBAGE AND RUBBISH
SECTION 11.97ME	

## THE INDIAN POLICE

SECTION 11.301	SUPERINTENDENT IN COMMAND
SECTION 11.302	POLICE COMMISSIONERS
SECTION 11.303	POLICE TRAINING
SECTION 11.304	MINIMUM STANDARDS FOR POLICE PROGRAMS
SECTION 11.306	RETURN OF EQUIPMENT

## APPLICATION OF JURISDICTION

### SECTION 11.2 JURISDICTION

- (a) A Court of Indian Offenses shall have jurisdiction over all offenses enumerated in 11.38 through 11.87H, when committed by any Indian, within the reservation or reservations for which the court is established, provided that such court on the Hopi Reservation shall also have jurisdiction to enforce against members of the tribe within the Hopi Reservation the ordinances passed by the Hopi tribal council which prohibit offenses against the peace and welfare of the tribe committed by such members off the reservation.
- (b) With respect to any of the offenses enumerated in 11.38 through 11.87H, over which Federal or State courts may have lawful jurisdiction, the jurisdiction of the Court of Indian Offenses shall be concurrent and not exclusive. It shall be the duty of the said Court of Indian Offenses to order delivery to the proper authorities of the State or Federal Government or of any other tribe or reservation, for prosecution, any offender, there to be dealt with according by law, where such authorities consent to exercise jurisdiction lawfully vested in them over the said offender.
- (c) For the purpose of the enforcement of the regulations in this part, an Indian shall be deemed to be any person of Indian descent who is a member of any recognized Indian

## MENOMINEE TRIBAL CODE

tribe now under Federal jurisdiction and a "reservation" shall be taken to include all territory within reservation boundaries, including fee patented lands, roads, waters, bridges, and lands used for agency purposes.

- (d) All Indians employed in the Indian Service shall be subject to the jurisdiction of the Court of Indian Offenses but any such employee appointed by the Secretary of the Interior shall not be subject to any sentence of such court, unless such sentence shall have been approved by the Secretary of the Interior.

## COURTS OF INDIAN OFFENSES

### SECTION 11.8 WITNESSES

- (a) The several judges of the Courts of Indian Offenses shall have the power to issue subpoenas for the attendance of witnesses either on their own motion or on the request of the police commissioner or superintendent or any of the parties to the case, which subpoena shall bear the signature of the judge issuing it. Each witness answering such subpoena shall be entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each witness testifying at a hearing shall receive pay for a full day (8) hours, plus travel allowance. Failure to obey such subpoena shall be deemed an offense as provided in Section 11.73. Service of such subpoenas shall be by a regularly acting member of the Indian police or by an Indian appointed by the court for that purpose.
- (b) Witnesses who testify voluntarily shall be paid by the party calling them if the court so directs, their actual traveling and living expenses incurred in the performance of their function.

### SECTION 11.11 RECORDS

Each Court of Indian Offenses shall be required to keep for inspection by duly qualified officials a record of all proceedings of the court, which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case. A record of all proceedings shall be kept at the agency office, as required by 25 U.S.C. 200.

### SECTION 11.12 COPIES OF LAWS

- (a) Each Court of Indian Offenses shall be provided with copies of all Federal and State laws and regulations of the Bureau of Indian Affairs applicable to the conduct of Indians within the Reservation.

## JUDICIARY

- (b) Whenever the court is in doubt as to the meaning of any law, treaty or regulation it may request the superintendent to furnish an opinion on the point in question.

### SECTION 11.14 WARRANTS TO APPREHEND

Every judge of a Court of Indian Offenses shall have the authority to issue warrants to apprehend, said warrants to issue in the discretion of the court only after a written complaint shall have been filed, bearing the signature of the complaining witness. Service of such warrants shall be made by a duly qualified member of the Indian police or other police officer of the United States Indian Service. No warrant to apprehend shall be valid unless it shall bear the signature of a duly qualified judge of the Court of Indian Offenses.

### SECTION 11.15 ARRESTS

No member of the Indian police shall arrest any person for any offense defined by 11.38 through 11.87H or by Federal law, except when such offense shall occur in the presence of the arresting officer or he shall have reasonable evidence that the person arrested has committed an offense or the officer shall have a warrant commanding him to apprehend such person.

### SECTION 11.16 SEARCH WARRANTS

- (a) Every judge of the Court of Indian Offenses of any Indian reservation shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of said court. However, no warrant of search and seizure shall issue except upon a duly signed and written complaint based upon reliable information or belief and charging the commission of some 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 describes the articles or property to be seized and bears the signature of a duly qualified judge of the Court of Indian Offenses. Service of warrants of search and seizure shall be made only by members of the Indian police or police officers of the Bureau of Indian Affairs.
- (b) No policeman shall search or seize any property without a warrant unless he shall know, or have reasonable cause to believe, that the person in possession of such property is engaged in the commission of an offense under the regulations in this part. Unlawful search or seizure will be deemed trespass and punished in accordance with Section 11.52.

### SECTION 11.17 COMMITMENTS

No Indian shall be detained, jailed or imprisoned under the regulations in this part for a longer period than 36 hours unless there be issued a commitment bearing the signature of a duly qualified judge of the Court of Indian Offenses. There shall be issued, for each Indian held for trial, a temporary commitment and for each Indian held after sentence a final commitment on the prescribed forms.

## MENOMINEE TRIBAL CODE

### SECTION 11.18 BAIL OR BOND

Every Indian charged with an offense before any Court of Indian Offenses may be admitted to bail. Bail shall be by two reliable members of any Indian tribe who shall appear before a judge of the Court of Indian Offenses where complaint has been filed and there execute an agreement in compliance with the form provided therefor and made a part of the regulations in this part. In no case shall the penalty specified in the agreement exceed twice the maximum penalty set by 11.38 through 11.87H for violations of the offense with which the accused is charged.

### SECTION 11.19 DEFINITION OF SIGNATURE

The term "signature" as used in the regulations in this part shall be defined as the written signature, official seal, or the witnessed thumb print or mark of any individual.

### SECTION 11.20 DEFINITION OF TRIBAL COUNCIL

The term "tribal council," as used in the regulations in this part, shall be construed to refer to the council, business committee or other organization recognized by the Department of the Interior as representing the tribe, or where no such body is recognized, to the adult members of the tribe in council assembled.

### SECTION 11.21 COOPERATION BY FEDERAL EMPLOYEES

- (a) No field employee of the Indian Service shall obstruct, interfere with or control the functions of any Court of Indian Offenses, or influence such functions in any manner except as permitted by the regulations in this part or in response to a request for advice or information from the court.
- (b) Employees of the Bureau of Indian Affairs, particularly those who are engaged in social service, health and educational work, shall assist the court, upon its request, in the preparation and presentation of the facts in the case and in the proper treatment of individual offenders.

## CIVIL ACTIONS

### SECTION 11.23 LAW APPLICABLE TO CIVIL ACTIONS

- (a) In all civil cases the Court of Indian Offenses shall apply any laws of the United States that may be applicable, any authorized regulations of the Interior Department, and any ordinances or customs of the tribe, not prohibited by such Federal laws.

## JUDICIARY

- (b) Where any doubt arises as to the customs and usages of the tribe the court may request the advice of counselors familiar with these customs and usages.
- (c) Any matters that are not covered by the traditional customs and usages of the tribe, or by applicable Federal laws and regulations, shall be decided by the Court of Indian Offenses according to the laws of the State in which the matter in dispute may lie.

### SECTION 11.24 JUDGMENTS IN CIVIL ACTIONS

- (a) In all civil cases, judgment shall consist of an order of the court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act of the benefit of the injured party.
- (b) Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.
- (c) Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the tribe.
- (d) Where the injury was inflicted as the result of accident, or where both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he has suffered.

### SECTION 11.25 COSTS IN CIVIL ACTIONS

The court may assess the accruing costs of the case against the party or parties against whom judgment is given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible under Section 11.8 and the fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the procedure before the court as the court may direct.

### SECTION 11.26 PAYMENT OF JUDGMENTS FROM INDIVIDUAL INDIAN MONEY'S

- (a) Whenever the Court of Indian Offenses shall have ordered payment of money damages to an injured party and the losing party refuses to make such payment within the time set for payment by the court, and when the losing party has sufficient funds to his credit at the agency office to pay all or part of such judgment, the superintendent shall certify to the Secretary of the Interior the record of the case and the amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the injured party the amount of the judgment, or such lesser amount as may be specified by the Secretary, from the account of the delinquent party.
- (b) A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Court of Indian Offenses to distribute decedents' estates.

## MENOMINEE TRIBAL CODE

### DOMESTIC RELATIONS

#### SECTION 11.27 RECORDING OF MARRIAGES AND DIVORCES

All Indian marriages and divorces, whether consummated in accordance with the State law or in accordance with tribal custom, shall be recorded within 3 months at the agency of the jurisdiction in which either or both of the parties reside.

#### SECTION 11.28 TRIBAL CUSTOM MARRIAGE AND DIVORCE

- (a) The Tribal council shall have authority to determine whether Indian custom marriage and Indian custom divorce for members of the tribe shall be recognized in the future as lawful marriage and divorce upon the reservation, and if it shall be so recognized, to determine what shall constitute such marriage and divorce and whether action by the Court of Indian Offenses shall be required. When so determined in writing, one copy shall be filed with the Court of Indian Offenses, one copy with the superintendent in charge of the reservation, and one copy with the Commissioner of Indian Affairs. Thereafter Indians who desire to become married or divorced by the custom of the tribe shall conform to the custom of the tribe as determined. Indians who assume or claim a divorce by Indian custom shall not be entitled to remarry until they have complied with the determined custom of their tribe nor until they have recorded such divorce at the agency office.
- (b) Pending any determination by the tribal council on these matters, the validity of Indian custom marriage and divorce shall continue to be recognized as heretofore.

#### SECTION 11.29 TRIBAL CUSTOM ADOPTION

The tribal council shall likewise have authority to determine whether Indian custom adoption shall be permitted upon the reservation among members of the tribe, and if permitted, to determine what shall constitute such adoption and whether action by the Court of Indian Offenses shall be required. The determination of the tribal council shall be filed with the Court of Indian Offenses, with the superintendent of the reservation and with the Commissioner of Indian Affairs. Thereafter all members of the tribe desiring to adopt any person shall conform to the procedure fixed by the tribal council.

#### SECTION 11.30 DETERMINATION OF PATERNITY AND SUPPORT

The Court of Indian Offenses shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of the inheritance by the Department of the Interior or by the Court of Indian Offenses.

## JUDICIARY

### SECTION 11.31 DETERMINATION OF HEIRS

- (a) When any member of the tribe dies leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any member claiming to be an heir of the decedent may bring suit in the Court of Indian Offenses to have the court determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of heirs shall be made unless all the possible heirs known to the court, to the superintendent, and to the claimant have been notified of the suit and given full opportunity to come before the court and defend their interests. Possible heirs who are not residents of the reservation under the jurisdiction of the court must be notified by mail and a copy of the notice must be preserved in the record of the case.
- (b) In the determination of heirs the court shall apply the custom of the tribe as to inheritance if such custom is proved. Otherwise the court shall apply State law in deciding what relatives of the decedent are entitled to be his heirs.
- (c) Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the administrative law judge would have jurisdiction, the Court of Indian Offenses may distribute only such property as does not come under the jurisdiction of the administrative law judge, and the determination of heirs by the court may be reviewed, on appeal, and the judgment of the court modified or set aside by the said administrative law judge, with the approval of the Secretary of the Interior, if law and justice so require.

### SECTION 11.32 APPROVAL OF WILLS

When any member of the tribe dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Court of Indian Offenses shall, at the request of any member of the tribe named in the will or any other interested party, determine the validity of the will after giving notice and full opportunity to appear in court to all persons who might be heirs of the decedent, as under Section 11.31. A will shall be deemed to be valid if the decedent had a sane mind and understood what he was doing when he made the will and was not subject to any undue influence of any kind from another person, and if the will was made in accordance with a proved tribal custom or made in writing and signed by the decedent in the presence of two witnesses who also sign the will. If the court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or to their heirs; but no distribution of property shall be made in violation of a proved tribal custom which restricts the privilege of tribal members to distribute property by will.

## MENOMINEE TRIBAL CODE

### SENTENCES

#### SECTION 11.33 NATURE OF SENTENCES

- (a) Any Indian who has been convicted by the Court of Indian Offenses violation of provision of 11.38 through 11.84H shall be sentenced by the court to work for the benefit of the tribe for any period found by the court to be appropriate; but the period fixed shall not exceed the maximum period set for the offense in the code, and shall begin to run from the day of the sentence. During the period of sentence the convicted Indian may be confined in the agency jail if so directed by the court. The work shall be confined in the agency jail if so directed by the court. The work shall be done under the supervision of the superintendent or an authorized agent or committee of the tribal council as the court may provide.
- (b) Whenever any convicted Indian shall be unable or unwilling to work, the court shall, in its discretion, sentence him to imprisonment for the period of the sentence or to pay a fine equal to \$2 a day for the same period. Such fine shall be paid in cash, or in commodities or other personal property of the required value as may be directed by the court. Upon the request of the convicted Indian, the disbursing agent may approve a disbursement voucher chargeable to the Indian's account to cover payment of the fine imposed by the court.
- (c) In addition to any other sentence, the court may require an offender who has inflicted injury upon the person or property of any individual to make restitution or to compensate the party injured, through the surrender of property, the payment of money damages, or the performance of any other act for the benefit of the injured party.
- (d) In determining the character and duration of the sentence which shall be imposed, the court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, and whether the offense was malicious or willful and whether the offender has attempted to make amends, and shall give due consideration to the extent of the defendant's resources and the needs of his dependents. The penalties listed in 11.38 through 11.87H are maximum penalties to be inflicted only in extreme cases.

#### SECTION 11.34 PROBATION

- (a) Where a sentence has been imposed upon any Indian who has not previously been convicted of any offense, the Court of Indian Offenses may in its discretion suspend the sentence imposed and allow the offender his freedom on probation upon his signing a pledge of good conduct during the period of the sentence upon the form provided therefor.
- (b) Any Indian who shall violate his probation pledge shall be required to serve the original sentence plus an additional half of such sentence as penalty for the violation of his pledge.

## JUDICIARY

### SECTION 11.35 PAROLE

- (a) Any Indian committed by a Court of Indian Offenses who shall have without misconduct served one-half the sentence imposed by such court shall be eligible to parole. Parole shall be granted only by a judge of the Court of Indian Offenses where the prisoner was convicted and upon the signing of the form provided therefor.
- (b) Any Indian who shall violate any of the provisions of such parole shall be punished by being required to serve the whole of the original sentence.

### SECTION 11.36 JUVENILE DELINQUENCY

Whenever any Indian who is under the age of 18 years is accused of committing one of the offenses enumerated in 11.38 through 11.87H, the judge may in his discretion hear and determine the case in private and in an informal manner, and, if the accused is found to be guilty, may in lieu of sentence place such delinquent for a designated period under the supervision of a responsible person selected by him or may take such other action as he may deem advisable in the circumstances.

### SECTION 11.37 DISPOSITION OF FINES

- (a) All money fines imposed for the commission of an offense shall be in the nature of an assessment for the payment of designated court expenses. Such expenses shall include the payment of the fees provided for in the regulations in this part to jurors and to witnesses answering a subpoena. The fines assessed shall be paid over by the clerk of court to the disbursing agent of the reservation for deposit as a "special deposit, court funds" to the disbursing agent's official credit in the Treasury of the United States. The disbursing agent shall withdraw such funds, in accordance with existing regulations, upon the order of the clerk of the court signed by a judge of the court for the payment of specified fees to specified jurors or witnesses. The disbursing agent and the clerk of the court shall keep an accounting of all such deposits and withdrawals for the inspection of any person interested. Whenever such fund shall exceed the amount necessary with a reasonable reserve for the payment of the court expenses before mentioned, the tribal council shall designate, with the approval of the superintendent, further expenses of the work of the court which shall be paid by these funds, such as the writing of records, the costs of notices or the increase of fees, whether or not any such costs were previously paid from other sources.
- (b) Wherever a fine is paid in commodities, the commodities shall be turned over under the supervision of the clerk of the court to the custody of the superintendent to be sold or, if the tribal council so directs, to be disposed of in other ways for the benefit of the tribe. The proceeds of any sale of such commodities shall be deposited by the disbursing agent in the special deposit for the court funds and recorded upon the accounts.

## MENOMINEE TRIBAL CODE

### **CODE OF INDIAN TRIBAL OFFENSES**

#### **SECTION 11.40 CARRYING CONCEALED WEAPONS**

Any Indian who shall go about in public places armed with a dangerous weapon concealed upon his person, unless he shall have a permit signed by a judge of a Court of Indian Offenses and countersigned by the superintendent of the reservation, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days; and the weapons so carried may be confiscated.

#### **SECTION 11.41 ABDUCTION**

Any Indian who shall willfully take away or detain another person against his will or without the consent of the parent or other person having lawful care or charge of his, shall be deemed guilty of abduction and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

#### **SECTION 11.42 THEFT**

Any Indian who shall take the property of another person, with intent to steal, shall be deemed guilty of theft and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

#### **SECTION 11.43 EMBEZZLEMENT**

Any Indian who shall, having lawful custody of property not his own, appropriate the same to his own use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

#### **SECTION 11.44 FRAUD**

Any Indian 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 and upon conviction thereof shall be sentenced to labor for a period not to exceed 8 months.

#### **SECTION 11.45 FORGERY**

Any Indian who shall, with intent to defraud, falsely sign, execute or alter any written instrument, shall be deemed guilty of forgery and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

## JUDICIARY

### SECTION 11.46 MISBRANDING

Any Indian who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

### SECTION 11.47 RECEIVING STOLEN PROPERTY

Any Indian who shall receive or conceal or aid or conceal or receiving any property, knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, robbery or burglary, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 3 months.

### SECTION 11.48 EXTORTION

Any Indian who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any moneys, goods, property, or anything else of any value, shall be deemed guilty of extortion and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days.

### SECTION 11.51 MALICIOUS MISCHIEF

Any Indian who shall maliciously disturb, injure or destroy any livestock or other domestic animal or other property, shall be deemed guilty of malicious mischief and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

### SECTION 11.52 TRESPASS

Any Indian who shall go upon or pass over any cultivated or enclosed lands of another person and shall refuse to go immediately therefrom on the request of the owner of occupant thereof or who shall willfully and knowingly allow livestock to occupy or graze on the cultivated or enclosed lands, shall be deemed guilty of an offense and upon conviction shall be punished by a fine not to exceed \$5, in addition to any award of damages for the benefit of the injured party.

### SECTION 11.53 INJURY TO PUBLIC PROPERTY

Any Indian who shall, without proper authority, use or injure any public property of the tribe or the United States, shall be deemed guilty of the offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days.

## MENOMINEE TRIBAL CODE

### SECTION 11.54 MAINTAINING A PUBLIC NUISANCE

Any Indian who shall act in such a manner, or permit his property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his neighbors, shall be deemed guilty of offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 5 days, and may be required to remove such nuisance when so ordered by the court.

### SECTION 11.55ME LIQUOR VIOLATIONS

Until such time as the Menominee Tribe enacts its own liquor control ordinance, the provisions of the Wisconsin State laws found in Wis. Ann. 176.01 through 176.91 relating to liquor control, are hereby incorporated by reference and made applicable to the buying, selling, and consumption of alcoholic beverages on the Menominee Reservation, with the exception that any Indian found guilty of violating such law shall, in lieu of the penalties provided by State Law, be sentenced to labor for a period not to exceed sixty (60) days.<sup>1</sup>

### SECTION 11.56 CRUELTY TO ANIMALS

Any Indian who shall torture or cruelly mistreat any animal, shall be deemed guilty of an offense and shall be sentenced to labor for a period not to exceed 30 days.

### SECTION 11.57 GAME VIOLATIONS

Any Indian who shall violate any law, rule or regulation adopted by the tribal council for the protection or conservation of the fish or game of the reservation, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days; and he shall forfeit to the court for the use of any Indian institution such game as may be found in his possession.

### SECTION 11.58 GAMBLING

Any Indian who shall violate any law, rule or regulation adopted by the tribal council for the control or regulation of gambling on any reservation, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days.

### SECTION 11.59 ADULTERY

Any Indian who shall have sexual intercourse with another person, either of such persons being married to a third person, shall be deemed guilty of adultery and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days.

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<sup>1</sup>Editor's Note: See now Ch. 125, Wis. Stats., and Ch. 250, Alcoholic Beverages, of this Code.

## JUDICIARY

### SECTION 11.62 PROSTITUTION

Any Indian who shall practice prostitution or who shall knowingly keep, maintain, rent or lease, any house, room, tent, or other place for the purpose of prostitution shall be deemed guilty of a offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

### SECTION 11.63 GIVING VENEREAL DISEASE TO ANOTHER

Any Indian who shall infect another person with a venereal disease shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to labor for a period not to exceed 3 months. The Court of Indian Offenses shall have authority to order and compel the medical examination and treatment of any person charged with violation of this section or found to be afflicted with any communicable disease.

### SECTION 11.65 FAILURE TO SEND CHILDREN TO SCHOOL

Any Indian who shall, without good cause, neglect or refuse to send his children or any children under his care, to school shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 10 days.

### SECTION 11.66 CONTRIBUTING TO THE DELINQUENCY OF A MINOR

Any Indian who shall willfully contribute to the delinquency of any minor shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

### SECTION 11.67 BRIBERY

Any Indian who shall give or offer to give any money, property or services, or anything else of value to another person with corrupt intent to influence another in the discharge of his public duties or conduct, and any Indian who shall accept, solicit or attempt to solicit any bribe, as above defined, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months; and any tribal office held by such person shall be forfeited.

### SECTION 11.68 PERJURY

Any Indian who shall willfully and deliberately, in any judicial proceeding in any Court of Indian Offenses, falsely swear 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

## MENOMINEE TRIBAL CODE

deemed guilty of perjury and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

### SECTION 11.71 REFUSING TO AID OFFICER

Any Indian who shall neglect or refuse, when called upon by any Indian police or other police officer of the Bureau of Indian Affairs, to assist in the arrest of any person charged with or convicted of any offense or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement shall be deemed guilty of an offense, and upon conviction, shall be sentenced to labor for a period not to exceed 10 days.

### SECTION 11.72 ESCAPE

Any Indian, who, being in lawful custody, for any offense, shall escape or attempt to escape or who shall permit or assist or attempt to permit or assist another person to escape from lawful custody shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to labor for period not to exceed 6 months.

### SECTION 11.73 DISOBEDIENCE TO LAWFUL ORDERS OF COURT

Any Indian who shall willfully disobey any order, subpoena, warrant or command duly issued, made or given by the Court of Indian offenses or any officer thereof, shall be deemed guilty of an offense and upon conviction thereof shall be fined in an amount not exceeding \$180 or sentenced to labor for a period not to exceed 3 months.

### SECTION 11.74 VIOLATION OF AN APPROVED TRIBAL ORDINANCE

Any Indian who violates an ordinance designed to preserve the peace and welfare of the tribe, which was promulgated by the tribal council and approved by the Secretary of the Interior, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced as provided in the ordinance.

### SECTION 11.90ME KEEPING OF LIVESTOCK

Until such time as the Menominee Tribe enacts its own ordinances dealing with the keeping of livestock, the provisions of Menominee County Zoning Ordinance, Article 6, Section 41, prohibiting the keeping of livestock within 200 feet of residential property lines are hereby incorporated by reference and made applicable with the exception that any Indian found guilty of violating such law shall, in lieu of the penalties provided by the Menominee County Zoning Ordinance, be sentenced to labor for a period not to exceed thirty (30) days.

## JUDICIARY

### SECTION 11.92ME FOREST FIRE PREVENTION

Until such time as the Menominee Tribe enacts its own ordinances dealing with fire protection, control and suppression, the provisions of the Wisconsin Administration Code, DNR Section 26.12(5)(a) requiring a written permit issued by Wisconsin Department of Natural Resources Fire Warden before any person sets any fire except for warming the person or cooking food, are hereby incorporated by reference and made applicable to the setting of fires on the Menominee Reservation. Any Indian found guilty of failing to obtain a permit shall be sentenced to labor for a period not to exceed thirty (30) days.<sup>2</sup>

### SECTION 11.94ME GARBAGE AND RUBBISH

Until such time as the Menominee Tribe enacts its own ordinances dealing with garbage, rubbish, and inflammable material, the provisions of the town of Menominee Ordinance No. 4 regulating disposal of garbage, rubbish and inflammable material are hereby incorporated by reference and made applicable with the exception that the designation of Menominee Enterprises, Inc., shall include Menominee Tribal Enterprises, that public dumps may be designated by the Menominee Tribe as well as by the town of Menominee, and that any Indian found guilty of violating such law shall, in lieu of the penalties provided by town of Menominee Ordinance No. 4, be sentenced to labor for a period not to exceed five (5) days in the event of the first offense and not to exceed thirty (30) days for each succeeding violation.<sup>3</sup>

### SECTION 11.97ME

Until such time as the Menominee Tribe enacts its own juvenile code, the provisions of the Wisconsin State laws relating to juveniles, Wisconsin Statutes 48.12-48.47, 48.78, 48.81-48.97, and Chapter 54, are hereby incorporated by reference and made applicable to juvenile cases arising on the Menominee Reservation. Provided, That the following statutes are not to apply: Wis. Stat. Ann. 48.31, 48.32, 48.41, 48.43, and 48.89. And provided further, That rendering of juvenile services to the Menominee Tribe shall be in accordance with the agreement entered into on March 15, 1978, between the Wisconsin Department of Health and Social Services and the Menominee Restoration Committee.<sup>4</sup>

## THE INDIAN POLICE

### SECTION 11.301 SUPERINTENDENT IN COMMAND

The superintendent of each Indian reservation shall be recognized as commander of the Indian police force and will be held responsible for the general efficiency and conduct of the members

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<sup>2</sup>Editor's Note: See Ch. 325, Fire Prevention, of this Code.

<sup>3</sup>Editor's Note: See Ch. 504, Solid Waste, of this Code. Former Section 11.95ME, Extradition, which immediately followed this section, was repealed 9-18-1981 by Ord. No. 81-22. See now Ch. 132, Law Enforcement, Art. II, Extradition.

<sup>4</sup>Editor's Note: See Ch. 124, Juvenile Justice Code, of this Code. Section 48.12, Wis. Stats., was repealed by 1995 Act 77.

## MENOMINEE TRIBAL CODE

thereof. It shall be the duty of the superintendent, or his duly qualified representative, to keep himself informed as to the efficiency of the Indian police in the discharge of their duties, to subject them to a regular inspection, to inform them as to their duties to keep a strict accounting of the equipment issued them in connection with their official duties. It shall be the duty of the superintendent to detail such Indian policemen as may be necessary to carry out the orders of the Court of Indian Offenses and to preserve order during the court sessions. The superintendent shall investigate all reports and charges of misconduct on the part of Indian policemen and shall exercise such proper disciplinary measures as may be consistent with existing regulations. No superintendent of any Indian reservation shall assign or detail any member of the Indian police force for duty not connected with the administration of law and order.

### SECTION 11.302 POLICE COMMISSIONERS

The superintendent of any Indian reservation may, with the approval of the Commissioner of Indian Affairs, designate as police commissioner any qualified person. Wherever any special or deputy special officer is regularly employed in any Indian jurisdiction, he shall be police commissioner for that jurisdiction. Such police commissioner shall obey the orders of the superintendent of the reservation where employed and shall see that the orders of the Court of Indian Offenses are properly carried out. The police commissioner shall be responsible to the superintendent for the conduct and efficiency of the Indian police under his direction and shall give such instruction and advice to them as may be necessary. The police commissioner shall also report to the superintendent all violations of law or regulation and any misconduct of any member of the Indian police.

### SECTION 11.303 POLICE TRAINING

It shall be the duty of the superintendent to maintain from time to time as circumstances require and permit classes of instruction for the Indian policemen. Such classes shall familiarize the policemen with the manner of making searches and arrests, the proper and humane handling of prisoners, the keeping of records of offenses and police activities, and with court orders and legal forms and the duties of the police in relation thereto, and other subjects of importance for efficient police duty. It shall further be the purpose of the classes to consider methods of preventing crime and of securing cooperation with Indian communities in establishing better social relations.

### SECTION 11.304 MINIMUM STANDARDS FOR POLICE PROGRAMS

The following minimum standards are required of all law enforcement programs that receive funding from the Bureau of Indian Affairs.

- (a) Each law enforcement officer shall be specifically identified as such and shall be individually authorized to make arrests and carry firearms. Only employees assigned duties as law enforcement officers and qualified under paragraph (e) of this section may be authorized to carry firearms or make arrests.

## JUDICIARY

- (b) Uniforms, when worn, shall positively identify the wearer as a law enforcement officer. Badge, name plate and tribal or Bureau of Indian Affairs patch shall be visible at all times. Uniforms of all enforcement personnel shall be plainly distinguishable from the uniforms of any non-enforcement personnel working on the reservation. Each officer shall be issued a standard identification card bearing a photograph of the officer.
- (c) A firearm may be discharged only when in the considered judgment of the officer there is imminent danger of loss of life or serious bodily injury to the officer or to another person. The weapon may be fired only for the purpose of rendering the person at whom it is fired incapable of continuing the activity prompting the officer to shoot. The firing of warning shots is prohibited. The policy does not apply to the use of firearms to participate in official marksmanship training or to kill a dangerous or seriously injured animal.
- (d) Except in firearms training, each time a firearm is used for law enforcement purposes a report shall be filed with the superior of the officer who used the weapon. Whenever use of a weapon results in serious injury or death of any person, the officer firing the weapon shall be placed on administrative leave, or be assigned to strictly administrative duties pending a thorough investigation of all circumstances surrounding the incident.
- (e) Each law enforcement officer must have attained a score of 70 percent or better on an approved firearms qualification course within the previous six months to be qualified to carry a firearm. Whenever an officer's firearms qualification lapses, the officer shall return all weapons issued. The following qualification courses are approved firearms qualification courses:
  - (1) The National Rifle Association National Police Course.
  - (2) The National Rifle Association 25 – Yard Course.
  - (3) The National Rifle Association Practical Pistol Course.
  - (4) The Federal Bureau of Investigation Practical Pistol Course.
- (f) (1) Law enforcement officers shall be issued the standard police .38 caliber revolver and ammunition. The use of other types of hand guns such as automatics, parabellums, or calibers other than the authorized .38 caliber is prohibited. The barrel length may be not more than 6 inches nor less than 4 inches for uniformed personnel, and not less than 2 inches for plainclothes personnel. Only standard load ammunition may be used. Bureau of Indian Affairs officers who carried a .357 Magnum revolver. The Commissioner of Indian Affairs may grant a written waiver to permit Bureau of Indian Affairs officers to carry hand guns not authorized by this paragraph.
  - (2) Each tribe shall specify the type of firearms, ammunition and auxiliary equipment to be used by the law enforcement officers of that tribe.
- (g) (1) Newly employed patrol officers shall successfully complete within their first year of service the approved Basic Police Training Course conducted at the Indian Police

## MENOMINEE TRIBAL CODE

Academy and approved by the Commissioner of Indian Affairs. An officer who fails to complete the training required by this paragraph shall be discharged or transferred to a position not involving law enforcement duties. Transfer may result in demotion.

- (2) Prior to, or within one year after, promotion or appointment to a supervisory enforcement position, an employee shall complete the approved Supervisory Enforcement Officer Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who is serving in a supervisory position and fails to complete the training required in this paragraph shall be transferred to a nonsupervisory position. Transfer may result in demotion.
  - (3) Prior to, or within one year after, promotion or appointment to a criminal-investigator position, an officer shall successfully complete the Criminal-Investigator Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who is serving in a criminal-investigator position and fails to complete the training required in this paragraph shall be transferred to a noncriminal-investigator position. Transfer may result in demotion.
  - (4) Prior to, or within one year after, promotion or appointment to a supervisory criminal-investigator position, an officer shall successfully complete the Executive Management Course of Training conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy approved by the Commissioner of Indian Affairs. An officer who is serving in a supervisory criminal-investigator position and fails to complete the training required in this paragraph shall be transferred to a nonsupervisory criminal-investigator position. Transfer may result in demotion.
- (h) Each law enforcement office shall receive a minimum of forty hours of local in-service training annually to meet training needs determined by the tribe and to keep abreast with developments in the field of law enforcement.
- (i) The Civil Service Commission accepted Bureau of Indian Affairs standards for skill level GS-083 are the minimum entry level qualifications for a patrol officer. The Civil Service Commission standards for skill level qualifications for criminal investigators. The standards are available for inspection or copying at any Bureau, Agency, Area, or Central Personnel Office.
- (j) Salaries paid law enforcement officers by a tribal organization under contract under Part 271 of this chapter or by a tribal governing body under a grant under Part 272 of this chapter shall be equal to or greater than the salaries paid officers with similar responsibilities employed directly by the Bureau of Indian Affairs.
- (k) Prior to taking an adverse action against any employee, the contractor under Part 272 of this chapter shall take the following steps:

## JUDICIARY

- (1) Notify the employee of the contemplated action and give a full specification of the reasons such action is contemplated.
  - (2) Provide the employee with a written statement of any specific violation of rules, regulations, or statutes the contractor or grantee alleges the employee has committed and the names of all persons upon whose testimony these allegations are based.
  - (3) Set a hearing date not less than 15 days after the employee has been given the written statement of allegation.
  - (4) Provide the employee and the employee's counsel at the hearing with an opportunity to confront and cross-examine each adverse witness.
  - (5) Provide the employee and the employee's counsel at the hearing with an opportunity to delineate issues, to present factual contentions in an orderly manner and to generally protect the employee's interest.
  - (6) Reconsider the decision to take the adverse action based solely on the evidence given at the hearing and provide the employee at the time the decision is announced with a written statement of the reasons for the decision and the evidence relied upon in reaching the decision.
  - (7) Issue a final order based on the decision reached after the hearing.
- (l) After October 1, 1977, the tribe shall require each law enforcement officer it employs to adhere to a law enforcement code of conduct prescribed by the tribe. The code shall establish specific rules concerning conflicts of interest, employee conduct both on and off duty, impartiality and thoroughness in performance of duty, and acceptance of gifts or favors.
  - (m) A contractor under Part 271 of this chapter shall use the same report forms and submit the same statistical reports to the Central Office that are required of Bureau of Indian Affairs police programs.
  - (n)
    - (1) When a law enforcement officer receives an oral or written allegation that a law enforcement officer employed by a program funded by the Bureau of Indian Affairs has violated the civil rights of any person, the officer receiving the allegation shall prepare a written report of the allegation and transmit it through the chain of command to the chief law enforcement officer within seven days of receipt of the allegation.
    - (2) Not later than seven days after being notified of the allegation, the chief law enforcement officer shall take the following actions:
      - (i) Notify the Federal Bureau of Investigation, the agency superintendent or contracting officer's representative, and the tribal council. The notice to the Federal Bureau of Investigation shall state whether an investigation is being

## MENOMINEE TRIBAL CODE

conducted to determine whether tribal law was violated and shall cite any relevant provisions of the tribal code.

- (ii) If the officer against whom the allegation is made is an employee of the Bureau of Indian Affairs, prepare a memorandum to the superintendent, who shall, through the area director and the Assistant Secretary-Indian Affairs, transmit to the Director, Office of Audit and Investigation, a request that the allegation be investigated to determine whether any administrative action is warranted. The memorandum shall be transmitted through the superintendent and the area director. The tribal council shall receive a copy of any such memorandum.
- (iii) If the officer against whom the allegation is made is an employee of a tribal contractor, notify both the top Bureau of Indian Affairs law enforcement officer assigned to the agency and the tribal council. If there is no Bureau of Indian Affairs law enforcement officer at the agency, the superintendent and the area special officer shall be notified.
- (3) If the chief law enforcement officer is accused of a civil rights violation, the report of the allegation shall be transmitted directly to the agency superintendent, who shall take the actions required by paragraph (n)(2) of this section. If there is no agency superintendent, the report of the allegation shall be transmitted directly to the area director, who shall take the action required by paragraph (n)(2) of this section.
- (4) As soon as all actions required by paragraphs (n)(1), (2), and (3) of this section have been completed, a copy of all documents concerning the allegation shall be transmitted to the Chief Division of Law Enforcement Services, in the Central Office.<sup>5</sup>

## SECTION 11.306 RETURN OF EQUIPMENT

Upon the resignation, death or discharge of any member of the Indian police all articles or property issued him in connection with his official duties must be returned to the superintendent or his representative.

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<sup>5</sup>Editor's Note: Former Section 11.305, Minimum standards for detention programs, which immediately followed this section, was repealed 12-7-1989 by Ord. No. 89-21. See now Ch. A900, Detention Facility Policies and Procedures.