

CY2013-DRAFT OF PROPOSED REVISED CRIMINAL OFFENSE CODE SECTION 605

605. Driving While Intoxicated – It shall be unlawful to drive or be in actual physical control of any motor vehicle upon any private or public road within the Tribal Jurisdiction while under the influence of intoxicating liquor, or controlled dangerous substances, or any other drugs which impair the ability to control or operate a vehicle.

(a) A person is presumed to be intoxicated if there is 0.08% or more alcohol in the blood by weight as shown by chemical analysis of that person's breath, blood, or other bodily substance.

(b) A person is presumed not to be intoxicated if there is less than 0.05% of alcohol in their blood by weight. Between such above stated percentages, results of tests showing such fact may be received in evidence, with other tests or observations, for consideration by the court or jury.

(c) Any person who operates any vehicle on this reservation shall be deemed to have given his or her consent to a chemical analysis of his/her blood, breath, or other bodily substance for the purposes of determining the amount of alcohol or drugs in his/her body.

(d) A person is presumed to be under the influence of intoxicating liquor if the person refuses to consent to a blood alcohol test and fails to pass field sobriety tests.

(e) A breath or blood test must be administered with the consent of the subject, by a qualified operator using a properly maintained apparatus in order to be admissible, provided that if any person refuses to take such test when requested to do so by an Officer having a reasonable suspicion that such a person may be intoxicated, the person's driving privileges within the Tribal jurisdiction shall be suspended by the Court for a period of six (6) months whether or not such person is convicted of any offense. Such suspension is mandatory.

605.1 Driving Under the Influence of Alcohol and/or a Controlled Substance or other Drugs- It shall be unlawful to drive or be in actual physical control of any motor vehicle upon any private or public road within the Tribal jurisdiction while under the influence of alcohol and/or a controlled dangerous substance or other drugs when there is alcohol in their blood by weight between 0.07% and 0.05% and/or fails to pass field sobriety tests and other observations which impair the ability to control or operate a motor vehicle.

(a) Any person who operates any vehicle on this reservation shall be deemed to have given his or her consent to a chemical analysis of his/her blood, breath, or other bodily substance for the purposes of determining the amount of alcohol or drugs in his/her body.

(b) A person is presumed to be under the influence of alcohol and/or a controlled substance or other drugs if the person refuses to consent to a breath, blood, or bodily substance test and fails to pass field sobriety tests.

(c) A breath or blood test must be administered with the consent of the subject, by a qualified operator using a properly maintained apparatus in order to be admissible, provided that if any person refuses to

take such test when requested to do so by an Officer having a reasonable suspicion that such a person may be intoxicated, the person's driving privileges within the Tribal jurisdiction shall be suspended by the Court for a period of six (6) months whether or not such person is convicted of any offense. Such suspension is mandatory.

The phrase "physical control of a motor vehicle" under these sections shall mean a situation where the driver is sitting in the driver's seat with the key in the ignition.

605.2 Penalties

A. Any operator convicted of **Driving While Intoxicated** shall be guilty of a misdemeanor offense:

(a) Any prior convictions for DWI/DUI of 10 years or more shall not be used to determine that the violation being charged is a second, third, or subsequent offense and is inadmissible to determine level of severity of penalties.

1st Offense shall be punishable by a fine not to exceed \$500 (plus court costs) and imprisonment of six (6) months in jail. First time offenders shall be afforded the opportunity to participate in a diversion program. The diversion program shall consist of obtaining an Alcohol/Drug evaluation and following recommendations, completion of DWI/DUI classes, six (6) months' probation, and payment of fine and court costs. Driving privileges within Tribal jurisdiction shall be suspended for (6) months unless court grants restricted driving privileges. The conviction shall be reported to the State that issued the operator's license.

2nd Offense shall be punishable by a fine not less than \$500 and not to exceed \$1000 (plus court costs) and imprisonment of six (6) months in jail. Driving privileges within Tribal jurisdiction shall be suspended for one (1) year. The conviction shall be reported the State that issued the operator's license.

3rd Offense shall be punishable by a fine not less than \$1000 and not to exceed \$5000 (plus court costs) and mandatory imprisonment of one (1) year in jail. The conviction shall be reported to the State that issued the operator's license.

Driving While Intoxicated violations shall not be dropped/dropped during plea negotiations.

B. Any Operator convicted of **Driving Under the Influence of Alcohol and/or a Controlled Substance or other Drugs** shall be guilty of a misdemeanor offense:

1st Offense shall be punishable by a fine not less than \$200 and not to exceed \$300 (plus court costs) and imprisonment of 90 days in jail. First time offenders shall be afforded the opportunity to participate in a diversion program. The diversion program shall consist of obtaining an Alcohol/Drug evaluation and following the recommendation, completion DWI/DUI classes, 90 day probation and payment of fine and court costs.

2nd Offense shall be punishable by a fine not less than \$350 and not to exceed \$500 (plus court costs) and imprisonment of six (6) month in jail.

3rd Offense shall be punishable by a fine not less than \$750 and not to exceed \$1000 (plus court costs) and imprisonment of one (1) year in jail.

Any subsequent DUI offenses after the 3rd offense shall be punishable of a fine not less than \$1500 and not more than \$3000 (plus court costs) and mandatory imprisonment of one (1) year in jail.

- C. Prior convictions for DWI/DUI shall be considered for level of severity of penalty if occurrence is less than 10 years from date of current arrest.

Hist. Ord. #02-25

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