



# KIOWA TRIBE

**P.O. Box 369 • Carnegie, Oklahoma • 73015**  
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**OFFICE OF THE LEGISLATURE**

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RESOLUTION NO. KL-CY-2017-009

## Kiowa Code of 2017

At a duly called Session of the Legislature of the Kiowa Tribe held this **8th** day of **July 2017**, the following Resolution and Law were adopted.

**WHEREAS;** the Legislature is vested with the authority to pass laws and resolutions pursuant to Article VI, Section 6(a) of the Constitution of the Kiowa Tribe; and,

**WHEREAS;** the U.S. Senate Committee on Indian Affairs has recognized that there is a public safety crisis in Indian Country and violent crime rates in Indian Country are more than twice the national average; and

**WHEREAS;** the U.S. Senate Committee on Indian Affairs admits that the federal response to reservation crime remains fragmented and fails to meet the justice needs of tribal communities; and

**WHEREAS;** the enactment of The Tribal Law and Order Act of 2010 through acknowledges the right of an Indian tribe to impose increased criminal penalties if the tribe provides, among other things, a comprehensive system of criminal laws and procedures, including rules of evidence; and

**WHEREAS;** it is deemed to be in the best interest of the Kiowa Tribe to enact Rules of Civil and Criminal Procedures that expand the sovereignty of the Tribe to better address the right of the people to live in a peaceful environment; and

**NOW THEREFORE BE IT RESOLVED** that the Legislature approves and enacts the attached Kiowa Code; and,

**BE IT FINALLY RESOLVED** all versions of, and amendments to, resolutions concerning the current Law and Order Code including the Court of Indian Offenses regulations are hereby replaced and superseded.



## CERTIFICATION

The foregoing Resolution No. **KL-CY-2017-009** was duly voted upon at a duly called **Session III** of the Legislature of the Kiowa Tribe held this **8th** day of **July 2017**, the following Resolution and Law were adopted, with a vote of **( 5 )** in favor, and **( 0 )** opposed, **( 0 )** abstaining, and **( 0 )** absent, pursuant to the authority vested in the Kiowa Tribe Legislature by the Constitution of the Kiowa Tribe.



**Rhonda J. Ahhaitty, Secretary  
of the Kiowa Tribe Legislature**

RESOLUTION NO KL-CY-2017-009

SPONSOR: RENEE M. PLATA, SPEAKER OF THE KIOWA TRIBE LEGISLATURE

CO-SPONSOR(S): RHONDA J. AHHAITY, SECRETARY OF THE KIOWA LEGISLATURE; ANITA ONCO-JOHNSON, LEGISLATOR; DAVE GEIMAU SADDLE, LEGISLATOR; RONALD C. POOLAW, LEGISLATOR

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LEGISLATORS	YES	NO	ABSTAIN	ABSENT
Rhonda J. Ahhaitty, Secretary	X			
Renee M. Plata,	X			
Ronald C. Poolaw, Sr.	X			
Dave Geimausaddle	X			
Anita L. Onco-Johnson	X			
Modina M. Waters	X			

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**DELIVERY OF THE RESOLUTION AND LAW TO THE CHAIRMAN**

Resolution No. **KL-CY-2017-009** was presented to the Chairman of the Kiowa Tribe on the **13th** day of **July 2017**, pursuant to the Article VI, Section 8(a)(iv) of the Constitution of the Kiowa Tribe, and will become effective after signature by the Chairman or veto override by the Legislature, and as otherwise required by the Constitution.

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**Rhonda J. Ahhaitty, Secretary  
of the Kiowa Tribe Legislature**

**CHAIRMAN'S ACTION:**

APPROVED

VETO - RETURNED TO LEGISLATURE WITH EXPLANATION:

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On this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
**Matthew Komalty, Chairman  
of the Kiowa Tribe**

Presented by the Chairman to the Legislature on the \_\_\_\_ day of \_\_\_\_\_, 2017.

**LEGISLATURE'S ACTION:**

**Override of Chairman's veto:**

YES

NO

LEGISLATORS	YES	NO	ABSTAIN	ABSENT
Rhonda J. Ahhaitty, Secretary				
Renee M. Plata, Speaker				
Ronald C. Poolaw, Sr.				
Dave Geimausaddle				
Anita L. Onco-Johnson				
Modina M. Waters				



## CERTIFICATION

The foregoing Resolution No. **KL-CY-2017-009** was duly voted upon at a duly called **Session III** of the Legislature of the Kiowa Tribe held this **8th** day of **July 2017**, the following Resolution and Law were adopted, with a vote of **( 5 )** in favor, and **( 0 )** opposed, **( 0 )** abstaining, and **( 0 )** absent, pursuant to the authority vested in the Kiowa Tribe Legislature by the Constitution of the Kiowa Tribe.

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**Rhonda J. Ahhaitty, Secretary  
of the Kiowa Tribe Legislature**

# **KIOWA CODE**

# KIOWA CODE

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## PREAMBLE

It is the intent of this Kiowa Code to adopt the essential provisions of the United States Government's Tribal Law and Order Act of 2010. Therefore, in accordance with Section 234(a) of the Act, the Kiowa Code provides for:

1. The effective assistance of counsel, Section 2.8.5 (Rights of Accused);
2. Access to a licensed attorney for the indigent at Tribal expense, Section 1.6.3 (Kiowa Public Defender);
3. Licensed judges presiding over cases with enhanced sentencing, Sections 1.3.3 (Qualifications of Chief Judge and Senior Associate Judge), 1.3.6 (Pro-Tern Judge), and 2.2.4 (Assignment of Criminal Actions Involving Serious or Dangerous Offenses); and
4. A Record of court proceedings, Section 1.5.7 (Courts of Record).

**TITLE I**  
**ESTABLISHMENT OF COURTS AND**  
**APPOINTMENT OF JUDGES**

**Chapter 1. JUDICIAL POWER**

**1.1.1 JUDICIAL POWER.** The judicial power of the Kiowa Tribe shall be vested in one Supreme Court and one Trial Court. The Legislature may also establish inferior courts, as needed.

**1.1.2 JUDICIAL COMMISSION.**

- (a) There shall be a Judicial Commission comprised of five Members of the Tribe nominated by the Chairman subject to the constitutional outlined in Art. VIII Sec. 9 (a). No person who has been convicted of a felony may serve as a Judicial Commission Member. Judicial Commission members shall serve four year staggered terms.
- (b) The Judicial Commission shall adopt a Code of Ethics for the Judges and Justices, based on the Model Code of Judicial Conduct. A Professionalism Committee shall adopt a Code of Ethics for attorneys and lay advocates, based on the Model Rules of Professional Conduct. The Judicial Commission shall hear any complaints regarding Justices, Judges, attorneys and lay advocates. The Judicial Commission shall have the power to make recommendations to the Chief Justice and Chief Judge to discipline a Justice, Senior Associate Judge, Judge or Pro-Tem Judge. The Judicial Commission shall have the power to make recommendations to the Chief Justice or Chief Judge to discipline or remove a Court clerk or other court staff. The Judicial Commission shall have the power to make recommendations to the Legislature to remove a Judge or Justice. The Judicial Commission shall provide each person subject to discipline or removal with due process.
- (c) The Judicial Commission shall have the power to regulate the conduct of lawyers and lay advocates licensed to practice in the Courts. A denial or revocation of a license to practice in the Courts issued by the Chief Judge may be appealed to the Judicial Commission, provided that any decision by the

Judicial Commission regarding such license may be appealed to the Chief Justice, who shall make a final decision in writing.



## **Chapter 2. SUPREME COURT**

**1.2.1 HOW CONSTITUTED.** The Supreme Court of the Kiowa Tribe shall consist of one Chief Justice and four Associate Justices. The selection of each Judge and Justice shall be upon nomination by the Chairman, subject to confirmation by the legislature as outlined Const. Art. VIII Sec. 2. The terms of each Judge and Justice are further set Art. VIII Sec. 3 (a) and (b). The Judicial Commission shall conduct a written evaluation and report of each Justice after one year of service and at such other times as the Judicial Commission deems necessary.

**1.2.2 QUALIFICATIONS.** Any individual who is a graduate of an accredited school of law and who is over the age of thirty (30) years and has never been convicted of a felony shall be eligible to be appointed a judge of the Supreme Court.

**1.2.3 CHIEF JUSTICE.** The Chief Justice or his designee shall preside at all proceedings. The Chief Justice shall hold such position until the expiration of his appointment.

**1.2.4 JURISDICTION.** The Supreme Court shall have appellate jurisdiction over any case on appeal from the Trial Court. The Supreme Court shall have original and exclusive jurisdiction over any final determination by the Election Commission on a protest or challenge of the results of an election, and such jurisdiction shall include the power to make findings of fact and conclusion of law, and to issue all remedies in law and equity. The Trial Court and the Supreme Court shall not have jurisdiction over traditional religious matters such as the conduct of ceremonies or the possession of sacred objects.

**1.2.5 ORDERS AND REMEDIES.** The Supreme Court has the power to issue all remedies in law or in equity necessary and proper to the complete exercise of its jurisdiction; to prevent or remedy any act of the Trial Court beyond the Trial Court's jurisdiction; to cause a Trial Court to act where the Trial Court unlawfully fails or refuses to act within its jurisdiction; and to interpret the Kiowa Constitution and all Kiowa statutes. The Supreme Court shall have the power to invalidate the laws of the Tribe if such laws are in conflict with the Constitution. Decisions of the Supreme Court shall be final. All orders, opinions and decisions of the Supreme Court shall be written and published.

**1.2.6 SALARIES.** Justices and Judges shall receive reasonable compensation as established by law. No increase or decrease in compensation for Justices and Judges shall take effect until after the next General Election except for generally applicable cost of living increases.

**1.2.7 CERTIFIED QUESTIONS OF KIOWA LAW.**

- (a) The Supreme Court has jurisdiction to answer questions of Kiowa Tribe law, including Kiowa constitutional law, certified from any tribal, federal, or state court or from any tribal, federal or state administrative agency.
- (b) The Supreme Court has jurisdiction to answer questions of Kiowa constitutional law, certified to it by the Legislature.

and shall expedite consideration of any certified questions of law. In the exercise of sound discretion, the Kiowa Supreme Court may decline to answer questions certified to it.

- (c) The Supreme Court may issue rules or administrative orders appropriate to the processing of certified questions.

**1.2.8 APPELLATE PROCEDURE.**

- (a) There shall be no right to a trial de novo (new trial) on appeal from the Trial Court to the Supreme Court. The decision of the Supreme Court shall be made on the basis of the file and record of the proceedings in the Trial Court, in addition to the briefs and verbatim memoranda submitted by the parties to the appeal. Oral argument may be allowed, if requested.
- (b) Upon the stipulation (agreement) of all parties to an appeal, the decision of the Supreme Court may be made upon the basis of stipulated (agreed upon) facts and/or issues of law and without, or with less than all of, the file and/or verbatim record of the Trial Court.

### **Chapter 3. TRIAL COURTS**

**1.3.1 ESTABLISHMENT.** A trial Court is hereby established for the Kiowa Tribe and shall be known as the Trial Court.

**1.3.2 COMPOSITION.** The Trial Court shall consist of one Chief Judge, one Senior Associate Judge, and associate judges, as deemed necessary by the Legislature by law. The Judicial Commission may conduct a written evaluation and report of each Trial Court Judge after one year of service and at such other times as the Judicial Commission deems necessary.

**1.3.3 QUALIFICATIONS OF CHIEF JUDGE AND SENIOR ASSOCIATE JUDGE.** Any person admitted to practice before the Supreme Court of the United States, or any United States Circuit Court of Appeals, or the Supreme Court of any state of the United States who is over the age of thirty (30) years and who has never been convicted of a felony shall be eligible to be appointed Chief Judge or Senior Associate Judge of the Trial Court. No person shall be appointed or serve as a Trial or a Chief Judge who has been found guilty of any crime involving fraud or dishonesty.

**1.3.4 ASSOCIATE TRIAL JUDGES.** Any member of the Kiowa Tribe over the age of 25 years who has never been convicted of a felony or a misdemeanor involving fraud or dishonesty, shall be eligible to be appointed associate judge of the Trial Court.

**1.3.5 SALARIES.** Justices and Judges shall receive reasonable compensation as established by law. No increase or decrease in salary shall be allowed during the Judge's term, except for cost of living increases that apply to all employees.

**1.3.6 DISQUALIFICATION.** No judge shall hear or determine any case at the trial level or appeal when he has a direct interest in the outcome of the case or is related to one of the litigants in the trial, in

accordance with the Model Code of Judicial Conduct Rule 2.11(A), or applicable rules adopted by the Judicial Commission.

**1.3.7 REMOVAL.** Appellate and Trial judges may be removed for cause by the Legislature, but only as set in the removal process in Art. VIII, Sec. 9 Sec 9 (b). Written charges must be delivered to the judge sought to be removed not less than twenty (20) days before the hearing.

**1.3.8 EXISTING TERMS OF OFFICE.** Upon the adoption of this Code, the Judges currently serving shall remain in office with the full judicial authority to act, in accordance with the Constitution, and pursuant to their employment or contractual terms.

## **Chapter 4. JURISDICTION OF TRIAL COURT.**

**1.4.1 CRIMINAL JURISDICTION.** The Trial Court has original jurisdiction over all offenses committed in violation of this Code, the Kiowa Sex Offender Registration Code (SORNA), and any ordinances or laws of the Tribe when committed by an Indian, within any lands held in trust for, or owned by the Tribe, or held by the United States for the benefit of the Tribe or the people, including any rights of way existing now or in the future (the "Territory").

**1.4.2 EXCLUSION OF NON-INDIANS.** The Trial Court has original jurisdiction to enforce the provisions of any Code, ordinance or law of the Kiowa Tribe providing for the exclusion of non-Indians from the Kiowa Territory.

**1.4.3 JUVENILE MATTERS.** The Trial Court sits as the Juvenile Court and exercises the jurisdiction over such matters.

### **1.4.4 CIVIL JURISDICTION.**

The Trial Court has original jurisdiction over all civil actions or controversies, whether at law or equity, arising under the Constitution, laws, customs, and traditions of the Tribe, including cases in which the Tribe or its officials and employees shall be a party. All civil causes of action arising within the Jurisdiction of the Tribe shall be brought in the Trial Court before they can be litigated in any other court. The Trial Court shall also have original jurisdiction over civil regulatory actions involving the registration of convicted sex offenders, as defined in The Kiowa Sex Offender Registration Code (SORNA)

## **Chapter 5. POWERS & DUTIES OF TRIAL COURT**

**1.5.1 POWERS.** The Trial Court has the following powers:

- (a) To preserve and enforce order in its immediate presence.
- (b) To enforce order in the proceedings before it, or before a person empowered to conduct a judicial investigation under its authority.
- (c) To provide for the orderly conduct of proceedings before it or its officers.
- (d) To compel obedience to its judgments, orders, and process.
- (e) To supervise and control the conduct of its ministerial officers.
- (f) To compel the attendance of persons to testify in any hearing or trial.
- (g) To administer oaths in all proceedings held in its courtroom, and in all other cases where it may be necessary in the exercise of its powers and duties.
- (h) To interpret the Kiowa Constitution and laws of the Tribe, and to invalidate laws if they conflict with the Constitution.
- (i) To issue all remedies in law and in equity.
- (j) To administer funds received by the Court as a result of fines or sanctions issued by the Court.

**1.5.2 DUTIES.** It is the duty of the Courts to hear and decide all cases before it in a fair and impartial manner to the end that justice may be administered and law and order maintained.

**1.5.3 RULES OF COURT.** The time and place of Court sessions of both the Trial and Appellate Courts and all other details of judicial procedure not prescribed in this Code shall be established by the Chief Justice or Chief Judge of each Court respectively, subject to the authority of the Judicial Commission and/or Legislature to modify such rules.

### **1.5.4. PRECEDENTIAL AUTHORITY FOR THE COURTS.**

The Courts, in deciding matters of both substance and procedure, shall look to, and give weight as precedent to, the following:

- (a) The Kiowa Constitution;
- (b) Codes, ordinances, Resolutions, and laws enacted by the Tribe;
- (c) Laws passed by the Legislature;
- (d) Common law of the Kiowa Tribe;

(e) Laws, rules and regulations and cases of the Federal Government, which the Judge or Justice may use as guidance. This provision shall not, however, be deemed to be an adoption of such laws or rules as the law of the Kiowa Tribe nor as a grant or cession of any right, power or authority by the Kiowa Tribe to the Federal Government.

(f) The laws and rules, and cases interpreting such laws and rules, of the State of Oklahoma. This provision shall not be deemed to be an adoption of such laws or rules as the law of the Kiowa Tribe nor as a grant or cession of any right, power or authority by the Kiowa Tribe to the State of Oklahoma.

**1.5.5. RULES OF CRIMINAL PROCEDURE.** The Federal Rules of Criminal Procedure shall govern all criminal proceedings before the Trial Court. In the event that there is a conflict between the Federal Rules and procedures established under Kiowa law, the procedures established in Kiowa law shall control.

**1.5.6. RULES OF EVIDENCE.** The Federal Rules of Evidence shall constitute the rules of evidence, to the extent that they do not conflict with Kiowa law and tradition, in all proceedings before the Trial Courts.

**1.5.7. COURTS OF RECORD.**

- (a) The Trial and Appellate Courts are hereby declared to be Courts of Record and the Clerk thereof shall certify under seal as to the accuracy and validity of the files and records of all proceedings before the Courts of the Kiowa Tribe.
- (b) The Clerk of the Courts shall take, preserve and certify under seal to the accuracy of a verbatim record of the proceedings before the Courts. Such record may be taken and recorded by a stenographic, electronic, mechanical, or other recording means of devices approved by the Chief Judge of the Court as a trustworthy means of creating a permanent verbatim record of all proceedings.
- (c) The Chief Judge of the Trial Court and Chief Justice of the Supreme Court shall, by rule, prescribe the length of time such verbatim transcripts shall be preserved by the Clerk.
- (d) It shall be a criminal offense, punishable by the penalties and under the rules and procedures of Kiowa law for the Clerk of the Trial Courts to knowingly make or keep a false file, record or certificate or to alter, amend or destroy any file, record or transcript without lawful authority.



**1.5.8. VICTIM'S RIGHTS.** The Kiowa Tribe recognizes that victims of crime, including victims of Domestic Violence and Elderly Abuse, must be treated with the utmost respect in all criminal investigations and court proceedings. In addition to the rights enumerated in Rule 60 of the Federal Rules of Criminal Procedure, victims shall have the following rights:

- (a) To be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process.
- (b) To be reasonably protected from the defendant, or anyone acting on his or her behalf, from intimidation, threat, harassment or abuse.
- (c) To confer with the Tribal Prosecutor regarding the disposition of the case.
- (d) To refuse a personal interview by the defense attorney or anyone representing the defendant regarding the charges alleged in the criminal complaint.
- (e) To be accompanied by a victim's advocate, family member or friend, at all court proceedings.
- (f) To be compensated for all reasonable economic losses sustained by the victim caused by the defendant's criminal conduct.
- (g) To have personal property seized as evidence returned promptly.
- (h) To be informed, upon request, when the defendant is released from custody or has escaped.

## **Chapter 6. OFFICERS OF THE TRIAL COURT**

### **1.6.1 OFFICERS.** Officers of the Trial Court include:

- (a) Prosecutor;
- (b) Public Defender;
- (c) Clerk of the Court and any deputies, probation officers, referees, or masters;
- (d) Law enforcement officers, including all regularly employed police officers of the Kiowa Tribe, special officers, police officers, conservation officers, and federal officers;
- (e) Attorneys and lay advocates who are members of the Bar of the Kiowa Tribe.

**1.6.2 AUTHORITY OF PROSECUTOR APPOINTED BY TRIBE.** In any and all criminal proceedings in any and all Courts, the Kiowa Tribe shall appoint a person to act as prosecutor who shall have power and authority to sign, file, and present any and all complaints, subpoenas, affidavits, motions, processes, and papers of any kind and to appear before all Courts, Commissions, or Tribunals in criminal proceedings.

### **1.6.3 PUBLIC DEFENDER.**

- (a) The Kiowa Tribe hereby establishes the Office of Public Defender. The Chairman shall appoint a suitable person to serve as the Public Defender, subject to an appropriation of funds for such purposes in an approved budget.
- (b) Any person who is admitted to practice law before any State Supreme Court or U.S. District Court, and is in good standing, shall be qualified for the office.
- (c) The Public Defender shall be compensated upon a contractual basis, in accordance with the Kiowa Tribe's hiring and/or contracting requirements.
- (d) The Public Defender shall perform the following duties:
  - 1. Upon order of the court, defend, advise, and counsel without expense to the defendant, any person who is not financially able to employ counsel in the following proceedings and circumstances:
    - a. Offenses triable in the Trial Court at all stages of the proceedings, including the preliminary examination, but only for those offenses defined under 3.4.1 of this Code as an Offense, Serious Offense or Dangerous Offense;

- b. Extradition hearings;
  - c. Sanity hearings only when appointed by the court;
  - d. Involuntary commitment hearings only when appointed by the court;
  - e. Juvenile delinquency hearings only when appointed by the court;
  - f. Appeals to the Court of Appeals.
2. Keep a record of all services rendered by the public defender in that capacity and file with the Legislature an annual report of those services.
  3. By December 1 of each year, file with the Chief Judge and Tribal Council an annual report on the average cost of defending a major offense. For the purpose of this section, a major offense shall mean an offense, serious offense or dangerous offense as defined in Section 3.4.1 of this Code.
  4. The Public Defender may, with the consent and at salaries authorized by law, appoint those full-time and part-time deputies and assistants necessary to conduct the affairs of the office. The appointments shall be in accordance with the Kiowa Tribe's hiring and/or contracting requirements.
  5. The Public Defender shall petition the court to withdraw as attorney of record and the court may grant such petition, whenever private counsel is employed either by the defendant or by any other person to represent such defendant and such private counsel is accepted by the defendant.

**1.6.4 APPEARANCE OF ATTORNEYS.**

- A. Attorneys, if qualified, may appear before the Courts in all cases.
- B. Qualification of Attorneys. Attorneys may become a member of the Bar of the Courts, if they are admitted to practice before the Supreme Court of the United States, a United States Circuit Court of Appeals, U.S. District Court, or the Supreme Court of any state, and are in good standing.
- C. Certification. Any attorney eligible under Section 1.6.4(B), who desires to practice in the Courts shall obtain a certificate from the Court authorizing his or her practice before the Courts each calendar year. A certificate must be obtained prior to any appearance by the attorney in Court. The annual fee shall be established by the Chief Judge at not less than \$100.

- D. Dignity & Ethics. Any applicant for a certificate to become a member of the Bar of the Kiowa Courts shall agree that he or she will conform to the standards of conduct established by the Professionalism Committee in the performance of his duties as an attorney before the Courts.
- E. Contempt. In the event that an attorney is found guilty of contempt before any Court or contempt outside the presence of any Court, the judge may levy a penalty for the contempt not to exceed the sum of Five hundred Dollars (\$500.00), and if any attorney who fails to pay the fine as provided by any judgment of any Court therefore, he shall be disqualified to practice before the Courts.
- F. Attorney's fees. Attorneys practicing before the Court may charge reasonable fees.

**1.6.5 LAY ADVOCATES.** Lay advocates shall be permitted to obtain a certificate to practice before the Courts in all civil matters and minor criminal matters when the defendant has knowingly waived his right to an attorney. For the purposes of this section, a minor criminal matter is an offense punishable for less than a year. The provisions of Section 1.6.4 (A), (C)-(F) shall also apply to lay advocates. The Professionalism Committee and/or Chief Judge shall establish qualifications for certification of lay advocates to appear in cases before the Trial Court.

**TITLE II**  
**COURT PROCEDURES**

**Chapter 1. GENERAL PROVISIONS**

**2.1.1 SIGNATURE.** Defined. The act of putting a person's name at the end of an instrument to attest its validity. A signature may be written by hand, printed, stamped, typewritten, or engraved and whatever mark, symbol, or device one may choose to employ as representative of himself is sufficient.

**2.1.2 WORDS USED IN PRESENT TENSE.** Unless otherwise provided, words used in this Code in the present tense include the future as well as the present. Words used in the masculine include the feminine and the neuter, and plural includes the singular and vice-versa. The term "writing" includes the printing. The term "oath" includes affirmation.

**2.1.3 SPECIAL PROVISIONS CONTROL GENERAL PROVISIONS.** In construing this Code, each general provision shall be controlled by any special provision on the same subject if a conflict exists.

## **Chapter 2. COMMENCEMENT OF CRIMINAL PROCEEDINGS**

**2.2.1 COMPLAINT, DEFINED.** A Complaint is a written charge presented by the Prosecutor to the Trial Court judge having jurisdiction, that a person has committed a specified offense in violation of Kiowa Criminal Law.

### **2.2.2 CONTENTS OF COMPLAINT.**

Each Complaint must contain:

- a. The name of the jurisdiction where it is filed and the Trial Court within which it is brought.
- b. The names of the parties. If the names of all the defendants are not known, the complainant may add names as needed.
- c. A statement signed by the complainant of the acts constituting the offense, and the time and place of the commission of the offense, be as near as may be ascertained, in ordinary and concise language.

**2.2.3 FILING OF COMPLAINT.** The Prosecutor shall file a complaint with the Court and the Clerk shall mark thereon the date of filing same.

**2.2.4 ASSIGNMENT OF CRIMINAL ACTIONS INVOLVING SERIOUS OR DANGEROUS OFFENSES.** Criminal Actions that include allegations of a serious offense or dangerous offense, as defined in section 3.4.1 in this Code, shall only be heard by the Chief Judge, Senior Associate Judge, or a Pro-Tem Judge.

## **Chapter 3. ARREST, DELIVERY ON WARRANT, AND HOT PURSUIT**

**2.3.1 ARREST - DEFINED; PERSONS QUALIFIED TO MAKE; AID MAY BE REQUIRED.** Arrest is the taking of any Indian in custody and held to answer for a Tribal offense. An arrest may be made by:

1. A duly authorized police officer under a warrant as provided in Section 2.3.2 of this Code.
2. A duly authorized police officer without a warrant as provided in Section 2.3.5 of this Code.
3. Any Indian must promptly aid an officer in the execution of an arrest if the police officer commands his aid.

A police officer may detain a non-Indian for purposes of determining whether a crime(s) has been committed and the appropriate jurisdiction to address such crime(s).

**2.3.2 WARRANT OF ARREST.** A Warrant of Arrest is a written order signed by a Trial Court judge commanding the arrest of an Indian person. The warrant must specify the name of the person, or a description by which the person can be identified with reasonable certainty, if the name of the person is not known. It must also state the offense or offenses charged and the date it was issued. A Warrant of Arrest shall not be valid outside the limits of the Kiowa Tribe's jurisdiction as defined in Section 1.4.1 of this Code, but shall be subject to extradition as agreed upon between the Tribe and the various states.

**2.3.3 DIRECTION TO PEACE OFFICER; EXECUTION.** The Warrant may be directed to any law enforcement officer as defined in Section 1.6.1 of this Code and shall be executed by any qualified law officer to whom it may be delivered.

### **2.3.4 ARREST.**

A. **EXECUTION OF WARRANT.** The Warrant shall be executed by the arrest of the person. The peace officer need not have the Warrant in his possession at the time of the arrest; but must be satisfied that this is the person identified in the warrant.

B. **WITHOUT A WARRANT.** Any enforcement officer may, without a Warrant, arrest an Indian person:

1. For an offense committed or attempted in his presence.
2. When he has probable or reasonable cause for believing the Indian person arrested has committed an offense. He is justified in making the arrest though it later determined

that the offense had not been committed by the party arrested. When an Indian person is arrested without a warrant, the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of an offense, or is pursued immediately after the commission of an offense.

C. NOTIFICATION OF RIGHTS. At the time of making the arrest, the arresting officer must inform the defendant that he or she has the right to remain silent; that anything he says may be used against him in Court; that he may cease talking at any time he desires; and that he has a right to counsel before answering any questions regarding an alleged crime. If the defendant does not waive such rights, the officer must not continue any interrogation.

**2.3.5 BREAKING INTO DWELLING HOUSE OR OTHER STRUCTURE TO MAKE ARREST OR TO PROTECT A POTENTIAL VICTIM OF A CRIME.** Any enforcement officer having authority to make an arrest may break open an outer or inner door or window of a dwelling house or other structure for the purpose of making an arrest, or where a reasonable person has reason to believe that a person's life or limb is in immediate danger.

**2.3.6 PROMPT APPEARANCE OF DEFENDANT BEFORE A TRIAL COURT JUDGE.** An officer making an arrest shall take the defendant without undue delay before a Trial Court judge for arraignment. When a defendant arrested without a warrant is brought before the Court, a complaint shall be filed without delay. The defendant arrested shall be arraigned at the next regularly scheduled session of the Court. Any person brought before the Court at the session immediately following the arrest shall be considered to have been presented before the Court without undue delay.

**2.3.7 RETURN OF WARRANT.** Upon service of the Warrant of Arrest, or upon failure to find and apprehend the accused, the officer to whom the Warrant is directed shall endorse and return it to the Trial Court for filing.

**2.3.8 EXTRADITION.** The Chairman is hereby empowered to negotiate for the extradition of persons accused of criminal offenses, both to and from the Territory of the Kiowa Tribe, with any state, county, municipal jurisdiction or Indian Tribe, and to enter into reciprocal agreements that are substantially in the form attached. Such agreements shall be



the law of the Tribe until the date of expiration thereof or until rescinded by both the Chairman and the Legislature.

## **RECIPROCAL EXTRADITION AGREEMENT**

This agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, between the Kiowa Tribe

and \_\_\_\_\_, by and through their authorized representatives, is intended to provide a practical, workable framework in which said jurisdictions can obtain the extradition, for purposes of criminal prosecution, of persons violating the laws of either jurisdiction and fleeing to or found in the territory of the other.

### **Section 1. Definitions**

(1) "Executive Authority" means the Chairman of the Kiowa Tribe, in the case of the Kiowa Tribe, and the \_\_\_\_\_ in the case of \_\_\_\_\_.

(2) "Territorial Jurisdiction" means all lands and property within the limits of the territorial jurisdiction of either party hereto.

(3) "Criminal offense" means any act or failure to act which is defined by the law of the requesting jurisdiction to be criminal, and in the case of the Kiowa Tribe shall include any act or failure to act made criminal by any code, ordinance or law of the Kiowa Tribe, and in the case of \_\_\_\_\_, shall mean any act or failure to act which is declared to be, or punished as if it were, a felony. "Criminal offense" shall include a sentence of imprisonment for a criminal offense from which the accused person has fled or escaped before completing or being released by lawful procedure.

(4) "Requesting jurisdiction" means the jurisdiction which initiates a request for the other jurisdiction to turn over a person accused of a criminal offense.

(5) "Responding jurisdiction" means the jurisdiction which receives a request to turn over a person accused of a criminal offense.

(6) "Prosecuting authority" means the officer of either jurisdiction charged with the duty to prosecute the criminal offense for which extradition is sought.

### **Section 2. Persons charged with criminal offense to be delivered upon demand.**

Subject to the laws applicable to each party hereto, and except as otherwise provided in this agreement, the executive authority of each jurisdiction which is a party hereto shall cause to be arrested and delivered up to the executive authority of the requesting jurisdiction, any person within the territorial jurisdiction of the responding jurisdiction accused of committing a criminal offense within the territorial jurisdiction of the requesting jurisdiction, upon receipt of a request for extradition as specified herein.

### **Section 3. Request for Extradition.**

(1) The request for extradition shall be in writing and addressed from the executive authority of the requesting jurisdiction to the executive authority of the responding jurisdiction, and shall request the extradition of a person charged with committing a criminal offense in the requesting jurisdiction and having thereafter fled from the requesting jurisdiction.

(2) The request for extradition must be accompanied by certified copies of the following documents:

(a) The indictment, information, or criminal complaint, together with any affidavits relating thereto, or, in the case of the failure to serve or

complete a sentence or imprisonment lawfully imposed, the judgment and sentence and any affidavits or documents relating thereto plus a certificate of the executive authority of the requesting jurisdiction that the person requested has escaped from the confinement, or has otherwise unlawfully failed to complete same.

(b) A warrant of arrest, issued by the requesting jurisdiction.

(3) The indictment, information or criminal complaint, together with supporting affidavits, must substantially charge the person requested with having committed a criminal offense under the law of the requesting jurisdiction.

(4) The authenticity of the documents submitted and the validity and good faith of the request for extradition must be certified to in the request by the executive authority of the requesting jurisdiction.

#### **Section 4. Procedure Upon Receipt of a Request for Extradition**

The executive authority of the responding jurisdiction shall, within five (5) days after receipt of a request for extradition, do one of the following:

(1) Forward the request, with his approval endorsed thereon, to a judge of his jurisdiction empowered to issue warrants of arrest; or

(2) Return the request to the executive authority of the requesting jurisdiction with his reasons for not approving the request endorsed thereon, provided however, that the executive authority shall not inquire into the guilt or innocence of the accused as a condition to granting or withholding approval.

#### **Section 5. Arrest of Accused Person**

(1) Upon receipt of a request for extradition with the approval of the executive authority of the responding jurisdiction endorsed thereon, the judge of the responding jurisdiction shall issue a warrant of arrest for the person named in the request, and deliver said warrant of arrest to the law enforcement officers of the responding jurisdiction having authority to make arrests.

(2) The warrant of arrest so issued shall substantially conform to the requirements for such documents in the responding jurisdiction and shall recite the facts necessary to the validity of its issuance.

(3) Such warrants of arrest shall authorize the arrest of the accused at any time or place within the territorial jurisdiction of the responding jurisdiction in the manner provided for other arrests in that jurisdiction, and the authority of the officers executing said warrant shall be the same as when making other, arrests.

#### **Section 6. Procedure upon Arrest**

(1) As soon as practicable after the arrest of the accused, he shall be taken before the judge issuing the warrant of arrest and, after confirming his identity, there he shall be advised of the cause of the arrest, and, if he so desires, given an opportunity to obtain counsel.

(2) If the accused or his counsel desires to test the legality of the arrest, a hearing to determine such issue shall be scheduled and held as soon as is practicable. Notice of such hearing shall be given to the prosecuting authority of the responding jurisdiction, and to the agent of the requesting jurisdiction into whose custody the accused would otherwise be delivered.

(3) No person arrested under this agreement shall be delivered up to the requesting jurisdiction until he has either had a hearing to test the legality of his arrest, or has, in open court, made an informed waiver of such hearing.

(4) Persons arrested pursuant to this agreement shall be incarcerated in the local jail of the respective jurisdiction, as in the case of regular arrests.

(5) Any person arrested pursuant to this agreement shall be given the opportunity to make bail in any case where his delivery to the requesting jurisdiction is not imminent. Such bail shall be in amount sufficient to reasonably assure the appearance of the accused at a time and place specified by the court. Forfeiture of bail and arrest for nonappearance, where appropriate, may be made as in other cases.

**Section 7. Procedure if Prosecution is pending in the Responding Jurisdiction**

If a criminal prosecution has been instituted in the responding jurisdiction against the person whose extradition is sought, the executive authority of the responding jurisdiction, in his discretion, may either surrender the accused to the requesting jurisdiction or hold him until he has been tried and discharged or convicted and punished in the responding jurisdiction.

**Section 8. Manner of Initiating Requests for Extradition**

The prosecuting authority of each jurisdiction shall have authority to initiate requests for extradition, to administer the details thereof, and to designate officers to receive persons extradited from the other jurisdiction.

**Section 9. Prosecution in Requesting Jurisdiction**

(1) A person extradited under this agreement shall be given the same rights and privileges under the laws of the requesting jurisdiction as any other person accused of a criminal offense by that jurisdiction.

(2) Criminal prosecution in the requesting jurisdiction shall not be limited to the criminal offense specified in the request for extradition.

**Section 10. Sovereignty**

Nothing in this agreement or in the implementation hereof shall be deemed to be a grant, cession or waiver of any of the sovereign governmental rights, powers, or jurisdiction of either party hereto, including sovereign immunity.

**Section 11. Duration of Agreement.**

(1) This agreement shall become effective upon its execution by the executive authorities of the parties hereto.

(2) This agreement shall remain in effect until canceled by notification from the executive authority of either jurisdiction to the other.

Done at \_\_\_\_\_ on the day and year first above written.

KIOWA TRIBE

By: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
By: \_\_\_\_\_

**2.3.10 HOT PURSUIT DEFINED.** For the purpose of this Code, the term "hot pursuit" shall mean the act of chasing or following a person by a law enforcement officer who has reason to believe the person has committed a violation of the laws of the Kiowa Tribe, beyond the boundaries of the Trial Court's jurisdiction with the intent to arrest the person for such violation. The term shall include and be limited to immediate and uninterrupted chase. Any law enforcement officer as defined in this Code shall have the authority to engage in hot pursuit to apprehend and return to this jurisdiction, incarcerate and charge such person with a violation of the Kiowa Criminal Code.

## **Chapter 4 . SEARCH WARRANT**

**2.4.1 SEARCH WARRANT DEFINED.** A search warrant is a written Order signed by a Trial Court judge, directing any enforcement officer, as designated by Section 1.6.1(d) of this Code, to search for items or articles designated in the warrant and bring them before the Trial Court.

**2.4.2 ISSUANCE & CONTENTS.** A search warrant shall only be issued upon probable cause, supported by oath or affirmation, naming or describing with particularity the person, the items or articles to be seized, the place to be searched, and the reason or reasons for its issuance.

**2.4.3 EXECUTION OF WARRANT; OFFICERS AUTHORIZED; AUTHORITY TO BREAK IN STRUCTURE.** A search warrant may be served by any duly authorized enforcement officer during any time of the day or night unless the Trial Court finds sufficient reason to limit the time in which the warrant may be served and so endorses the warrant. The officer may break open any building, structure, or container.

**2.4.4 TIME LIMIT; EXECUTION OF WARRANT; VOID AT EXPIRATION.** A search warrant must be executed and returned to the Trial Court judge by whom it was issued within ten (10) days. The warrant is void after the expiration of that time, unless extended at the discretion of the Trial Court, and so endorsed.

**2.4.5 INVENTORY.** The officer must immediately return the warrant to the Trial Court judge, as set forth in Section 2.4.4 of this Code, together with a complete inventory of the items or articles taken. The inventory must be made before witnesses or in the presence of the person from whose possession it was taken. The Trial Court shall deliver a copy of the inventory to the person from whose possession the items or articles were taken.

**2.4.6 SEARCH & SEIZURE INCIDENTAL TO ARREST.** All reasonable searches and seizures that are incidental to a legal arrest are valid.

## **Chapter 5. BAIL**

**2.5.1 BAIL DEFINED.** Bail is setting at liberty a person arrested or imprisoned on security being taken for his appearance. His sureties shall be regarded as custodians of the principal's person. This provision is applicable only to offenses over which the Tribe has jurisdiction.

**2.5.2 BAILABLE OFFENSES.** All defendants, as a matter of right, are bailable before conviction, by sufficient cash or surety bail bond, and after conviction if an appeal is pending. If bail is not met, the defendant shall be incarcerated until his case is heard.

**2.5.3 BAIL SET; MAXIMUM AMOUNT.** Bail shall be set by the judge upon the showing of probable cause by the prosecutor or complainant. Bail shall be filed in such amount and in such form as, in the judgment of the Court, will insure the presence of the defendant in Court at the time of trial, having due regard for the nature and circumstances of the offense charged, the character and reputation of the defendant and the previous criminal record of the defendant. In no case shall the bail exceed five times the maximum cash penalty for each offense for which the defendant has been charged.

**2.5.4 TAKING OF BAIL; ENTERED BY CLERK.** The Trial Court shall accept sufficient cash or surety bond for the appearance of the defendant. Upon filing, the Clerk shall enter in the register of actions the date and amounts of the bond or name or names of the surety or sureties thereon and the amount of the bond.

**2.5.5 DISCHARGE OF DEFENDANT; BAIL FURNISHED; ORDER.** If the defendant is in custody, upon the execution of the requisite recognizance or bail bond to the Tribe, the Court must issue a written order for the defendant's discharge and upon the delivery of such order to the proper officer the defendant must be discharged.

**2.5.6 INCREASE OR DECREASE OF BAIL BOND; COMMITMENT ON DEFAULT.** When good cause has been shown to the Trial Court that a person previously admitted to bail on any such charge is about to abscond, has violated his conditions of release, has been charged with a subsequent offense, the Court may reconsider the amount of bail and may remand him to the custody of the jail pending a bail hearing. The Court may also, for good cause, reduce the amount of the bail after a hearing.

**2.5.7 ARREST OF DEFENDANT BY SURETY.** At any time before the defendant is required to appear and at any place within the Territory, for the purpose of surrendering the defendant, the surety may himself arrest the defendant, or, by written authority endorsed on a certified

copy of the bond, may empower any person of suitable age and discretion to do so and cause the delivery of the defendant before the Court forthwith, whereupon said bond shall be released.

**2.5.8 FORFEITURE OF BAIL.** If the defendant fails to appear for trial or when his personal appearance in Court is lawfully required, the Court may direct an entry of such failure to be made in the record, and the surety bond, or the money deposited instead of the bond, may be forfeited without further proceedings and the Court will thereafter issue a warrant for the arrest of the defendant.

**2.5.9 RETURN OF CASH OR SURETY BOND.** Any security given by surety or the defendant must be returned upon the return of a not guilty verdict or upon the execution of the sentence.

**2.5.10 RELEASE.** At arraignment, the Court, in its discretion, may release a defendant upon the defendant's own recognizance (OR). In determining whether to grant or release or set bond, the Court may consider the following factors:

1. Whether the defendant accurately identified himself to the Court and Law Enforcement, or otherwise used a false name or date of birth;
2. The nature and circumstances of the current charge, including whether the offense allegedly involved the use of force or violence, the risk of danger to any person or the community if the defendant is released on his own recognizance (OR);
3. The defendant's prior criminal history, if any, and whether, at the time of the current arrest or offense, the defendant was on probation, parole, or on other release pending trial, sentencing, or appeal for an offense;
4. The nature and extent of defendant's family relationships and ties to the Kiowa community;
5. Defendant's employment status and work history.

**2.5.11 BAIL FOR JUVENILE PERSONS.** No bail shall be required of any person who has not reached his sixteenth birthday. Custody and detention of minors under the age of sixteen shall be governed by Kiowa Children's Code.



## **Chapter 6. ARRAIGNMENT**

**2.6.1 ARRAIGNMENT DEFINED.** Arraignment consists of reading by the Court of the complaint to the defendant, and delivering to him a true copy thereof and of the endorsements thereon, and asking him whether he pleads guilty or not guilty to the offense charged in the complaint.

**2.6.2 PROCEDURE AT ARRAIGNMENT.** Arraignment shall be conducted in open Court, and shall consist of the following:

- a. Reading the complaint to the accused.
- b. Stating to him the substance of the charges and the language of the law establishing the offense and fixing the penalty.
- c. Advising him of his rights to counsel at his own expense, if he so desires, or at no cost if he so qualifies.
- d. Calling on him to plead to the charges.

**2.6.3 PLEAS.** The defendant may plead, "guilty," "not guilty," "not guilty by reason of former jeopardy," or "not guilty by reason of insanity." If the defendant wishes to plead "not guilty," he may demand a jury trial. After a plea of "not guilty," the Court shall set a date for trial which shall allow sufficient time for defendant to prepare his defense. If the defendant refuses to plead, a plea of "not guilty" will be entered for him by the Court. If the defendant wishes to plead "guilty," he may be sentenced immediately or within a reasonable time thereafter. A plea made to the Court must be made in open court with the defendant himself in Court. When the defendant pleads a former jeopardy and shall have been acquitted or convicted upon complaint, the conviction or acquittal is a bar to another complaint for the offense charged in the former, or for an attempt to commit the same, or an offense necessarily included therein of which he might have been convicted under that complaint.

## **Chapter 7. PRE-TRIAL MOTIONS**

**2.7.1 MOTIONS DEFINED.** A motion is the formal mode in which a party submits a proposed measure or resolution for the consideration and action of the Court.

**2.7.2 MOTION TO SET ASIDE THE COMPLAINT.** The complaint must be set aside by the Tribal Court upon the defendant's motion, prior to a plea, in the following cases:

- a. Where it is found not to comply with the requirements of Section 2.2.2 of this Code.
- b. That the defendant has been charged or committed without reasonable or probable cause.
- c. When the Court has determined that it has no jurisdiction over the person or the offense.

**2.7.3 ORDER SETTING ASIDE COMPLAINT NOT BAR TO SUBSEQUENT PROSECUTION.** An order to set aside the complaint is no bar to future prosecution for the same offense, except when the complaint was set aside for a lack of jurisdiction.

**2.7.4 MOTION WAIVED BY FAILURE TO MOVE TO SET ASIDE COMPLAINT.** If the motion to set aside the complaint is not made before the defendant's plea, the defendant is precluded from afterwards making the motion, except for a motion of lack of jurisdiction.

**2.7.5 PRE-TRIAL MOTIONS HEARD AT TIME MADE, EXCEPT GOOD CAUSE POSTPONEMENT.** All pre-trial motions must be ruled upon at the time they are made unless for good cause the Court postpones the hearing to another time.

**2.7.6 MOTION FOR A BILL OF PARTICULARS.** The defendant may make a motion for a bill of particulars in order to obtain facts other than those specified in the complaint.

**2.7.7 MOTION TO SUPPRESS EVIDENCE.** A defendant has the right to file with the Trial Court a motion to suppress evidence which he contends has been obtained in an unlawful manner. The evidence in question may be a tangible item or an intangible item. If the Court is satisfied that the evidence has been unlawfully obtained, it shall order the evidence suppressed. If the Court decides that the evidence was lawfully obtained, it may be used against the defendant.

## **Chapter 8. TRIAL, GENERAL PROVISIONS**

**2.8.1 CRIMINAL ACTION DEFINED.** A criminal action is prosecuted by the Tribe as a party against a person for punishment for offenses charged in the complaint.

**2.8.2 IRREGULARITIES, MISTAKES OMISSIONS HAVE NO LEGAL EFFECT UNLESS ACTUALLY PREJUDICIAL.** Neither a departure from the form or mode prescribed in this chapter in respect to any pleading or proceedings nor an error or mistake therein renders it invalid, unless it has prejudiced the defendant.

**2.8.3 SUMMONING JURORS & WITNESSES.** The Trial Court shall have the power to issue summons to witnesses and jurors. The summons must contain the reason for summoning the person and the number of days the person will be required to be present. If the juror or witness is summoned and appears in court as required, he shall receive a sum for each day that he is required to attend as a juror or witness, to be set by the Chief Judge. Any fees paid to jurors or witnesses shall be taxed as costs against the defendant, if found guilty. Juror and witness fees shall be paid by the Tribe.

**2.8.4 TRIAL BY JURY OR BY THE COURT.** Cases shall be tried by the Court unless the defendant shall file with the Clerk of the Court a written request for a jury trial not less than ten (10) after his arraignment. The jury shall consist of six (6) persons and shall be selected randomly from the Kiowa membership list.

**2.8.5 RIGHTS OF ACCUSED.** In all criminal prosecutions, the accused person shall have the right to defend himself in person or, at his own expense, by counsel; to demand the nature and cause of the accusation against him face to face; to have compulsory process served for obtaining witnesses in his behalf; and to a speedy public trial by an impartial jury. No person shall be compelled in any criminal case to give evidence against himself or be twice put in jeopardy for the same offense; upon request, the accused or a juror shall be entitled to an interpreter.

**2.8.6 PRESENCE OF THE DEFENDANT.** The defendant in a criminal case has the right be present in Court at every stage of the proceedings, including empanelling of the jury and the return of the verdict, where trial is by jury, and at the imposition of the sentence.

### **2.8.7 WAIVER OF RIGHTS.**

A. Notwithstanding the rights enumerated in Section 2.8.6, a defendant who is properly notified of the date of the trial and voluntarily absent shall be deemed to have waived the right to be present at trial and at the return of the verdict. Therefore,

the trial to a jury or the Court may proceed in absentia and the verdict recorded by the Clerk of the Court. If the jury or Judge renders a guilty verdict, a bench warrant shall issue for the arrest of the defendant and he shall be sentenced within 30 days after he is apprehended or voluntarily appears on the warrant.

- B. Rule 43 of the Federal Rules of Criminal Procedure is hereby superseded and shall be replaced with the following:

**(a) When Required.**

Unless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at:

- (1) the initial appearance, the initial arraignment, and the plea;
- (2) every trial stage, including jury impanelment and the return of the verdict; and
- (3) sentencing.

**(b) When Not Required. A defendant need not be present under any of the following circumstances:**

(1) **Organizational Defendant.**

The defendant is an organization represented by counsel who is present.

(2) **Minor or Petty Offense.**

The offense is punishable by fine or by imprisonment for not more than six months, or both, and with the defendant's written consent, the court permits arraignment, plea, trial, and sentencing to occur in the defendant's absence.

(3) **Conference or Hearing on a Legal Question.**

The proceeding involves only a conference or hearing on a question of law.

(4) **Sentence Correction.**

The proceeding involves the correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c).

(5) **Waiving Presence.**

A defendant waives the right to be present under the following circumstances:

- (i) when the defendant is voluntarily absent, if the court has informed the defendant of an obligation to be present and remain during trial;
- (ii) when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom.

**2.8.8 CALENDAR; CLERK OF COURT'S DUTIES.** The Clerk of the Court must keep a calendar of all criminal actions pending in the Court, listing them according to the date of the filing of the complaint, specifying the offense charged and whether the defendant is in custody or on bail.

**2.8.9 SETTING CASES FOR TRIAL; MAXIMUM TIME; CONTINUANCES; PROOF REQUIRED; LENGTH; PRECEDENCE OF CRIMINAL CASES.** The Court shall set all criminal cases for trial as soon as possible after the date of entry of the plea of the defendant. No continuances of the trial shall be granted except upon affirmative proof in open court, and upon reasonable notice, that the ends of justice require a continuance. The defendant shall be entitled to a reasonable continuance, but such continuance shall not exceed thirty (30) days, unless for good cause. Criminal cases shall be given precedence over civil cases.

**2.8.10 DEATH, ILLNESS; SUBSTITUTIONS AUTHORITY OF SUBSTITUTE JUDGE.** After the commencement of the trial of a criminal action or proceeding, if the judge presiding at such trial shall die, become ill, or for any other reason be unable to proceed with and finish the trial, another judge may proceed with and finish the trial. If no other judge is available, then the Clerk of that Court shall adjourn the Court until such time as by stipulation in writing between the parties to the proceeding, a judge shall be agreed upon by them and shall arrive to complete the trial. The judge authorized by this section shall proceed with and complete the trial and has the same power, authority, and jurisdiction as if the trial had originally commenced before him.

## **Chapter 9. FORMATION OF THE JURY.**

**2.9.1 QUALIFICATIONS OF JURORS.** The basic qualifications of a juror shall be: Any person who is a duly enrolled member of the Kiowa Tribe; who has reached his twenty-first (21<sup>st</sup>) birthday; and has been a resident within the Territory of the Kiowa Tribe for ninety (90) days; and who is not under any legal disability; and who has not been convicted of a felony or major offense in any jurisdiction.

**2.9.2 JURY PANEL EXCUSED.** It is within the Trial Court's discretion whether a jury summoned for the trial prior to a continuation or postponement shall remain or a new jury panel is selected.

**2.9.3 CHALLENGES DEFINED.** A challenge is an objection made to the trial jurors and can be made either against the entire panel, or individual jurors.

**2.9.4 PANEL DEFINED.** A panel is a list of jurors returned by the board of jury selectors.

**2.9.5 CHALLENGE TO PANEL DEFINED; WHO MAY CHALLENGE; REASON FOR CHALLENGE.** A challenge to the panel is a written objection made regarding all the jurors returned, and may be made by either party. The panel may be challenged when there is an error in the procedure used in summoning the jurors, or bias can be shown.

**2.9.6 CHALLENGES TO INDIVIDUAL JURORS.** A challenge to an individual juror is an objection which may be taken orally, and is either for cause or peremptory.

**2.9.7 ORDER FOR EXERCISING CHALLENGES FOR CAUSE; PEREMPTORY AND TIME.** All challenges for cause must be taken first by the defendant and then by the Tribe. Peremptory challenges may be taken by either party at any time during the seating of the jury and before the jury is sworn.

**2.9.8 CHALLENGE FOR CAUSE.** A challenge for cause may be made by the Tribe or by the defendant, and must specify the facts constituting the causes thereof. It may be made for any of the following causes:

- a. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.
- b. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal action.
- c. Having formed or expressed an opinion as to the guilt or innocence of the defendant based on information the juror has

learned, whether true or false, concerning the defendant's alleged criminal conduct.

d. A relationship between the juror and the defendant that in the opinion of the judge would cause the juror to be unable to render an impartial decision.

**2.9.9 FAILURE TO CHALLENGE FOR CAUSE.** Failure to challenge for cause shall constitute a waiver of the basis for challenge.

**2.9.10 JURY SELECTION.** The Chief Judge, in cooperation with the Clerk of the Court, and the Director of Enrollment Department of the Tribe, will establish rules regarding Jury Selection.

**2.9.11 PEREMPTORY CHALLENGE; PARTIES WHO MAY TAKE; FORM DEFINITION.** A peremptory challenge can be taken by either party and may be oral. It is an objection to a juror for which no reason need be given, but upon which the Court may exclude him.

**2.9.12 PEREMPTORY CHALLENGE; NUMBER JOINT DEFENDANTS.** The defendant is entitled to two (2) and the Tribe to two (2) peremptory challenges. If two or more defendants are jointly tried for any public offense, the Tribe and the defendants shall be entitled to two (2) peremptory challenges and on the part of the defendants must be exercised jointly.

**2.9.13 VACANCY FILLED.** After each challenge, sustained for cause or made peremptorily, another juror shall be called, may be challenged for cause, and shall be subject to peremptory challenge.

**2.9.14 JURY OATH.** When the jury has been selected, the judge shall administer to the jurors the following oath:

"You and each of you do solemnly swear or affirm that you will well and truly try the issues relative to the cause now on trial according to the law and the evidence under the penalty of Perjury."

**2.9.15 CONTINUANCE.** If a jury trial is continued, the jury shall then be notified of the new date for trial and no further notice to them of such date is required. The penalty for failure to appear at the time to which the trial is continued is contempt of court.

**2.9.16 JURY DUTY EXEMPTION.** The following persons shall be exempt from jury service:

- (1) Members of the Tribal and Federal Police Departments.
- (2) Appointed and elected officials of the executive, legislative and judicial branches of the government of the Kiowa Tribe, as follows:
  - (a) Legislators;
  - (b) Chairman;
  - (c) Vice Chairman;
  - (d) Chief Judge, Senior Associate Judge, Associate Judges and Supreme Court Justices; and
- (3) Kiowa Elders age 70 and over may file for a permanent exemption from Jury Duty.



## **Chapter 10. TRIAL PROCEDURE.**

**2.10.1 ORDER OF PROCEDURE.** The jury having been selected and sworn, the trial shall proceed as follows:

- a. The Clerk of the Trial Court judge must read the complaint, and state the plea of the defendant to the jury.
- b. Opening statements shall be given by the Tribe followed by the defendant and his counsel.
- c. The Tribe must open the case and offer evidence in support of the charge. The defendant or his counsel shall have the right to cross-examine any witness called to the stand by the Tribe.
- d. The defendant or his counsel may then open the defense and offer evidence in support thereof. The Tribe shall have the right to cross-examine any witness called to the stand by the defendant or his counsel.
- e. The parties may then respectively offer rebutting testimony only, unless the Court, in furtherance of justice, permits them to offer evidence upon their original case.
- f. When the evidence is concluded, the Tribe and the defendant or his counsel may argue the case to the Court and jury, the Tribe opening the argument and having the right to close same.
- g. Upon the conclusion of the arguments, the Court shall charge the jury orally or in writing, stating the law of the case. However, at the beginning of the trial or from time to time during the trial and without any request from either party, the judge may give the jury such instructions on the law applicable to the case as he may deem necessary for their guidance on hearing the case.

**2.10.2 PRESUMPTION OF INNOCENCE; EFFECT: REASONABLE DOUBT; DEFENDANT'S REFUSAL TO TESTIFY; DEFENDANT'S WAIVER OF RIGHT TO BE PRESENT.** A defendant in a criminal action need not testify and is presumed to be innocent until the contrary is proven. The effect of this presumption is only to place upon the Tribe the burden of proving him guilty beyond a reasonable doubt. The defendant's failure to testify on his own behalf shall in no way be construed against him nor commented upon by the Tribe. When a defendant has waived his right to be present at trial, the Court, in its discretion, may allow the Tribe to comment upon the defendant's absence and waiver.

**2.10.3 JOINT DEFENDANTS TRIED JOINTLY; COURT MAY DIRECT SEPARATE TRIALS.** When two or more defendants are jointly charged

with an offense, they shall be prosecuted jointly, provided that the Court may, in its discretion, on application duly made prior to trial, direct that separate trials be held.

**2.10.4 INTERPRETER.** In the event that any party or witness or juror requests that an interpreter be present during the trial, the Court shall appoint an interpreter from a list supplied by the Tribal Council, who shall be paid at a rate fixed by the Court, and such sum shall be taxed as costs in the case.

**2.10.5 VIEW OF THE PREMISES BY JURY.** It is within the Court's discretion to allow the jury to view the place in which the offense is charged to have been committed, or in which any other material fact occurred. The Court may also place the jury in the custody of the appropriate officials to bring them to the appropriate place, which shall be shown them by a person appointed by the Court.

**2.10.6 DISCHARGE OF JUROR FOR ILLNESS OR DISABILITY; NEW TRIAL.** Before the jury has returned its verdict to the Court, if a juror becomes sick, or upon other good cause shown to the Court is found to be unable to perform his duty, the Court may order him to be discharged. When a juror is discharged for any of the above reasons, the Court may, upon stipulation, proceed in the absence of said juror. In the absence of such stipulation, the jury shall be discharged and a new jury shall be empanelled to hear the case.

**2.10.7 LAW QUESTIONS FOR COURT AND FACT QUESTIONS FOR JURY.** Questions of law are to be decided by the Court; questions of fact by the jury.

**2.10.8 INSTRUCTIONS TO JURY.** At the close of evidence or at such time during the trial as the judge directs, counsel for each party may file with the judge written instructions on the law which the party requests the judge to deliver to the jury. At the same time, copies of such requests shall be furnished to opposing counsel. The judge shall inform counsel of his proposed action upon each request prior to the arguments to the jury, but the judge shall deliver his instructions to the jury after arguments are completed. No party may assign as error any portion of the judge's charge or omission therefrom unless he makes his objection before the jury retires to consider its verdict. Objections must be given out of the hearing of the jury.

**2.10.9 POLL OF JURY BEFORE RECORDING VERDICT; EITHER PARTY AUTHORIZED; DISSENTING JUROR FURTHER DELIBERATION; DISMISSAL OF JURY.** On the request of either party, when a verdict is rendered but before it is recorded, the jury may be polled on the request of either party or the Court. Each juror must be asked

whether it is his verdict. If any juror answers in the negative, the jury must be sent out for further deliberation. If upon returning after further deliberation, the jury is polled again and a juror answers that the verdict is not his own, then the judge shall dismiss the jury and a new trial will be ordered.

**2.10.10 DIRECTION OF VERDICT OF ACQUITTAL.** At any time after the evidence on either side is closed, the Court may, upon motion of the defendant or upon its own motion, direct the jury to return a verdict of acquittal; and in the event of the failure of the jury to return such a verdict of acquittal, the Court may refuse to receive any other verdict and may discharge the jury and enter a judgment of acquittal. The denial of the motion may be reviewed upon appeal to the Supreme Court of the Kiowa Tribe by the defendant.

## **Chapter 11. SUBMISSION TO THE JURY & VERDICT**

**2.11.1 PAPERS TAKEN BY JURY.** Upon retiring for deliberation, the jury may take with it all instructions, exhibits, and papers that have been received in evidence. Also any notes of the testimony taken in the trial by the jurors may be taken.

**2.11.2 INFORMED ON ANY POINT OF LAW.** After the jury has retired for deliberation, if there be any disagreement as to any part of the testimony or if it desires to be informed on any point of law arising in the case, it must require the officer to conduct it into Court; and upon its being brought in, the information required may be given at the discretion of the Trial Court.

**2.11.3 JURY KEPT TOGETHER.** The jury shall be under the charge of the bailiff or other officer appointed by the Court. The jury must be kept together after the cause is submitted to them by the Clerk of the Court until they have agreed upon and rendered a verdict, unless, for good cause, the judge sooner discharges them.

**2.11.4 VERDICT.** The jury must render a general verdict of "guilty" or "not guilty" which imports a conviction or acquittal on every material allegation in the complaint. The verdict in all criminal actions must be unanimous.

**2.11.5 HUNG JURY.** In the event the jury is unable to agree upon a verdict, the Judge shall dismiss the jury and order a new trial.

## **Chapter 12. JUDGMENT**

**2.12.1 TIME FOR SENTENCING FOLLOWING CONVICTION.** Upon a plea of guilty or a verdict of guilty, the Court shall fix a time for sentencing, which must be within a reasonable time after the verdict is rendered. Prior to judgment, the Court may request a presentence investigation to be conducted by the probation department. All presentence reports shall be filed with the Court.

**2.12.2 SENTENCING: IMPRISONMENT.** When sentence of imprisonment is entered, a signed copy thereof must be delivered to the law enforcement officer as defined in this Code, or other officer.

**2.12.3 PRESENCE OF DEFENDANT.** When judgment is pronounced, the defendant must be personally present.

**2.12.4 SUSPENSION OF SENTENCE.** The Court may, on such terms and conditions as the Court may impose, suspend the imposition of sentence and release a convicted person on probation. The probation term shall not exceed the maximum term allowed under the statute violated by the defendant.

**2.12.5 COMMUTATION OF SENTENCE.** If the Court is satisfied that justice will best be served by reducing a sentence, the Court may, at any time after one-half of the sentence has been served, commute to a lesser period any sentence imposed upon a person, upon proof that during the period of confinement the person served without misconduct and/or satisfactorily performed community service pursuant to a 2 for 1 program administered by the jail or detention facility.

### **2.12.6 EXPUNGEMENT. SETTING ASIDE JUDGMENT OF CONVICTION.**

- A. Every person convicted of a criminal offense, on fulfillment of the conditions of probation or sentence and discharge of the court, may apply to the judge, to have the judgment of guilt set aside. The convicted person shall be informed of this right at the time of discharge.
- B. The application to set aside the judgment may be made by the convicted person or by the convicted person's attorney or probation officer authorized in writing.
- C. If the judge grants the application, the judge shall set aside the judgment of guilt, dismiss the accusations or information and order that the person be released from all penalties and disabilities resulting from the conviction.

## **Chapter 13. PROBATION**

**2.13.1** CONDITION OF PROBATION. The Court may release on probation a convicted person on such terms and conditions as are just and appropriate, taking into consideration the prior criminal record of the defendant, his background, character, financial condition, family obligation, and any other pertinent circumstances.

**2.13.2** VIOLATION OF CONDITIONS OF PROBATION. Any person who violated the terms and conditions of his probation may be required to serve an additional jail sentence as a condition of continuing the person on probation or the Court may terminate probation and order the defendant to serve a jail term of up to one year, with no credit for time served.

## **Chapter 14. NEW TRIAL**

**2.14.1 NEW TRIAL** - Defined. A new trial is a retrial of the criminal charges in the same Court before another jury.

**2.14.2 APPLICATION**. Application for a new trial may be made only by the defendant or his attorney and must be made before the completion of the sentence. Application must be made to the Court before which the case was tried.

**2.14.3 GROUNDS**. The Court, on application from the defendant or on its own motion, may grant a new trial based on the following cause or causes:

- a. When proper evidence has been presented that the jury, has received any evidence, paper, or document out of Court not authorized by the Court.
- b. When the verdict has been decided by lot or by means other than a fair expression of opinion on the part of all the jurors.
- c. When the Trial Court, has refused to instruct the jury properly as to law.
- d. When any other cause the defendant has not received a fair and impartial trial.

**2.14.4 EFFECT OF A NEW TRIAL**. The granting of a new trial places the parties in the same position as if no trial has been held; all testimony must be reproduced and the former verdict cannot be used or referred to either in the evidence or in argument.

**2.14.5 STATUS OF THE ACCUSED PENDING NEW TRIAL**. Pending a new trial, the accused shall be entitled to bail the same as before the trial.

**2.14.6 STAY OF EXECUTION PENDING APPEAL**. If the defendant appeals, the Court, in its discretion, may stay a sentence of imprisonment, fine, or probation. The Court may set the terms of any stay.

## **Chapter 15. CONTEMPT OF COURT**

**2.15.1 REASONS FOR CHARGE.** A judge may punish as for contempt persons guilty of the following acts:

1. Disorderly, contemptuous, or insolent behavior toward the judge.
2. Disobedience to a subpoena, duly served, or refusing to be sworn or to answer as a witness.
3. Disobedience or resistance to the carrying out of a lawful order made or issued by the judge.
4. Rescuing or interfering with any person or property in the custody of an enforcement officer acting under an order of the Court or process of the Court.
5. Failure to appear for jury duty, without justifiable cause, when properly notified.

**2.15.2 CONTEMPT COMMITTED IN PRESENCE OF JUDGE.** When contempt is committed in the immediate view and the presence of the judge, it may be punished summarily. The judge must make an order reciting the facts as they occurred, and that the person proceeded against is guilty of contempt, and that he be punished as therein prescribed.

**2.15.3 CONTEMPT COMMITTED NOT IN PRESENCE OF JUDGE.** When the contempt is not committed in the immediate view and presence of the judge, a Warrant of Arrest may be issued by such judge and the person so guilty may be arrested and brought before the judge. The judge must give the arrested person an opportunity to present his defense. The judge may then discharge him or find him guilty of contempt.

**2.15.4 PUNISHMENT.** A judge may punish for contempt by fine or imprisonment, or both; such fine not to exceed One Hundred Dollars (\$100.00) or imprisonment not to exceed forty-five (45) days plus Court costs.



## **Chapter 16. RECOGNITION AND ENFORCEMENT OF FOREIGN COURT JUDGMENTS.**

**2.16.1 DEFINITION OF TERMS.** When used in this Chapter, unless the content otherwise indicates:

1. "Foreign Court" means any court other than the Trial or Supreme Court of Kiowa Tribe, including federal, state, tribal or courts of a foreign country.
2. "Foreign Judgment" means any final judgment, decree, or order by any Foreign Court, regardless of whether the judgment is for money, injunctive, declaratory, or any other relief.
3. "Judgment Creditor and Judgment Holder" are synonymous and mean one who has a judgment rendered in his or her favor.
4. "Judgment Debtor" means the party against whom a judgment has been rendered.
5. "Rendering Jurisdiction" means the jurisdiction in which the foreign judgment was entered.

**2.16.2 RECOGNITION OF FOREIGN JUDGMENTS.** The judgments, decrees, orders, warrants, subpoenas, records and other judicial acts of a foreign court are recognized and have the same effect and are subject to the same procedures, defenses and proceedings as judgments, decrees, orders, warrants, subpoenas, records and other judicial acts of the Trial Court, subject to the provisions of this rule.

- A. The recognition described in this rule applies only if the foreign court has enacted an ordinance, court rule or other binding measure that obligates the foreign court to enforce the judgments, decrees, orders, warrants, subpoenas, records and other judicial acts of the Kiowa Courts.
- B. The person seeking recognition or enforcement of a foreign judgment complies with the conditions and procedures set forth in 2.16.3.
- C. A judgment decree, order, warrant, subpoena, record or other judicial of a foreign court that complies with the above conditions described in 2.16.2(A) is presumed to be valid. To overcome this presumption, an objecting party must demonstrate that:
  1. The foreign court lacked personal or subject matter jurisdiction; or
  2. The judgment, decree, order, warrant, subpoena, record or other judicial acts of the foreign court
    - a. was obtained by fraud, duress or coercion;
    - b. was obtained without fair notice or a fair

- hearing;
  - c. is repugnant to the public policy of the Tribe; or
  - d. is not final under the laws and procedures of the foreign court.
- D. This rule does not apply to judgments or orders that federal law requires be given full faith and credit.

**2.16.3 PROCEDURES FOR RECOGNITION OR ENFORCEMENT OF FOREIGN JUDGMENTS.**

- A. Application. In accordance with the foreign judgment recognition provisions set forth in 2.16.2, a foreign judgment that is final and conclusive is enforceable in the Trial Court pursuant to the following procedure.
- B. Registration of Foreign Judgment. A person seeking enforcement of a foreign judgment shall file:
1. A copy of the foreign judgment, which has been authenticated by the clerk or registrar of the foreign court in the following manner:
    - a. The clerk or registrar of the foreign court must attest in writing that he or she:
      - i. Is the clerk or registrar of the foreign court;
      - ii. Is the custodian of the records of the foreign court; and
      - iii. Has compared an attached copy of the foreign judgment from the case with the original(s) on file and of record in the foreign court, and has found the copy of the foreign judgment to be a true copy of the whole of the original(s).
    - b. Upon completing the written attestation above, the clerk or registrar of the foreign court must:
      - i. Sign and date the attestation;
      - ii. Affix the seal of the foreign court to the attestation; and
      - iii. Attach a certified copy of the original foreign judgment to the attestation.
  2. An affidavit by the judgment holder, or his/her attorney or lay advocate, which includes the following:
    - a. The name and last known post office address of the judgment debtor and the judgment creditor;

- b. Proof that the judgment is final and statement that no appeal is pending;
  - c. A statement that no subsequent orders vacating, modifying or reversing the judgment have been entered in the rendering jurisdiction;
  - d. Proof that the person against whom the foreign judgment has been rendered (i.e., judgment debtor) is subject to the jurisdiction of the Trial Court with regard to enforcement of the judgment; and
  - e. Proof that the court from which the foreign judgment was issued provides reciprocal recognition and enforcement to the judgments of the Trial Court.
3. A receipt filing fee for registering the foreign judgment.
- C. Notice of Registration of Foreign Judgment. Upon the filing of the foreign judgment, attestation, affidavit and filing fee, the Clerk of the Court shall within fourteen (14) days mail a notice of the filing of the foreign judgment along with a copy of the foreign judgment, attestation, and affidavit to the judgment debtor at the address provided by the judgment creditor and shall complete a proof of service. The notice of the filing of the foreign judgment shall include the following:
1. The name and post office address of the judgment holder and the judgment holder's attorney or lay advocate, if any; and
  2. A statement giving notice that an order entering the enforcement of the foreign judgment shall be entered by the court within twenty-one (21) days of the same having been served on the judgment debtor unless the judgment debtor files written objections with the court along with a request for a hearing within twenty-one(21) days.
- D. Notice for Written Objection. A statement that gives the debtor notice that he/she has twenty-one (21) days to file written objections of either recognition or enforcement of the Judgment along with a request for hearing. If no objections is filed the court will enter an order recognizing and/or enforcing the judgment. The written objects shall include a statement of the basis for the objections.
- E. Objections; Hearing; Entry of Order When Objections. In the event that the judgment debtor files written objections within the twenty-one (21) day period set forth in (D) above along with

a request for a hearing, the Clerk of the Court shall send by first- class mail a copy of the objections to the judgment holder, or his/her attorney or lay advocate. In addition, the Clerk of the Court shall send by first-class mail a notice of the hearing setting forth the date and time of hearing or the denial of such hearing to the judgment holder and judgment debtor, or their respective attorney(s) or lay advocate(s). The judgment debtor at the hearing will be required to show cause why the foreign judgment should not be recognized and/or enforced by the Trial Court. At the scheduled hearing, after reviewing all the relevant evidence concerning the foreign judgment, the court shall issue an order either granting or denying recognition and/or enforcement of the foreign judgment.

- F. Entry of Order Where No Objections. In the event that the judgment debtor does not file written objections within the twenty-one (21) daytime period set forth in (D) above, an order granting the recognition and/or enforcement of the foreign judgment shall be issued by the court.
- G. Appeal; Stay of Execution; Stay of Proceedings. If the judgment debtor satisfies the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Trial Court may stay recognition and enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.
- H. Post-Judgment Proceedings Regarding Foreign Judgment; No Waiver of Immunity.
  - 1. A foreign judgment holder may proceed to post-judgment proceedings upon entry of an order enforcing the foreign judgment by the Trial Court. The entry of the order enforcing the foreign judgment by the Trial Court shall entitle the judgment holder to enforce its judgment against the judgment debtor in any manner available to judgment creditors.
  - 2. The Tribe does not waive its immunity from suit with regard to the recognition and/or enforcement of a foreign judgment in any post-judgment proceedings, even when the Tribe is served as a garnishee-defendant for the wages or property of an employee who is a judgment debtor.

**TITLE III**  
**CRIMINAL CODE**

**Chapter 1. GENERAL PROVISIONS**

**3.1.1 SHORT TITLE.**

This title may be known and cited as the "Kiowa Criminal Code".

**3.1.2 PURPOSE.**

The public policy of the Kiowa Tribe and the general purposes of the provisions of this Code are:

1. To define conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual, public, or tribal interests;
2. To give fair warning of the nature of the conduct proscribed and of the penalties authorized upon conviction;
3. To define the act or omission and the accompanying mental state appropriate to each offense and limit the condemnation of conduct as criminal when it does not fall within the purposes set forth;
4. To differentiate on reasonable grounds between serious and minor offenses and prescribe proportionate penalties for each;
5. To insure the public safety by preventing the commission of offenses through the deterrent influence of the penalties authorized;
6. To impose just and deserved punishment on those whose conduct threatens the public peace;
7. To provide restitution for victims of offenses, to rehabilitate offenders through the imposition of appropriate consequences and preserve harmony among the Kiowa people; and
8. To promote truth and accountability in sentencing.

**3.1.3 EFFECTIVE DATE.**

This Code shall become effective after its passage into law.

#### **3.1.4 SEVERABILITY.**

If any portion of this Code should be held invalid, that portion shall cease to be operative, but the remainder of this Code shall continue in full force and effect.

#### **3.1.5 APPLICABILITY OF CODE.**

A. The provisions of this code shall not apply or extend to any offense committed prior to the effective date of this Code. The provisions of law in force prior to the enactment of this Code shall remain in full force and effect in regard to any offense committed before the effective date of this Code.

B. Except as otherwise provided by law, the procedure governing accusation, prosecution, conviction and punishment of offenders and offenses is not regulated by this Code but by the rules of criminal procedure.

C. This Code does not affect any power conferred by law upon a courtmartial or other military authority or officer, or conferred upon the United States Department of Justice, to prosecute or punish conduct and offenders violating military codes or laws, or U.S. federal laws, nor any power conferred by law to impose or inflict punishment for contempt.

D. This Code does not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action regardless of whether the conduct involved in the proceeding constitutes an offense defined in this Code.

E. Except as otherwise expressly provided, or unless the context otherwise requires, the provisions of this Code shall govern the construction of and punishment of any offense defined outside this title.

#### **3.1.6 RULE OF CONSTRUCTION.**

The general rule that a penal statute is to be strictly construed does not apply to this code, but the provisions herein must be construed

according to the fair meaning of the terms to promote justice and effect the objects of law, including the purpose stated in Section 3.1.2.

### **3.1.7 JURISDICTION.**

A. The Kiowa Tribe has jurisdiction over an offense that a person commits by his or her own conduct or by the conduct of another for which he or she is criminally liable if:

1. Conduct constituting any element of an offense or a result of such conduct occurs within the Territory;
2. Conduct occurring outside the Territory constitutes an attempt or conspiracy to commit an offense within the Territory and an act in furtherance of the attempt or conspiracy occurs within the Territory; or
3. Conduct occurring within the Territory constitutes an attempt or conspiracy to commit an offense in another jurisdiction that is also an offense under the laws of the Kiowa Tribe.

B. The Kiowa Tribe reserves the right to prosecute a person for any violation of this Code, regardless of whether the person has previously been prosecuted for the same conduct, or is concurrently being prosecuted for the same conduct, in a court of the United States, a court of any State, or a court of any other tribal jurisdiction.

### **3.1.8 SOVEREIGN IMMUNITY.**

Nothing in this Code shall be construed as a waiver, in whole or in part, of the sovereign immunity of the Kiowa Tribe.

### **3.1.9 DEFINITION OF TERMS.**

In this Code, unless the context or subject matter otherwise requires:

2. "Act" means a bodily movement.
3. "Adult" means any individual eighteen years of age or older.
4. "Alcohol," "Alcoholic beverages," "Spirituous liquor," or "Distilled Spirits," include alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one per cent of alcohol by volume.

5. "Benefit" means anything of value or advantage, present or prospective.
6. "Calendar year" means three hundred and sixty five days actual.
7. "Conduct" means an act or omission and its accompanying culpable mental state.
8. "Crime" means a minor offense, offense, serious offense or dangerous offense.
9. "Controlled Substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V listed in 21 U.S.C. § 812, and also including future amendments to schedules I through V as may be enacted by the U.S. Congress, or is listed in current or future schedules issued pursuant to authority vested in the Attorney General of the United States pursuant to 21 U.S.C. § 811; or a dangerous drug or narcotic drug.
10. "Dangerous instrument" means anything that, under the circumstances in which it is used, attempted to be used or threatened to be used, is capable of causing death or serious physical injury.
11. "Deadly weapon" means anything designed for lethal use, including a firearm.
12. "Deadly physical force" means force that is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.
13. "Delinquency" means any act that would injure the morals, health or welfare of a child or that promotes the commission of any act by a minor that would be a public offense and a violation of law if committed by an adult.
14. "Detention" means temporary care in physically restricting facilities.
15. "Economic loss" means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses that would not have been incurred but for the offense. Economic loss does not include damages for pain and suffering, punitive damages or consequential damages.
16. "Enterprise" includes any corporation, association, labor union or other legal entity.



17. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, except that it does not include a firearm in permanently inoperable condition.
18. "Government" means the Kiowa Tribe, any political subdivision of the Tribe or any department, agency, board, commission, institution or governmental instrumentality of or within the Tribe or political subdivision.
19. "Government function" means any activity that a public servant is legally authorized to undertake on behalf of a government.
20. "Indian" for the purposes of this Code is any person who is an enrolled member of any Federally recognized tribe or who has Indian blood and is regarded as an Indian by the society of Indians among whom he lives.
21. "Marijuana" means all parts of any plant of the genus cannabis, from which the resin has not been extracted, whether growing or not, and the seeds of such plant
22. "Minor" means any individual under the age of eighteen.
23. "Offense" or "public offense" means conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of the state or tribe in which it occurred or by any law, regulation or ordinance of a political subdivision of that state or tribe and, if the act occurred in a state or reservation other than this tribe, it would be so punishable under the laws, regulations or ordinances of this tribe or of a political subdivision of this tribe if the act had occurred in the Territory.
24. "Omission" means the failure to perform an act as to which a duty of performance is imposed by law.
25. "Oral sexual acts" means oral contact with the penis, vulva or anus.
26. "Peace officer" means any person vested by law with a duty to maintain public order and make arrests and includes a police officer.
27. "Person" means, a human being, and as the context requires, an individual, corporation, company, partnership, association, trust, firm, a society, tribal enterprise, government, governmental agency or any other entity capable of holding a legal or beneficial interest in property.
28. "Physical force" means force used upon or directed toward the

body of another person and includes confinement, but does not include deadly physical force.

29. "Physical injury" means any impairment of the physical condition.
30. "Possess" means knowingly to have physical possession or exercise dominion or control over property.
31. "Possession" means a voluntary act if the defendant knowingly exercised dominion or control over property.
32. "Property" means anything of value, tangible or intangible.
33. "Public servant":
  2. means any officer or employee of any branch of government, whether elected, appointed or otherwise employed, including a peace officer, and any person participating as an advisor or consultant or otherwise in performing a governmental function;
  3. does not include jurors or witnesses;
  4. includes those who have been elected, appointed, employed or designated to become a public servant although not yet occupying that position.
34. "Serious physical injury" includes physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.
35. "Sexual acts" means penetration, however slight, into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.
36. "Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact with the intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desire of any person..
37. "Support" means necessary food, shelter, clothing, medical attention, and any court-ordered financial compensation.
38. "Territory" means all lands held in trust for, or owned by the Tribe, or held by the United States for the benefit of the Tribe or the people, including any rights of way existing now or in the future.
39. "Unlawful" means contrary to law, or as the context requires,

not permitted by law.

40. "Vehicle" means a device in, upon or by which any person or property is, may be or could have been transported or drawn upon a highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.
41. "Voluntary act" means a bodily movement performed consciously and as a result of effort and determination.
42. "Voluntary intoxication" means intoxication caused by the knowing use of drugs, toxic vapors or alcoholic beverages by a person, unless the person introduces them pursuant to medical advice or under such duress as would afford a defense to an offense.

**3.1.10 TIME LIMITATIONS.**

- A. A prosecution for any homicide, any offense that is listed in §§3.10.01-3.10.03 of this title, any misuse of public monies or an offense involving falsification of public records or any attempt to commit an offense listed in this subsection may be commenced at any time.
- B. Except as otherwise provided in this section, prosecutions for other offenses must be commenced within the following periods after actual discovery of the crime and identification of the defendant by the tribe or the political subdivision having jurisdiction of the offense or discovery by the tribe or the political subdivision that should have occurred with the exercise of reasonable diligence, whichever first occurs:
  1. For dangerous offense, five years.
  2. For a serious offense, three years.
  3. For an offense, two years.
  4. For a minor offense or petty offense, one year.
- C. A prosecution is commenced when an indictment, information or complaint is filed.
- D. The period of limitation does not run during any time when the accused is absent from the Territory or has no reasonably ascertainable place of abode within the Territory.

**3.1.11 SPEEDY TRIAL; COUNSEL; WITNESSES AND CONFRONTATION.**

In a criminal action for an offense, serious offense and dangerous offense, the defendant is entitled:

- A. To have a speedy public trial by an impartial jury of members of the Kiowa Tribe.

- B. To have counsel.
- C. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court, except that the testimony or deposition of a witness may be received in evidence at the trial as allowed under the rules of evidence.

## **Chapter 2. DETERMINING APPLICABLE MENTAL STATES**

**3.2.1 GENERAL RULE.** Provisions herein must be construed according to the fair meaning of their terms in order to promote justice and effect the objects of the law.

**3.2.2 APPLICABLE MENTAL STATES.** In this Code, unless the context or subject matter otherwise requires:

- A. "Intentionally" or "with the intent to" means that a person's objective is to cause something to occur or to engage in certain conduct.
- B. "Knowingly" means that a person is aware of a fact or believes that the fact exists. It does not require any knowledge of the unlawfulness of the act or omission. Knowledge of the existence of a particular fact is established if a person is aware of a high probability of its existence, unless he or she actually believes that it does not exist.
- C. "Recklessly" means that a person is aware of and consciously disregards a substantial and unjustifiable risk that a fact exists or that a particular result will occur. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the same situation. A person who creates such a risk but is unaware of it solely because of voluntary intoxication also acts recklessly.
- D. "Negligence," "criminal negligence," or "negligently" means that a person fails to perceive a substantial and unjustifiable risk that a fact exists or that a particular result will occur. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the same situation.

**3.2.3 INTOXICATION.** No act committed by a person while in a state of voluntary intoxication is less criminal by reason of having been in such condition. Voluntary intoxication shall not be a defense, and shall not be allowed as a reason why a person did not have the applicable mental state for an offense.

## **Chapter 3. DEFENSES**

### **3.3.1 SELF-DEFENSE.**

- A. A person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary:
  - 1. to protect himself against the other's use or attempted use of unlawful physical force;
  - 2. to protect a third party against the other's use or attempted use of unlawful physical force; or
  - 3. to protect property or a home against the other's use or attempted use of unlawful physical force, or against an attempt or commission of theft or criminal damage.
- B. A person who provoked the other's use or attempted use of unlawful physical force in the same encounter is not justified in threatening or using physical force unless he or she withdraws from the encounter or clearly communicates to the other an intent to do so.
- C. Deadly physical force is justified only when a reasonable person would believe it immediately necessary to protect himself or an innocent third person against the other's use or attempted use of unlawful deadly physical force.
- D. The use of physical force against another is not justified in response to verbal provocation alone, or to resist an arrest, whether lawful or unlawful, unless the physical force used by the arresting officer exceeds that allowed by law.

**3.3.2 DURESS.** Conduct which would otherwise constitute an offense is excused if a reasonable person would believe that he was compelled to engage in such conduct by the threat or use of immediate physical force against his person or against the person of another which a reasonable person in the same situation would not have resisted.

This defense is unavailable if such person intentionally, knowingly or recklessly places himself in a situation in which duress was foreseeable and for offenses involving homicide or the infliction of serious physical injury.

**3.3.3 IMMATURITY.** A person less than twelve years old at the time of the conduct charged is not criminally responsible for that conduct unless there is clear proof that at the time of committing the conduct charged the person knew it was wrong.

**3.3.4 INSANITY.** A person is not responsible for criminal conduct by reason of insanity if, as a result of a mental disease or defect affecting the person at the time of such conduct, he or she lacks the substantial capacity to know the nature and quality of the act or to know that what he or she was doing was wrong. The defendant shall prove he or she is not responsible for criminal conduct by reason of insanity by clear and convincing evidence.

**3.3.5 FORMER JEOPARDY OR ACQUITTAL.** Where a defendant is convicted or acquitted, or has once been placed in jeopardy in the Trial Court, the conviction, acquittal or jeopardy is a bar to another indictment or information for the same offense under this Code.

## **Chapter 4. PENALTIES**

### **3.4.1 IMPRISONMENT AND FINES.**

The Court may impose the following criminal penalties against a person who is convicted for violating this Code:

- A. A maximum of three years in custody and/or a fine of up to \$15,000.00 upon conviction for an offense which is defined in this Code as a "dangerous offense;"
- B. A maximum of two years in custody and/or a fine of up to \$10,000.00 upon conviction for an offense which is defined in this code as a "serious offense;"
- C. A maximum of one year in custody and/or a fine of up to \$5,000.00 upon conviction for an offense which is defined in this Code as an "offense;"
- D. A maximum of six months in custody and/or a fine of up to \$2,500.00 upon conviction for an offense which is defined in this Code as a "minor offense;"
- E. A maximum of three months in custody and/or a fine of up to \$1,250.00 upon conviction for an offense which is defined in this Code as a "petty offense."

### **3.4.2 REPETITIVE OFFENDERS.**

The Court may, at its discretion, sentence a person who has been previously convicted of the same offense, or a comparable offense by any jurisdiction in the United States, to one class higher than the sentence imposed in the previous conviction. Convictions for two or more offenses committed for the same act may be counted as one conviction for the purposes of this section.

### **3.4.3 CONSECUTIVE TERMS OF IMPRISONMENT.**

If multiple crimes are committed, and multiple sentences of imprisonment are imposed on a person at the same time, the Court may, at its discretion, direct the sentences to run consecutively.

### **3.4.4 OTHER CRIMINAL PENALTIES.**

In addition to, or in lieu of, the penalties set forth in Section 3.4.1, the Court may order restitution, diversion from criminal prosecution, community service, treatment, probation, parole, or suspension of sentence, unless a provision of this Code provides otherwise with respect to a certain type of offense.



The Court may substitute community service for a fine, upon a showing that the defendant is indigent.

**3.4.5 CIVIL DAMAGES.**

A. Any person subject to the civil jurisdiction of the Kiowa Tribe, but not subject to the criminal jurisdiction of the Kiowa Tribe, who engages in conduct in the Territory that constitutes a violation of this Code shall be liable to the Kiowa Tribe for the following civil damages:

1. Civil damages not to exceed \$15,000.00 upon a finding by the Court that the person engaged in conduct constituting an offense defined in this Code as a "dangerous offense;"
2. Civil damages not to exceed \$10,000.00 upon a finding by the Court that the person engaged in conduct constituting an offense defined in this Code as a "serious offense;"
3. Civil damages not to exceed \$5,000.00 upon a finding by the Court that the person engaged in conduct constituting an offense defined in this Code as an "offense;"
4. Civil damages not to exceed \$2,500.00 upon a finding by the Court that the person engaged in conduct constituting an offense defined in this Code as a "minor offense;"
5. Civil damages not to exceed \$1,250.00 upon a finding by the Court that the person engaged in conduct constituting an offense defined in this Code as a "petty offense;"

B. The Tribal Prosecutor is authorized to file civil actions on behalf of the Kiowa Tribe against any person who may be liable to the Kiowa Tribe for civil damages pursuant to subsection A of this Section.

**3.4.6 KIOWA TRADITIONS, CUSTOMS AND PRACTICES.** The Court shall consider Kiowa traditions, customs and practices when imposing the penalties set forth in this section.

**Chapter 5. PREPARATORY OFFENSES AND ACCOMPLICE LIABILITY**

**3.5.1 ATTEMPT.**

- A. A person who intends to commit a serious or dangerous offense and engages in conduct constituting a substantial step toward commission of the offense, is guilty of a serious offense.
- B. Factual or legal impossibility shall not be a defense to attempt.

**3.5.2 CONSPIRACY.**

- A. A person is guilty of a serious offense if he or she agrees with one or more persons to engage in conduct that would constitute a serious or dangerous offense and one of them commits an act in furtherance of the agreement.
- B. It shall be a defense to prosecution under this Section that the defendant clearly ceased to agree with the conspiracy, took no further part in the conspiracy, and either communicated his or her desire to abandon the conspiracy to the authorities or took other action to thwart the conspiracy.

**3.5.3 ACCOMPLICE LIABILITY.** A person is guilty of an offense committed by another person to the same extent as that other person if, with the intent that the offense be committed, he or she encourages the other person to commit the offense or provides the other person with the means or opportunity to commit the offense.

## **Chapter 6. OFFENSES AGAINST THE FAMILY**

### **3.6.1 ENDANGERMENT OR ABANDONMENT OF A MINOR.**

- A. A parent, guardian or other person who has assumed or been entrusted with the care of a minor, who knowingly causes or permits the endangerment of such minor, is guilty of an offense.
- B. A parent, guardian or other person who has assumed or been entrusted with the care of a minor, who intentionally abandons the minor with intent not to return, is guilty of an offense.

**3.6.2 CUSTODIAL INTERFERENCE.** A person who knowingly removes or entices a minor away from lawful custody without consent of the lawful custodian, or when he or she has no privilege to do so, is guilty of an offense.

**3.6.3 FAILURE TO PROVIDE SUPPORT.** A person who knowingly fails to support a spouse, child or other dependent, when he or she is legally required to provide such support, and is able to do so, is guilty of an offense.

**3.6.4 CONTRIBUTING TO THE DELINQUENCY OF A MINOR.** An adult who knowingly causes or entices the delinquency of a minor is guilty of an offense.

**3.6.5 FAILURE TO SEND CHILDREN TO SCHOOL.** A person who neglects or refuses, without good cause, to send his children or legal wards to school, is guilty of a minor offense.

### **3.6.6 BIGAMY.**

- A. A person, knowing that he or she is already legally married, who marries another person, is guilty of a minor offense.
- B. Subsection A of this section does not extend to a person whose spouse has been absent for seven successive years without being known to such person within that time to be living, nor to any person whose former marriage has been pronounced void, annulled or dissolved by judgment of a competent court.
- C. A person who marries another, knowing that such other person is already legally married, is guilty of a minor offense.

### **3.6.7 DOMESTIC VIOLENCE.**

A person who commits assault, aggravated assault, endangerment, threatening, kidnapping, sexual assault, or sexual conduct with a minor is guilty of domestic violence, a serious offense, if any the following factors are present:

- A. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or have resided in the same household.
- B. The victim and the defendant have a child in common.
- C. The victim is pregnant by the other party.
- D. The victim is related to the defendant or the defendant's spouse by blood, marriage or court order as a parent, grandparent, child, grandchild, brother or sister.
- E. The victim is a child who resides or has resided in the same household as defendant and is related by blood to a former spouse as the defendant or to a person who resides in the same household as the defendant.
- F. The relationship between the victim and the defendant is currently or was previously an intimate relationship.

### **3.6.8 STALKING.**

A. A person commits stalking if the person intentionally or knowingly engages in a course of conduct that is directed toward another person and if that conduct either:

- 1. Would cause a reasonable person to fear for the person's safety or the safety of that person's immediate family member and that person in fact fears for their safety or the safety of that person's immediate family member, which is a serious offense.
  - 2. Would cause a reasonable person to fear death of that person or that person's immediate family member and that person in fact fears death of that person or that person's immediate family member, which is a dangerous offense.
- B. For the purposes of this section:
- 1. "Course of conduct" means maintaining visual or physical proximity to a specific person or directing verbal, written or other threats, whether express or implied, to a specific person on two or more occasions over a period of time.
  - 2. "Immediate family member" means a spouse, parent, child or sibling or any other person who regularly resides in a

person's household or resided in a person's household  
within the past six months.

## **Chapter 7. OFFENSES AGAINST PERSONS**

### **3.7.1 ASSAULT.**

A person commits assault, an offense, by:

- A. intentionally placing another person in reasonable apprehension of imminent physical injury;
- B. attempting to cause or recklessly causing physical injury to another person; or
- C. negligently causing physical injury to another person through the use of a deadly weapon.

### **3.7.2 AGGRAVATED ASSAULT.**

A person commits aggravated assault, a serious offense, by:

- A. attempting to cause or recklessly causing serious physical injury to another person;
- B. attempting to cause or knowingly causing physical injury to another person through the use of a deadly weapon or dangerous instrument;
- C. attempting to cause or knowingly causing serious physical injury to a child who is fifteen years of age or younger;
- D. committing an assault on a tribal official, or a person age sixty-five (65) or older.

### **3.7.3 ENDANGERMENT.**

- A. A person who recklessly endangers another person with a substantial risk of death or serious physical injury is guilty of an offense.
- B. Endangerment involving a substantial risk of imminent death is a serious offense.

### **3.7.4 THREATENING.**

A person commits threatening by threatening to commit any violent crime with the intent to:

- A. terrify or intimidate another person;
- B. cause evacuation of a building or any other place of assembly; or
- C. cause serious public inconvenience.

A person committing threatening is guilty of an offense, unless it is committed in retaliation for reporting criminal activity or being involved in an organization, other than a law enforcement agency, that

is established for the purpose of reporting criminal activity, in which case it is a serious offense.

**3.7.5 ABUSE.**

- A. A parent, guardian, or other person who has assumed or been entrusted with the care of a minor or vulnerable adult, who knowingly causes or permits physical injury to such minor or vulnerable adult, is guilty of a serious offense.
- B. For purposes of this section, "vulnerable adult" means an individual eighteen years of age or older who, because of a mental or physical disability, is unable to protect himself from abuse or neglect.
- C. In addition to the remedy in section A, an injured minor or vulnerable adult is entitled to all other available remedies.

**3.7.6 KIDNAPPING.** A person who knowingly moves or detains another person against such person's will, or in the case of a minor without the consent of such person's lawful custodian, and without proper legal authority, is guilty of a serious offense.

**3.7.7 HOMICIDE.** Any person who unlawfully and intentionally, knowingly or recklessly causes the death of another person is guilty of a dangerous offense.

**3.7.8 NEGLIGENT HOMICIDE.** Any person who, with criminal negligence, causes the death of another person is guilty of a serious offense.

**3.7.9 ROBBERY.** A person who knowingly uses force or threatens to use force against another person with the intent to take the property of such person, is guilty of a serious offense.

**3.7.10 AGGRAVATED ROBBERY.** A person who, in the course of committing robbery, is aided by one or more accomplices actually present, is guilty of a dangerous offense.

**3.7.11 HARASSMENT.** A person commits a minor offense by persistently placing obscene or harassing telephone calls, or other electronic or Internet messages, with the intent to annoy, abuse, or threaten another person.

## **Chapter 8. OFFENSES AGAINST PROPERTY**

**3.8.1 BURGLARY.** A person who unlawfully enters or remains in any dwelling, other structure, or vehicle, with the intent to commit theft or any serious or dangerous offense, is guilty of a serious offense.

**3.8.2 AGGRAVATED BURGLARY.** A person who commits burglary while possessing a deadly weapon or dangerous instrument, is guilty of a dangerous offense.

### **3.8.3 TRESPASSING.**

1. A person who enters or remains in any building, structure or land, after being notified by the owner or lawful possessor not to enter or remain, is guilty of a minor offense.
2. It shall be a defense to trespassing that the person acted with legal authority or consent.

### **3.8.4 THEFT.**

- A. A person who knowingly takes or controls the property or services of another person without consent of the owner or other proper legal authority is guilty of an offense.
- B. Theft of property or services with a value of two thousand dollars or more is guilty of a serious offense.

### **3.8.5 RECEIVING OR CONCEALING STOLEN PROPERTY.**

- A. A person who knowingly sells stolen property is guilty of a serious offense.
- B. A person who receives or conceals property of another person, knowing the same to have been stolen, is guilty of a serious offense.

### **3.8.6 CRIMINAL DAMAGE TO PROPERTY.**

- A. A person who intentionally, knowingly or recklessly defaces, damages or tampers with property not his own, whether public or private, is guilty of an offense.
- B. A person who commits criminal damage of property in an amount of five thousand dollars or more is guilty of a serious offense.

### **3.8.7 CRIMINAL LITTERING OR POLLUTING OF PUBLIC PROPERTY.**

- A. A person commits a minor offense by recklessly or negligently discarding any refuse, debris, destructive or other injurious material that he does not remove, without lawful authority within the Territory of the Tribe.



- B. A person who discharges sewage, oil products or other harmful substances, in excess of three hundred pounds in weight or one hundred cubic feet in volume, or is done in any volume for commercial purposes, into any public waters is guilty of an offense.
- C. A person convicted under Subsections A or B will be required to remove or remedy the nuisance upon order of the Court.

**3.8.8 BURNING.**

- A. A person who recklessly causes a fire or explosion that results in damage to an occupied structure, a structure, wildland or property is guilty of an offense.
- B. A person who knowingly and unlawfully damages an occupied structure by knowingly causing a fire or explosion, or commits burning to property in an amount of five thousand dollars or more is guilty of a serious offense.

## **Chapter 9. FRAUD & RELATED OFFENSES**

**3.9.1 FRAUD.** A person who obtains money, property or services by knowingly misrepresenting a material fact or by knowingly using false weights or measures, is guilty of an offense. If the value of the money, property or services is \$5,000 or more, the person is guilty of a serious offense.

### **3.9.2 BRIBERY.**

- A. A person who offers or confers any money, property, service, or other benefit to an official of the Tribe, or public servant with the intent to influence the conduct of the other person's public duties, is guilty of a serious offense.
- B. An official of the Tribe or public servant who knowingly accepts or intentionally solicits such offers, is guilty of a serious offense.

**3.9.3 EXTORTION.** A person who intentionally obtains or seeks to obtain property, services, or other benefit by means of a threat to either cause physical injury to persons or property; or make allegations, whether true or false, which damage another's personal reputation or business associations is guilty of a serious offense.

### **3.9.4 FORGERY.**

A person commits a serious offense if, with intent to defraud, such person:

- A. falsely makes, completes, signs, or alters a written instrument;
- B. knowingly possesses a forged instrument; or,
- C. offers a forged instrument for execution, whether accepted or not.

**3.9.5 ISSUANCE OF INSUFFICIENTLY FUNDED CHECKS.** A person who intentionally issues a check, draft, or other financial instrument with the intent to defraud and with the knowledge that the depository will not credit the full amount upon its presentation, is guilty of a minor offense.

## **Chapter 10. SEXUAL OFFENSES AND RELATED OFFENSES**

**3.10.1 ENTICEMENT OF A MINOR.** A person who forces, entices, or persuades a child under the age of sixteen to enter any building, vehicle, or secluded place with intent to engage in sexual acts, sexual contact or oral sexual acts with the minor, is guilty of a dangerous offense.

### **3.10.2 SEXUAL ASSAULT.**

- A. A person who engages in sexual contact with another person, without his or her consent, is guilty of a sexual assault, a serious offense. "Without consent" includes any of the following:
1. The victim is coerced by the immediate use or threatened use of force against a person or property.
  2. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. For purposes of this subsection, "mental defect" means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another.
  3. The victim is intentionally deceived as to the nature of the act.
  4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.
- B. A person who engages in sexual acts or oral sexual acts with another person, without his or her consent, is guilty of aggravated sexual assault, a dangerous offense.

### **3.10.3 SEXUAL CONDUCT WITH A MINOR.**

Any person who engages in sexual acts, sexual contact or oral sexual acts with a minor who is not his or her spouse is guilty of a dangerous offense.

### **3.10.4 INDECENT EXPOSURE.**

- A. A person who intentionally, knowingly or recklessly exposes his or her genitals to observers in a public place or unwilling observers in a private place, is guilty of a minor offense.
- B. A person who commits indecent exposure to a person who is under fifteen years of age is guilty of an offense.

**3.10.5 PROSTITUTION.**

- A. A person who knowingly engages in or offers to engage in sexual conduct in exchange for money, property or other services is guilty of a minor offense.
- B. A person who knowingly exchanges or offers to exchange money, property or other services for sexual conduct is guilty of a minor offense.
- C. A person who knowingly arranges, offers to provide or solicits the services of a prostitute is guilty of a minor offense.
- D. A person who knowingly keeps, maintains, rents, or leases property for the purpose of prostitution is guilty of a minor offense.

**3.10.6 FAILURE TO REPORT CHILD ABUSE.**

- A. Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, endanger or abandonment of a minor, child abuse, sexual assault or sexual conduct with a minor that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in shall immediately report or cause reports to be made of this information to a law enforcement officer.
- B. A report is not required under this section for conduct prescribed by sections 3.10.3 if the conduct involves only minors who are sixteen or seventeen years of age and there is nothing to indicate that the conduct is other than consensual.
- C. A person who furnishes a report, information or records required or authorized under this section, or a person who participates in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, is immune from any civil or criminal liability by reason of that action unless the person acted with malice or unless the person has been charged with or is suspected of abusing or neglecting the child or children in question.
- D. Reports shall be made immediately by telephone or in person and shall be followed by a written report within seventy-two hours. The reports shall contain:

1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor, if known.
2. The minor's age and the nature and extent of the minor's abuse, child abuse, physical injury or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect.
3. Any other information that the person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.
4. The name of the person making the report.

E. For the purposes of this section:

1. "Abuse" shall have the same meaning as in 3.7.5.
2. "Endangerment or abandonment of a minor" shall have the same meaning as in 3.6.1.
3. "Sexual assault" shall have the same meaning as in 3.10.2.
4. "Sexual conduct with a minor" shall have the same meaning as in 3.10.3.

F. Penalty.

1. A person who violates this section and is a parent, stepparent, guardian, law enforcement officer, teacher, school official, or has responsibility for the care or treatment of the minor, such as a physician, dentist, nurse, psychologist, counselor, social worker, is guilty of an offense.
2. A person who violates this section, but does not have a relationship to the child described in subsection 1, shall receive a warning for a first violation, is guilty of a minor offense for second violation, and is guilty of an offense for subsequent violations.

**Chapter 11. OFFENSES INVOLVING WEAPONS AND EXPLOSIVES**

**3.11.1 MISCONDUCT INVOLVING FIREARMS.** A person who knowingly discharges a firearm within three hundred (300) feet of any inhabited building or on any road or highway within the Territory, is guilty of a petty offense.

- A. This offense shall not apply to persons who discharge their firearms for ceremonial or law enforcement purposes, to those who discharge their firearms in protection of their farming or ranching activities, to those who discharge their firearms within a designated area such as an archery or rifle range, or to those who discharge their firearms in accordance with other laws of the Tribe.
- B. In addition to such other penalties prescribed by this Code, the firearm may be immediately seized as a civil forfeiture.

## **Chapter 12. OFFENSES INVOLVING DOMESTICATED ANIMALS**

### **3.12.1 CRUELTY TO DOMESTICATED ANIMALS.**

- A. A person who recklessly subjects any animal under his custody or control to mistreatment or neglect, is guilty of a minor offense.
- B. Mistreatment or neglect includes, but is not limited to: torture, mutilation, failure to provide necessary sustenance, and forcibly working animals unfit for labor.
- C. For the purposes of this section, a domesticated animal is any animal that depends on a human for food, water and shelter, including dogs and cats and other house pets unless otherwise defined by law.

**Chapter 13. OFFENSES AGAINST PUBLIC PEACE,  
ORDER, WELFARE AND ADMINISTRATION**

**3.13.1 CURFEW VIOLATIONS.**

- A. Children under age eighteen shall observe the following curfew schedule:
1. During School Term: Unless accompanied by a lawful custodian, children under age sixteen shall not appear in public places after 9:00 pm; children ages sixteen through seventeen shall not appear in public places after 10:00 pm, regardless of whether they are enrolled in school.
  2. During Vacation Periods: Unless accompanied by a lawful custodian, children under age sixteen shall not appear in public places after 11:00 pm; children ages sixteen through seventeen shall not appear in public places after 12:00 midnight.
  3. Exceptions: When a school, community, or ceremonial function runs late, curfew is extended for all children until one half-hour after the official close of the function.
- B. A lawful custodian who intentionally fails to enforce the curfew schedule is guilty of a petty offense.

**3.13.2 DISORDERLY CONDUCT.**

A person commits a minor offense if, with the intent to disturb the peace and quiet of a community, family or person, he or she:

1. engages in violent or seriously disruptive behavior;
2. makes unreasonable noise;
3. uses abusive or offensive language or gestures in a manner likely to provoke immediate physical retaliation by another person; or
4. recklessly handles, displays or discharges a deadly weapon or dangerous instrument.

**3.13.3 DISRUPTING MEETINGS, PROCESSIONS AND CEREMONIES.**

- A. A person makes any unreasonable disruption, commotion or display with the intent to prevent or obstruct a lawful meeting, procession, ceremony or gathering is guilty of a petty offense.
- B. For purposes of this section, a person will be considered to have made an "unreasonable disruption" if he or she



attends a lawful meeting, procession, ceremony or gathering while under the influence of alcohol, marijuana or a controlled substance.

**3.13.4 DISRUPTING RELIGIOUS CEREMONIES.**

- A. A person who recklessly or negligently enters ceremonial area during a religious or ceremonial activity and makes any unreasonable disruption, commotion or display is guilty of an offense.
- B. For purposes of this section, a person will be considered to have made an "unreasonable disruption" if he or she enters a ceremonial area during a religious or ceremonial activity while under the influence of alcohol, marijuana or a controlled substance.
- C. A person who has been previously convicted under this section and makes an unreasonable disruption is guilty of a serious offense.

**3.13.5 RIOT.** A person who intentionally, knowingly or recklessly induces two or more persons to use force or violence to disturb the public peace, or to create an imminent threat of disturbance, is guilty of an offense.

**Chapter 14. INTERFERING WITH ADMINISTRATION OF JUSTICE**

**3.14.1 IMPERSONATION OF A PUBLIC OFFICIAL.** A person who intentionally impersonates a law enforcement officer or other public official is guilty of an offense.

**3.14.2 ESCAPE.**

A. A person who unlawfully and knowingly removing himself from official detention or by unlawfully and knowingly failing to return to official detention following a temporary leave commits an offense.

B. For purposes of this section "official detention" means arrest, detention in any facility for custody of persons under charge or conviction of a crime, or any other detention for law enforcement purposes.

**3.14.3 HINDERING APPREHENSION OR PROSECUTION.** A person commits an offense if, with the intent to hinder the apprehension, prosecution, conviction or punishment of another person for a crime, he or she:

1. harbors or conceals the other person;
2. provides or aids in providing the other person with a weapon, transportation or a disguise;
3. conceals or destroys evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility into evidence;
4. warns the other person of impending discovery or apprehension; or
5. volunteers false information to a law enforcement officer.

**3.14.4 GIVING FALSE INFORMATION TO AN OFFICER.**

A. A person who knowingly gives false information to a law enforcement officer is guilty of a minor offense.

B. A person who intentionally causes the unlawful arrest, detention or imprisonment of another person is guilty of an offense.

**3.14.5 CONTEMPT OF COURT.** A person who intentionally disobeys a lawful order, process or other mandate of the Trial Court is guilty of a minor offense.

**3.14.6 RESISTING LAWFUL ARREST.**

A person commits an offense if, with the intent to prevent a law enforcement officer from making a lawful arrest, he or she:

- A. uses or threatens to use physical force against the law enforcement officer or another person; or
- B. engages in any other conduct that creates a substantial risk of causing physical injury to a law enforcement officer or another person.

**3.14.7 PERJURY.**

- A. A person who makes a sworn statement or affidavit, knowing the same to be untrue, is guilty of a serious offense.
- B. A person who intentionally induces another to make a sworn statement or affidavit, knowing the same to be untrue, is guilty of a serious offense.

**3.14.8 TAMPERING WITH PUBLIC RECORDS.**

- A. A person commits an offense if he or she:
  - 1. Knowingly makes a false entry in, or false alteration of, any public record;
  - 2. Knowingly makes, presents or uses a false record, document or thing with the intent that it be taken as a genuine public record;
  - 3. Intentionally and unlawfully destroys, conceals, removes or otherwise impairs the accuracy or availability of any public record.
- B. For purposes of this section, "public record" means any record, document or thing belonging to, or received or kept by a public office for information or record, or required by law to be kept by others for the information of a public office.

**Chapter 15. CONTROLLED SUBSTANCES & ALCOHOL RELATED OFFENSES**

**3.15.1 USE OR POSSESSION OFFENSES.**

**A. Possession of Alcoholic Beverages**

1. A person who knowingly possesses alcoholic beverages for personal use is guilty of a petty offense. In addition to any jail sentence or fine the court may impose, the court shall require the person to participate in an outpatient counseling program designed and supervised by an alcohol rehabilitation program as a condition of probation or in lieu of a jail sentence.
2. A person who knowingly possesses alcoholic beverages for personal use with one prior conviction for using or possessing alcoholic beverages, is guilty of a minor offense. In addition to any jail sentence or fine the court may impose, the court shall require the person to participate in an outpatient counseling program designed and supervised by an alcohol rehabilitation program.
3. A person who possesses alcoholic beverages for personal use with two or more prior convictions for using or possessing alcoholic beverages, is guilty of an offense. In addition to any jail sentence or fine the court may impose, the court shall require the person to participate in an alcoholic rehabilitation unit for residential treatment.
4. A person who knowingly possesses alcoholic beverages for sale or distribution is guilty of a serious offense.

**B. Use or Possession of Marijuana or Controlled Substances**

1. A person who knowingly uses or possesses marijuana or controlled substances, for personal use is guilty of a petty offense. In addition to any jail sentence or fine the court may impose, the court shall require the person to participate in an out-patient counseling program designed and supervised by a drug rehabilitation program as a condition of probation or in lieu of a jail sentence.
2. A person who knowingly uses or possesses marijuana or controlled substances for personal use with one prior conviction for using or possessing marijuana or controlled substances, is guilty of a minor offense. In addition to any jail sentence or fine the court may impose, the court shall require the person to participate in an outpatient

counseling program designed and supervised by a drug rehabilitation program.

3. A person who knowingly uses or possesses marijuana or controlled substances for personal use with two or more prior convictions for using or possessing marijuana or controlled substances, is guilty of an offense. In addition to any jail sentence or fine the court may impose, the court shall require the person to participate in a drug rehabilitation unit for residential treatment.
- C. A person who knowingly possesses marijuana or controlled substances for sale or distribution is guilty of a serious offense.
- D. Nothing in this section shall make it illegal to possess, use or be affected by marijuana or controlled substance when authorized for medicinal purposes by a "Practitioner" as defined in 21 U.S.C. § 802(21), or as directed by a physician.

**3.15.2 BOOTLEGGING, SALE, DISTRIBUTION, TRANSPORTATION OF ALCOHOL, MARIJUANA OR CONTROLLED SUBSTANCES.**

- A. A person who knowingly sells, distributes, transports or imports or offers to sell, distribute, transport or import alcoholic beverages, marijuana or controlled substances is guilty of an offense.
- B. For each offense, the Court shall impose a term of imprisonment of one (1) year and a fine of five thousand (\$5,000.00) dollars. Each act of sale, distribution or transportation under Subsection A shall constitute a separate offense. Such sentence shall not be otherwise suspended or deferred, and no parole, probation or other early release shall be authorized.
- C. The mandatory sentence provided for in Subsection B shall not apply if the defendant is a first or second-time offender or the Court finds that extraordinary circumstances justify mitigation of the sentence.
- D. Upon conviction under Subsection A, the Court shall assess as costs payable to the Tribe the reasonable costs of investigation and prosecution of the offense.
- E. Enforcement
  1. Any vehicle or other property knowingly used to facilitate the sale, distribution or transportation of alcoholic beverages, marijuana or a controlled substance may be

seized immediately as a civil forfeiture, and will not be returned without a showing of good cause before the Court.

2. Procedures for disposing of seized property shall be established by the Trial Court and approved by the Tribal Council.

**3.15.3 PRODUCTION, CULTIVATION OR MANUFACTURING OFFENSES.**

A person who knowingly produces alcoholic beverages, cultivates marijuana or manufactures a controlled substance, or takes substantial steps toward such production, cultivation or manufacturing, is guilty of a serious offense.

**3.15.4 INTOXICATION.**

- A. A person who is voluntarily under the influence of, or intoxicated by alcoholic beverages, marijuana or a controlled substance, is guilty of a minor offense.
- B. A person who is voluntarily under the influence of, or intoxicated by alcoholic beverages, marijuana or a controlled substance with three or more prior convictions for said offense, committed within the past three years, is guilty of an offense.
- C. The court may, in its discretion or at the request of another, commit a person convicted of intoxication, if he or she is a repeat offender, to an alcoholic rehabilitation unit for residential treatment, or require the person to participate in an out-patient counseling program designed and supervised by an alcohol or drug rehabilitation program as a condition of probation or in lieu of a jail sentence.
- D. Nothing in this section shall make it illegal to possess, use or be affected by a controlled substance when authorized for medicinal purposes by a "Practitioner" as defined in 21 U.S.C. § 802(20), or as directed by a physician.

**3.15.5 POSSESSION OF DRUG PARAPHERNALIA.**

- A. A person who possesses, or uses drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body marijuana or a controlled substance is guilty of an offense.
- B. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use.
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to marijuana or any controlled substance.
3. The proximity of the object, in time and space, to a direct violation of this chapter.
4. The proximity of the object to marijuana or a controlled substance.
5. The existence of any residue of marijuana or a controlled substance on the object.
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter.
7. The existence and scope of legitimate uses for the object in the community.
8. Expert testimony concerning its use.





**TITLE IV**  
**MOTOR VEHICLE CODE**

**CHAPTER 1. GENERAL PROVISIONS**

**4.1.1 SHORT TITLE.**

This title may be known and cited as the "Kiowa Motor Vehicle Code".

**4.1.2 JURISDICTION OF KIOWA TRIBE.**

Under this Title, the Kiowa Trial Court shall have exclusive original jurisdiction over all civil traffic infractions and all criminal traffic offenses committed within its Territory, as defined in Section \_\_\_\_\_.

**4.1.3 DEPOSIT TO AND APPROPRIATION OF GENERAL FUNDS.**

All fees, assessments, fines, penalties and forfeitures imposed and collected under this Title shall be used for funding programs related to the enforcement and implementation of this Title, including appointment of Traffic Hearing Officers as provided below.

**4.1.4 CIVIL COMPROMISE DISMISSAL.**

A Trial Court Judge may dismiss a pending action based on a complaint or citation for any civil infraction under this Title upon a motion filed by the defendant together with the sworn stipulation and acknowledgement of all parties claiming injury or damage that they have received full compensation and satisfaction from the defendant.

**4.1.5 COURT-APPOINTED CIVIL TRAFFIC HEARING OFFICERS.**

- A. Subject to available funding, the Chief Judge of the Trial Court may appoint qualified Traffic Hearing Officers. Such Traffic Hearing Officers may hear and dispose of civil traffic infractions under the supervision of the Trial Court Judges, and the judgment and disposition of the Traffic Hearing Officers shall constitute the final judgment and order of the Court.
- B. All criminal traffic offenses shall be heard and determined only by a Judge of the Trial Court, consistent with the provisions of the Kiowa Criminal Code and all other applicable laws, court rules and regulations.

#### **4.1.6 DEFINITION OF TERMS.**

- A. The definitions contained herein shall apply to all chapters of this Title.
- B. Under this Title, unless the context or subject matter otherwise requires:
  - 1. **ABANDONED VEHICLE:** a vehicle left unattended, on private or public property, for an unreasonable length of time, and which, after being reported to a law enforcement agency, has been discovered by that agency:
    - (a) not to have been stolen; and
    - (b) not able to establish legal ownership by normal record-checking procedures; and
    - (c) the legal ownership of which is not claimed or asserted by any person.
  - 2. **AUTHORIZED EMERGENCY VEHICLE:** properly marked law enforcement vehicles, fire department vehicles, and ambulances or other vehicles as authorized by the Kiowa Tribe, the State of Oklahoma, or the United States Government.
  - 3. **BICYCLE:** a vehicle with two wheels tandem, a steering handle, a saddle seat and pedals by which it is propelled.
  - 4. **CARGO TANK:** any tank permanently affixed to a motor vehicle for the purpose of transporting any flammable liquid or compressed gas.
  - 5. **CROSSWALK:** any portion of a roadway distinctly indicating a pedestrian crossing by lines or other surface markings.
  - 6. **DEPARTMENT:** refers to the Kiowa Department of Public Safety.
  - 7. **DRIVER:** any person who exercises control over a motor vehicle, or any person who steers a vehicle that is being towed.
  - 8. **FARM TRACTOR:** any motor vehicle designed and used primarily for drawing implements of husbandry.

9. **FREIGHT TRAILER:** any trailer, semi-trailer or pole trailer drawn by a truck tractor or road tractor, and any trailer, semi-trailer or pole trailer drawn by a truck which has a gross vehicle weight of more than twenty-six thousand (26,000) pounds. The term does not include house trailers, trailers of less than one-ton carrying capacity used to transport animals, or fertilizer trailers of less than three thousand five hundred (3,500) pounds empty weight.
10. **GROSS VEHICLE WEIGHT:** the weight of a vehicle without load, plus the weight of any load thereon.
11. **INTERSECTION:** the common area created when two or more roadways join or cross one another.
12. **LANED ROADWAY:** a roadway that is divided into two or more clearly-marked lanes for vehicular traffic.
13. **MOBILE HOME:** a house trailer, other than one held as inventory for sale or resale by a registered dealer.
14. **MOTORCYCLE:** a two-wheeled automotive vehicle with one or two saddles and sometimes a sidecar with a third supporting wheel.
15. **MOTOR VEHICLE:** any vehicle propelled by the use of an internal combustible engine, electricity or motor vehicle fuel.
16. **NEGLIGENCE:** the failure to use such care as a reasonably prudent and careful person would exercise under similar circumstances; it may involve either an omission or an affirmative act.
17. **OFFICIAL TRAFFIC-CONTROL DEVICES:** all signs, signals, markings and devices placed or erected by authority of a public body or official with the responsibility to regulate, warn or guide traffic.
18. **OWNER:** a person who holds legal title to a vehicle or, if who holds the right of purchase upon performance of the conditions stated in the agreement, if the vehicle is the subject of an agreement for a conditional sale or lease.
19. **PEDESTRIAN:** any person afoot. A person who is not ambulatory and is in a wheelchair is considered a pedestrian.

20. PERSON: includes individuals, firms, co-partnerships, associations or corporations.
21. POLICE or LAW ENFORCEMENT OFFICER: any officer duly authorized or commissioned by the authority of the Kiowa Tribe to direct or regulate traffic or to enforce or make arrests for violations of the Kiowa Motor Vehicle Code.
22. RACE: two or more vehicles operating at accelerating speeds in a competitive attempt to outdistance each other.
23. RIGHT-OF-WAY: the privilege of the immediate use of the highway or the lands or interest in the lands within the right-of-way boundaries.
24. ROADWAY: that portion of a route which is improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder.
25. SIDEWALK: that portion of a street between the curb or lateral lines of a roadway, and the adjacent property lines; intended for the use of pedestrians.
26. SCHOOL BUS: any motor vehicle which is used to transport children, students or teachers to and from school, or to and from any school activity. This definition may include any type of vehicle except:
  - (a) one operated by a common carrier, or private mass transit system not used exclusively for the transportation of pupils;
  - (b) one operated solely by a governmental-owned public transit authority not used exclusively for transportation of pupils.
  - (c) a privately owned vehicle not used exclusively for the transportation of pupils.
27. SEMI-TRAILER: any vehicle without mechanical power, other than a pole trailer, designed for carrying persons or property and for being drawn by another vehicle, and so constructed that some part of its weight and that of its load rests upon or is carried by such other vehicle.

28. SHOULDER: the area immediately adjacent to the edge of a paved road.
29. SINGLE AXLE LOAD: the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches or less apart, extending across the full width of the vehicle.
30. STOP: complete cessation from movement.
31. TANDEM AXLE LOAD: the total load transmitted to the road by all wheels whose centers are included between two (2) parallel transverse vertical planes more than 40 inches apart but less than 120 inches apart, extending across the full width of the vehicle.
32. TANK MOTOR VEHICLE: any motor vehicle designed for the transportation of liquids or gases in a cargo tank.
33. TRAFFIC: pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, using any roadway for purposes of travel.
34. TRAFFIC-CONTROL SIGNAL: a device, manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.
35. TRUCK: any vehicle with an attached box, platform or other equipment designed to carry property other than the effects of the driver or passengers.
36. TRUCK TRACTOR: a vehicle designed to draw other vehicles without carrying part of the weight of the vehicle and load down.
37. VEHICLE: any device in, upon or by which persons or property may be transported, including a frame chassis or body of any type of vehicle, excluding devices driven by human power or used exclusively upon stationary rails or tracks.

## **CHAPTER 2. GENERAL APPLICATION**

### **4.2.1 ENFORCEMENT.**

The Kiowa Tribe Police Officers and other police officers authorized by the Tribe shall be responsible for the enforcement of all regulations established in this chapter.

### **4.2.2 VALID STATE DRIVER'S LICENSE REQUIRED.**

Any person operating a motor vehicle within the jurisdiction of the Tribe must possess a valid state driver's license.

### **4.2.3 AUTHORIZED EMERGENCY VEHICLES.**

- A. The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of law, or when responding to a fire alarm, is exempt from the requirements in this chapter.
- B. The provisions of this section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with ordinary care for the safety of all persons, nor shall these provisions exempt any party from the consequences of his reckless disregard for the safety of others.
- C. Upon the approach of an authorized emergency vehicle displaying flashing red lights and sirens, all other vehicles shall immediately drive to a position parallel with, and as close as possible to, the right-hand edge of the roadway, clear of any intersection, and shall stop and remain in that position until the authorized emergency vehicle has passed.

### **4.2.4 APPLICATION TO ANIMALS AND ANIMAL-DRAWN VEHICLES.**

- A. Any person riding an animal or driving an animal-drawn vehicle upon a roadway shall be granted all the rights, and shall be subject to all the duties, applicable to the driver of a vehicle by this chapter.
- B. A vehicle approaching animals or animal-drawn vehicles shall exercise reasonable care to prevent frightening such animals, and to insure the safety of any person riding or driving the same.

**4.2.5 CIVIL ASSESSMENT FEE.**

- A. Except as otherwise indicated, it shall be a civil infraction for any person to violate the provisions of this Code.
- B. Except as otherwise indicated, any person violating the provisions of this Code within the territorial jurisdiction of the Tribe shall be subject to civil assessment fees of not less than thirty-seven dollars and fifty cents (\$37.50), or more than five hundred dollars (\$500.00), and/or possible civil forfeiture.
- C. The Court may hire a collection agency for the collection of civil assessment fees.

**4.2.6 TRAFFIC CONTROL DEVICES AND SIGNS.**

The appropriate Department of the Tribe is authorized to place and maintain traffic-control devices on or within the right-of-way of any roadway within the Kiowa Territory.

## **CHAPTER 3: ACCIDENTS**

### **4.3.1 DUTY OF DRIVERS INVOLVED IN AN ACCIDENT.**

- A. The driver of a vehicle involved in an accident resulting in damage to an unattended vehicle, shall immediately stop and locate the operator or owner of the vehicle. If locating the operator or owner of the damaged vehicle is not possible, the driver shall leave written notice giving the name and address of the driver and the owner of the vehicle causing the damage.
- B. The driver of any vehicle involved in an accident resulting in damage to fixtures or other property legally upon or adjacent to a roadway, shall take reasonable steps to locate and notify the property's owner or caretaker of such damage, giving his name, address and the registration number of his vehicle.
- C. The driver of a vehicle involved in an accident resulting in bodily injury, death or total property damage of three hundred dollars (\$300.00) or more, shall immediately file a written report of the accident with the appropriate Law Enforcement Agency. If necessary, the driver of such vehicle shall render reasonable assistance to any person injured in the accident by making immediate arrangements for medical care.

### **4.3.2 WHEN DRIVER UNABLE TO REPORT.**

- A. If an accident occurs, and the driver of the vehicle involved in an accident is physically incapable of making an immediate report, any occupant in the vehicle at the time of the accident capable of making a report, shall be responsible for filing the accident report.
- B. If the driver physically incapable of making a written report does not own the vehicle involved in the accident, the owner shall file a report immediately upon being informed of such accident.

### **4.3.3 CONFIDENTIALITY OF ACCIDENT REPORTS.**

- A. All accident reports shall be made without prejudice to the individual reporting such accident. The department may disclose:
  - 1. the identities of the parties involved in an accident; and
  - 2. whether the owner or operator of the vehicle involved in the accident is insured. If such owner or operator is



insured, the department may release the name and address of the insurance carrier.

- B. Upon request, the department may furnish a copy of the investigating officer's accident report to the parties involved and to any court of competent jurisdiction.
- C. Any law enforcement officer making the initial investigation of a motor vehicle accident in which a minor was involved, shall make every reasonable effort to immediately notify the parents or legal guardian of such accident.

#### **4.3.4 DUTY OF GARAGES, DEALERS AND WRECKERS TO REPORT ACCIDENTS.**

If a vehicle showing recent evidence of an accident under Section 4.2.1 (C) is brought in for services, the owner or manager of the garage, repair shop, dealership or wrecker service shall report the vehicle to the department within twenty-four hours after such vehicle is received. The report must include the engine number, registration number and the name and address of the owner or operator of such vehicle. Non-compliance may result in the loss of business license.

#### **4.3.5 TRAFFIC ACCIDENTS INVOLVING DEATH OR SERIOUS PHYSICAL INJURY, IMPLIED CONSENT.**

A person who operates a motor vehicle within the Kiowa Territory gives consent to a test or tests of the person's blood, breath, urine or other bodily substance for the purposes of determining alcohol concentration or drug content, if the vehicle is involved in a traffic accident resulting in death or serious physical injury to a passenger, driver, or pedestrian.

## **CHAPTER 4: SPEED REGULATIONS**

### **4.4.1 SPEED REGULATIONS.**

- A. No person shall operate a vehicle on a public roadway at a speed greater than:
  - 1. Fifteen (15) miles per hour in a school zone;
  - 2. Twenty-five (25) mph in any business or residential district;
  - 3. Fifty-five (65) mph on highways in open country; or
  - 4. The maximum posted speed.
- B. No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation.

### **4.4.2 SPEED ZONE.**

- A. The director of any agency having authority to maintain the roadways within the Territory of the Tribe is hereby empowered to do the following:
  - 1. To determine upon the basis of an engineering survey or traffic investigation that any speed limit established by law is greater or less than is reasonable and safe under the conditions found to exist upon any part of such roadway.
  - 2. To determine and declare a reasonable maximum speed for such location, which shall be in effect when appropriate signs giving notice thereof are erected.
- B. The agency establishing a speed zone under this section shall be responsible for erecting at the beginning of each such zone, a sign designating a maximum allowed speed within the zone, and at the end thereof, a sign bearing either the legend "Resume Speed" or setting forth a new maximum speed limit.

### **4.4.3 CLASSIFICATION OF COMPLAINT OF EXCESSIVE SPEED AS ALLEGING CIVIL OR CRIMINAL VIOLATION.**

- A. Every complaint alleging excessive speed shall specify the speed at which the defendant is alleged to have driven and the maximum speed applicable at such location.

B. In addition to those violations expressly designated a criminal offense in this Title, the Trial Court may elect to classify the following as alleging minor criminal offenses:

1. any complaint for speeding more than twenty (20) miles per hour in excess of the posted or otherwise applicable speed limit; or
2. any complaint alleging that a violation of the speed limit has caused or contributed to an accident resulting in personal injury or property damage in excess of one thousand five hundred (\$1,500.00) dollars.

## **CHAPTER 5: TRAFFIC SIGNS AND SIGNALS**

### **4.5.1 OBEDIENCE TO TRAFFIC-CONTROL DEVICES.**

The driver of a vehicle shall obey the instruction of any official traffic-control device placed by the proper authority, subject to the exemptions granted authorized emergency vehicles.

### **4.5.2 TRAFFIC CONTROL SIGNAL LEGENDS.**

- A. Electric traffic control signals shall use only the colors green, red, and yellow, except for special pedestrian signals carrying a word legend. Such lights shall apply to drivers of vehicles and pedestrians as follows:
1. Green indication:
    - a. Vehicular traffic facing a green signal may proceed straight through or turn right or left unless otherwise indicated. All vehicular traffic shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is shown.
    - b. Vehicular traffic facing a green arrow signal may cautiously enter the intersection only to make the movement indicated by such arrow, unless other indications are shown simultaneously. All such vehicular traffic shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is shown.
    - c. Unless otherwise directed by a pedestrian control signal, pedestrians facing any green signal not a turn arrow, may proceed across the roadway.
  2. Steady yellow indication:
    - a. Vehicular traffic approaching a steady yellow signal must slow down in anticipation of a pending red indication.
    - b. Pedestrians facing a steady, yellow signal, unless otherwise directed by a pedestrian control signal, shall not then start to cross the roadway, but may continue if already in the crosswalk.

3. Red indication:

- a. Vehicular traffic facing a steady red signal shall stop before entering the intersection and shall remain stopped until an indication to proceed is shown, except as provided in sub-paragraph (b) below.
- b. The driver of a vehicle stopped at the entrance to an intersection in obedience to a red signal, may make a right turn, but shall yield the right of way to pedestrians and other traffic proceeding as directed by the signal. Right turns against a red signal may be prohibited at any intersection where a posted sign so indicates.
- c. Unless otherwise directed by a pedestrian control signal, pedestrians facing a steady red signal shall not enter the roadway.

- B. The provisions of this section shall be applicable where an official traffic control signal is erected and maintained at a place other than an intersection.

**4.5.3 FLASHING SIGNALS.**

A flashing red or yellow traffic control signal shall indicate the following:

1. Flashing Red: all traffic must stop before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
2. Flashing Yellow: traffic must proceed through the intersection with extreme caution.

**4.5.4 PROHIBITION OF UNAUTHORIZED SIGNS, SIGNALS OR MARKINGS.**

- A. No person shall display or maintain a device that attempts to direct traffic or hide or interfere with official traffic control devices.
- B. No person shall alter, deface or remove any official traffic control device or railroad sign or signal, in whole or in part.
- C. All prohibited signs, signals, or markings are hereby declared to be a public nuisance and any authority having jurisdiction over

the highway, including police officers, are empowered to remove the such signs or cause them to be removed without notice.

- D. The court, in addition to or in lieu of any assessment imposed, may require any person found in violation of this section, to pay to the Kiowa Tribe the full cost of replacing such traffic control device or railroad sign or signal.

#### **4.5.5 KIOWA TERRITORY BOUNDARY SIGNS.**

The Chairman, or his designee, shall maintain public notice signs at key ingress and egress points at the boundaries of the Tribe's Territory notifying the public that they are entering the Jurisdiction of the Tribe and subject to the laws of the Tribe.

## **CHAPTER 6: RIGHT-OF-WAY**

### **4.6.1 RIGHT-OF-WAY WHEN APPROACHING OR ENTERING INTERSECTIONS.**

- A. When two vehicles enter or approach an intersection from different streets or roadways at approximately the same time the driver of the vehicle to the left shall yield the right of way to the vehicle on the right.
- B. This paragraph does not apply to vehicles approaching or entering an uncontrolled "T" intersection when the vehicle on the left is on a continuing street or roadway and the vehicle on the right is on the terminating street or roadway. In such cases, the vehicle on the terminating street or roadway shall yield to the vehicle on the continuing street or roadway.

### **4.6.2 VEHICLES ENTERING YIELD INTERSECTION.**

The driver of a vehicle approaching a yield sign shall, in obedience to the sign, slow down to a speed reasonable for the existing conditions, and must yield the right-of-way to any vehicle already in the intersection or approaching so closely as to constitute an immediate hazard. If such driver is involved in a collision after failing to yield, the collision shall be deemed prima facie evidence of his failure to yield.

### **4.6.3 VEHICLE ENTERING ROADWAY FROM PRIVATE ROAD OR DRIVEWAY.**

A vehicle attempting to enter or cross a public roadway from a private road or driveway shall yield the right-of-way to any vehicle or pedestrian on the public roadway.

## **CHAPTER 7: DRIVING, OVERTAKING AND PASSING**

### **4.7.1 OVERTAKING A VEHICLE ON THE LEFT.**

- A. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left at a safe speed and shall not drive on the right side of the roadway again until safely clear of the overtaken vehicle.
- B. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

### **4.7.2 OVERTAKING A VEHICLE ON THE RIGHT.**

- A. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
  - 1. When the vehicle overtaken is making or is about to make a left turn; or
  - 2. Upon a roadway with unobstructed pavement not occupied by parked vehicles and of sufficient width for two or more lines of moving vehicles in each direction.
  - 3. Upon a one-way street, or upon any roadway on which traffic is restricted to one direction, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.
- B. Such exceptions are only allowed when the movement to the right can be made with safety. In no event shall movement to the right be made by driving off the pavement or main-traveled portion of the roadway.

### **4.7.3 OVERTAKING AND PASSING A SCHOOL BUS.**

- A. Upon meeting or overtaking a stopped school bus with its red flashing lights in operation, all other vehicles must stop before reaching the school bus and shall not proceed until the bus resumes motion and the red flashing lights are not in operation.
- B. Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "School Bus" in letters not less than eight (8) inches in height.



- C. Every bus used for the transportation of school children shall be equipped with a signal with the word "Stop" printed on both sides in white letters not less than five (5) inches high on a red background. The signal shall not be less than twenty (20) inches long and shall be manually operated by the operator of the school bus in such manner as to be clearly visible from both front and rear when extended from the left of the body of the bus. It shall be displayed only when passengers are being received or discharged from the bus.
- D. Any person who violates the provisions of paragraph (a) of this section shall be guilty of an infraction punishable by a civil assessment fee of not more than one hundred fifty dollars (\$150.00). A second violation within one year thereafter shall be a criminal offense subject to a fine of not more than three hundred seventy-five dollars (\$375.00). A third or subsequent violation within one year after the last violation shall be a criminal offense subject to not less than five hundred dollars (\$500.00) or imprisonment for not less than sixty (60) days, nor more than six (6) months, or both.

#### **4.7.4 LIMITATIONS ON OVERTAKING AND PASSING.**

- A. No vehicle shall be driven to the left side of the center of the roadway when the following conditions exist:
  - 1. When approaching the crest of a grade or upon a curve in the roadway where the driver's view is so obstructed as to create a hazard in the event another vehicle might approach from the opposite direction; or
  - 2. Within one hundred (100) feet of an intersection; or
  - 3. Where appropriate signs or markings indicate the existence of a no passing zone; or
  - 4. Within one hundred (100) feet of any bridge, viaduct or tunnel.
- B. The limitations set forth in paragraph (A) of this section shall not apply on a one-way roadway.

#### **4.7.5 FOLLOWING TOO CLOSELY.**

- A. A motor vehicle shall not follow another vehicle more closely than is reasonable, having due regard for the speed of the vehicle, volume of traffic and the condition of the roadway.

- B. All vehicles being driven in a caravan or motorcade shall be operated so as to allow another vehicle to enter and occupy space within the caravan or motorcade without danger. The provisions of this subsection shall not apply to funeral processions.

**4.7.6 DRIVING ON RIGHT SIDE OF ROADWAY; EXCEPTIONS.**

- A. On all roadways of sufficient width, a person shall drive a vehicle on the right half of the roadway except as follows:
  - 1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing the movement.
  - 2. When the right half of a roadway is closed to traffic while under construction or repair.
  - 3. On a roadway divided into three marked lanes for traffic under the rules applicable on the roadway.
  - 4. On a roadway designated and signposted for one-way traffic.
- B. On all roadways, a person driving a vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall drive the vehicle in the right-hand lane then available for traffic or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

## **CHAPTER 8: SIGNALS ON STARTING, TURNING AND STOPPING**

### **4.8.1 REQUIRED POSITION AND METHOD OF TURNING AT INTERSECTIONS.**

The driver of a vehicle intending to turn at an intersection shall observe the following rules:

1. A right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.
2. When making a left turn from a two-way road, the driver shall use the lane closest to the centerline.
3. When making a left turn onto a one-way road, the driver shall enter the extreme left-hand lane on the one-way road.
4. Where a center lane has been provided, any maneuver other than a left turn from this center lane will be deemed a violation of this section.

### **4.8.2 TURNING MOVEMENTS AND REQUIRED SIGNALS.**

- A. No person shall turn his vehicle without giving an appropriate signal, whether mechanical or manual.
- B. A signal of intention to turn right or left shall be given continuously during the last one hundred (100) feet traveled by the vehicle before turning.
- C. No person shall stop or suddenly decrease the speed of a vehicle without first signaling the driver of any vehicle immediately to the rear.

### **4.8.3 SIGNAL DEVICE REQUIRED.**

- A. Any stop or turn signal shall be given by means of the hand and arm or by a mechanical signal device, except as provided in Subsection (B).
- B. When the distance from the center of the top of the steering post to the left outside limit of a motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen (14) feet, a turn signal must be given by a mechanical signal device.

#### **4.8.4 METHOD OF GIVING HAND AND ARM SIGNALS.**

All signals given by hand and arm shall be given from the left side of the vehicle in the following manner:

1. Left Turn: hand and arm extended horizontally;
2. Right Turn: hand and arm extended upward;
3. Stop or Decreasing Speed: hand and arm extended downward.

## **CHAPTER 9: STANDING OR PARKING**

### **4.9.1 STOPPING, STANDING OR PARKING.**

- A. No person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the roadway when it is possible to stop, park or leave the vehicle off that part of the roadway.
- B. When a vehicle is left standing upon a roadway in violation of paragraph (A), any law enforcement officer is authorized to remove or to cause the vehicle to be removed to a place of safety.
- C. This section shall not apply to a disabled vehicle on the paved or main-traveled portion of a roadway when it is impossible to avoid temporarily leaving the disabled vehicle in such position.

### **4.9.2 PROHIBITIONS ON STOPPING, STANDING OR PARKING.**

No person shall stop, stand or park a vehicle in any of the following places:

- 1. On a sidewalk; or
- 2. In front of a public or private driveway; or
- 3. In an intersection; or
- 4. Within twenty (20) feet of a fire hydrant; or
- 5. Within thirty (30) feet of a crosswalk at an intersection; or
- 6. Within thirty (30) feet of the approach to any flashing beacon, stop sign, yield sign or traffic-control device located adjacent to the roadway; or
- 7. Within fifty (50) feet of the nearest rail or railroad crossing, except when a motor vehicle is loading or unloading railroad cars; or
- 8. Within thirty (30) feet of the driveway entrance to any fire station or within seventy-five (75) feet on the side of a street opposite the entrance to any fire station; or
- 9. Adjacent or opposite to any street excavation when stopping, standing or parking would obstruct traffic; or

10. On the roadway side of any vehicle stopped or parked at the edge or curb of a street; or
11. Upon a bridge, tunnel or other elevated roadway structure; or
12. At any place where official signs prohibit standing or stopping.

**4.9.3 PARKING PRIVILEGES FOR PHYSICALLY DISABLED.**

Only a motor vehicle bearing the international wheelchair symbol may park in designated parking areas for the physically disabled, except as provided in Sections 4.9.1(C).

**4.9.4 ADDITIONAL PARKING REGULATIONS.**

- A. Any vehicle stopped or parked upon a roadway with an adjacent curb shall be so stopped or parked with the right-hand wheels of the vehicle parallel to and within eighteen (18) inches of the right-hand curb.
- B. A vehicle may be angle parked only within posted zones, and will not be permitted on any federal-aid or state highway unless the appropriate governmental agency has specifically determined that angle parking will not interfere with the free movement of traffic.

## **CHAPTER 10: PEDESTRIANS' RIGHTS AND DUTIES**

### **4.10.1 PEDESTRIANS SUBJECT TO TRAFFIC REGULATIONS.**

- A. Pedestrians shall obey all traffic control signals. Where no signals are in place, pedestrians shall have the right-of-way subject to the restrictions in this chapter.
- B. Every pedestrian crossing a roadway at any point other than within a marked crosswalk shall yield the right-of-way to all vehicles upon the roadway.
- C. All pedestrians shall exercise due caution and reasonable care when walking adjacent to a roadway.

### **4.10.2 PEDESTRIANS' RIGHT-OF-WAY IN CROSSWALKS.**

- A. When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, allowing a pedestrian to cross the roadway within a crosswalk when the pedestrian is upon the same half of the roadway as the vehicle, or when the pedestrian is close enough on the other side to be in danger.
- B. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.
- C. When any vehicle is stopped at a crosswalk in order to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

### **4.10.3 PEDESTRIAN CONTROL SIGNALS; LOITERING PROHIBITED.**

- A. When pedestrian control signals exhibiting the words "Walk" or "Don't Walk" are in place, the signals shall indicate as follows:
  - 1. Walk: pedestrians facing the signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by vehicles in the intersection.
  - 2. Don't Walk: no pedestrian shall start to cross the roadway in the direction of the signal, but any pedestrian who has partially completed his crossing may proceed to a sidewalk or safety island while the "Don't Walk" signal is showing.

- B. Pedestrians shall not loiter or unduly delay crossing the roadway after traffic has stopped to give the right-of-way.
- C. Failure to comply with this section may result in the imposition of a civil assessment fee not to exceed thirty-seven dollars and fifty cents (\$37.50).

#### **4.10.4 SCHOOL CROSSINGS.**

- A. Crosswalks may be established over highways near a school or the grounds nearby, and all children crossing the highway shall be required to do so within the marked crosswalks.
- B. At all school crossings, except as provided in this section, appropriate signs shall be provided, indicating the crossings and regulations for traffic movement within the school zones.
- C. School crossings are not required to be specially posted when they are located:
  - 1. at a signalized intersection; or
  - 2. at an intersection where traffic is controlled by a stop sign; or
  - 3. at a point where a pedestrian tunnel or overhead crossing is provided.

#### **4.10.5 USE OF WHITE CANE AND OTHER AMBULATION OR MOBILITY DEVICES.**

- A. A vehicle approaching a legally blind pedestrian who is carrying a white or metallic cane, using a guide dog or is assisted by a sighted person shall yield the right-of-way and take reasonable precautions to avoid injury to such pedestrian. Such pedestrians shall have the same rights as all other pedestrians whether or not they are carrying canes, using a dog or being assisted by a sighted person.
- B. A violation of this section shall be subject to a fine not to exceed five hundred dollars (\$500.00).



## **CHAPTER 11: OPERATION OF BICYCLES AND PLAY VEHICLES**

### **4.11.1 APPLICATION OF PROVISIONS.**

- A. A parent or guardian who authorizes or knowingly permits a child to violate any of the provisions of this chapter may be found liable and assessed for each such violation.
- B. Any person riding a bicycle upon a roadway shall be granted all the rights, and shall be subject to all the duties applicable to the driver of a vehicle by this chapter, except as provided herein.

### **4.11.2 CLINGING TO VEHICLES.**

No person riding on a tricycle, bicycle, coaster, roller skates, skateboard, sled or toy vehicle shall attach the same or himself to any vehicle operated upon a roadway.

### **4.11.3 RIDING ON ROADWAYS AND BICYCLE PATHS; PROHIBITION OF MOTOR VEHICLE TRAFFIC ON BIKE PATH.**

- A. A person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as possible, exercising due care when passing vehicles proceeding in the same direction.
- B. Persons riding bicycles upon a roadway must ride single file, except on paths or parts of the roadway set aside for the exclusive use of bicycles.
- C. Wherever a path for bicycles has been provided, a bicycle rider shall refrain from riding on the roadway.
- D. Motor vehicles are prohibited from operating on bike paths.

### **4.11.4 LAMPS AND OTHER EQUIPMENT ON BICYCLES.**

- A. Any bicycle being used after dark shall be equipped with a lamp on the front emitting a white light visible from a distance of at least 500 feet to the front and a red reflector on the rear which shall be visible from at least 150 feet to the rear.
- B. Every bicycle shall be equipped with brakes that will make the wheels skid on clean, dry, level pavement.
- C. Any person who violates a provision of this subchapter shall be subject to a civil assessment fee not to exceed thirty-seven dollars and fifty cents (\$37.50).

## **CHAPTER 12: MISCELLANEOUS PROVISIONS**

### **4.12.1 RIDING ON MOTORCYCLES.**

- A. No person shall operate a motorcycle or motor-driven cycle upon a public roadway in the Territory unless he has a valid motorcycle license.
- B. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and the operator shall not carry any other person unless the motorcycle is specifically designed for that purpose.
- C. Any person operating a motorcycle without a fixed windshield shall wear an eye protective device. All eye protective devices or windshields shall comply with appropriate state regulations or codes.
- D. Any person who violates the provisions of this section shall be subject to a civil assessment fee not to exceed one hundred fifty dollars (\$150.00).

### **4.12.2 MANDATORY USE OF PROTECTIVE HELMETS.**

- A. No person shall operate or be a passenger on a motorcycle unless he is wearing a safety helmet securely fastened in the prescribed manner and meeting the standards specified in applicable state regulations or codes.
- B. Any person who violates the provisions of this section shall be subject to a civil assessment fee not to exceed three hundred seventy-five dollars (\$375.00).

### **4.12.3 OBSTRUCTION TO DRIVER'S VIEW.**

- A. No person shall drive a vehicle when its load obstructs the view of the driver or interferes with the driver's control over the vehicle.
- B. No passenger in a vehicle shall ride in such position as to interfere with the driver's view or his control over the driving mechanisms of the vehicle.
- C. Any person who violates the provisions of this section shall be subject to a civil assessment fee not to exceed one hundred fifty dollars (\$150.00).

**4.12.4 COASTING PROHIBITED.**

A motor vehicle traveling upon a downgrade shall not coast with the clutch disengaged or with the motor off.

**4.12.5 LIVESTOCK ON HIGHWAYS.**

- A. It is unlawful for any person to ride a horse or other animal upon the roadway or its shoulder after dark.
- B. It is unlawful for any person to permit livestock to wander or graze upon a fenced roadway at any time or to drive livestock upon the roadway or its shoulder after dark.
- C. Owners of livestock ranging in pastures through which unfenced roads pass, shall not be liable for damages or injuries to persons or property caused by collisions of vehicles with livestock unless the owner of such livestock is guilty of negligence.
- D. Any person who violates the provisions of this section shall be subject to a civil assessment fee not to exceed five hundred dollars (\$500.00).

## **CHAPTER 13: EQUIPMENT**

### **4.13.1 GENERAL APPLICABILITY.**

- A. It shall constitute a civil infraction for any person to operate an unsafe vehicle or combination of vehicles.
- B. The use of additional parts and accessories on any vehicle shall not be prohibited, unless inconsistent with the provisions of this chapter.
- C. The provisions of this chapter, with respect to vehicular equipment, shall not apply to implements of husbandry, road machinery, road rollers or farm tractors unless otherwise stated.

### **4.13.2 WHEN LIGHTED LAMPS ARE REQUIRED.**

Any vehicle operating upon a highway within the Territory of the Tribe from one-half hour after sunset to one-half hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any persons and/or vehicles on the highway at a distance of five hundred (500) feet ahead, shall display lighted lamps and reflective devices.

### **4.13.3 HEADLAMPS.**

- A. Any vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two headlamps, one on each side of the front of the motor vehicle, which shall comply with the requirements and limitations set forth in this chapter.
- B. Every motorcycle and motor-driven cycle shall be equipped with at least one and not more than two head-lamps that shall comply with the requirements and limitations set forth in this chapter.
- C. Every headlamp upon a motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the headlamp of not more than fifty-four inches nor less than twenty-four inches from level ground.

### **4.13.4 TAIL LAMPS.**

- A. Every motor vehicle, trailer, semi-trailer and pole trailer and any other vehicle drawn last, shall be equipped with at least one tail-lamp mounted on the rear, which shall emit a red light plainly visible from a distance of five hundred (500) feet to the rear.

- B. Each tail-lamp shall be located at a height of not more than seventy-two (72) inches nor less than twenty (20) inches from level ground.
- C. Any tail-lamp together with any separate lamp for illuminating the rear license plate, shall be wired to be lighted whenever the headlamps or auxiliary driving lamps are lighted, and shall be free of any obstruction.

**4.13.5 SIGNAL LAMPS AND DEVICES.**

- A. All motor vehicles shall be equipped with the following signal lamps or devices:
  - 1. Rear stop lamps which shall light up upon use of the foot brake and which may be incorporated with one or more rear lamps; and
  - 2. A lamp or mechanical signal device capable of clearly indicating a right or left turn, which is visible both from the front and rear.
- B. Every stop lamp shall be plainly visible from a distance of one hundred (100) feet to the rear both during the day and at night. Turn signal lamps shall be plainly visible from a distance of one hundred (100) feet to the rear both during the day and at night. All such lamps shall at all times be maintained in good working condition.

**4.13.6 ADDITIONAL LIGHTING EQUIPMENT.**

- A. A motor vehicle may be equipped with not more than two side cowl or fender lamps, which shall emit an amber or white light.
- B. A motor vehicle may be equipped with not more than two back-up lamps either separately or in combination with other lamps except that a back-up lamp shall not be lighted when the motor vehicle is in forward motion.
- C. A vehicle may be equipped with no more than one spot lamp. A lighted spot lamp shall not be aimed at another vehicle in such a way as to impair the vision of oncoming drivers.
- D. A vehicle may be equipped with no more than two fog lamps. A lighted fog lamp shall not be aimed at another vehicle in such a way as to impair the vision of oncoming drivers.

- E. When a motor vehicle equipped with headlamps as required by this chapter is also equipped with an auxiliary lamp or spot lamp, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time.

#### **4.13.7 SPECIAL RESTRICTIONS ON LAMPS.**

- A. Only fire department vehicles, law enforcement agency vehicles, ambulances, school buses and authorized emergency vehicles shall display flashing red lights visible from the front of the vehicle.
- B. Tow trucks standing on highways for the purpose of removing disabled vehicles, and while engaged in towing any disabled vehicle, shall display flashing blue lights. This shall not be construed to permit the use of flashing lights by tow trucks in going to or returning from the location of disabled vehicles unless actually engaged in towing a disabled vehicle.

#### **4.13.8 MULTIPLE-BEAM ROAD LIGHTING EQUIPMENT.**

- A. A vehicle's headlamps, auxiliary driving lamps, auxiliary passing lamps, or some combination thereof, shall be arranged so the driver may select different light elevations, subject to the following requirements and limitations:
  - 1. An uppermost distribution of light, or composite beam, shall reveal persons and vehicles at a distance of at least three hundred fifty (350) feet ahead under all conditions.
  - 2. A lowermost distribution of light, or composite beam, shall reveal persons and vehicles at a distance of at least one hundred (100) feet ahead.
  - 3. High-intensity beams shall not be aimed at another vehicle in such a way as to impair the vision of oncoming drivers.
- B. Headlamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured prior to January 1, 1951, in lieu of multiple-beam road-lighting equipment specified above.

#### **4.13.9 FLAG ON PROJECTING LOAD.**

Whenever a load upon a vehicle extends at least four feet or more beyond the bed or body of the vehicle, there shall be displayed at the extreme rear end of the load a red flag or cloth not less than twelve

inches square and plainly visible to the driver of a vehicle approaching from the rear.

**4.13.10 EQUIPMENT REQUIRED ON CERTAIN VEHICLES.**

Every bus or truck less than eighty (80) inches in overall width shall be equipped at a minimum as follows:

1. on the front: two headlamps: and
2. on the rear: one red tail lamp; one red stop lamp; and two red reflectors, one at each side.

**4.13.11. COLOR OF CLEARANCE LAMPS, SIDE-MARKER LAMPS AND REFLECTORS.**

Every bus or truck eighty (80) inches or more in overall width shall be equipped as follows:

1. On the front: two headlamps and two amber clearance lamps, one at each side;
2. On the rear: one red tail lamp, one red stop lamp, two red clearance lamps, one at each side, and two red reflectors, one at each side;
3. On each side: one amber side-marker lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear; and
4. Both the back-up lamp and the light illuminating the license plate shall emit a white light.

**4.13.12 LAMPS AND REFLECTORS: TRUCK TRACTORS AND ROAD TRACTORS.**

Every truck tractor and road tractor shall be equipped as follows:

1. On the front: two headlamps; and two amber clearance lamps, one at each side;
2. On the rear: one red tail lamp and one red stop lamp.

**4.13.13 LAMPS AND REFLECTORS: LARGE SEMITRAILERS, FULL TRAILERS AND HOUSE TRAILERS.**

A. Every semitrailer, full trailer or house trailer eighty (80) inches or more in overall width and in motion shall be equipped as follows:

1. On the front: two amber clearance lamps, one at each side;
  2. On the rear: one red tail lamp; one red stop lamp; two red clearance lamps, one at each side, two red reflectors, one at each side; and
  3. On each side: one amber side-marker lamp, located at or near the front; one red side-marker lamp, located at or near the rear; one amber reflector, located at or near the front; one red reflector, located at or near the rear.
- B. Side-marker lamps may be in combination with clearance lamps and may use the same light source.

**4.13.14 LAMPS AND REFLECTORS: SMALL SEMITRAILERS, HOUSE TRAILERS AND TRAILERS.**

On the rear of every semitrailer, house trailer or trailer less than eighty (80) inches in overall width there shall be the following equipment: one red tail lamp; two red reflectors, one at each side; and one red stop lamp, if the semitrailer, house trailer or trailer obscures the stop lamp on the towing vehicle.

**4.13.15 LAMPS AND REFLECTORS: POLE TRAILERS.**

Every pole trailer shall be equipped as follows:

1. On the rear: one red tail lamp, two red reflectors, one at each side; one indicator of the extreme width of the pole trailer; and
2. On each side, on the rearmost support for the load: one combination marker lamp showing amber to the front and red to the side and rear, mounted to indicate the maximum width of the pole trailer; and red reflector, located at or near the rear; and on pole trailers thirty feet or more in overall length, an amber marker lamp on each side near the center.

**4.13.16 LAMPS AND REFLECTORS: COMBINATION IN DRIVEAWAY-TOWAWAY OPERATIONS.**

Combinations of motor vehicles engaged in driveaway/towaway operations shall be equipped as follows:

1. On the towing vehicle:
  - a. On the front: two headlamps and two amber clearance lamps, one at each side;



- b. On each side and near the front: one amber side-marker lamp;
  - c. On the rear: one red tail lamp; one red or amber stop lamp; and
  - d. Provided, however, that vehicles of less than eighty inches in width shall be equipped as provided in section 4.12.10;
2. On the towed vehicle of a tow-bar combination, the towed vehicle of a single saddle-mount combination and the rearmost towed vehicles of a double saddle-mount combination:
- a. On each side, and near the rear: one red side marker lamp; and
  - b. On the rear: one red tail lamp; two red clearance lamps, one at each side; one red or amber stop lamp; two red reflectors, one at each side;
3. On the first saddle-mount of a double saddle-mount combination: on each side, and near the rear, one amber side-marker lamp; and
4. Combination of vehicles less than eighty (80) inches in width in driveaway/towaway operations shall carry lamp and reflectors as required in section 4.13.10.

**4.13.17**    REFLECTORS, CLEARANCE LAMPS AND SIDE-MARKER LAMPS.

- A. All reflectors shall be permanently and securely mounted so as to provide maximum stability and minimum likelihood of damage.
- B. Retro-reflective surfaces, other than required reflectors, may be used, provided:
  - 1. Designs do not resemble traffic control signs, lights or devices, although straight edged stripping resembling a barricade pattern may be used;
  - 2. Designs do not tend to distort the length or width of the vehicle;
  - 3. Such surface shall be at least three inches from any required lamp or reflector unless of the same color as such lamp or reflector;

4. No red color shall be used on the front of any vehicle; and
5. No provision of this subsection shall be so construed as to prohibit the use of retro-reflective registration plates required by any State or local authority.

**4.13.18 BRAKES.**

- A. The following brake equipment is required:
1. Every motor vehicle must have two separate means of applying the brakes, each of which shall effectively apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that a failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.
  2. Every motorcycle and every motor-driven cycle, shall be equipped with at least one brake which may be operated by hand or foot.
  3. Every trailer or semi-trailer of a gross-weight of three thousand (3000) pounds or more shall be equipped with brakes adequate to control the movement of and to stop and to hold the vehicle. Brakes may be applied from the vehicle's cab or be of a type which will operate automatically when the service brakes of the towing vehicle are applied. The brakes shall be so designed that in case of an accidental break-away of the towed vehicle the brakes shall be automatically applied.
  4. In any combination of motor-drawn vehicles, the rear-most trailer brakes must operate in approximate synchronism with the brakes on the towing vehicle.
  5. The brake shoes operating within or upon the wheel drums may be used for both service and foot operation.
- B. Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road, free from loose material, upon application of the service or foot brake, within the distances specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

Deceleration	Feet to stop	
	from 20 miles per hour	in feet per second
Vehicles or combination of vehicles having brakes on all wheels	30	14
Vehicles or combination of vehicles not having brakes on all wheels	40	10.7

- C. All brakes shall be maintained in good working order and shall be adjusted as to operate as equally as possible.

**4.13.19 HORNS AND WARNING DEVICES.**

- A. Every motor vehicle shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200) feet.
- B. An authorized emergency vehicle may be equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of at least five hundred (500) feet. The siren shall not be used except when the vehicle is operating in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law.

**4.13.20 MUFFLERS; EMISSION CONTROL DEVICES.**

- A. Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise. No person shall use a muffler cutout, bypass or similar device.
- B. The muffler, emission control equipment device, engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.
- C. Every registered gasoline-fueled motor vehicle manufactured after December 31, 1967, shall be equipped and maintained with the factory-installed equipment or its replacement designed to prevent, reduce or control exhaust emissions or air pollution.

**4.13.21 MIRRORS.**

Every motor vehicle shall be equipped with a mirror positioned to reflect an unobstructed view of the roadway.

**4.13.22. WINDSHIELD AND WINDOWS.**

- A. No person shall place signs, posters or other nontransparent material upon or in the front windshield, windows to the immediate right and left of the driver or in the rearmost window.
- B. The windshield on every motor vehicle, except a motorcycle, shall be equipped with a mechanical device for cleaning rain, snow or other moisture from the windshield and shall be maintained in good working order.

**4.13.23 RESTRICTIONS AS TO TIRE EQUIPMENT.**

- A. When their use is permitted, every solid rubber tire shall have rubber on its entire traction surface at least one-inch thick above the edge of the flange of the entire outside surface.
- B. No tire shall have on its outside surface any block, flange, cleat, spike or other protection of any material other than rubber that is beyond the tread of the traction surface of the tire.
- C. It is permissible to use farm machinery with tires having rubber protections that will not damage the highway. It is permissible to use tire chains of reasonable proportions or snow tires with metal studs when weather conditions permit.
- D. The Department may issue special permits authorizing the operation of traction engines, tractors or other farm machinery having movable tracks with transverse corrugations, the operation of which would otherwise be prohibited.
- E. No vehicle equipped with solid rubber tires shall be permitted upon any roadway of the Kiowa Tribe without special permission first being granted by the Department. In no event may any such vehicle be operated at a speed in excess of that specified by law.

**4.13.24 EMERGENCY WARNING EQUIPMENT.**

- A. Every bus, truck, truck tractor, and road tractor, and every driven vehicle in driveway/towaway operation, of a width greater than 80 inches, shall carry the following emergency equipment:

1. Three flares or liquid-burning pot torches, three fuses and two red cloth flags; or
  2. Three red electric lanterns, two red cloth flags and three fuses; or
  3. Three red emergency reflectors, two red cloth flags, and three fuses.
- B. Motor vehicles used in the transportation of explosives, flammable liquids or flammable compressed gases, and motor vehicles fueled by flammable compressed gas, must carry three electrical lanterns or three red emergency reflectors. Under no circumstances may these vehicles carry an emergency signal produced by a flame.

#### **4.13.25 PLACEMENT OF WARNING SIGNALS.**

In an emergency, a driver shall place three liquid-burning flares or pot torches, or three red electric lanterns, or three red emergency reflectors on the traveled portion of the highway according to the following guidelines:

1. One at a distance of approximately one hundred (100) feet from the disabled vehicle in the center of the traffic lane occupied by such vehicle and toward traffic approaching in that lane;
2. One at a distance of approximately one hundred (100) feet in the opposite direction from the disabled vehicle in the center of the traffic lane occupied by such vehicle; and
3. One at the traffic side of the disabled vehicle, not less than (10) feet to the front of it.

#### **4.13.26 VEHICLES TRANSPORTING EXPLOSIVES OR OTHER DANGEROUS SUBSTANCES.**

- A. Vehicles transporting explosives or dangerous substances will not be permitted to stop while enroute to destination unless instructed to do so by an authorized law enforcement office.
- B. Dangerous substances include but are not limited to:
1. Flammable Solid: a solid substance other than one classified as an explosive, which is liable, under conditions incident to transportation, to cause fires through friction, absorption of moisture, spontaneous chemical changes, or

as a result of retained heat from manufacturing or processing.

2. Oxidizing Materials: a substance that yields oxygen, stimulating the combustion of organic matter. Examples include chlorate, permanganate, peroxide or nitrate.
3. Corrosive Liquids: acids, alkaline caustic liquids and other corrosive liquids which may cause severe damage to persons or property by chemical action; or such liquids as are liable to cause fire when in contact with organic matter or with certain chemicals.
4. Compressed Gas: any material with a gauge pressure exceeding 40 pounds per square at 70 degrees Fahrenheit; or any liquid flammable material having a Reid vapor pressure exceeding 40 pounds per square inch, absolute, at 100 degrees Fahrenheit. Compressed gas (butane propane) must be transported in an open, ventilated transportation device.
5. Classifications of Poison:
  - a. Class A: includes extremely dangerous poisons. Poisonous gases or liquids of such nature that a very small amount of the gas, or vapor of the liquid mixed with air, is dangerous to life. Such poison shall be labeled as dangerous.
  - b. Class B: includes less dangerous poisons. Poisonous liquids or solids, including pastes and semi-liquids, are substances of such nature that they are chiefly dangerous by external contact with the body or by being taken internally as in contaminated foods or feeds.
  - c. Class C: includes tear gases or irritating substances. Tear gases are liquid or solid substances which upon contact with fire or when exposed to air give off dangerous or intensely irritating fumes, such as brombensylcyanide, chloracetophonone, diphenylaminechlorisane, and diphelychlorasine.

**4.13.27**      MARKINGS ON MOTOR VEHICLES CONCERNING DANGEROUS SUBSTANCES.

A. Every motor vehicle other than a tank motor vehicle transporting twenty-five hundred (2,500) pounds or more of any class of explosives or other dangerous substances, shall be marked as prescribed below:

- |                             |                         |
|-----------------------------|-------------------------|
| 1. Explosives, Class A..... | EXPLOSIVES              |
| 2. Explosives, Class B..... | DANGEROUS               |
| 3. Flammable liquid.....    | DANGEROUS               |
| 4. Flammable solid.....     | DANGEROUS               |
| 5. Oxidizing material.....  | DANGEROUS               |
| 6. Corrosive liquid.....    | DANGEROUS               |
| 7. Compressed gas.....      | COMPRESSED GAS          |
| 8. Poison gas, Class A..... | POISON GAS              |
| 9. Tear Gas.....            | DANGEROUS               |
| 10. Poisons, Class B.....   | DANGEROUS-POISON<br>GAS |

B. The prescribed markings shall be located on each side and the rear of the motor vehicle, and the letters shall be at least three inches high on a background of sharply contrasting color.

C. A motor vehicle transporting more than one class of dangerous substances for which signs are required shall designate the most dangerous substance being transported on its sign.

**4.13.28**      SAFETY BELT REQUIREMENT.

A. All adults, children 13 years of old and older, or 4 feet 9 inches in height or taller, in a moving non-commercial vehicle operated in the Kiowa Territory shall use a properly fastened lap and shoulder belt, or a lap belt only in those vehicles without a lap and shoulder restraint system. This requirement shall not apply to any person possessing a written statement from a physician indicating that the person is unable to wear a safety belt for medical or psychological reasons. A copy of the physician's

statement must be in the person's possession while operating the vehicle in the Territory of the Tribe.

- B. Violators of this section are subject to a civil assessment fee of not less than thirty-seven dollars and fifty cents (\$37.50) and not more than seventy-five dollars (\$75.00), or not less than ten hours and not more than 30 hours of community service.
- C. Evidence of a violation of this section shall be admissible for the purposes of mitigation of damages, appointment of damages or comparative fault, or other issues as determined by the court, with respect to any person who is involved in an accident and seeks to recover damages for injuries resulting from the accident.

**4.13.29 INFANT/CHILD PASSENGER RESTRAINTS.**

- A. A parent or guardian of a child twelve (12) years of age or younger and less than 4'9", when transporting the child in a non-commercial motor vehicle operated on any highway within the Territory of the Tribe, shall properly secure the child in a child passenger restraint system. The restraint system shall meet Federal Motor Vehicle Safety Standard Number 213, which requires the following information to be printed on a permanent label attached to the restraint:
  - 1. The statement: "This child restraint system conforms to all applicable Federal Motor Vehicle Safety Standards; and
  - 2. The manufacturers' recommendations of the minimum and maximum weight and height of the children who can safely occupy the system; and
  - 3. Step-by-step instructions for installing the system in motor vehicle, positioning the child in the system, and adjusting the system to fit the child.
- B. No child passenger restraint system shall be used if:
  - 1. it is beyond its labeled expiration date; or
  - 2. it is known to be on a University of North Carolina/Highway Safety Research Center, or other equivalent national, child restraint recall list.



C. A person shall not operate a passenger car, van or pickup truck within the Territory of the Tribe, unless all passengers less than 12 years of age and less than 4 feet 9 inches in height are properly restrained.

1. Children less than one year of age shall be properly secured in a rear-facing child restraint of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle with the passenger-side air bag deactivated.

2. Children one year of age through four years of age, regardless of weight, and children who weigh less than forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards for this age and size range.

3. Children five years of age through 12 years of age, regardless of weight; or children who weigh less than 60 pounds, regardless of age; shall be properly secured in a child restraint device that meets federal standards, by a booster seat or by a seat belt.

C. Civil Penalties.

i. A first time violator of this section is subject to a civil assessment fee not more than thirty-seven dollars and fifty cents (\$37.50), or not less than ten (10) hours of community service. A second time violator of this section is subject to a civil assessment fee of not more than fifty dollars (\$50), or not less than twenty (20) hours of community service. A person violating this section three times or more is subject to a civil assessment fee of not more than sixty seven dollars and fifty cents (\$67.50), or not less than thirty (30) hours of community service.

ii. Civil assessment fees collected from violations of this section shall be used for the purpose of purchasing child restraint seats for the Tribe.

iii. A civil assessment fee arising from a violation of this section can be reduced or waived if the individual attends a Children Are Precious Passengers (CAPP) course and provides proof within thirty (30) days that they have purchased a child passenger restraint system that meets the requirements of subsection A.

D. This provision shall not apply to a driver who transports a child in an emergency to obtain necessary emergency medical care.

**4.13.30 UNSECURED PASSENGERS IN TRUCKS.**

- A. No person shall operate a truck when any person under the age of thirteen is riding in the unenclosed bed of the truck. The provisions of this section shall not apply if the truck has installed a means of preventing a person riding in the unenclosed bed from being thrown, falling, or jumping from the truck.
- B. Violators of this section are subject to a civil assessment fee not more than three hundred fifty dollars (\$350.00) or less than fifty (50) hours of community service.

## **CHAPTER 14: WEIGHT AND SIZE LIMITATIONS**

### **4.14.1 SCOPE AND EFFECT OF ARTICLE.**

- A. The provisions of this chapter governing size, weight and load shall not apply to fire apparatus, road machinery engaged in highway construction or maintenance, or to implements of husbandry temporarily moved upon a highway, or to a vehicle operated under term of special permit.
- B. The court, in addition to or in lieu of any assessment imposed, may require any person found in violation of this section to pay the full cost of repairing or replacing any property damaged as the result of such violation.

### **4.14.2 PROJECTING LOADS ON PASSENGER VEHICLES.**

No passenger-type vehicle, except a motorcycle, shall be operated on any highway with any load carried on it extending beyond the line of the fenders on the left side of the vehicle nor extending more than six (6) inches beyond the line of the fenders on the right side of the vehicle.

### **4.14.3 SPECIAL LOAD LIMITS.**

- A. The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet (3) beyond the foremost part of the vehicle.
- B. The load upon any vehicle operated alone, or the load upon the rear vehicle of a combination of vehicles, shall not extend more than six feet (6) beyond the rear of the bed or body of such vehicle.

### **4.14.4 LOADS ON VEHICLES.**

No vehicle shall operate on any highway unless its load is securely fastened so as to prevent such load from becoming loose, detached, or in any manner a hazard to other users of the highway.

### **4.14.5 TRAILERS AND TOWED VEHICLES.**

- A. When one vehicle is towing another the drawbar or other connection shall not extend more than fifteen (15) feet from one vehicle to the other.

- B. When one vehicle is towing another and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than 15 inches square.
- C. When a combination of vehicles are engaged in transporting poles, pipe, machinery, or other objects of a structural nature which cannot readily be dismembered, the load shall be distributed so as to equalize the weights on the axles of each vehicle.

**4.14.6 LOAD LIMITS ON AXLES, WHEELS AND TIRES.**

- A. The gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed 21,600 pounds; nor shall any one wheel carry a load in excess of 11,000 pounds; nor shall a tandem axle carry a load in excess of 34,320 pounds.
- B. No wheel equipped with pneumatic, solid rubber or cushion tires shall carry a load in excess of 600 pounds for each inch of tire width. The width of pneumatic tires shall be taken at the manufacturer's rating. The width of solid rubber and cushion tires shall be measured at the flange of the rim.

**4.14.7 PERMITS FOR EXCESSIVE SIZE AND WEIGHT.**

- A. Upon application to the appropriate tribal authority, a special permit may be issued authorizing the applicant to operate a vehicle or combination of vehicles of a size, weight or load exceeding the maximum specified in this chapter.
- B. Whenever vehicles are being moved upon the highway under special permit, escort vehicles shall be required in front of and behind the non-conforming vehicle.

## **CHAPTER 15: CRIMINAL OFFENSES**

### **4.15.1 OBEDIENCE TO POLICE OFFICERS.**

Any person who knowingly fails or refuses to comply with any reasonable order or direction of any law enforcement official vested with authority to direct, control or regulate traffic, is guilty of a minor offense.

### **4.15.2 UNLAWFUL FLIGHT FROM PURSUING LAW ENFORCEMENT VEHICLE.**

Any driver of a motor vehicle who intentionally flees or attempts to elude a pursuing law enforcement vehicle is guilty of an offense.

### **4.15.3 DRIVING UNDER INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.**

- A. Any person under the influence of intoxicating liquor or drugs who drives or is in actual physical control of any vehicle within the territorial jurisdiction of the Kiowa Tribe, is guilty of a minor offense.
- B. It is a minor offense for any person under the influence of any narcotic drug, any other drug or controlled substance, to drive or be in actual physical control of any vehicle within the Territory. The fact that any person charged with a violation of this paragraph is or has been entitled to use such drug under the laws of any state or the Kiowa Tribe shall not constitute a defense.
- C. Any person convicted of violating this section shall be sentenced to not less than twenty-four (24) consecutive hours in jail. The court will not grant probation, pardon, parole, commutation or suspension of sentence or release on any other basis, except upon the condition that the person serve not less than twenty-four consecutive hours in jail. The court shall order such person to pay a fine of not less than three hundred (\$300.00) dollars and may order the person to perform not less than eight nor more than forty (40) hours of community service. The Judge shall require the surrender of the offender's operator's or chauffeur's license and suspend the license for a period of ninety (90) days, for a first offense, one hundred eighty (180) days, for a second offense, and one year, for a third offense.
- D. When the Trial Court requires a person convicted of violating the provisions of this section to surrender to the court the operator's or chauffeur's license of such person, it shall forward the

surrendered license or permit to the state office issuing the license or permit together with a certified order of the court suspending or revoking the driving privileges of the convicted person.

- E. The court may require the person to attend traffic safety or alcohol abuse classes at the offender's expense or, if in the court's opinion, the offender has the problem of habitual abuse of alcohol or drugs, the court may require the person to obtain treatment under its supervision; however, in no case shall an offender be excused from spending twenty-four (24) consecutive hours in jail.
- F. If a person is convicted of a second violation of this section within a period of twenty-four months, the person shall be ordered to serve a term of not less than thirty days in jail. A court shall not grant probation, pardon, parole, commutation or suspension of sentence or release on any other basis, except upon the condition that the person serves not less than thirty days in jail. The court shall also order the person to pay a fine of not less than five hundred (\$500.00) dollars. The dates of the commission of the offense shall be the determining factor in applying this rule. No judge may grant probation to, or suspend the imposition or execution of a jail sentence. If, in the court's opinion, the offender has the problem of habitual abuse of alcohol or drugs, the court shall require the person to obtain treatment under its supervision.
- G. If a person is convicted of a third or subsequent violation of this section within a period of thirty-six months, the person shall be sentenced to serve not less than six months in jail. A judge shall not grant probation, pardon, parole, commutation or suspension of sentence or release on any other basis, except upon the condition that the person serves not less than six months in jail. The dates of the commission of the offense are the determining factors in applying this rule. The Judge shall require the surrender of such offender's operator's or chauffeur's license and suspend the license for a period of five years. A judge shall not suspend the imposition of a prison sentence, or fail to require the surrender of any license of a person for a third or subsequent conviction. If, in the court's opinion, the person has the problem of habitual abuse of alcohol or drugs, the court shall require the person to obtain treatment under its supervision.

- H. Any political subdivision processing or utilizing the services of a person ordered to perform community service pursuant to this section, shall not incur any civil liability to the person ordered to perform community service as a result of these activities, unless the political subdivision, its agent or employee is guilty of gross negligence or willful and wanton disregard for such person's safety.
- I. The court may, upon pronouncement of any jail sentence under this section, provide in the sentence that the defendant be permitted, if he or she is employed and can continue the employment, to continue such employment for not more than twelve hours per day nor more than six days per week; the remaining days or parts of days shall be spent in jail until the sentence is served. Such person shall be allowed out of jail only long enough to complete his or her actual hours of employment and no longer.

**4.15.4 AGGRAVATED DRIVING UNDER INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.**

A person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs, an offense, if the person does any of the following:

- A. Commits a violation of section 4.15.3 while the person's driver license or privilege to drive is suspended, canceled, revoked or refused or while a restriction is placed on the person's driver license or privilege to drive by the Kiowa Court, any tribal court, or any state court.
- B. Commits a violation of section 4.15.3 while a person under twelve years of age is in the vehicle.

**4.15.5 RECKLESS DRIVING.**

- A. Any person who drives a vehicle in reckless disregard of the rights or safety of others, and at a speed or in a manner so as to endanger any person or property, shall be guilty of reckless driving, a minor offense.
- B. On a second or subsequent conviction for reckless driving within a period of twenty-four months, the defendant shall be punished by imprisonment for a term not less than twenty days, or by a fine of not less than two hundred twenty dollars (\$220.00), or both, and shall be required to attend a traffic safety education course.

- C. The driving license or permit of any person found guilty of violating this section may be suspended by the court for a period not to exceed ninety (90) days.

**4.15.6 RACING PROHIBITED.**

- A. Any person who drives a vehicle on a highway in any race, exhibition of speed or acceleration, or for the purpose of making a speed record, whether or not the speed is in excess of the maximum speed prescribed by law, is guilty of a petty offense.
- B. Any person found guilty of violating this section shall attend a traffic safety education course, in addition to any other penalties imposed by the court.
- C. Upon a second or subsequent conviction committed within a period of twenty-four (24) months, such person shall be punished by imprisonment for a term of not less than twenty (20) days, or be ordered to pay a fine of not less than two hundred twenty-five dollars (\$225.00), or both.

**4.15.7 IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST.**

- A. Any person who operates a motor vehicle within the Territory of the Tribe shall be deemed to have given consent to chemical tests of his breath and/or blood for the purpose of determining the alcoholic and/or drug content of his blood, for any offense alleged to be committed while the person was operating the motor vehicle.
- B. The tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person has been operating a motor vehicle under the influence of intoxicating liquor or drugs.
- C. Any person in a condition rendering him incapable of refusal, shall not be deemed to have withdrawn the consent provided by paragraph (a), and any test designated by law enforcement officers may be administered.

**4.15.8 PENALTY FOR REFUSAL TO SUBMIT TO CHEMICAL TEST.**

Any person who refuses to submit to a chemical test as requested by an officer pursuant to Section 4.15.7, shall have his driving privileges suspended by the court for a period of one year.



#### **4.15.9 PRESUMPTIONS OF INTOXICATION.**

- A. The results of a chemical test performed pursuant to this chapter may be introduced into evidence in any civil or criminal action arising out of acts alleged to have been committed while operating a motor vehicle under the influence of intoxicating liquor or drugs.
- B. The amount of alcohol in a person's blood as shown by analysis of the person's blood, breath or other bodily substance shall give rise to the following presumptions:
  - 1. If there was at the time 0.05 percent or less by weight of alcohol in defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor;
  - 2. If there was at that time in excess of 0.05 percent but less than 0.08 percent by weight of alcohol in defendant's blood, such fact shall not give rise to any presumption, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;
  - 3. If there was at the time 0.08 percent or more by weight of alcohol in defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor;
  - 4. Paragraphs 1, 2 and 3 of this subsection shall not limit the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor.
- C. The percent by weight of alcohol shall be based on the grams of alcohol per one hundred (100) cubic centimeters of blood.

#### **4.15.9 ADMINISTRATION OF CHEMICAL TESTS.**

- A. Only a physician, practical nurse, phlebotomist, certified technician, laboratory technician or technologist employed by a hospital or physician shall withdraw blood from any person in the performance of a blood-alcohol and/or drug test. This limitation does not apply to the taking of samples of breath or urine.
- B. A physician, nurse, technician or technologist who performs a blood-alcohol and/or drug test at the direction of any law enforcement agency, shall be held liable in any civil or criminal

action for assault, battery, false imprisonment, or any conduct of any police officer

- C. The person tested shall be given an opportunity to arrange for a physician, licensed nurse or hospital laboratory technician of his own choosing to perform a chemical test, in addition to any test performed at the direction of a law enforcement officer. If a person exercises his right to have a chemical test performed by a person of his own choosing, then the cost of that test shall be paid by the person exercising that right.
- D. Upon the request of the person tested, full information concerning the test or tests performed at the direction of the law enforcement officer shall be made available to him as soon as it is available.
- E. Nothing in this chapter will authorize any law enforcement officer, or any judicial or probation officer, to make an arrest or to direct the performance of a blood-alcohol and/or drug test otherwise unauthorized by law.

#### **4.15.10 RECORDS OR DISPOSITION.**

All records regarding the disposition of cases in which a person is charged with a violation of Section 4.15.3 shall be maintained by the court and made accessible to the general public. The court shall include in these records an explanation of its reasons for accepting any plea agreement or dismissing any charge in violation of Section 4.15.3.

#### **4.15.11 THROWING OR DROPPING OBJECTS AT MOVING VEHICLES.**

It is an offense for any person to intentionally or recklessly throw, or otherwise propel any object at a motor vehicle in operation. The Court shall consider the age of the violator, the extent of damage, as well as any injuries and may, in its discretion, reduce the classification or sentence.

#### **4.15.12 WARNING DEVICES AT CONSTRUCTION SITES.**

- A. Any contractor, individual, firm, corporation, political subdivision or other entity performing work on roads, streets or highways, shall place at every such work or construction site, specified notices, warnings and traffic control signs and devices in conformity with the specifications required by the National

Highway Safety Code. All such notices shall remain at the work site until the work is completed.

- B. Any person failing to place or maintain such notices, warnings or traffic control signs and devices, shall be guilty of a petty offense.
- C. In addition to any penalties imposed by the court, the Department may order that the conduct of any highway, roadway or street work construction or maintenance not in conformity with the requirements of this section, be secured and suspended until brought into full compliance and conformity with said requirements.

## **CHAPTER 16: PROCEDURE FOR THE TRAFFIC COURT**

### **4.16.1 WHEN ARRESTEE TO BE GIVEN NOTICE TO APPEAR IN COURT.**

- A. When a person is arrested for a criminal offense under this Title, he shall give his written promise to appear in court in order to secure release as provided in this section. The officer shall deliver a copy of the notice to the person promising to appear. The officer shall then release the person arrested from custody.
- B. An officer violating any of the provisions of this section is guilty of misconduct and is subject to removal.

### **4.16.2 VIOLATION OF PROMISE TO APPEAR.**

- A. Any person knowingly violating his written promise to appear in court, given as provided in section 4.16.1 above, is guilty of a petty offense, regardless of the disposition or the charge upon which he was originally arrested.
- B. A written promise to appear in court may be complied with by an appearance by counsel.

### **4.16.3 DISPOSITION OF TRAFFIC CITATIONS.**

- A. Every law enforcement officer issuing a traffic citation to an alleged violator of the Kiowa Motor Vehicle Code shall deposit the original or a copy of the traffic citation with the Trial Court.
- B. Upon the deposit of the original or a copy of the traffic citation with the Trial Court, such original or copy may be disposed of only by the court. Disposition by the court includes trial, forfeiture of bond or bail, entry of judgment or determination, the deposit of sufficient bond or bail with the court, payment by the offender of any fine or assessment to the court, or fulfillment of appropriate sentences.
- C. It is unlawful and official misconduct for any law enforcement officer or public employee to dispose of an original, copy or record of a traffic citation in a manner other than as required by this article.
- D. The Department shall also maintain a record of the disposition of the traffic citation by the court in which the original or copy of such was deposited.

**4.16.4 CERTIFICATION OF TRAFFIC CITATION FORMS AND COMPLAINTS.**

- A. Traffic citation or complaints need not be sworn to if they contain a form of certification by the arresting officer in substance as follows:

"I hereby certify that I have reasonable grounds to believe and do believe that the person cited herein committed the offense described herein contrary to law."

- B. A knowingly false certification under the provisions of subsection A shall constitute a minor offense.