

JANUARY 2008 CROW TRIBAL LEGISLATURE

BILL NO. CLB08-02

**INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH AND AMENDED BY THE CROW
LEGISLATIVE BRANCH**

A BILL FOR AN ACT ENTITLED:

**“AMENDMENT OF THE CROW LAW AND ORDER CODE, TITLES 8B:
CROW CRIMINAL CODE AND 8C: CRIMINAL METHAMPHETAMINE
OFFENSES”**

WHEREAS the Chairman of the Executive Branch has authority and responsibility pursuant to the enumerated powers in Article IV, Section 3(g) of the Constitution and Bylaws of the Crow Tribe of Indians to **“enforce all laws, ordinances, resolutions, regulations or guidelines passed by the Legislative Branch . . .;”** and

WHEREAS the Legislative Branch has authority and responsibility pursuant to its powers and duties set forth in Article V, Section 2(b) of the Constitution and Bylaws of the Crow Tribe of Indians to **“adopt legislation, not inconsistent with this constitution, which is necessary in exercising the duties conferred upon the three branches of government;”** and

WHEREAS the illicit use of intoxicating substances, controlled substances, dangerous drugs, and inhalants creates a public safety hazard to the citizens of the Crow Indian Reservation; and

WHEREAS the appearance in public of persons under the influence of intoxicating substances, controlled substances, dangerous drugs, and inhalants is not currently illegal within the boundaries of the Crow Indian Reservation; and

WHEREAS the possession of intoxicating substances, controlled substances, dangerous drugs, and inhalants is illegal within the boundaries of the Crow Indian reservation; and

WHEREAS there is a need to strengthen the ability of law enforcement on the Crow Indian Reservation to protect the community by enacting a law prohibiting public appearance under the influence of methamphetamine; and

WHEREAS members of the Crow Tribe suffer from fatality, injury, loss of loved ones, and property damage caused by a drug related traffic accidents at a disproportionately high rate; and

WHEREAS the penalties currently in effect for the offense of driving under the influence of drugs are clearly insufficient to protect the general public from physical harm and/or damage to or loss of property; and

WHEREAS substance abuse is known to be a major problem on the Crow Indian Reservation, contributing to a host of additional social ills; and

WHEREAS the Crow Tribe of Indians is bound to protect and enhance the safety and welfare of all of its citizens,

NOW THEREFORE, BE IT ENACTED BY THE CROW TRIBAL LEGISLATURE:

Section 1. TITLE 8B OF THE CROW LAW AND ORDER CODE, SPECIFICALLY CHAPTER 11, IS HEREBY AMENDED TO ADD THE FOLLOWING SECTION:

8B-11-101. Public Appearance or Drugs Under the influence of Methamphetamine

(1). A person commits the offense of Public Appearance Under the influence of Methamphetamine if he or she appears in a public place under the influence of

(a) marijuana, methamphetamine, or any other dangerous drug, controlled substance, or inhalant, the use of or possession of which is prohibited under § 8B-10-102, § 8B-10-106, § 8B-10-110, § 8B-10-113, and which is not therapeutically administered.

(2). Safety detention. Any person arrested for under the influence of dangerous drugs may be held in a detention facility for not more than 48 hours after arrest if such person is unable to care for his or her own safety.

(3). Sentence.

(a). Dangerous Drugs, Controlled Substances,

i. A first conviction under this section is a Class C offense for which the offender shall be imprisoned in the Crow Tribal Jail for any term not to exceed six (6) months or be fined an amount not to exceed \$500.00 to be payable to the Crow Tribal Court, or both. Any individual convicted under this section shall be required to undergo a chemical dependency evaluation.

- ii. A second or subsequent conviction under this section is a Class B offense for which the offender shall be imprisoned in the Crow Tribal Jail for any term not to exceed nine (9) months or be fined an amount not to exceed \$750.00 to be payable to the Crow Tribal Court, or both. Any individual convicted under this section shall be required to undergo a chemical dependency evaluation and follow the recommendations of that assessment as a condition of his/her sentence.

(4) Chemical Blood, Breath, or Urine Test

- (a) Upon establishment of probable cause, as defined in 8A-1-102, by a trained law enforcement officer, any person may be arrested for violation of this section, and may be given a chemical test of his or her oral saliva fluids, blood, breath, or urine for the purpose of determining whether that person is under the influence of a controlled substance, methamphetamine, or inhalant, provided that the arrested person voluntarily consents to the chemical test. The tests shall be administered at the direction of a trained law enforcement officer certified to administer or order such tests having probable cause to believe the person to be under the influence of a controlled substance while appearing in a public place. The arresting officer may designate which one of the aforesaid tests shall be administered.
- (b) Any person, who is unconscious or otherwise in a condition rendering him or her incapable of refusing such tests, shall be deemed to have rendered his/her consent to such tests.
- (c) Blood tests are to be administered only by a licensed medical professional acting at the request of a law enforcement officer. Only a licensed medical professional may draw blood for the purpose of determining content or presence of controlled substances, inhalants, or methamphetamine in a person's blood. This limitation does not apply to breath or urine samples.
- (d) The person tested may, at his or her own expense, have a licensed medical professional of his or her own choosing administer a test, in addition to any test administered at the direction of a law enforcement officer, for the purpose of determining the content of his/her blood at the time alleged as shown by chemical analysis of his or her blood, breath, or urine. Failure or inability to obtain an additional test shall not preclude the admissibility in evidence of any test taken at the direction of the law enforcement official.

- (e) Upon request of the person tested, full information concerning any and/or all test(s) taken at the direction of a law enforcement officer shall be made available to him or her and/or their attorney.
- (f) No licensed medical professional shall incur any civil or criminal liability as a result of the proper administration of a blood test requested by a law enforcement officer.
- (g) If the test given under this section is a chemical test of urine, the subject of the test shall be given privacy in the taking of the urine specimen commensurate with the need to ensure the accuracy of the specimen collected. Law enforcement officers shall make reasonable efforts toward maintaining the dignity of the individual subject to the test.

(5) Evidence Admissible

(a). Upon the trial of any criminal action or proceeding arising out of allegations that an individual appeared in a public place while under the influence dangerous drugs, inhalants, or other controlled substance, evidence of amount of controlled substance in the person's blood at the time of the act alleged as shown by a chemical analysis of his or her blood, breath, or urine, is admissible.

(b). Upon the trial of any criminal action or proceeding arising out of allegations that an individual appeared in a public place while under the influence of dangerous drugs, inhalants, or any other controlled substance, testimony by an officer with current training and certification as a drug recognition expert to recognize and document the symptoms of an individual under the influence of illegal drugs and narcotics, shall be admissible.

(b). If the person alleged to have appeared in a public place while under the influence of dangerous drugs, inhalants, or any other controlled substance refused to submit to any of the tests provided for above, such refusal shall be admissible in any criminal action or proceeding.

(c). The provisions above do not limit the introduction of any other competent evidence bearing on the question of whether the alleged offender was under the influence of a controlled substance.

(6) Standard of Proof

(a) A person with detectable amounts of marijuana, methamphetamine, or any other dangerous drug in their blood or urine at the time of arrest, where a trained law enforcement official is able to document recognized signs or symptoms that the individual was currently under the influence of marijuana, methamphetamine, or other dangerous drugs or controlled substances, shall be presumed to have been under the influence of a controlled substance. This presumption may be rebutted by competent scientific, factual, or other evidence by defendant, and shall be considered by factfinder, along with any and all other competent evidence, in determining the guilt or innocence of the defendant.

Section 2. TITLE 8C OF THE CROW LAW AND ORDER CODE, SPECIFICALLY SECTION 8B-CHPT. 11-102, IS HEREBY AMENDED AS FOLLOWS:

8B-11-102. Penalty for *Under the influence of Methamphetamine or Other drug.*

- (1) Upon first conviction of violating Section 8C-3-302, an offender shall be sentenced to a period of not less than five (5) days nor more than ninety (90) days and ordered to pay a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). At the discretion of the judge, the offender's driving privileges on the Crow Indian Reservation may be suspended for a period of time not to exceed one year. Any individual convicted and sentenced pursuant to this section shall additionally be required to undergo a chemical dependency evaluation.
- (2) Upon second conviction of violating Section 8C-3-302, an offender shall be imprisoned in the Crow Tribal Jail for a period of not less than ten (10) days or more than one-hundred eighty (180) days. The offender's driving privileges on the Crow Indian Reservation shall be suspended for one year from the date of sentencing. Any individual convicted and sentenced pursuant to this section shall additionally be required to undergo a chemical dependency evaluation and follow the recommendations of that assessment as a condition of his/her sentence.
- (3) Upon third and all subsequent convictions of violating Section 8C-3-302, an offender shall be imprisoned in the Crow Tribal Jail for a period of not less than thirty (30) days or more than one (1) year. The offender's driving privileges on the Crow Indian Reservation shall be suspended for one year from the date of sentencing. Any individual convicted and sentenced pursuant to this section shall additionally be required to undergo a chemical dependency evaluation and follow the recommendations of that assessment as a condition of his/her sentence.

CERTIFICATION

I hereby certify that this Bill: "AMENDMENT OF THE CROW LAW AND ORDER CODE, TITLES 8B: CROW CRIMINAL CODE AND 8C: CRIMINAL METHAMPHETAMINE OFFENSES" was duly passed by the Crow Tribal Legislature with a vote of 14 in favor, 0 opposed, and 0 abstained and that a quorum was present on this 18TH day of **January, 2008**.

Jonathan Q. Stou Sr
Speaker of the House
Crow Tribal Legislature

ATTEST:

Bernard Shaw
Secretary, Crow Tribal Legislature



EXECUTIVE ACTION

I hereby

approve
 veto

this Bill: "AMENDMENT OF THE CROW LAW AND ORDER CODE, TITLES 8B: CROW CRIMINAL CODE AND 8C: CRIMINAL METHAMPHETAMINE OFFENSES" pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow Tribe of Indians on this

18th day of January, 2008.

Carl E. Peters
Chairman
Crow Tribe Executive Branch

"Title 8B: Crow Criminal Code and
8C: Criminal Methamphetamine Offenses"

Bill or Resolution Number CLB08-02 Introduced by Executive Date of Vote January 18, 2008
Branch

<u>Representative:</u>	<u>Yes</u>	<u>No</u>	<u>Abstained</u>
L. Plain Bull, Sr.	_____	_____	_____
C. Goes Ahead	✓	_____	_____
O. Costa	✓	_____	_____
V. Crooked Arm	✓	_____	_____
M. Not Afraid	✓	_____	_____
P. Alden, Jr.	✓	_____	_____
B. House	✓	_____	_____
E. Fighter, Sr.	✓	_____	_____
C.J. Stewart	_____	_____	_____
L. Hogan	_____	_____	_____
S. Fitzpatrick, Jr.	✓	_____	_____
O. Half, Jr.	✓	_____	_____
M. Covers Up, Sr.	✓	_____	_____
R. Old Crow, Sr.	✓	_____	_____
W. Plainfeather	✓	_____	_____
D. Wilson	_____	_____	_____
B. Shane <i>Secretary of the House</i>	✓	_____	_____
J.D. Stone, Sr. <i>Speaker of the House</i>	✓	_____	_____
Totals:	<u>14</u>	<u>0</u>	<u>0</u>

Result of Vote:

Passed

Not Passed

Tabled

Veto-Override

Beverly M. Shane 1-18-08
Beverly M. Shane Date
Secretary of the House

Jonathan D. Stone 1/23/08
Jonathan D. Stone Date
Speaker of the House