

TITLE II - CRIMINAL PROCEDURE

CHAPTER 1. COMPLAINT

Sec. 101. Complaint.

(a) A complaint is the written statement of the essential facts charging that a named individual has committed a particular criminal offense. All criminal prosecutions shall be initiated by a complaint filed with the Court and sworn to by a person having personal knowledge of the offense.

(b) Complaints shall contain:

(1) The signature of the complaining witness or witnesses, sworn to before a Judge, a clerk or any law enforcement officer.

(2) A written statement by the complaining witness or witnesses having personal knowledge of the violation describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained.

(3) The name or description of the person alleged to have committed the offense.

(4) A description of the offense charged.

(5) Unless the complaint is signed by a police officer having personal knowledge of the violation, no arrest warrant or summons shall issue to the defendant unless the complaint is approved by a Judge.

(c) The Chief Judge may designate an individual or individuals who shall be available to assist persons in drawing up complaints and who shall screen them for sufficiency. Such complaints shall then be submitted without unnecessary delay to a judge to determine whether an arrest warrant or summons should be issued.

Sec. 102. Time Limit for Commencing Criminal Prosecution.

No prosecution for an offense under this Code shall be maintained unless the complaint is filed within one (1) year after the commission of the offense. Time during which the accused is outside the jurisdiction of the Court, for whatever reason, shall not be included in this one (1) year time limit.

CHAPTER 2. ARRESTS

Sec. 201. Arrest.

(a) Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.

(b) No member of the Tribal Police Department or other law enforcement officer of the Tribe shall arrest or apprehend any person for alleged criminal offense except under the following circumstances:

(1) When such offense shall occur in the presence of an arresting officer; or

(2) When the arresting officer shall have probable cause to believe that the person to be arrested has committed an offense contained in Title III of this Code ; or

(3) When the arresting officer acts pursuant to warrant issued by the Tribal Court commanding him or her to arrest such person.

(Revised by Ordinance # 2-97; Adopted: December 11, 1997; Effective: December 11, 1997)

Sec. 202. Warrants for Arrest.

(a) The Tribal Court shall have the authority to issue warrants for arrest only upon satisfaction of the issuing Judge that there is probable cause to believe that an offense against tribal law has been committed by the named accused, based on sworn written statements or sworn oral testimony.

(b) The arrest warrant shall contain the following information:

(1) Name or description and address, if know, of the person to be arrested.

(2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing Judge.

(c) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of arrest, but upon request shall, as soon as possible, show it to the defendant.

Sec. 203. Notification of Rights at Time of Arrest.

Upon arrest, the suspect shall be advised immediately of the following rights:

- (1) That he has the right to remain silent.
- (2) That any statements made by him may be used against him in court.
- (3) That he has the right to obtain counsel at his own expense.
- (4) That he has the right to make at least one completed telephone call to a friend

and at least one completed call to a lay counselor or attorney immediately after being registered and identified at the jail, or sooner if there is an unreasonable delay in taking the accused to jail or in registering the accused at the jail.

Sec. 204. Summons in Lieu of Arrest Warrant.

(a) A law enforcement officer or a judge may, in lieu of an arrest warrant, issue a summons commanding the accused to appear before the Court at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as an arrest warrant, except that it may be signed by a police officer.

(c) The summons shall state that if a defendant fails to appear in response to the summons, a warrant for his or her arrest shall be issued.

(d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his usual residence or place of business with a person of suitable age and discretion who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the records of the case.

CHAPTER 3. SEARCHES

Sec. 301. Search Warrant.

- (a) A search warrant is a written order, signed by a judge, directing a law enforcement officer to conduct a search and seize property specified in the warrant. A search warrant shall describe the person, property or place to be searched and shall describe

the property to be seized.

(b) A search warrant shall be issued only by a judge and only upon probable cause that a search will discover:

- (1) stolen, embezzled, contraband or otherwise unlawfully possessed property;
- (2) property which has been or is being used to commit a criminal offense; or
- (3) property which constitutes evidence of the commission of a criminal offense.

Such probable cause shall be supported by a sworn written statement or sworn oral testimony.

Sec. 302. Execution and Return of Search Warrant.

Warrants shall be served only by authorized law enforcement officers. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than 10 days from the date of issuance. Warrants not returned within such time limits shall be void. The warrant shall be served between 7:00 a.m. and 9:00 p.m., unless the judge, upon a showing of good cause therefore, inserts a direction that it be served at some other time.

Sec. 303. Search Without a Warrant.

No law enforcement officer shall conduct any search without a valid warrant except:

- (a) When he is making a lawful arrest; or
- (b) With the voluntary consent of the person being searched or the person entitled to possession of property being searched; or
- (c) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed.

Sec. 304. Disposition of Seized Property.

(a) The officer serving and executing a warrant shall make an inventory of all property seized and a copy of this inventory shall be left with every person from whom property is seized.

(b) A hearing shall be held by the Court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property shall be delivered

immediately to the owner, unless the property is contraband or is to be used as evidence in a pending case, or was used in connection with the commission of an unlawful act. Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court. Property confiscated because it was used in connection with the commission of an unlawful act shall be returned to its owner or otherwise lawfully disposed of by the Court upon notice to and an opportunity to be heard by its owner.

Sec. 305. Exclusion of Unlawfully Obtained Evidence.

The Court may prohibit the introduction or use at tribal of any evidence seized in a search conducted in violation of Section 303 and may, in addition, recommend to the chief law enforcement officer of the Reservation any appropriate disciplinary actions against the law enforcement officer who conducted the unlawful search.

CHAPTER 4. ARRAIGNMENT AND RELEASE

Sec. 401. Arraignment.

(a) Arraignment is the bringing of an accused before the Court to inform him of his rights and of the charge against him, to receive his plea, and to set conditions of pre-trial release as appropriate in accordance with this Code.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than 72 hours after arrest.

(c) Before an accused is required to plead to any criminal charges the Judge shall:

(1) Read to the accused, and provide the accused with a copy of, the complaint and determine that the accused understands the complaint and the section of the Code which he is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he has the right to remain silent, to have a speedy and public trial where he will be confronted with witnesses against him after he has had sufficient time to prepare his defense if he pleads "not guilty," to be tried by a jury if the offense charged is punishable by imprisonment, and to be represented by counsel, at his own expense,

before he pleads to the charge.

(d) If the arrest was without a warrant, in order for the accused is to be continued in custody the Judge shall determine during arraignment whether there is probable cause to believe that an offense against tribal law has been committed by the accused.

(e) At arraignment, the Judge shall call upon the accused to plead to the charge and proceed as follows:

(1) If the accused pleads "**not guilty**" to the charge, the Judge shall set a trial date and consider conditions for release prior to trial as provided in Section 402.

(2) If the accused pleads "**guilty**" to the charge, the Judge shall accept the plea only if the Judge is satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights he is waiving by the plea. The Judge may then impose sentence or defer sentencing for a reasonable time not to exceed thirty days in order to obtain any information the Judge deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing.

(3) If the accused refuses to plead, the Judge shall enter a plea of "**not guilty**" on his behalf.

Sec. 402. Release Before Final Judgment of Conviction.

(a) At arraignment, the Judge shall decide whether to release the defendant from custody pending sentencing or trial. As conditions of release, the Judge may, to assure the accused's appearance at all times lawfully required, order any or all of the following:

(1) that the accused deposit cash or other sufficient collateral, in an amount specified by the Judge;

(2) that the accused, and/or any other designated person or organization satisfactory to the Judge, execute a written promise to appear or to deliver the accused at all required times;

(3) reasonable restrictions on the travel, association or place of residence of the accused;

(4) any other condition reasonably necessary to assure the appearance of the

accused as required.

(b) Any police officer authorized to do so by the Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared and approved by the Court.

(c) The Court may revoke release of any defendant and order the defendant committed at any time if it determines that the conditions of release will not reasonably assure the appearance of the defendant or if any conditions of release have been violated.

Sec. 403. Withdrawal of guilty plea.

The Court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice and fairness would be served by doing so.

CHAPTER 5. TRIAL PROCEEDINGS.

Sec. 501. Rights of Defendant in Criminal Cases.

No person shall twice be put in jeopardy for the same offense, nor shall he be compelled in any criminal case to be a witness against himself. The accused shall have the right to a speedy and public trial, the right to be confronted with witnesses against him, the right to assistance of counsel at his own expense and the right to demand trial by an impartial jury if the offense, or combination of offenses, charges is punishable by imprisonment.

Sec. 502. Issuance of Subpoenas.

(a) Upon request of the defendant or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses or the production of books, records, documents or other physical evidence relevant to the determination of the case that does not impose an undue burden on the person possessing the evidence. An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by the Chief Judge or his/her designee, and which are to be served within the confines of the Reservation.

(b) A subpoena shall bear the signature of the Chief Judge or his/her designee and shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the date, time and place where the witness is to

appear or the evidence is to be produced.

(Revised by Ordinance #3-93; Adopted: May 10, 1993; Effective: May 10, 1993)

Sec. 503. Service of Subpoenas.

(a) A subpoena may be served at any place within or without the confines of the Reservation.

(b) A subpoena may be served by any law enforcement officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his usual place of residence or business with any person of suitable age and discretion who also resides or works there.

(c) Proof of service of the subpoena shall be filed with the Court by noting on the back of a copy of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

Sec. 504. Failure to Obey Subpoena.

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be deemed to be in contempt of court.

Sec. 505. Witness Fees.

(a) Each witness answering a subpoena shall be entitled to a fee as set by the Court for each day the witness' services are required.

(b) The expenses provided for in this section shall be paid by the Tribe upon completion of the trial, but such expenses associated with witnesses called by the defendant may be taxed as costs against the defendant if he is found guilty and in such case a judgment for the costs of witnesses shall be entered against the defendant, provided however that no defendant shall be imprisoned solely because of his inability to pay such costs.

(c) If the Court finds that a complaint was not filed in good faith, but with a frivolous or malicious intent, it may order the expenditures incurred under this section, and such order shall

constitute a judgment against the complainant.

(Revised by Ordinance # 2-98; Adopted: June 18, 1998; Effective: June 18, 1998)

Sec. 506. Trial Procedure.

(a) The prosecution shall present its case first, followed by the defendant. If rebuttal is required, the prosecution shall proceed first, followed by the defendant. The Tribe shall prosecute the charge by presenting the testimony of the law enforcement officer and any other witnesses who have information that support the charge. In presenting such evidence, the Tribe may employ a tribal official, professional attorney, or other approved spokesperson.

(b) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court and available to the defendant. The Court shall not be bound by formal rules of evidence, but shall use its own discretion as to what evidence it deems necessary and relevant to the case.

(c) The defendant may be found guilty of a lesser offense not necessarily included in the offense charged, without the necessity of having been formally charged with the lesser offense.

(d) The defendant shall be present in court at every stage of the trial, including selection of the jury, return of the verdict, and imposition of the sentence.

(e) The defendant is presumed to be innocent. The prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt, including the facts that a crime has actually been committed and that the defendant committed it with the requisite intent when intent is an element of the offense.

(f) At the conclusion of the evidence, the prosecution and defendant each in turn shall summarize the proof and make final argument, with the prosecution having the right to speak last.

(g) All records relating to statements or confessions of the defendant or reports of physical, mental, or other scientific tests or examinations relating to or performed on the defendant, when in the possession or control of the Tribe, shall be open to inspection and copying by the defendant.

Sec. 507. Right to Jury Trial.

(a) Any person accused of a crime punishable by imprisonment shall be granted a jury trial upon his or her request, made at the time of arraignment or by a written request filed with the Clerk at least 15 days before the date set for trial. A jury shall consist of at least six members of the Tribe selected at random from a list of eligible jurors prepared each year by the Court.

(b) An eligible juror is a tribal member who is 18 years of age, is of sound mind and discretion, has never been convicted of a felony, is not a member of the Tribal Council, or a judge, officer or employee of the Court, or an employee of the reservation police force or reservation jail.

(c) A current roster of at least 25 tribal members who are eligible for jury duty shall be prepared and maintained by the Clerk.

(d) Under the supervision of the Clerk, witnessed by at least two other adult persons, a panel of jurors shall be drawn by lot from the jury roster. A trial jury shall consist of six (6) qualified jurors selected in a random fashion from a panel of twelve (12) eligible persons taken from the jury roster, none of whom has an interest in the case, or is related as spouse, parent, brother or sister to any of the parties or their attorneys. If the jury panel is exhausted before a sufficient number of jurors are selected, additional panels shall be drawn by lot from the jury roster until a trial jury is selected.

(e) Upon a showing satisfactory to the Clerk, the following persons, upon their request, may be excluded from the jury roster and jury panels:

(1) Persons who reside outside of the Reservation and more than fifty (50) miles from the nearest exterior boundary of the Reservation.

(2) Persons of advanced age, infirmity or illness.

(3) Persons burdened by such other circumstances or subject to such other demands that jury service would cause extraordinary hardship for them. Such hardship must be substantially greater than would be experienced ordinarily by persons serving as jurors.

(4) Employees of the United States.

(f) Each member of a designated jury panel shall be served with a summons, signed by

the Judge, indicating the date, place and time that he is first to appear for jury service. The notice shall be served by the Clerk of Court, a member of the Tribal Police Department, or any other person who may be designated in writing by the Court. The notice shall be served not less than seven-two (72) hours prior to the designated time for initial appearance. After such initial appearance, the times and places for attendance by those persons included on the designated jury panel shall be prescribed by the Court.

(g) A person summoned to serve as a juror who has not been excused pursuant to any provisions of this Code, or by order of Court, who fails to appear where and when summoned, or who having so appeared absents himself therefrom without the permission of the Court, or who renders himself unfit to commence or continue the duties of a juror, shall be in contempt of Court. In addition to the penalties for contempt of Court prescribed by this Code, he may be charged by the Court with any costs incurred by the Court or by any other persons which resulted from such failure to be present or from such misconduct.

(h) Each party may question members of the jury panel for the purpose of selecting a trial jury. In criminal cases, in addition to disqualifying jurors for cause as determined by the Judge, each side shall be entitled to three peremptory challenges without assigning any cause. Where there is more than one defendant, they must join in a challenge before it can be made unless the Court, for good cause shown, shall permit otherwise, or shall permit each defendant to exercise two peremptory challenges.

(i) Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to compensation at a rate determined by the Court. All payment of compensation shall be supported by the juror attendance logs as verified by the Tribal Courts Director. Payment shall be made from available funds on deposit as the jury bond required by the Court.

(j) The judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact. At the close of evidence, or at such earlier time during the trial as the Judge directs, any party may file with the Judge written instructions on the law which the party requests the Judge to deliver orally to the jury. At the same time, copies of such requests shall be furnished to the opposing party. The Judge shall inform each party of his proposed action upon

request prior to the arguments to the jury, but the Judge shall deliver his instructions to the jury after closing arguments are completed. No party may assign as error any portion of the Judge's charge or any omission unless he makes an objection and presents reasons for the objection before the jury retires to consider its verdict. Opportunity shall be given to make an objection out of the hearing of the jury.

(k) After deliberation in private, the jury shall return to the Judge, in open court, a verdict of "**Guilty**" or "**Not Guilty**" to each charge for each defendant. A verdict of "**Guilty**" shall require unanimous vote of the jury.

(Revised by Ordinance # 2-98; Adopted: June 18, 1998; Effective: June 18, 1998)

CHAPTER 6. SENTENCING.

Sec. 601. Sentences.

Any person who has been convicted of an offense enumerated in this Code may be sentenced by the Court to one or a combination of the following penalties:

(a) Imprisonment for a period not to exceed the maximum permitted by the Code provision defining the offense. Imprisonment may be continuous or intermittent. On any sentence of imprisonment, credit shall be given for all time spent in custody in an institution as a result of the charge for which the sentence was imposed. Imprisonment may include commitment to an appropriate institution or program either on or off the Reservation, for care, treatment, evaluation, or rehabilitation of the offender. Anyone receiving physical custody of a person sentenced by the Court shall be acting solely as an agent of the Tribe and Court. Jurisdiction over a person sentenced to a program or institution off the Reservation shall be retained by the Tribe and the Court exclusively. No placement off the Reservation shall be valid unless first approved in writing by the Chief Judge, and any order of such placement shall specify that the Tribes and the Court retain jurisdiction over any person so placed.

(b) A money fine in an amount not to exceed the maximum permitted by the code provision defining the offense. If the Court determines that a convicted offender is unable to pay forthwith a money fine assessed under this Section or any costs assessed under Section 505(b) of this Title, the Court shall allow the offender a reasonable period of time to pay the entire sum or

allow the offender to make installment payments to the Clerk of the Court at specified intervals until the entire sum is paid. If the offender defaults on such payments the Court may find the offender in contempt of court and punish the offender accordingly, but no person shall be held in contempt of court where nonpayment is because of indigence. Any convicted offender may, if such person so chooses, elect to serve time in prison at the rate of five (5) dollars per day to be credited against any fine or costs such person owes.

(c) In addition to or in lieu of the penalties provided above, the Court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensation to the injured person by means of the surrender of property, payment of money damages, or the performance of any other act, including appropriate work detail, for the benefit of the injured party.

(d) In its discretion, the Court may commute or suspend some or all of the sentence imposing a fine or imprisonment, or grant probation, on condition that the convicted person does work for the benefit of the Tribe. A person unable or unwilling to work may be confined in jail or fined as provided above.

(e) In determining the character and duration of the sentence to be imposed, the Court shall take into consideration the previous conduct, background and characteristics of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, whether the defendant has attempted to make amends, the defendant's financial resources, and the needs of the offender's dependents. Prior to imposing sentence, the Court shall afford a reasonable opportunity to the convicted offender to present information to it. The Court may also request and receive pertinent reports, advice, and recommendations from any other person or agency which may assist the Court in imposing an appropriate sentence, provided, however, that prior to sentencing the convicted person shall be advised of the content, identity, and source of any such report, advice or recommendation and shall be afforded a reasonable opportunity to comment upon or rebut it. The Court may require, as a condition of its sentence, that the convicted offender undergo available medical, psychiatric or substance abuse treatment, not operate a motor vehicle, or remain within geographic areas designated by the Court.

Sec. 602. Probation.

(a) **Granting probation.** After conviction for an offense, the offender may be placed on probation under such terms and conditions as the Court deems just, including a signed pledge by the offender of good conduct for the duration of the sentence. The Court shall take into consideration any prior criminal record of the offender, the offender's background, characteristics, financial condition and any other circumstances helpful in determining the advisability of probation.

(b) **Violation of conditions of probation.** If any convicted offender violates the terms and conditions of probation, the Court may, after giving such person notice and the opportunity for a hearing in open court, revoke or alter the terms of probation, and may, as a penalty for violation of the probation, impose an additional fine or imprisonment.

Sec. 603. Forfeiture of Weapons.

Any convicted offender owning and using a firearm, or any sharp or dangerous weapon, in the commission of an offense shall forfeit such weapon to the Tribe as part of the sentence. Upon order of the Court, such weapon shall be destroyed, retained by the Police Department, or sold at public sale after appropriate public notice, pursuant to the direction of the Court.

Sec. 604. Notification of right to appeal.

Following conviction, except upon a plea of guilty, the Court shall inform the convicted offender that he has a right to appeal. Upon the convicted offender's request, the Clerk of the Court shall prepare and file a Notice of Appeal on behalf of the convicted offender. The convicted offender, or the Clerk of the Court filing on his behalf, must file the Notice of Appeal within fifteen working days of the judgment.