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## 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 signed by the prosecutor and sworn to before a judge. All complaints initiated by the prosecutor shall be based on probable cause that the crime charged happened and that the defendant(s) committed the crime charged. A judge shall have the authority to demand the filing of an information by the prosecutor or to hold a preliminary hearing to determine whether lawful probable cause as to the crime exists, and whether the appropriate defendant(s) exist prior to the issuance of a summons or warrant for the arrest of the defendant(s).

(b) Complaints shall contain:

(1) A written statement of the violation describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained. Statements or affidavits by persons having personal knowledge may be expressly referenced in and attached to the complaints.

(2) The name and description of the person(s) alleged to have committed the offense.

(3) A statement describing why the Court has personal jurisdiction of the defendant.

(4) A description of the offense charged.

(5) The signature of the prosecutor sworn to before a judge.

**(AMENDED AS PER RESOLUTION NO. 1565-88- 11, DATED 11/10/88.)**

(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 the prosecutor and, if he/she approves, to a judge to determine whether an arrest warrant or summons should be issued.

**Sec. 102. Time limit for commencing criminal prosecution.**

With the exception stated below, 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. Where the complaint alleges violation of Section 220 or 227 of Title VII, and the alleged victim is eighteen (18) year of age or less, there is no time limit for filing the complaint. Where the complaint alleges violation of Section 221, 222, 226, or 228 of Title VII, and the victim is eighteen (18) years of age or less, the complaint must be filed within five (5) years of 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.

**(AMENDED AS PER RESOLUTION NO. 1287-86-7, DATED 07/28/86.)**

## **Chapter 2. Arrests**

**Sec. 201. Arrest.**

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

(b) No law enforcement officer shall arrest any person for a criminal offense except when:

(1) A judge has signed a warrant commanding the arrest of such person, and the arresting officer has the warrant in his/her possession or knows for a certainty that such a warrant has been issued; or

(2) The offense shall occur in the presence of the arresting officer; or

(3) The arresting officer shall have probable cause to believe that the person arrested committed the offense.

(c) Probable cause. For purposes of this chapter, probable cause is defines as: such facts and circumstances which would lead a reasonable person to believe that an offense has been committed.

**(AMENDED AS PER RESOLUTION NO. 3137-93-9, DATED 09/13/93.)**

**Sec. 202. Arrest warrants.**

(a) Judges shall have authority to issue warrants to arrest if they find 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 known, 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/her possession at the time of the arrest, but upon request shall, as soon as possible, show it to the defendant.

(d) A warrant shall not be executed by a Tribal or Bureau of Indian Affairs law enforcement

official outside the boundaries of the Reservation.

**Sec. 203. Notification of rights at time of arrest.**

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

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

**Sec. 204. Summons in lieu of arrest warrant.**

(a) A law enforcement officer or a judge may, in lieu of a 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 a 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 a summons, a warrant for his/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/her 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.

**Sec. 205. Appearance of arrested person - use of two-way electronic audio-video communication.**

(a) A person arrested, with or without a warrant, must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance.

(b) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication, if available. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing.

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## **Chapter 3. Searches**

**Sec. 301. Search warrant.**

(a) A search warrant is a written order, signed by a tribal judge, directing a law enforcement officer to conduct a search and seize property specified in the warrant. A 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.

Warrants shall be served only by authorized law enforcement officers.

**Sec. 302. Execution and return of search warrant.**

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 ten (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 therefor, 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:

- (1) When he/she is making a lawful arrest; or
- (2) With the voluntary consent of the person being searched or the person entitled to possession of property being searched; or

(3) 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. 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.

**Sec. 305. Exclusion of unlawfully obtained evidence.**

The Court shall prohibit the introduction or use at trial 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 conducting the unlawful search.

## **Chapter 4. Arraignment and Release**

**Sec. 401. Arraignment.**

(a) Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charge against him/her, receiving his/her plea, and setting 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 the next regular session of Court.

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

(1) Read the complaint to the accused and determine that he/she understands the complaint and the Section of the Tribal Code which he/she is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he/she has the right

(a) to remain silent,

(b) to have a speedy and public trial where he/she will be confronted with witnesses against him/her after he/she has had sufficient time to prepare his/her defense if he/she pleads "not guilty,"

(c) to be tried by a jury if the offense charged is punishable by imprisonment, and

(d) to be represented by counsel at his/her own expense, before he/she pleads to the charge.

(d) If the arrest was without a warrant, and the defendant is to be continued in custody, the judge shall also determine during arraignment whether there is probable cause to believe that an offense against Tribal law has been committed by the named accused.

(e) The judge shall call upon the defendant to plead to the charge:

(1) If the accused pleads "not guilty" to the charge, the judge shall then 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 he/she is satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights which he/she is waiving by the plea. The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he/she 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/her behalf.

**Sec. 402. Release before final judgment of conviction.**

(a) Prior to trial. At arraignment, the judge shall decide whether to release the defendant from custody pending trial. As conditions of release, the judge may, to assure the accused's appearance at all times lawfully:

(1) require the accused to deposit cash or other sufficient collateral, in an amount specified by the judge;

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

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

(4) impose any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(b) By police officer. Any law enforcement 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

by the Court.

(c) Pending appeal. A convicted person may be released from custody pending appeal on such conditions as the judge determines will reasonably assure the appearance of the accused unless the judge determines that release of the accused is likely to pose a danger to the community, to himself/herself or to any other person.

(d) The Court may revoke its release of the defendant and order him/her committed at any time where 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/she be compelled in any criminal case to be a witness against himself/herself. The accused shall have the right to a speedy and public trial, the right to be confronted with witnesses against him/her, the right to assistance of counsel at his/her own expense and the right to demand trial by an impartial jury if the offense, or combination of offenses, charged 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 any other physical evidence relevant to the determination of the case and not 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 a trial judge and which are to be served within the confines of the Reservation.

(b) A subpoena shall bear the signature of the Chief Judge or an Associate Judge of the Court and it 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 time and place where the witness is to appear or the evidence is to be produced.

**Sec. 503. Service of subpoenas.**

(a) A subpoena may be served at any place within or without the confines of the Reservation, but any subpoena to be served outside the Reservation shall be issued personally by a judge of the Court.

(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/her 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 expenses.**

(a) Each witness answering a subpoena shall be entitled to reimbursement fees and mileage expenses at the current rate paid by Roosevelt County, Montana.

(b) The expenses provided for in this Section shall be paid by the Tribes 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/she is found guilty and in such case a judgment for the costs shall be entered against the defendant, provided however, that no defendant shall be imprisoned solely because of his/her inability to pay such costs.

(c) If the Court finds that a complaint was filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the Tribes for expenditures incurred under this Section, and such order shall constitute a judgment against the complainant.

**Sec. 506. Trial procedure.**

(a) The time and place of court sessions, the rules of evidence to be followed by the Court and all other details of judicial procedure may be set out in rules of court.

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

(c) 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.

(d) 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.

(e) The prosecution shall present its case first, followed by the case of the defendant. If rebuttal is required, the prosecution shall proceed first, followed by the defendant.

(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 of final rebuttal.

(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 Tribes, shall be open to inspection and copying by the defendant.

(h) At any time in the trial process, the judge may appoint an interpreter of his/her own selection and may fix the reasonable compensation of such interpreter. An interpreter through whom testimony is communicated shall be put under oath to faithfully and accurately translate and communicate as required by the judge.

**Sec. 507. Right to jury trial.**

(a) Any person accused of a crime punishable by imprisonment shall be granted a jury trial, upon his/her request made at time of arraignment. A jury shall consist of at least six (6) 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 has reached the age of eighteen (18) years, 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, and is not otherwise disqualified according to standards established by the Court.

(c) A list of at least twenty one (21) resident enrollees of the Tribes who are eligible for jury duty shall be prepared and maintained by the clerk.

(d) Under the supervision of the presiding judge, a panel of jurors shall be drawn by lot from the jury list. A trial jury shall consist of six (6) qualified jurors selected from a panel of twelve (12) eligible persons taken from the jury list, 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 for the trial jury, additional jurors shall be drawn by lot from the jury list for the panel until a trial jury is selected.

(e) The judges of the Court shall have the power to issue subpoenas to compel the attendance of members of the jury panel and of trial jurors. Subpoenas shall be signed by the judge issuing them.

(f) The judge assigned to the case shall have the power to excuse persons from jury duty on account of sickness, disability or for other good cause.

(g) Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury.

(h) In criminal cases, in addition to disqualifying jurors for cause as determined by the judge, the prosecution and the defendant, each side shall be entitled to three (3) peremptory challenges without assigning any cause. Where there is more than one (1) defendant, they must join in a challenge before it can be made unless the Court, for due cause shown, shall permit otherwise, or shall permit each defendant to exercise two (2) 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 paid to jurors by Roosevelt County, Montana, and may, in the discretion of the presiding judge, be allowed mileage at a rate to be fixed by the Court. All payments of per diem and mileage shall be supported by vouchers signed by the presiding judge. Such vouchers shall be paid in order of presentation, from available funds on deposit for the purpose.

(j) The judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law. 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/her proposed action upon each request prior to the arguments to the jury, but the judge shall deliver his/her instructions to the jury after arguments are completed. No party may assign as error any portion of the judge's charge or any omission unless he/she makes his/her objection and reasons for it before the jury retires to consider its verdict. Opportunity shall be given to make the objection out of the hearing of the jury.

(k) After deliberation in private, the jury in criminal cases shall return to the judge in open court a verdict of "Guilty" or "Not Guilty" with respect to each defendant. A verdict in criminal cases shall be rendered by a five-sixths (5/6) majority of the jury.

**(AMENDED AS PER RESOLUTION NO. 739-2002-7, DATED 07/08/02).**

**Sec. 508. Expert witness reliance on records produced by law enforcement investigations and provision for telephonic court testifying.**

(1) (a) Tribal and State records of law enforcement work product listed in Subsection (3) of this Section shall be acceptable for a law enforcement expert to rely on in testifying in the Fort Peck Court, as per Federal Rule of Evidence 703, and may be the product of any State or Tribal law enforcement employee.

(b) To be admissible, the records must conform to the requirements set out in Subsection (4), following Federal Rule of Evidence 807, and Rule of Civil Procedure for the Fort Peck Tribal Court 9-5. Records shall be acceptable source material whether they come from Tribal or State law enforcement.

(2) Lab technicians of the Montana State Crime Lab may telephonically testify in trial as to their personal findings relevant to the case at hand.

(3) The following shall be acceptable for law enforcement experts to rely on in testifying in a Court proceeding:

(a) Records of autopsies from fatalities from the case at hand, performed by or for any government law enforcement personnel;

(b) Records from the examination, description, or testing of any physical evidence of the case at hand;

(c) Records about fingerprint or DNA found at the crime scene for the case at hand.

(4) To be admissible in the Fort Peck Tribal Court, such records shall meet the following requirements:

(a) The record shall contain an inherent guarantee of trustworthiness:

(i) It shall be signed and dated by the author, not photocopied;

(ii) It shall bear the letterhead of the law enforcement agency;

(iii) It shall be written in the format standard for such reports.

(iv) If it is a record from the Montana State Crime Laboratory, the Tribal Criminal Prosecutor shall notify the Court and the Defendant( s), as below in (4)( d), in writing of its intention to offer such record(s) in evidence at trial in sufficient time for the party not offering the record(s) to either obtain the record(s) before trial of the person(s) responsible for creating the record(s), or to subpoena the attendance of the record's author(s) at trial. (b) It shall be offered as evidence of a fact material to the issue at hand, but not for the ultimate truth of the matter asserted. (c) It is of the best probative value for the point for which it is offered.

(d) It must be made known to the opposite party of that litigation prior to trial at the hearing prescribed by VIII CCO] 103( c) and CCO] Rule of Civil Procedure 5-2, Documents of Discovery.

(i) The notice must include disclosure of what the record to be relied on is and the purpose of its intended use in trial.

(ii) Notice shall state who wrote it and the address of its author/ declarant.

(iii) To be admissible, portions of the report to be quoted from in trial must be underlined, and irrelevant questions, answers, colloquy, and abandoned objections deleted.

(iv) To be admissible the opposing party shall, before the final pre-trial conference, underline the parts to be quoted in trial and submit to the party originally submitting the report.

(v) To be admissible, record contents which were objected to, and the

Court sustained the objection, shall be deleted and not entered as part of the Court transcript.

(vi) For a bench trial, record contents longer than 25 pages shall be summarized and the summary provided to opposition at the pre-trial hearing.

(vii) Any of the requirements in (iii), (iv), (v), and (vi) above may be waived if the record is to be used to refresh recollection, as an admission against interest, or as impeachment.

**(AMENDED AS PER RESOLUTION NO. 821-2002-8, DATED 8-12-2002)**

## **Chapter 6. Sentences**

### **Sec. 601. Sentences.**

Any person who has been convicted of an offense enumerated in this Code may be sentenced by the Court to one (1) or a combination of the following penalties:

(a) Imprisonment for a period no 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 Tribes and Court. Jurisdiction over a person sentenced to a program or institution off the Reservation shall be absolutely retained by the Tribes and the Court. 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 costs assessed under Section 505 of this Title, the Court shall allow him/her a reasonable period of time to pay the entire sum or allow him/her 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 him/her in contempt of court and punish him/her accordingly, but no person shall be held in contempt of court where nonpayment is because of indigency. Any convicted person may, if he/she so chooses, elect to serve time in prison at the rate of five dollars (\$5.00) per day to be credited against any fine or costs such person owes.

(c) Parents, guardians, and custodians of a child who are convicted of rape, sexual assault, sexual exploitation, physical abuse, neglect, or abandonment of that child may be ordered to seek such therapy, treatment, or instruction as will assist in preventing recurrence of the conduct that formed the basis of the offense. Such treatment or therapy may be ordered in lieu of incarceration, with the proviso that if the offender fails to seek the therapy or treatment as ordered, the sentence of incarceration shall be reinstated.

**(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86.)**

(d) 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.

(e) 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 Tribes. A person unable or unwilling to work may be confined in jail or fined as provided above.

(f) In determining the character and duration of the sentence to be imposed, the Court shall take into consideration the previous conduct 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, and shall give due consideration to the extent of the defendant's financial resources and the needs of his/her dependents.

#### **Sec. 602. Probation.**

(a) Granting probation. After conviction of an offense, the defendant may be placed on probation, under such terms and conditions as the Court deems just, taking into consideration any prior criminal record of the defendant, his/her background and characteristics, financial condition and any other circumstances helpful in determining the advisability of probation. In cases where the defendant has not previously been convicted of an offense under this Code, the Tribal Court may in its discretion suspend the sentence imposed and release the defendant on probation upon a signed pledge by the defendant of good conduct for the duration of the sentence.

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

#### **Sec. 603. Forfeiture of Weapons.**

Any person owning and using a firearm, or any sharp or dangerous weapon, in the commission of an offense shall forfeit such weapon to the Tribes as part of the sentence. Upon order of the Court, such weapon shall be destroyed, or sold a public sale after appropriate public notice, pursuant to the direction of the Court.

#### **Sec. 604. Notification of right to appeal.**

Following the imposition of judgment of guilty, except upon a plea of guilty, the Court shall inform the defendant that he/she has a right to appeal. If the defendant requests, the clerk of the court shall prepare and file a Notice of Appeal on behalf of the defendant. The defendant, or the clerk of the court filing on his/her behalf, must file the Notice of Appeal within fifteen (15) working days of the judgment.

## **Chapter 7**

### **Probation and Parole**

#### **Sec. 701. Establishment of Department of Tribal Probation and Parole.**

There is established a Tribal Department of Probation and Parole (hereafter "the Department"), for the purposes of which include the protection of the Reservation community by providing for the acceptance of custody and the supervision and rehabilitation of juvenile and adult

offenders placed on probation or released on parole by the Tribal Court.

**Sec. 702. Organization of the Department.**

The Department is managed by the Tribal Court Administrator, subject to the supervision of the Tribal Executive Board, and is comprised of adult probation officers, juvenile probation officers, community service officers, youth court representatives, support staff, and such other personnel as may be deemed necessary and approved by the Tribal Executive Board by means of its budgeting process.

**Sec. 703. Definitions.**

As used in this Chapter, unless the context otherwise requires, the following definitions apply:

(a) "Notice to the probationer or parolee" is the personal service of a warrant or a summons and petition for revocation of the parole or probation to a supervised offender.

(b) "Parole" means the release to the community of an adult prisoner as provided by law prior to the expiration of the prisoner's term, subject to the conditions imposed by the Court and subject to the supervision of the Department upon direction of the Court.

(c) "Probation" means the release by the Court without imprisonment of an offender found guilty of a crime upon verdict or plea, subject to conditions imposed by the Court and subject to the supervision of the Department upon direction of the Court.

(d) "Supervised offender" is an offender (1) sentenced to probation, (2) whose sentence is deferred, or (3) released from incarceration subject to conditions imposed by the Court and subject to the supervision of the Department.

**Sec. 704. Powers of the Department of Adult Probation.**

(a) An adult probation officer, in his or her supervision of an adult offender, is vested with:

(1) the authority to request a judge of the Tribal Court to issue a warrant for arrest of the supervised offender,

(2) the authority to conduct a search without warrant upon reasonable cause or upon the terms agreed upon in the signed Conditions of Probation statement.

(b) The Department may:

(1) recommend to the Tribal Executive Board for adoption of rules for the conduct of adults placed on parole or probation, except that the Department may not recommend, and the Tribal Executive Board may not adopt, any rule conflicting with conditions or parole or probation imposed by a court of competent jurisdiction; and

(2) adopt requirements for the training of probation officers.

**Sec. 705. Juvenile Probation Officers.**

Juvenile Probation Officers shall have the power and duty to carry out the objectives and provisions of this Chapter with regard to juvenile offender cases and shall:

(a) make preliminary inquiries, social studies, and such other investigations as the Court may direct;

(b) keep written records of such inquiries, social studies, and such other investigations and shall make written reports to the Court;

(c) supervise and assist each child placed on probation or under his/her supervision;

- (d) keep informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report thereon to the Court as directed;
- (e) use all suitable methods to aid children on probation or under protective supervision to bring about improvements in their conduct or conditions;
- (f) have children taken into custody when there is reasonable cause to believe that they have violated conditions of their probation; and
- (g) perform such other duties in connection with the care, custody, or transportation of children as the Court may require.

## Part 2

### Probation

#### **Sec. 706. Declaration of purpose and policy.**

The Tribal Executive Board finds and declares that probation is a desirable disposition of appropriate criminal cases because:

- (a) It provides a framework by which the Tribes can supervise positive rehabilitative measures imposed on an offender by a court;
- (b) The offender remains under the purview of the Court while engaging in the educational, therapeutic and community restorative pursuits that add up to a successful rehabilitation;
- (c) It maximizes the liberty of the individual while at the same time vindicating the authority of the law and effectively protecting the public from further violations of the law;
- (d) It affirmatively promotes the rehabilitation of the offender by continuing normal community contacts; and
- (e) It minimizes the impact of the conviction upon innocent dependents of the offender.

#### **Sec. 707. Penalty upon revocation of probation or parole.**

- (a) A person who is found, after a hearing, to have violated a condition of his or her probation may be required:
  - (1) In the case of probation during a suspended sentence, to serve in the Tribal jail up to the entire period for which execution of sentence was suspended; or
  - (2) In the case of deferred imposition of sentence, to serve such sentence as may be imposed by the Court after a sentencing hearing.
- (b) Parole is not available to a supervised offender whose probation is revoked, but appellate review of the trial court's revocation decision may be had on the ground that the supervised offender was deprived of liberty without due process of law.

#### **Sec. 708. Violation of a condition of probation.**

Upon a determination that a condition(s) of probation have been violated, the probation officer may petition the Court to have the probation revoked.

#### **Sec. 709. Probation revocation hearing.**

- (a) A probationer is entitled to a hearing before the Court prior to revocation of probation within 10 days of the date of notice that a petition for revocation has been filed, unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

(b) The subject matter of a revocation hearing is limited to alleged knowing violation(s) of probation condition(s). A violation of a condition is deemed to be a knowing violation if the probationer signed and was given a copy of, the conditions of probation.

(c) Supervised offenders do not have a right to a jury trial at a revocation hearing.

(d) If the probationer admits to violating a condition of probation, the Court, after the probationer has had the opportunity to offer testimony or evidence regarding any circumstances tending to mitigate the violation, may revoke the probation.

(e) If the probationer does not admit to violating a condition of probation, the prosecutor has the burden of proving by a preponderance of the evidence that the probationer violated a condition of the probation. Prosecution evidence may not be suppressed on the ground that, if an admission of a violation, no warning was given of a right not to incriminate oneself.

(f) The probationer has a right to counsel at his or her own expense and may call witnesses or introduce evidence in his or her own behalf and may cross examine any prosecution witness. Hearsay evidence is admissible, although a decision to revoke probation may not be based solely on hearsay evidence. The prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.

(g) The Court may determine the appropriate disposition of the petition for revocation by balancing the probationer's interest in liberty, employment, family ties, responsibilities, health, or community ties against the Tribes' interest in rehabilitation, public safety, victim(s)' rights, and the probationer's duty to comply with each condition of probation.

(h) An order revoking probation shall be in writing and shall contain findings of fact, including, but not necessarily limited to, those required in subsection (g), and conclusions of law supporting the revocation.

### Part 3

#### Parole

#### **Sec. 710. Duties of the Adult Probation and Parole Officer.**

(a) The adult probation and parole officer shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the Court.

(b) The adult probation and parole officer shall review and monitor a person who is eligible for parole in preparing a parole plan. The officer shall make a report of the officer's efforts and findings to the Court prior to its consideration of the case of the eligible person.

(c) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee's probation and parole officer, who shall report on the parolee's progress to the Court as maybe necessary or desirable.

(d) To assist parolees, the adult probation and parole officer may, in addition to other services, provide the following:

- (1) employment counseling and job placement;
- (2) family and individual counseling and treatment placement;
- (3) financial counseling;
- (4) vocational and educational counseling and placement; and
- (5) referral services to any appropriate agency.

**Sec. 711. Eligibility for parole.**

An offender sentenced to confinement in the Tribal correctional facility for 40 days or more on any conviction or combination of convictions, who has served at least one-half of the imposed sentence, and whose confinement is not the result of a probation or parole violation, may file a petition for parole with the Tribal Court.

**Sec. 712. Parole hearing.**

The Court shall hold a hearing on the petition within 10 days of its filing. All persons desiring to speak at the hearing shall be heard, including, but not limited to law enforcement officers, the Tribal prosecutor, family and friends of the offender, the offender and the offender's attorney, any victim of the offense for which the offender was sentenced in incarceration, and immediate, adult, family members of such victim. Notice of hearing shall be given to all parties at least 5 days prior to the hearing.

**Sec. 713. Granting parole.**

(a) In determining whether to grant parole, the Court shall consider all pertinent information including, but not limited to, the following:

- (1) the circumstances and nature of the offense;
- (2) the past criminal record of the petitioner;
- (3) the past employment record of the petitioner;
- (4) the conduct of the petitioner during imprisonment;
- (5) the results of any physical or psychological reports; and
- (6) the petitioner's employment status, family and community ties and

responsibilities, and health, which may be balanced against the Tribes' interest in rehabilitation, public safety, and victim's rights.

(b) The order granting parole shall set forth;

- (1) the duration of parole;
- (2) the conditions of parole;
- (3) commitment to the custody of the adult probation and parole officer; and
- (4) the consequences of violating a condition of parole.

**Sec. 714. Penalty for violation of a condition of parole.**

A person who violates a condition of parole may be apprehended and required to serve the remainder of the original sentence. Further parole in this instance is not allowed.

**Sec. 715. Parole revocation hearing.**

(a) Upon determination that a condition of parole has been violated, the adult probation and parole officer shall file a petition for the revocation of parole with the Court. Such petition must be filed within the parole period and served upon the parolee.

(b) the parolee is entitled to a revocation hearing within 10 days of arrest for a parole violation or receipt of a notice of revocation unless the Court finds good cause for delay exists.

(c) The subject matter of the hearing is limited to alleged violation(s) of condition(s) of parole.

(d) The parolee has no right to a jury trial when a violation of a condition of parole is alleged.

(e) Unless the parolee admits the parole violation, the adult probation officer or Tribal



prosecutor must prove by a preponderance of the evidence that the parolee violated a condition of his or her parole. Evidence that the parolee violated a condition of parole is not excludable on the grounds that the parolee was not warned of his or her right not to incriminate himself or herself prior to admitting a violation.

(f) A parolee has the right to counsel at the parolee's own expense.

(g) A parole may not be revoked based solely on hearsay, but hearsay testimony may be admitted.

(h) A parole revocation is appealable on the grounds that the revocation deprived the parolee of liberty without due process of the laws. The court's refusal to revoke a parole is not appealable by or on behalf of the Tribes.

(ADOPTED AS PER RESOLUTION NO. 1730-2007-06, 06/11/07)