

JANUARY 2007 CROW TRIBAL LEGISLATURE

BILL NO. CLB07-04

**INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH**

A BILL FOR AN ACT ENTITLED:

**“AN ACT TO AMEND TITLE 8A, CRIMINAL PROCEDURE,
OF THE CROW LAW AND ORDER CODE TO PROVIDE FOR BAIL
AND OTHER CONDITIONS OF PRETRIAL RELEASE AND TO AMEND TITLE 3 TO
REQUIRE CONFIRMATION OF CONTINUING SPECIAL JUDGE APPOINTMENTS”**

WHEREAS, the residents of the Crow Reservation have a right to be protected from harm when a criminal offense has been committed; and

WHEREAS, persons charged with a criminal offense or a violation of law have a right to be considered for pretrial release based upon due process and the equal protection of the law; and
WHEREAS, persons charged with a criminal offense or a violation of law have a right, under appropriate conditions, to be considered for pretrial release upon the posting of reasonable bail; and

WHEREAS, the Crow Tribal Court will be better able to exercise its discretion to grant or deny bail based on the legislation proposed herein; and

WHEREAS, the interests of the Crow Nation will be served by enacting this legislation,

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

Section 1. Title 8A, Chapter 5, of the Crow Law and Order Code is amended as provided herein.

CHAPTER 5

ARRAIGNMENT AND RELEASE

8A-5-101. Arraignment.

(1) Arraignment is the bringing of an accused before the Crow Tribal Court whenever a complaint has been filed by the Crow tribal prosecutor. 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 the Crow Tribal Court.

(2) Arraignment consists of reading the charge, unless the defendant waives the reading, supplying a copy of the charge to the defendant, informing the defendant of his/her rights, and calling on the defendant to enter a plea to the charge.

(3) Arraignments shall be videotaped or otherwise visually recorded by electronic means and the record shall be maintained until the defendant's case is concluded.

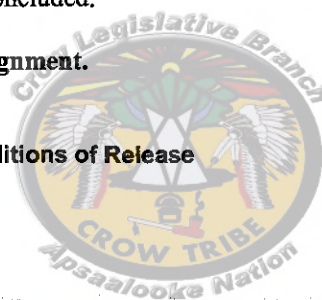
8A-5-102. Rights of Defendant at Arraignment.

2007.01.17

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Before an accused is required to plead to any criminal charges, the Crow Tribal Judge shall:

- (1) Read the complaint to the accused and ensure that the defendant understands the charge and section of the Crow Tribal Code which the defendant is charged with violating, including the maximum authorized penalty;
- (2) Advise the accused that he/she has the following rights, and have the accused sign an advisement of rights form in which he/she certifies that he/she understands these rights:
 - (i) to remain silent;
 - (ii) to have a speedy and public trial where he/she may confront witnesses called to testify against him/her;
 - (iii) to be tried by jury if the offense is punishable by imprisonment; and
 - (iv) to be represented by counsel at his/her expense, or to have counsel appointed, if available.

If the defendant was arrested without a warrant, and the defendant is to be continued in custody, the Crow Tribal Judge shall also determine during arraignment whether there is probable cause to believe that an offense against Crow tribal law has been committed by the accused.

8A-5-103. Plea Alternatives.

A defendant shall enter a plea of guilty or not guilty to each charge contained in the complaint.

- (1) If the defendant pleads not guilty, the Crow Tribal Judge shall then set a trial date and consider conditions for release as provided in Section 8A-5-104.
- (2) If the defendant pleads guilty to the charge, the Crow Tribal Judge shall accept the plea only if he/she is satisfied that the plea is knowingly and voluntarily entered, that the defendant can and does provide a statement which demonstrates that the defendant committed the charged offense and that the defendant understands the consequences of the plea, including the rights that the defendant is waiving by virtue of the plea.
- (3) If the defendant voluntarily enters a plea of guilty to the charge, the Crow Tribal Judge may impose a sentence at that time or may defer sentencing for a reasonable amount of time in order to obtain any information that the Crow Tribal Court deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Crow Tribal Court prior to sentence being imposed.
- (4) If the defendant refuses to enter a plea, the Crow Tribal Judge shall enter a not guilty plea on the defendant's behalf.
- (5) The Crow Tribal Court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interests of justice would be served by doing so.

8A-5-104. Release of Defendant.

- (1) A person charged with any offense is subject to release from custody pending trial, subject to such conditions as the Crow Tribal Court may reasonably prescribe to assure the defendant's appearance when required and to protect the safety of the community or any person.

The Crow Tribal Court may:

- (i) release the defendant on personal recognizance or conditional release;



- (ii) require the defendant to deposit cash or other sufficient collateral in an amount specified by the Crow Tribal Judge;
- (iii) require the defendant, or any other designated person or organization satisfactory to the Crow Tribal Judge, to execute a written promise to appear or to deliver the defendant at all required times;
- (iv) impose reasonable restrictions on the defendant's travel, personal associations, conduct and place of residence;
- (v) impose any other reasonable condition necessary to assure the appearance of the accused as required and ensure the safety of the community or any person.

(2) Any law enforcement officer authorized to do so by the Crow Tribal Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the Crow Tribal Court. Within thirty (30) days of the passage of this Bill, the Crow Tribal Court shall establish by a Memorandum of Agreement, or otherwise, a system for posting of bond as authorized by law (24 hours a day, seven days a week).

(3) A convicted person may be released from custody while he/she awaits sentencing or pending appeal on such conditions as the Crow Tribal Court may impose to assure future court appearances and ensure the safety of the community.

(4) If the Court determines that release of a defendant or convicted person awaiting sentencing or pending appeal is likely to pose a danger to himself/herself or any other person in the community, the Crow Tribal Court may refuse to admit the person to bail.

(5) The Court may revoke the release of the defendant or convicted person at any time if it determines that the existing release conditions will not reasonably assure the appearance of the defendant or convicted person, or if any conditions of release are violated by the defendant or convicted person or if the Court determines that the safety of the community or of any person is at risk because of the person's release.

8A-5-105. Time and Criteria to Determine Bail.

(1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance and is in the Court's discretion.

(2) The criteria for determining the conditions of release include, but are not limited to the following:

- (i) defendant's employment status and work history;
- (ii) defendant's financial condition;
- (iii) the nature and extent of defendant's family relationships and ties to the Reservation community;
- (iv) defendant's past and present residences;
- (v) names and character of individuals personally agreeing to assure defendant's court appearance;
- (vi) the nature and circumstances of the current charge, including whether the offense involved the use of force or violence;
- (vii) the defendant's prior criminal record, if any, and whether, at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for an offense;
- (viii) the defendant's record of appearance at court proceedings; and



- (ix) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

(3) The Court may in its discretion grant temporary release from custody under any conditions the Court deems appropriate.

8A-5-106. Release on Own Recognizance and Reasonable Bail.

(1) Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the Court may reasonably prescribe to assure his appearance when required.

(2) In all cases, the amount set for bail must be reasonable.

(3) Reasonable bail reflects an amount which is:

- (i) sufficient to ensure the presence of the defendant in any pending criminal proceeding;
- (ii) sufficient to assure compliance with the conditions set forth in a bail or release order; and
- (iii) not oppressive or excessive.

(4) The Court has discretion to establish reasonable bail; however, bail which exceeds the following limits raises the rebuttable presumption that it is unreasonable, oppressive or excessive and a violation of the Crow Constitution Bill of Rights, Article XI.h:

- (i) for a Class A offense, \$1,000.00;
- (ii) for a Class B offense, \$750.00; and
- (iii) for a Class C offense, \$500.00;

(5) If a defendant otherwise eligible for bail is granted bail in an amount which does not exceed the limits set forth in this section, the amount of bail is deemed reasonable. The amount of bail may be cumulative if more than one offense is charged.

(6) If a defendant otherwise eligible for bail is granted bail in an amount which exceeds the limits set forth in this section, the Court shall make specific findings of the reasons therefor and the defendant shall have an immediate right of appeal to the Crow Appellate Judge on the sole issue of the defendant's right to reasonable bail. The Appellate court hearing shall have priority over all other appellate matters and shall be held within five calendar days of the filing for appeal by the defendant. If for some reason there is no Appellate Judge available an appointed Special Judge shall hear the appeal within the five calendar days.

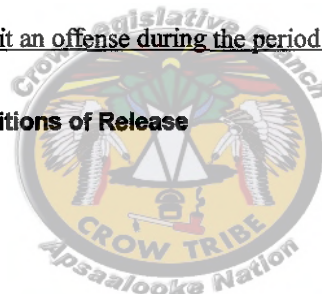
(7) A separate bond determination must be made for each case in which the person is a defendant. A bond is applicable only to the specific offense(s) charged in a single case and may not be retained after exoneration in that case on account of any other unrelated charges.

8A-5-107. Conditions Upon Defendant's Release.

(1) The Court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including, but not limited to the following conditions:

(i) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the Court if the designated person is reasonably able to assure the Court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(ii) the defendant may not commit an offense during the period of release;



- (iii) the defendant shall maintain employment or, if unemployed, actively seek employment;
- (iv) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;
- (v) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;
- (vi) the defendant shall comply with a specified curfew;
- (vii) the defendant may not possess a firearm, destructive device, or other dangerous weapon;
- (viii) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;
- (ix) the defendant shall report on a regular basis to a designated agency or individual, or both;
- (x) the defendant shall undergo evaluation and/or treatment for a medical condition and/or for substance abuse or addiction;
- (xi) the defendant shall furnish bail; or
- (xii) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The Court shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community.

(3) At any time, the Court may, upon a reasonable basis, amend the order of release to impose additional or different conditions of release upon its own motion or upon the motion of either party, after reasonable notice to the opposing party.

8A-5-108. Bail Schedule to be Posted by Court Annually.

(1) The Chief Judge of the Tribal Court shall establish and post a schedule of bail for offenses, including civil traffic violations, to be used by law enforcement officers. The Court has discretion to determine which offenses or violations of law should not be included in the schedule of bail and shall specifically set or deny bail for any offense not listed on the posted schedule.

(2) The Chief Judge of the Tribal Court shall replace any existing bail schedule with a revised bail schedule approved by the Legislature by January 31 of each year or shall enter on the record of the Court its determination that the current schedule requires no modification.

(3) A law enforcement officer may accept bail on behalf of the Tribal Court whenever the amount of bail is specified in the warrant of arrest or in accordance with the posted bail schedule.

(4) When a law enforcement officer accepts bail, based on an arrest warrant or current bail schedule, the officer shall give a signed receipt to the offender setting forth the bail received and the name of the person posting the bail. At the earliest time practicable, the law enforcement officer shall deliver the bail and duplicate copy of the bail receipt to the Tribal Court, obtaining a receipt for the bail delivered from a Clerk of Court.

8A-5-109. Forms of Bail.

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(1) Bail may be furnished in the following ways, as the Court may require:

- (i) by a deposit with the Court of an amount equal to the required bail of cash or other personal property approved by the Court;
- (ii) by pledging real estate situated within the Reservation with an unencumbered equity, not exempt, owned in fee simple by the defendant or sureties at a value double the amount of the required bail;
- (iii) by posting a written undertaking by the defendant and by two sufficient sureties; or
- (iv) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding and remain in effect until final sentence is pronounced in open court.

(3) Nothing in this part prohibits a surety from surrendering the defendant in a case in which the surety feels insecure in accepting liability for the defendant.

8A-5-110. Property and surety bonds.

(1) If property posted as a condition of release is personal property, the defendant or sureties shall file a sworn schedule that must contain a list of the personal property, including a description of each item, its location and market value, and the total market value of all items listed.

(2) If the property is real estate the defendant or sureties shall file a sworn schedule that must contain a legal description of the property, a description of any encumbrance on the property, including the amount of each encumbrance and its holder, and the market value of the unencumbered equity owned by the defendant or sureties.

(3) If the property is a written undertaking with sureties, each surety must be a Reservation resident and worth the amount specified in the undertaking, exclusive of property exempt from execution, but the Court may allow more than two sureties to justify severally and in amounts less than that expressed in the undertaking if the whole justification is equivalent to the amount required.

(4) If the property posted is a commercial bond, it may be executed by any domestic or foreign surety company that is qualified to transact surety business in Montana. The undertaking must state the following:

- (i) the name and address of the surety company that issued the bond;
- (ii) the amount of the bond and the unqualified obligation of the surety company to pay the Court should the defendant fail to appear as guaranteed; and
- (iii) a provision that the surety company may not revoke the undertaking without good cause.

(5) The Court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted.

8A-5-111. Release of Bail.

When all conditions of release have been satisfactorily performed and the defendant has been discharged from any obligations imposed by the Tribal Court, the Court shall return any security posted by the defendant to satisfy bail requirements.

8A-5-112. Violation of a Release Order.



(1) If a defendant violates a condition of release, including failure to appear, the prosecutor may make a motion to the Court for revocation of the order of release. The Court may issue a warrant for the arrest of a defendant charged with violating a condition of release and declare the bail to be revoked. Upon arrest, the defendant must be brought before the Court without unnecessary delay and the Court shall conduct a hearing and re-determine bail. On finding probable cause that the defendant has violated a tribal, federal, or any other law, or on finding a violation of any other release condition by clear and convincing evidence, the Court may:

- (i) reinstate the original release order on the same conditions and amount of bail; or
- (ii) revoke the original bail, increase the amount of the bail and modify the conditions of release; or
- (iii) at the defendant's request, revoke the defendant's release for any period of time, up to 10 days, and then reinstate release on the original conditions and bail or on such conditions and bail as the Court deems appropriate. Such time shall not be credited as time served.

(2) This section provides the exclusive remedy for a violation of a release order. A defendant may not be charged with contempt or found in contempt for violation of a release order.

(3) Neither a cash bond nor a commercial bond may be forfeit for violation of release conditions, except for failing to appear for Court proceedings without a lawful excuse.

8A-5-113. Forfeiture Order.

(1) If within 90 days of the forfeiture order, the defendant, or the defendant's surety, appears and presents evidence justifying the defendant's failure to appear or otherwise meet the conditions found in the release order, the Tribal Court may direct the forfeiture of the bail to be discharged upon such terms as are just.

(2) If the forfeiture order is not discharged by the Tribal Court, the Court shall proceed with the forfeiture of bail as follows:

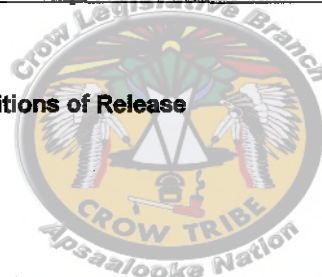
- (i) if money has been posted as bail, the Court shall issue an order directing that the funds be paid into the Tribe's general fund; or
- (ii) if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions and the proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the forfeiture must be paid into the Tribe's general fund; or
- (iii) if a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions and the proceeds must be paid into the Tribe's general fund.

8A-5-114. Surrender of Defendant.

(1) At any time before the forfeiture of bail:

- (i) the defendant may surrender to the Court or any Tribal law enforcement officer; or
- (ii) the surety company may arrest the defendant and surrender the defendant to the Court or to any Tribal law enforcement officer.

(2) If surrendered to a law enforcement officer, the officer will detain the defendant in the officer's custody and shall file a notice of the surrender in Court or with the prosecutor, who shall file it in the court record. The Court may then order the bail exonerated.



Section 2. Title 3, Section 3-3-305, is amended as follows:

3-3-305. Special Judges. The Chief Judge, in his or her discretion, may contract with a professional attorney licensed to practice before the highest court of any state, to sit as a Special Judge of the Tribal Court for a particular matter or proceeding or, in an appropriate case, may appoint a Crow tribal member to serve as a mediator or cultural specialist to assist the Court. Special Judges shall be subject to the rules of judicial ethics otherwise applicable to Crow Tribal Court Judges and to removal by the Judicial Ethics Board, and these requirements shall be stated in all Special Judge contracts. Special Judge or other contracts entered into by the Chief Judge to handle a particular matter pending before the Court shall not be subject to approval by any officer of any other Branch of the Tribal Government, subject to the approved Judicial Branch budget except that a person may not sit as a Special Judge on more than one case without being confirmed by the Crow Legislature.

Section 3. Upon enactment of this Bill by the Crow Tribal Legislature and approval of the Chairman of the Executive Branch, the Crow Law and Order Code is amended with an immediate effective date.



CERTIFICATION

I hereby certify that this Bill:

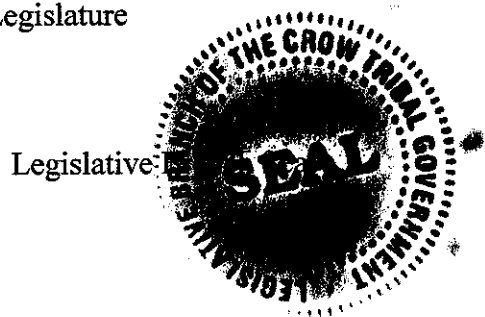
“AN ACT TO AMEND TITLE 8A, CRIMINAL PROCEDURE, CHAPTER 5, OF THE CROW LAW AND ORDER CODE TO PROVIDE FOR BAIL AND OTHER CONDITIONS OF PRETRIAL RELEASE AND TO AMEND TITLE 3 TO PROVIDE FOR CONFIRMATION OF CONTINUING SPECIAL JUDGE APPOINTMENTS”

Was duly passed by the Crow Tribal Legislature with a vote of 14 in favor, 1 opposed, And 0 abstained and that a quorum was present on this 9TH day of April, 2007.


Speaker of the House
Crow Tribal Legislature

ATTEST:


Secretary, Crow Tribal Legislature



Legislative:

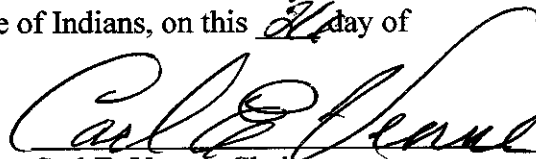
EXECUTIVE ACTION

I hereby
_____ approve
_____ veto

this Bill:

“AN ACT TO AMEND TITLE 8A, CRIMINAL PROCEDURE, CHAPTER 5, OF THE CROW LAW AND ORDER CODE TO PROVIDE FOR BAIL AND OTHER CONDITIONS OF PRETRIAL RELEASE AND TO AMEND TITLE 3 TO PROVIDE FOR CONFIRMATION OF CONTINUING SPECIAL JUDGE APPOINTMENTS ”

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 9th day of July, 2007.


Carl E. Venné, Chairman
Crow Tribal Executive Branch

SEE EXECUTIVE BRANCH ACTION “CLB07-04”



Bill or Resolution Number CLB07-04 Introduced by Executive Date of Vote January 17, 2007
 Branch

Representative:	Yes	No	Abstained
L. Plain Bull	✓		
O. Costa			
V. Crooked Arm	✓		
M. Not Afraid	✓		
R. Iron	✓		
B. House	✓		
E. Fighter	✓		
L. Costa			
L. Hogan		✓	
S. Fitzpatrick			
K. Real Bird	✓		
M. Covers Up	✓		
L. Not Afraid	✓		
B. Shane		✓	
J. Stone			
D. Wilson		✓	
R. Old Crow <i>Secretary of the House</i>	✓		
D. Goes Ahead <i>Speaker of the House</i>	✓		
Totals:	11	3	0

Result of Vote:

Passed Not Passed Tabled Veto Override

Signature Officer: Carlson [Signature] Date: 1-17-07



EXECUTIVE ACTION
FOLLOWING VETO AND OVERRIDE
CLB07-04

The foregoing Act, CLB07-04 "AN ACT TO AMEND TITLE 8A, CRIMINAL PROCEDURE, OF THE CROW LAW AND ORDER CODE TO PROVIDE FOR BAIL AND OTHER CONDITIONS OF PRETRIAL RELEASE AND TO AMEND TITLE 3 TO REQUIRE CONFIRMATION OF CONTINUING SPECIAL JUDGE APPOINTMENTS," (the "Act"), was passed by the Legislature on January 17, 2007. The Act was not approved by the Chairman of the Executive Branch within the time provided in Section 1-3-101 of the Crow Law and Order Code (as added by CLB06-08, "An Act to Establish a Time Limit for Executive Veto, a Veto Override Process, and a Referendum Process"), and was therefore deemed to have been vetoed. The veto was overridden by vote of two-thirds of the members of the Legislature during its next regular Session on April 9, 2007. No Referendum on the override having been held, the Act became effective on the first day of the next regular Session of the Legislature pursuant to CLOC Section 3-1-103, which was July 11, 2007. Pursuant to Section 1-3-103, the Executive Branch Chairman is required to sign the legislation, provided, however, that pursuant to Section 1-3-107, such signature shall not be interpreted to waive or prevent the exercise of any legal or equitable remedies to test the constitutionality of the legislation in the Crow Tribal Court.

Now, therefore, as required by Section 1-3-103 of the Crow Law and Order Code, and without waiving any right to challenge its constitutionality, I hereby affix my signature to this Act signifying its effectiveness as of July 11, 2007.

DATED this *11th* day of July, 2007.


Carl E. Venne, Chairman
Crow Tribal Executive Branch

