

TITLE II

CHAPTER 3

PROBATION AND PAROLE

Part 1

Administration

2-3-101. Establishment of Department of Tribal Probation and Parole. There is established a Tribal Department of Probation and Parole (hereafter "the Department"), 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.

2-3-102. Organization of the Department. The Department is managed by a Department Head, subject to the supervision of the Tribal Executive Secretary, and is comprised of adult probation officers, juvenile probation officers, community service officers, support staff, and such other personnel as may be deemed necessary and approved by the Tribal Council by means of its budgeting process.

2-3-103. Powers and duties of juvenile probation officers. The powers and duties of juvenile probation officers are those set forth in the Tribal Juvenile Justice Code, Ordinance 99A.

2-3-104. Definitions. As used in this Chapter, unless the context otherwise requires, the following definitions apply:

(1) "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.

(2) "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.

(3) "Probation" means the release by the Court without imprisonment of an adult 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.

(4) "Supervised offender" is an adult offender (a) sentenced to probation, (b) whose sentence is deferred, or (c) released from incarceration subject to conditions imposed by the Court and subject to the supervision of the Department.

2-3-105. Adult Probation Duties of the Department. The duties of the Department are:

(1) To undertake investigations and make reports, including a pre-sentence investigations and reports, which may include alternative sentencing recommendations, requested by the Tribal Court;

(2) To supervise an adult probationer or parolee when requested to do so by a court of competent jurisdiction, in accord with the conditions set by the court;

(3) To assure that a copy of the conditions of probation or parole is signed by the supervised offender and given to him or her;

(4) To regularly advise and consult with the supervised offender to encourage him or her to improve his or her condition;

- (5) To keep records and report on the progress of persons supervised as the court may require;
- (6) To identify and, where necessary, mobilize Tribal or community programs to which supervised offenders may be assigned for evaluation, treatment, or rehabilitation, or for the purpose of performing community services, and to monitor the execution and progress of any such court-ordered assignment; and
- (7) To cooperate with all agencies, Tribal, public and private, that are concerned with the treatment or welfare of persons on probation or parole.

2-3-106. Powers of the Department of Adult Probation. (1) An adult probation officer, in his or her supervision of an adult offender, is vested with all the authority of a Tribal law enforcement officer, including, without limitation,

- (a) the authority to carry firearms, including concealed firearms, when necessary,
- (b) the authority to request a judge of the Tribal Court to issue a warrant for arrest of the supervised offender or for search and seizure of the offender's person or property,
- (c) the authority to arrest a supervised offender without a warrant for violation of a condition of probation or parole and commit the offender to Tribal jail by presenting to the Tribal police a written statement that the offender has, in the judgment of the officer, violated the conditions of his or her release, and
- (d) the authority to conduct a search without warrant upon reasonable cause.

(2) The Department may:

- (a) recommend to the Tribal Council for adoption rules for the conduct of adults placed on parole or probation, except that the Department may not recommend, and the Council may not adopt, any rule conflicting with conditions of parole or probation imposed by a court of competent jurisdiction; and
- (b) adopt requirements for the training of adult probation officers.

Part 2

Probation

2-3-201. Declaration of purpose and policy. The Tribal Council finds and declares that probation is a desirable disposition of appropriate criminal cases because:

- (1) It provides a framework by which the Tribes can supervise positive rehabilitative measures imposed on an offender by a court;
- (2) 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;
- (3) 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;
- (4) It affirmatively promotes the rehabilitation of the offender by continuing normal community contacts; and
- (5) It minimizes the impact of the conviction upon innocent dependents of the offender.

2-3-202. Penalty upon revocation of probation or parole. (1) A person who is found, after a hearing, to have violated a condition of his or her probation may be required:

- (a) 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
 - (b) In the case of deferred imposition of sentence, to serve such sentence as may be imposed by the Court after a sentencing hearing.
- (2) 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.

2-3-203. Arrest for violation of a condition of probation. (1) As provided in Section 2-3-106(1)(b) and (c), an adult probation officer may arrest a supervised offender for violation of a condition of probation. Any probation officer may arrest the prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him or her a written statement setting forth that the prisoner has, in the judgment of the probation officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the Tribal jail shall be sufficient warrant for the detention of the probationer or conditional release. Pending hearing upon a charge of violation the prisoner may be incarcerated in the Tribal jail.

- (2) In the event of such arrest, the probation officer shall forthwith cause to be filed a petition for revocation of probation, which shall include, but not be limited to, facts showing the basis for the arrest and for revocation of probation.
- (3) An arrested probationer is entitled to determination of probable cause for the grounds for his or her arrest within 48 hours, exclusive of weekend and holidays, of the time of arrest.
- (4) If probable cause is found for the arrest, the arrested probationer shall be held in the Tribal jail without bail until the probation revocation hearing is held.

2-3-204. Probation revocation hearing. (1) A probationer is entitled to a hearing before the Court prior to revocation of probation within 10 days of the date of notice of revocation or the date of arrest for violating a

condition of probation, unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

(2) 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.

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

(4) 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.

(5) 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.

(6) The probationer has a right to counsel 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.

(7) The Court shall determine the appropriate disposition of a 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.

(8) An order revoking probation shall be in writing and shall contain findings of fact, including, but not necessarily limited to, those required in subsection (7), and conclusions of law supporting the revocation.

Part 3

Parole

2-3-301. Duties of the Adult Probation and Parole Officer. (1) 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.

(2) 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.

(3) 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 may be necessary or desirable.

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

- (a) Employment counseling and job placement;
- (b) family and individual counseling and treatment placement;
- (c) financial counseling;
- (d) vocational and educational counseling and placement; and
- (e) referral services to any appropriate agency.

2-3-302. 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.

2-3-303. 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.

2-3-304. Granting parole. (1) In determining whether to grant parole, the Court shall consider all pertinent information including, but not limited to, the following:

- (a) The circumstances and nature of the offense;
- (b) The past criminal record of the petitioner;
- (c) The past employment record of the petitioner;
- (d) The conduct of the petitioner during imprisonment;
- (e) The results of any physical or psychological reports; and

(f) 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.

(2) The order granting parole shall set forth:

(a) The duration of parole;

(b) The conditions of parole;

(c) Commitment to the custody of the adult probation and parole officer; and

(d) The consequences of violating a condition of parole.

2-3-305. Penalty for violation of a condition of parole. Any 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.

2-3-306. Arrest of alleged parole violator. Any parole officer may arrest the prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him or her a written statement setting forth that the prisoner has, in the judgment of the parole officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the Tribal jail shall be sufficient warrant for the detention of the parolee or conditional release. Pending hearing upon a charge of violation the prisoner may be incarcerated in the Tribal jail.

2-3-307. Determination of probable cause after arrest. An arrested parolee is entitled to a determination within 48 hours, exclusive of weekends and holidays, of whether there is probable cause to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. *(Rev. 1-27-00)*

2-3-308. Parole revocation hearing. (1) Upon a finding of probable cause or waiver of the hearing or upon issuance of a notice of parole violation by the Adult Probation Officer, the Officer shall file a petition for revocation of parole with the Court. Such petition must be filed within the parole period and served upon the parolee.

(2) 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 that good cause for delay exists.

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

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

(5) 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.

(6) A parolee has the right to legal counsel.

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

(8) 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 Tribe.