

Part XI Probation

Chapter 1 Probation

Section 1 Probation Proceedings

- (A) Whenever it places a person on probation, the court shall:
 - (1) specify on the record the conditions of the probation; and
 - (2) advise the person that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed;
 - (a) Violation occurs before sentence is served;
 - (b) Ten (10) days after the prosecutor receives notice of the violation.
- (B) In addition, if the person was convicted of an offense and is placed on probation, the court shall order the person to pay to the Tribal Court a probation fee.
- (C) In addition to any other conditions of probation, the court may order each person convicted of an offense to pay:
 - (1) not less than a fifty dollar (\$25) initial probation fee;
 - (2) not less than a ten dollar (\$25) monthly probation fee for each month that the person remains on probation.
- (D) All money collected under this section shall be collected by the criminal clerk shall who shall deposit the money into the tribal court general fund.
- (E) A person placed on probation for more than one (1) crime may not be required to pay more than:
 - (1) one (1) initial probation user's fee; and
 - (2) one (1) monthly probation user's fee per month; to the probation department.

Section 2 Alcohol and Drug Use

- (A) As a condition of probation for a person who is found to have; committed an offense related to alcohol the court shall require the person to pay the alcohol and drug fee and drug testing costs.

Section 3 Conditions of Probation

- (A) As a condition of probation, the court may require a person to do a combination of the following:
 - (1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment.
 - (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
 - (3) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

- (4) Support the person's dependents and meet other family responsibilities.
 - (5) Make restitution or reparation to the victim of the crime for damage or
 - (6) injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount of the person can or will be able to pay, and shall fix the manner of performance.
 - (7) Execute a repayment agreement with the appropriate governmental entity to repay the full amount of public relief or assistance wrongfully received, and make repayments according to a repayment schedule set out in the agreement.
 - (8) Pay a fine.
 - (9) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.
 - (10) Report to a probation officer at reasonable times as directed by the court or the probation officer.
 - (11) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.
 - (12) Remain within the jurisdiction of the court, unless granted permission to leave the court or by the person's probation officer.
 - (13) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.
 - (14) Perform uncompensated work that benefits the community.
 - (15) Satisfy other conditions reasonably related to the person's rehabilitation.
 - (16) Undergo home detention.
 - (17) Undergo a laboratory test or series of tests approved by the department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if: the person had been convicted of a sex crime and the crime created an epidemiological demonstrated risk of transmission of the human immunodeficiency virus (HIV);
or
 - (18) Refrain from any direct or indirect contact with an individual.
 - (19) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child.
 - (20) Periodically undergo a laboratory chemical test or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance. The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.
 - (21) Any others allowable by law.
- (B) When a person is placed on probation, the person shall be given a written statement specifying:
- (1) the conditions of probation; and
 - (2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed;

- (a) If the violation occurs before sentence is served; or
- (b) Ten (10) days after the prosecutor receives notice of the violation.

- (C) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation determined by the court.

- (D) Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the jail facility, patient treatment, or regulated program. The intermittent term is computed on the basis of the actual day spent in confinement and shall be completed within one (1) year. A person does not earn credit time while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:
 - (1) the term of imprisonment;
 - (2) the days or parts of days during which a person is to be confined; and
 - (3) the conditions.

- (E) As a condition of probation, the court may require a defendant charged with a child abuse or sex offense to:
 - (1) participate in a treatment program for sex offenders approved by the court;
 - (2) avoid contact with any person who is less than sixteen (16) years of age unless the probationer:
 - (a) receives the court's approval; or
 - (b) successfully completes the treatment program referred to in subsection (1).

Chapter 2 Probation Revocation

Section 1 Petition and Hearing on Revocation of Probation

- (A) The court may revoke a person's probation if:
 - (1) the person has violated a condition of probation during the probationary period; and
 - (2) the petition to revoke probation is filed during the probationary period.

- (B) When a petition is filed charging a violation of a condition of probation, the court may:
 - (1) order a summons to be issued to the person to appear; or
 - (2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.

- (C) The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.

- (D) The court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing.

- (E) The prosecutor must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel, at his own expense.
- (F) Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person.
- (G) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:
 - continue the person on probation, with or without modifying or enlarging the conditions;
 - (1) extend the person's probationary period for not more than one (1) year beyond the original probationary period; or
 - (2) order execution of the sentence that was suspended at the time of initial sentencing.
- (H) If the court finds that the person has violated a condition during any time before the termination of the period, and the petition is filed under subsection A before the probationary period has expired, the court may:
 - (1) extend the length of the original probationary period as long as the reinstated probationary period does not exceed the length of the maximum sentence allowable for the offense that is the basis of the probation; or
 - (2) order execution of the sentence that was suspended at the time of the initial sentencing.
- (I) A judgment revoking probation is a final appealable order.
- (J) Failure to pay fines or costs required as a condition of probation may not be the sole basis for commitment to jail.

Section 2 Incarceration

- (A) As used in this chapter: "Earliest possible release date" means the date, computed as of the date of sentencing, on which a person would be entitled to discharge or release on parole considering:
 - (1) the term of the sentence;
 - (2) the term of any other concurrent or consecutive sentence that the person must serve;
 - (3) credit time that the person has earned before sentencing; and "Receiving authority" means:
 - (4) the tribal jail or detention facility; or
 - (5) a facility or place designated by the court.

- (B) When a convicted person is sentenced to incarceration the court shall, without delay, certify, under the seal of the court, copies of the judgment of conviction and sentence to the receiving authority.
- (C) The judgment must include:
 - (1) the crime for which the convicted person is adjudged guilty and the classification of the criminal offense;
 - (2) the period, if any, for which the person is rendered incapable of holding any office of trust or profit;
 - (3) the amount of the fines or costs assessed, if any;
 - (4) the amount of credit, including credit time earned, for time spent in confinement before sentencing; and
 - (5) the amount to be credited toward payment of the fines or costs for time spent in confinement before sentencing.
- (D) The judgment may specify the degree of security recommended by the court.
- (E) A term of incarceration begins on the date sentence is imposed, unless execution of the sentence is stayed according to law.

Part XII Expungement of Records

Chapter 1 Expungement of Records

Section 1 When Expungement is Applicable

- (A) Whenever:
 - (1) an individual is arrested but no criminal charges are filed against the individual; or
 - (2) all criminal charges filed against an individual are dropped because:
 - (a) of a mistaken identity;
 - (b) no offense was in fact committed; or
 - (c) there was an absence of probable cause; the individual may petition the court for expungement of the records related to the arrest.

Section 2 Petition for Expungement

- (A) A petition for expungement of records must be verified and filed in the court in which the charges were filed. The petition must set forth:
 - (1) the date of the arrest;
 - (2) the charge;
 - (3) the arresting officer;
 - (4) any other known identifying information, such as the name of the arresting officer, case number, or court case number;
 - (5) the date of the petitioner's birth; and
 - (6) the petitioner's social security number;

- (7) the date petition is served upon the law enforcement agency and the prosecutor.
- (B) The petitioner, on the law enforcement agency and the prosecutor's central repository for records, shall serve a copy of the petition.

Section 3 Receipt of Expungement by Law Enforcement Officer

- (A) Upon receipt of a petition for expungement, the tribal prosecutor if he/she desires to oppose the expungement shall file notice of opposition with the court setting forth reasons for resisting the expungement along with any sworn statements from individuals that explain the reasons for resisting the expungement within thirty (30) days after the petition is filed. A copy of the notice of opposition and copies of any sworn statements shall be served on the petitioner in accordance with the Rules of Civil Procedure.
- (B) The court shall:
 - (1) summarily grant the petition; or
 - (2) set the matter for hearing; or
 - (3) summarily deny the petition, if the court determines that:
 - (a) the petition is insufficient; or
 - (b) based on information contained in sworn statements the petitioner is not entitled to an expungement of records.

Section 4 Hearing Necessary if Objection to the Petition

- (A) If a notice of opposition is filed and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.
- (B) After a hearing is held under this section, the petition shall be granted unless the court finds:
 - (1) The individual has a record of arrests other than minor traffic offenses; or
 - (2) Additional criminal charges are pending against the individual.
- (C) If the petition for expungement is granted, the law enforcement agency shall within thirty (30) days of receipt of the court order, deliver to the individual or destroy all fingerprints, photographs, or arrest records in their possession.

Part XIII Parole and Clemency

Chapter 1 Parole and Clemency

Section 1 Eligibility for Parole

- (A) When a person imprisoned for an offense completes his/her fixed term of imprisonment, less the credit time he has earned with respect to that term, he shall be released:

- (1) on parole for a period not exceeding twenty-four (24) months, as determined by the parole board established by Judicial Committee; or
 - (2) to the committing court if his/her sentence included a period of probation.
- (B) A person released on parole remains on parole from the date of his/her release until his/her fixed term expires, unless his/her parole is revoked or he/she is discharged from that term by the parole board. In any event, if his/her parole is not revoked, the parole board shall discharge him/her. A person whose parole is revoked shall be imprisoned for the remainder of his/her fixed term. However, he/she shall again be released on parole when he/she completes that remainder, less the credit time he/she has earned since the revocation. The parole board may reprosecute him/her on parole at any time after the revocation.
- (C) In addition to any credit time a person earns under this chapter and in addition to any reduction of sentence a person receives, a person earns credit time if the person:
- (1) Has demonstrated a pattern consistent with rehabilitation; and
 - (2) Successfully completes requirements to obtain one of the following:
 - (a) A general educational development (GED) diploma if the person has not previously obtained a high school diploma.
 - (b) A high school diploma.
 - (c) An associate's degree from an approved institution of higher learning.
 - (d) A bachelor's degree from an approved institution of higher learning.
- (D) The amount of credit time a person may earn under this section is the following:
- (1) Six (6) months for completion of general educational development (GED) diploma.
 - (2) One (1) year for graduation from high school.
 - (3) One (1) year for completion of an associate's degree.
 - (4) Two (2) years for completion of a bachelor's degree.
- (E) Credit time earned by a person under this section is subtracted from the period of imprisonment imposed on the person by the sentencing court.
- (F) A person does not earn credit time under subsection A unless the person completes at least a portion of the degree requirements after June 30, 1997.
- (G) The maximum amount of credit time a person may earn under this chapter is the lesser of:
- (1) four (4) years; or
 - (2) one-third (1/3) of the person's total applicable credit time.
- (H) Any person may, with respect to the same transaction, be deprived of any part of the credit time he/she has earned for any of the following:
- (1) A violation of one (1) or more rules of the Law and Order Department.

- (2) If a court determines that a civil claim brought by the person in a Tribe an administrative court is frivolous, unreasonable, or groundless.
- (1) Before a person may be deprived of earned credit time, the person must be granted a hearing to determine his guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in chapter C(b) of this chapter. The person may waive his right to the hearing. Any part of the credit time of which a person is deprived under this section may be restored.