

TITLE III
CHIPPEWA CREE TRIBAL
CRIMINAL PROCEDURE

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TITLE III CRIMINAL PROCEDURE

Chapter 1 SHORT TITLE

1.1 Title:

 This Title shall be known as the Code of Criminal Procedure of the Chippewa-Cree Tribe of the Rocky Boy's Reservation,

Chapter 2 SCOPE AND CONSTRUCTION

2.1 Scope and Construction:

(1) These rules shall govern the procedure in all criminal actions by the Chippewa-Cree Tribe of the Rocky Boy's Reservation.

(2) The common law of the Chippewa and Cree peoples, as expressed in their customs and traditions, shall apply unless inconsistent with the Code or an ordinance of the Chippewa-Cree Tribe.

Chapter 3 INSTITUTION OF THE CRIMINAL PROCESS

3.1 Notice of Crime:

(1) The notice to appear and complaint notifies the defendant as well as the court that a criminal charge is being filed by the prosecutor against the defendant, the facts upon which the charge is based, and the witnesses who will testify to those facts.

(2) The notice to appear and complain must be in writing and include;

(a) The name of the Court which has authority to hear the case;

(b) The name of the defendant;

(c) The crime committed, including the Code Section;

(d) The time, place and facts constituting the crime;

(e) The witnesses, who will testify to those facts. No additional witnesses may be added except for good cause and with permission of the court.

(f) The signature of the prosecutor or an official of the Court designated by the prosecutor.

(3) The complaint may charge more than one (1) offense and more than one (1) Defendant, provided the offenses were connected in time and location or were part of a continuing criminal activity, and providing the defendants were involved together in one (1) or more of the crimes. Offenses and defendants may be joined or separated for good cause shown and by order of the Court.

(4) The complaint shall be filed by the prosecutor with the Court. A copy of the complaint shall be served on the defendant at the first opportunity.

Chapter 4 OBTAINING THE PRESENCE OF THE DEFENDENT

4.1 Arrest:

(1) An arrest is taking a person into physical custody. Only reasonable or necessary force may be used.

(2) All arrests must be based on probable cause to believe the defendant has committed an offense.

(a) An arrest may be without a warrant of arrest, if the arrest is made during or immediately after the commission of the offense and existing circumstances require the immediate arrest of the defendant.

(b) An arrest may be based upon a warrant of arrest, signed by the judge.

(3) The police officer must inform the person arrested if the authority for the arrest and the reason for the arrest. The officer must provide the arrested person with a copy of the warrant of arrest, if one has been issued, and a copy of the complaint, if one has been filed.

Chapter 5 OBTAINING EVIDENCE OF THE CRIME

5.1 Interrogation:

Before the defendant may be asked any questions, the arresting officer, prosecutor or judgment must inform the defendant of his right to remain silent; to have counsel, at defendant's own expense, or lay counsel, or someone else present during questioning; and that anything the defendant may say could be used against him at trial.

5.2 Search and Seizure.

(1) All searches must be based on probable cause to believe evidence of a crime may be found at the location to be searched.

(a) Police officers may search the person the person and the area immediately around the arrested person incident to a lawful arrest for the purpose of protecting the police officer or preventing the destruction of evidence.

(b) All other searches and seizures must be based on a search warrant which specifically describes evidence to be seized and the location to be searched. All search warrants must be signed and issued by a judge.

5.3 Discovery:

(1) Either the defendant or the prosecutor may make discovery of non-parties by subpoena or deposition.

(2) The defendant may, upon request, inspect and make copies of any physical evidence in the hands of the police or the prosecutor.

(3) The defendant shall also receive timely notice of any witnesses for the prosecution not named on the charging document.

**CHAPTER SIX
PROCEEDINGS BEFORE TRIAL**

I. Initial Appearance and Arraignment:

A. Initial Appearance. The defendant must be taken to the nearest and most accessible judge, at the next court session or before seventy-two (72) hours have passed, whichever is first.

1. The judge shall advise the defendant as follows;

a. You have a right to be released in your personal recognizance or to bail;

b. You have the right to remain silent.

c. You have the right to have an attorney at your own expense, or to have lay counsel or someone else with you.

2. If the defendant has not received a copy of the Notice of Crime, the judge has not been prepared, it shall be prepared, signed, and a copy given to the defendant at this time.

3. If the defendant appeared before the Court upon a determination of probable cause made by a police officer only, the judge must review the determination of probable cause. If the judge rejects the determination, the defendant must be released. If the judge endorses the determination, the defendant must be arraigned as soon as possible at the next court session or before seventy-two (72) hours have passed, whichever is first.

B. Arraignment:

1. At arraignment the judge shall call upon the defendant to plead to the charge. The defendant shall plead guilty or not guilty. If the defendant refuses to plead or remains silent, a plea of not guilty shall be entered into the record.

2. Before a plea may be accepted, the judge must;
 - a. Ask the defendant to state his true name;
 - b. Determine if the defendant is under any disability;
 - c. Advise the defendant of the nature of the offense charged and the possible punishment;
 - d. Advise the defendant that he may plead at that time or may wait at least twenty-four (24) hours to plead and/or to obtain counsel or a friend;
 - e. Advise the defendant that a plea if guilty waives defendant's Right to:

“A jury trial, if the offense charged carries a penalty of imprisonment”
“Compel witnesses to testify in defendant's behalf”
“Confront and cross-examine witnesses for the prosecution; and”
“Testify or not to testify in the defendant's own behalf.”

3. If the judge determines the defendant's guilty plea is involuntary or without full understanding, he must reject the guilty plea and enter a plea of not guilty into the record.
4. If the arraignment is separated by more than twenty-four (24) hours, the Court shall reassess bail, if any, and again advise the defendant of his right to bail.

II. Bail:

The judge shall release the defendant on his own recognizance, or into the custody of into the custody of another resident of the reservation, unless it appears to the judge that the defendant will not be present for trial. If it so appears, the judge shall set bail no greater an amount than will tend to assure the appearance of the defendant at trial. Bail may be satisfied by money or other property of equal monetary value. All persons arrested and incarcerated shall be given the opportunity to make bail and be released.

III. Plea Agreement:

Any plea agreement between the defendant and the prosecutor shall be noticed by the judge in open court at the time the plea is made. The judge may accept the plea only in conjunction with the agreement surrounding the plea. If the judge rejects the agreement, then the judge must allow the defendant to withdraw the plea. Any plea so rejected is not admissible in any legal proceeding.

IV. Pretrial Conference and Motion:

- A.** Prior to trial a conference shall be held, attended by the judge, the Defendant, defendant's counsel or friend, the prosecutor and anyone invited by them with the judge's consent. The judge may set the trial date and any deadlines for motions or the completion of discovery.
- B.** The Order and Memorandum of the Pretrial Conference shall contain the agreements reached by the parties and the orders of the judge given at the conference. The Order and Memorandum of the Pretrial Conference shall be the only record of the conference. No statements made by any participant at the conference shall be admissible in any proceeding.
- C.** The defense or prosecution may at any time prior to trial, by written motion, request the judge to take whatever action seems necessary in the interest of fairness. Any motion shall be filed with the judge and a copy served on the opposing party.
 - 1.** The motion shall recite the defense, objection, or request made and state the reason for the motion. It shall state the action requested of the judge.
 - 2.** Motions may request;
 - a.** Substitution of the judge because of bias or other cause;
 - b.** Time to prepare;
 - c.** Continuance;
 - d.** A list of witnesses;
 - e.** Suppression of a confession or of evidence claimed to have been illegally seized;
 - f.** The production of evidence; or
 - g.** Joiner or severance of offenses or defendants; but are not limited to those requests.
- D.** The judge shall rule on all motions as soon as possible, but always before instructing the jury or, in a trial by the judge, before rendering a verdict.

CHAPTER SEVEN TRIAL

I. Trial Procedure:

- A.** If the defendant pleads not guilty, the judge shall set a trial date. The defendant shall be allowed a reasonable time to prepare for trial. The judge must insure there is no unreasonable or unnecessary delay infringing the defendant's right to a speedy trial.

- B.** All trials shall be open to the public and must accord the defendant the right to;
 - 1.** Be present through the trial and to defend himself in person, by friend, or by lay counsel or professional attorney at his own expense.

 - 2.** Meet the witnesses for the prosecution face to face and to cross-examine them.

 - 3.** Compulsory process through the power of the Court to obtain and develop the testimony of witnesses and to obtain physical evidence in his behalf.

 - 4.** Testify or not testify. If the defendant does not testify, the prosecution may not comment upon the lack of testimony by the defendant, nor may it be constructed against the defendant.

- C.** In all trials, the defendant is presumed to be innocent, the burden of proof rests on the prosecution, and the prosecution must provide beyond a reasonable doubt each element the crime charged and that the defendant committed the crime charged. In every trial before a jury, the judge shall charge the jury with the presumption of innocence of the defendant and the prosecution's burden of proof.

- D.** A charge may be dismissed in the discretion of the judge at any time prior to verdict, upon the motion of the court, the defendant or the prosecutor, and upon the order of the judge.
 - 1.** If the order to dismiss is prior to trial, the judge must state whether the dismissal is for cause or not. If dismissed for cause, no new charge based on the same facts may be filed against the defendant. If dismissed without cause, new charges may be filed.

 - 2.** If the order to dismiss is made at any time after the jury is impaneled and sworn, the judge need not determine whether the order to dismiss

is for cause and in no instance shall a new charge based in the same facts be filed against the defendant.

E. Objections and Motions at Trial:

1. Either party may make motions throughout the course of the trial, all of which shall be oral unless otherwise directed by the judge. Both parties shall have the opportunity to state their positions on any motion made.
2. The motion which can be made shall include, but are not limited to the following
 - a. Motion to Exclusion of witnesses;
 - b. Motion to Exclude Evidence;
 - c. Motion to Judicial Notice;
 - d. Motion for mistrial;
 - e. Motion for a New Trial;
 - f. Motion for Directed Verdict.

I. Jury and Non-Jury Trial:

The defendant requests and receive trial either by jury or by the judge.

A. Jury Trial;

1. If defendant requests a jury trial, the jury shall be informed of at least six (6) enrolled members of the Chippewa-Cree Tribe residing on the Rocky Boy's Reservation, selected in the same manner as in civil actions.
2. The judge shall examine the jurors to determine if they are qualified to serve. The judge shall excuse any jurors;
 - a. Who are related to the defendant;
 - b. Who have formed opinion about the case; or
 - c. Who, in the judge's discretion, should be dismissed.
3. The defendant and prosecutor each shall have as many challenges for cause as necessary and two (2) preemptory challenges.
4. The judge shall direct the jury as to the law in accordance with Rule 11 (3), and in accordance with the jury instructions accepted by the judge from the parties.
5. During the course of the trial, the jurors will not be permitted to discuss the trial with anyone but the other jurors. The jury may send

written questions about the law to the judge for his answer in the event the trial cannot be concluded in one day, the juror shall be sequestered in suitable quarters.

- B. Trial by Judge. In the case tried without a jury, the judge shall make a general finding of guilty, or not guilty based upon the same interpretation of the law that would be given the jury, if the trial were a jury trial.

I. Verdict:

The Verdict shall be by a majority in all cases.

- A. If the verdict is not guilty, the defendant shall be discharged, any bail posted shall be returned and any bail bond shall be exonerated. In no instance may the defendant be tried again on the same facts for the same offense.
- B. If the verdict is guilty, the defendant shall be sentenced at that time or within a reasonable time thereafter. The judge may require a pre-sentence investigation report or hearing before sentencing.

CHAPTER EIGHT POST-TRIAL PROCEDURE

I. Sentencing:

- A. Sentence shall be imposed without unreasonable delay. Pending sentence, the judge may commit the defendant to jail or continue or alter bail. Before imposing sentence, the judge shall afford counsel an opportunity to speak on behalf of the defendant and shall ask the defendant if he wishes to speak on his own behalf, to present any information which might lessen his punishment.
- B. A motion to withdraw a plea of guilty shall be made only before the defendant is sentenced. To correct manifest injustice, the judge may on his own motion, set aside the judgment of guilt prior to sentencing and permit the defendant to withdraw his plea.
- C. All persons convicted of any offense may be sentenced to imprisonment, fine, work, restitution or a combination of those punishments. However, no section of this code shall prohibit the judge from imposing any sentence deemed more appropriate than imprisonment, fines, restitution or work, under the circumstances of a particular case. Such sentences may include, but not limited to: commitment to a rehabilitation or alcoholic program, or work for the benefit of the Tribe. Under no circumstances shall fines exceed five hundred dollars (\$500) Or imprisonment exceed six (6) months for a single offense.

II. Deferred Sentences:

- A. Where a sentence has been imposed, the judge may, in his discretion, defer the imposition of the sentence and impose any reasonable restrictions or conditions during the period of deferred imposition.
- B. The judge may, in his discretion, revoke the suspension after giving the offender a hearing prior to the revocation.
- C. Where the Court has deferred the imposition of a sentence and the time period of the deferral has expired, upon motion of the judge, the defendant or the defendant's counsel or friend, the judge may allow the defendant to withdraw his plea of guilty or may strike the guilty verdict from the record and order that the charge be dismissed.

III. Parole:

- A. Any person, who has without misconduct served one-half (1/2) the sentence imposed by the judge, shall be eligible for parole.
- B. Anyone desired parole, may apply to any judge, who will review the circumstances of the potential parolee, and determine whether the person has served one-half (1/2) of the sentence and is not guilty of any misconduct if all requirements are met, the prisoner may be released on parole for the remainder of his sentence subject only to the terms and conditions he has, in writing, agreed to comply with.
- C. Violation of Sentence. Any parolee who violates any provision of his parole shall be apprehended and confined to serve the remainder of the original sentence without diminishment for the time the person was free on parole.

IV. Commutation of Sentence:

If a presiding judge is satisfied that justice will best be served by reducing a sentence, the judge may at any time reduce the amount of time of any sentence imposed upon a person, upon a showing of proof that during the period of the sentence the person served without misconduct and did satisfactory work.

CHAPTER NINE PROCEDURE FOR CRIMINAL APPEALS

I. Who can Request Judicial Review:

Any party adversely affected by a decision of the Tribal Court in a criminal case may appeal that decision to the court of appeals. An appeal of the Tribal Court's decision

in a civil case shall proceed pursuant to the provisions of the civil procedure Title of this Code.

REFER TO COURT OF APPEALS

II. Commencement of a Criminal Appeal:

~~A party must commence an appeal within twenty (20) days of the date of the Tribal Court's decision by filing with the Clerk of Court an original and one (1) copy of a Request for Appeal. No filing fee shall be required. Within twenty (20) days of requesting an appeal the party must file two (2) copies of his brief in support of the appeal. The Clerk will notify the Court of Appeals and the opposing parties within three (3) days of receiving the Request for Appeal. Upon receiving the copies of the brief in support of the appeal the clerk will distribute one (1) copy to the opposing party.~~

III. What May Be Appealed:

~~Any final decision of the Tribal Court may be appealed. The Court of Appeals may not refuse to hear an appeal of a decision in a criminal case.~~

IV. Opposing Party's Response:

~~The opposing party will have twenty (20) days from the date that the appealing party's brief is received to submit an opposing brief and to make any motions.~~

V. Consequences of Missing Filing Dates:

~~If a party does not file his request for appeal within the stated limit, he loses his opportunity to appeal. If a party does not submit a brief within the stated limits, the case will be decided without the brief. However, for good cause the court of appeals may extend any time limit set in this chapter.~~

VI. Availability of the Trial Transcript:

~~The clerk shall keep the original trial transcript tape on file. A copy of the tape shall be provided to the Court of Appeals, and upon the Court of Appeal's request a transcribed copy of the trial transcript shall be provided. The parties to the appeal may listen to the trial transcript tape at the court building. Upon the request of a party the clerk will furnish that party at cost, with either a recorded copy or a transcribed copy of the transcript.~~

VII. Court Cost and Fee Waivers:

~~If the court of appeals requests a transcribed copy of the Tribal Court transcript, the cost of transcribing the copy will be paid by the tribe.~~

VIII. When Oral Arguments Heard:

~~If a criminal case, the court of appeals or any party may request oral arguments. Oral arguments will be scheduled within ten (10) days of such a request.~~

IX. Procedures on Appeal:

~~Relying upon this Code, and custom and tradition, the court of appeals may affirm, modify or reverse the Tribal Court's determinations of issues of law. Of on reviews of the Tribal Court's findings of fact the Court of Appeals determines that he Tribal Court's findings of facts are not sufficient to support the Tribal Court's judgment and are not sufficient to support any other judgment on appeal, then the Court of appeals shall remand a case to the Tribal Court for further findings of fact and a new judgment.~~

X. Unanimous Decision:

~~Judgment of the Court of Appeals shall be by unanimous decision. The lower court's decision shall stand where there is no unanimous judgment by the Court of Appeals.~~

XI. Written Decision:

~~The court of Appeals decision must be in writing and contain the Tribal Court's findings if facts and the Court f Appeals' determination of the issues of law. In addressing the issues of law, the decision shall state the Code sections, and customs or traditions upon which the court of appeals based its determinations.~~

XII. Time Limits:

~~The written decision in a criminal case shall be issued within twenty (20) days of the date the last brief is submitted or of the completion of the oral arguments, whichever is later.~~