Legislative History: Resolution # 90-25 To Approve Amendments to Title III Criminal Procedures and Title IV Criminal Offenses on October 20, 2025

TITLE III
CHIPPEWA CREE TRIBAL CRIMINAL PROCEDURE

CRIMINAL PROCEDURE
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Attachment – Bond Schedule

3.1 Short Title. This Title shall be known as the Code of Criminal Procedure of the Chippewa Cree Tribe of the Rocky Boy's Reservation.

3.2 Scope, Construction, Choice of Law.

a. 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.

b. Choice of Law. The Tribal Court and appellate Court, in all actions, shall apply the laws, ordinances, customs, and traditions of the Chippewa Cree Tribe. In the absence of Tribal law in criminal matters the Court may apply laws and regulations of the United States or the State of Montana. Where doubt arises as to customs and traditions of the Tribe, the Tribal Court may request the advice of recognized Tribal elders.

3.3 Institution of the Criminal Process.

a. 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 complaint 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 alleged to have been committed, including the Code Section.

D. The time, place and facts constituting the crime, including a statement of probable cause.

E. The witnesses, who will testify to those facts. No additional witnesses may be added by the prosecution except for good cause and with the 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 against 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 to the defendant at the first opportunity.

3.4 Obtaining the Presence of the Defendant.

a. 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 of 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.

3.5 Obtaining Evidence of the Crime.

a. Interrogation: Before the defendant may be asked any questions, the arresting officer, prosecutor or judge 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.

b. Search and Seizure:

1. All searches must be based on probable cause (which must be established by a sworn statement of an officer or witness) to believe evidence of a crime may be found at the location to be searched.

2. Police officers may search the arrested 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. Dangerous or unlawful items in plain sight may justify such searches.

3. 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. Warrants must be accompanied by the sworn statement of officers and/or other witnesses. All search warrants must be signed and issued by a judge.

c. 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. The police and/or prosecutor must make evidence available for inspection no less than 14 days before trial. Evidence newly obtained within the 14 day window before trial must be made available to the defendant immediately.

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

3.6 Proceedings Before Trial.

a. Definitions.

1. Arraignment: The initial step in a criminal prosecution whereby the defendant is brought before the Court to hear the charges and to enter a plea.

2. Bail: Money or property that will be forfeited to the Court if the accused individual fails to appear for trial. It refers to when a person charged with an offense or their family use their own money to secure the accused's release.

3. Bail hearing: A judge will decide whether an arrested person may be released while his or her criminal case is pending.

4. Bail schedule: A written listing of amounts of money to be used in setting bail based on the offense charged, regardless of the characteristics of any individual defendant.

5. Bond: An agreement between the Court and the Defendant that secures the release of the Defendant before trial. It refers to when a person charged with an offense posts a portion of their bail to secure their release.

6. Bail or Bond forfeiture: When a defendant released on cash bail or surety bond fails to appear in Court, or otherwise violates a condition of their bail, the Court can declare the bail or surety bond forfeit.

7. Failure to appear: When a person subject to a subpoena, or other lawful order, does not show up for a scheduled Court appearance.

8. Pretrial services agency/program: Any organization created to perform the three primary pretrial agency or program functions of: (1) collecting and analyzing defendant information for use by the Court in assessing risk; (2) making recommendations to the Court concerning bail conditions of release to address risk; and (3) monitoring and supervising defendants who are released from secure custody during the pretrial phase of their cases in order to manage their risk.

9. Release on own recognizance: The pretrial release of an arrested person who promises, usually in writing but without supplying a surety or posting bail, to appear for trial at a later date.

10. Remission of bail: A decision by the Court to set aside a previous order of bail or bond forfeiture on equitable grounds.

b. Initial Appearance.

1. 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.

A. The judge shall advise the defendant as follows:

i. You have the right to a bail hearing.

ii. You have the right to a speedy trial.

iii. You have the right to remain silent and any statement made by you may be used against you.

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

v. Advise the defendant of the nature of the offense charged.

B. If the defendant has not received a copy of the complaint or it has not been prepared, it shall be prepared, signed, and a copy given to the defendant at this time.

C. 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.

c. Procedure for Bail and Bonds for the Chippewa Cree Tribal Court

1. Purpose: This section sets forth the laws, rules, procedures and the Chippewa Cree Tribal Court policy related to the posting of bail by individuals providing secured appearance bonds on behalf of defendants or respondents in the Chippewa Cree Tribal Courts in Rocky Boy, Montana. The following procedures shall govern the release of person on bail.

2. Bail

A. Purpose of bail. The purpose of setting bail has been to secure the presence of the person charged while recognizing there is a presumption of innocence. The purpose of bail, in recognition of the presumption of innocence, is to relieve the defendant from imprisonment prior to trial and secure his or her presence before Court at a designated time. Bail cannot be used to deprive accused of his constitutional right to speedy trial.

B. Right to a bail hearing. A person charged may be admitted to bail either before conviction or after conviction and pending appeal in accordance with the Constitution and laws of the Chippewa Cree Tribe. If there is unnecessary delay in bringing a person charged to trial, the Court may modify the terms for release on bail. The judge shall set a bail amount at a defendant's first Court appearance after an arrest, which may be either an initial appearance, bail hearing or an arraignment. Judges can set bail or waive bail altogether and grant release on the defendant's "own recognizance."

C. Terms. If the person charged is admitted to bail, the terms thereof shall be such as in the judgment of the Court will insure the presence of the person charged, having regard to the nature and

circumstances of the offense charged, the weight of the evidence, the financial ability of the person charged to give bail, the character of the person charged and the policy against unnecessary detention of persons charged pending trial.

D. Denial of bail. Bail may be denied if in the judgment of the Court the defendant poses a serious danger to the community or is a flight risk. Such denial must be supported by evidence set forth on the record and be made considering the general policy against the unnecessary detention of people charged pending trial.

3. Amount of Bail.

A. Determining amount of bail. The bail amount is initially set when the defendant is booked into jail.

i. The judge shall use its current bail schedule, which shall be updated annually to determine the amount of bail. After the bail amount is set, the defendant has two options. First, the defendant can pay the full bail amount either as cash bail or by posting a surety bond, which is refundable after trial, to the Court. Second, if the defendant is unable to afford bail, the defendant will remain in custody pretrial at the tribal jail.

ii. Bail may be specifically set by a judge for any offense not listed on the posted bail schedule or may increase the amount of bail at the arraignment. In all cases in which bail is determined to be necessary, bail must be reasonable and shall not exceed $5,000.00 per charge. A reasonable bail shall reflect an amount which is: (1) sufficient to ensure the presence of the defendant in any pending criminal proceeding; (2) sufficient to assure compliance with the conditions set forth in a bail or release order; and (3) not oppressive.

B. Bail Schedule. The Chippewa Cree bail schedule shall be reviewed and, if necessary, updated annually by the Chippewa Cree Tribal Business Council. The Chippewa Cree Tribal Court shall post the most current bail schedule at the tribal Court facility and on its website.

4. Release and Return of Bail.

A. Release and refund of bond before disposition of a case. The release of a bond before the case concludes will only be granted in response to a motion or filing with the Court. A bond refund or release is not performed as a standard procedure until the conclusion of a case. A demand for specific action must be requested by the interested party, which can include the party who posted the bail or bond. All bonds are only released upon order of the Court. The interested party should motion the tribal Court appropriately. A motion can be made before disposition of a case, but Court fees, fines, and all other expenses may be deducted. Before the return of a bond, the Judge shall make a determination whether or not to issue a return pursuant to an internal scorecard as outlined below.

B. Bond request scorecard. Bond return requests made prior to the conclusion of a case will be processed using a legal screening tool that measures a defendant's risk for not appearing at Court proceedings. All determinations shall be made on a case-by-case basis. In making its determination, the Court may consider: (1) whether the defendant is employed or unemployed; (2) the nature and seriousness of offense or offenses [against defendant]; (3) whether the defendant lives on or off the Rocky Boy's Indian Reservation; (4) the number of prior contempts; (5) and any other factor deemed relevant given the situation. The judge may order an option to hold a partial or total amount of the bond based upon the risk score.

5. Bail Forfeiture.

A. Declaration. The Court may declare bail or surety bond forfeit if a condition of the bail is breached.

B. Setting Aside. The Court may set aside a bail forfeiture in whole or in part upon any condition the Court may impose if: (1) the defendant voluntarily later surrenders into custody; or (2) it appears that justice does not require bail forfeiture.

C. Remission. The Court may remit in whole or in part a judgment of forfeiture under the same conditions.

6. Exoneration. A bail bond is exonerated when the legal process or trial has finished, whether or not the defendant is found guilty or if the case has been dismissed. At this point, the bail bond is discharged. However, any unpaid fees or other amounts that are still owed may be subtracted from the bond. At the conclusion of a criminal case, the Court must release any bond minus Court fees and fines and expenses.

d. 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 lay advocate.

E. Advise the defendant that a plea of guilty waives defendant's right to:

i. A jury trial, if the offense charged carries a penalty of imprisonment.

ii. Compel witnesses to testify in defendant's behalf.

iii. Confront and cross-examine witnesses for the prosecution; and

iv. 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 from the defendant's initial appearance, the Court shall reassess bail, if any, and again advise the defendant of his right to a bail hearing.

e. 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 accepts the plea, the Judge may impose a sentence at that time or schedule a sentencing hearing in order to allow time for the involved parties to

obtain information deemed necessary for the imposition of a just sentence. 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.

f. Pretrial Conference and Motions.

1. Prior to trial a conference shall be held, attended by the judge, the Defendant, defendant's counsel or lay advocate, 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.

2. 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.

3. The defense or prosecution may at any time prior to trial, by written motion, request the judge take any action deemed necessary in the interest of fairness and justice. Any motion shall be filed with the judge and a copy served on the opposing party.

A. The motion shall set forth the nature of the motion, the legal and factual basis for the motion and the relief sought.

B. Motions include but are not limited to the following:

i. Substitution of the judge because of bias or other cause.

ii. Time to prepare.

iii. Continuance.

iv. A list of witnesses.

v. Suppression of a confession or of evidence claimed to have been illegally seized.

vi. To Dismiss.

vi. The production of evidence; or

vii. Joinder or severance of offenses or defendants.

4. The judge shall rule on all motions as soon as possible, but must issue a ruling before instructing the jury, or in a judge trial, before the verdict.

3.7 Trial.

a. Trial Procedure.

1. 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 ensure there is no unreasonable or unnecessary delay infringing the defendant's right to a speedy trial. A trial shall be initiated within 180 days of the initial appearance, with the date of the initial appearance counting as day one of the 180-day trial clock. The 180-day trial clock shall be tolled for all motions, continuances and interlocutory appeals pursued by the defendant. The tolling shall be calculated from the date of submittal to the date of resolution. The defendant may also agree to waive their right to a speedy trial if, in the judgment of the Court, such waiver does not impact on the due process rights of the defendant or undermine society's interest in the swift administration of justice.

2. All trials shall be open to the public and must afford the defendant the right to:

A. Be present through the trial and defend himself in person, by friend, or by lay counsel or professional attorney at his own expense.

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

C. Engage in the compulsory process through the power of the Court to obtain and develop the testimony of witnesses and to obtain physical evidence on his behalf.

D. 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 construed against the defendant.

3. In all trials, the defendant is presumed to be innocent. The burden of proof rests on the prosecution. The prosecution must prove beyond a reasonable doubt that the defendant's alleged actions or omissions meet each element of each 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.

4. A charge may be dismissed at the discretion of the judge at any time prior to verdict, upon the motion of the Court, the defendant or the prosecutor. The dismissal of any charge shall require a written order of the Court setting forth the factual and legal basis for the dismissal.

A. 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.

B 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 on the same facts be filed against the defendant.

5. Objections and Motions at Trial.

A. 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 if requested by either party. The Court may set oral argument on any motion even in the absence of a request by a party.

B. Motions which can be made shall include, but are not limited to the following:

i. Motion to Exclude Witnesses.

ii. Motion to Exclude Evidence.

iii. Motion for Judicial Notice.

iv. Motion for Mistrial.

v. Motion for a New Trial.

vi. Motion for Directed Verdict.

b. Jury and Non-Jury Trial. The defendant can request and receive trial either by jury or by the judge.

1. Jury Trial.

A. If the defendant requests a jury trial, the jury shall consist of six (6) enrolled members of the Chippewa-Cree Tribe residing on the Rocky Boy's Reservation or within Hill, Blaine or Chouteau counties, and one alternate juror who is an enrolled member of the Chippewa-Cree Tribe residing on the Rocky Boy's Reservation or within Hill, Blaine or Chouteau counties. Jurors may also include

non-member spouses of tribal members residing on the Rocky Boy's Reservation. Current Chippewa Cree Tribal Business Committee members and Chairman are exempt from serving on a jury.

B. Jury selection.

i. Impanel jury. The Court shall describe the jury selection process and swear-in the jury panel. The oath shall be substantially as follows: Do you solemnly swear that you will answer all questions asked of you as to your respective qualifications to serve as a trial juror during this term of Court, and that you will truly answer all questions asked of you by this Court and counsel as to your respective qualifications to serve as a trial juror for the issue at hand

ii. Charges and admonition. The Court shall inform the panel of each charge against the defendant or defendants. The Court shall admonish the panel that (1) the defendant or defendants have pled not guilty; (2) that the defendant or defendants are presumed innocent unless and until they are proven guilty beyond a reasonable doubt; and (3) that the defendant or defendants have the right to remain silent and do not have to prove innocence or to present evidence.

iii. Court voir dire. 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 a defendant by blood or marriage within the fourth degree.

(b) Who formed an opinion about the case; or

(c) Who, at the judge's discretion, should be dismissed.

iv. Counsel voir dire. At the conclusion of the Court's voir dire and the dismissal of unqualified jurors, counsel for the prosecution and the defense may voir dire the remaining panel members.

(a) The defense and prosecution each shall have as many challenges for cause as necessary and two (2) peremptory challenges per defendant.

(b) At the conclusion of the examination of the jury panel by both the prosecution and defense, counsel shall present their peremptory strikes. The Court shall dismiss those jurors peremptorily struck.

(c) Counsel shall then make argument to the Court with respect to challenges for cause. The prosecution shall make argument first followed by the defense. The Court shall hear argument from both the prosecution and the defense with respect to each challenge for cause and grant or deny the challenge.

v. Final jury selection. If there are more than seven jurors remaining on the panel after the peremptory strikes and resolution of all challenges for cause, six jurors shall be drawn at random to compose the jury, with one juror chosen thereafter at random to be the alternate. If only seven jurors remain from the panel, then one shall be drawn at random to be the alternate. If fewer than 7 jurors remain on the panel after strikes and challenges, the Court shall declare a mistrial and dismiss the case without prejudice.

vi. Seating of jury. Upon the final selection of six jurors and one alternate, the Court shall swear in the jury substantially as follows: Do you and each of you solemnly swear that you will truly and fairly try this case between the Chippewa Cree Tribe and [the defendant or defendants]

C. Opening instructions. 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.

D. Trial sequence.

i. Opening statements by the prosecution and defense. Opening statement can be waived.

ii. Witnesses for the prosecution. Each witness shall be sworn for testimony. Defense may cross-examine each witness.

iii. Prosecution rests and the defense may make a motion for a directed verdict or acquittal.

iv. Witnesses for the defense. Each witness shall be sworn for testimony. Prosecution may cross-examine each witness.

v. Defense rests.

vi. Rebuttal evidence.

vii. Closing statements. The prosecutor opens the closing statements, followed by the defense, with final remarks by the prosecutor at their discretion.

viii. Jury deliberation instructions are given by the Court.

ix. At the close of jury deliberations, the Court is reconvened. The verdict form is obtained from the jury and read by the Court. The jury is polled if requested.

E. 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 jurors shall be admonished to speak to anyone about the trial for its entire duration.

2. 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 to the jury.

c. Verdict. The Verdict shall be by a majority in all cases.

1. 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.

2. 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.

3.8 Post-Trial Procedure.

a. Sentencing:

1. 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 be considered in sentencing.

2. 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 their own motion, set aside the judgment of guilt prior to sentencing and permit the defendant to withdraw his plea.

3. 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 include but are not limited to commitment to a rehabilitation or alcoholic program, or work for the benefit of the Tribe. Exclusion may be ordered pursuant to the terms of Chapter 5, Section 5.1 (Expulsion and Exclusion from the Rocky Boy's Indian Reservation).

b. Deferred Sentences:

1. Where a sentence has been imposed, the judge may, in their discretion, defer the imposition of the sentence and impose any reasonable restrictions or conditions during the period of deferred imposition.

2. The judge may, in their discretion, revoke the suspension after giving the offender a hearing prior to the revocation.

3. Where the Court has deferred the imposition of a sentence and the time period of the deferral has expired, upon motion of the defendant or the defendant's counsel or on the Court's own initiative, the judge may allow the defendant to withdraw his plea of guilt or may strike the guilty verdict from the record and order that the charge be dismissed.

c. Parole:

1. Any person who has served one-half (1/2) the sentence imposed by the judge and has remained in good standing with no additional misconduct, shall be eligible for parole.

2. Anyone desiring parole may apply to the Court, 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 in good standing and has not committed any additional misconduct. If all requirements are met, the Court may order that the prisoner be released on parole for the remainder of defendant's sentence subject only to any terms and conditions set by the Court.

3. Violation of Sentence. If a parolee violates any term or condition on of his parole, the Court shall issue a warrant for arrest and upon apprehension, the parolee shall be confined to serve the remainder of the original sentence without diminishment for the time the person was free on parole. However, the defendant shall be given credit for time served prior to parole.

d. 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 defendant is in good standing and has served his/her sentence without additional misconduct.