

TRIBAL CODE
CHAPTER 70:
CRIMINAL PROCEDURE

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HISTORY NOTE:

Current Ordinance

Originally enacted as Chapter 2 of the Law and Order Code, adopted by Resolution 11-28-79E, November 11, 1979, effective immediately.

Reenacted in Tribal Code format as part of the Tribal Code on July 5, 1995, Resolution No. 95-89, effective immediately.

Amendments:

Tribal Resolution 2014-221, adopted November 25, 2014, amends Chapter 70, by adding subsection (4) to §70.127. Inmates will incur costs of incarceration.

Tribal Resolution 2012-88, adopted April 24, 2012, amends Chapter 70, by adding § 70.133, Authorization of Medical Examiner.

Tribal Resolution 2012-87, adopted April 24, 2012, amends §70.115 by adding subsection (4), “no contest” plea.

Tribal Resolution 2011-138, adopted June 28, 2011, amends §70.126(6).

Tribal Resolution 2007-53, adopted March 20, 2007, amends § 70.121.

Tribal Resolution 9-21-83A, adopted September 21, 1983, added '70.131 to allow for arrest by Tribal officers on state warrants.

Tribal Resolution 2-16-87B, adopted February 16, 1987, amended '70.127(1)(a)(ii) and (1)(b)(ii) to increase the maximum penalties in accordance with amendments to the Indian Civil Rights Act.

Tribal Resolution 10-18-88, adopted October 18, 1988, amended '70.128(1) to provide for one year of probation for all offenses.

Tribal Resolution 2-18-92A, adopted February 18, 1992, added '70.104(2)(d) to provide for warrant less arrests for domestic assaults and endangerments.

Resolution 95-53, adopted April 19, 1995, added '70.132 to protect traditional Anishinabe religious and cultural activities.

TRIBAL CODE

CHAPTER 70:

CRIMINAL PROCEDURE

70.101 Purpose and Scope.

The purpose of this Chapter is to provide procedures for criminal cases in the Tribal Court. The procedures of this Chapter apply to all criminal proceedings in Tribal Court except to the extent that a specific procedure for a particular crime is provided for in another chapter of the Tribal Code.

70.102 Definitions.

As used in this Chapter:

(1) "Crime" (or "Criminal") means (or refers to) an act or omission prohibited by Tribal law which is punishable upon conviction by imprisonment, fine not designated as civil, or other penal discipline.

(2) "Tribal Court" means the court of the Tribe established pursuant to Tribal Code Chapter 80.

(3) "Tribe" (or "Tribal") means (or refers to) the Sault Ste. Marie Tribe of Chippewa Indians.

70.103 Complaint.

(1) All criminal prosecutions shall be initiated by complaint. A complaint is a written statement sworn to by the complaining witness and charging that a named individual has committed a particular criminal offense.

(2) Complaints shall contain:

(a) the signature of the complaining witness sworn to before the Chief Tribal Judge or an individual designated by the Chief Judge; and

(b) a written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained; and

(c) the name or description of the person alleged to have committed the offense; and

(d) the section of the Tribal Code allegedly violated.

(3) All criminal complaints filed with the Tribal Court shall be signed by the Tribal attorney, who shall assist individuals in drawing up complaints and screen them for sufficiency. In the exercise of his discretion, the Tribal attorney may decline to sign and file a complaint.

(4) If the complaint, or the complaint together with other sworn statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the Tribal Court shall issue a warrant pursuant to '70.105 instructing the Tribal police to arrest the named accused or, in lieu thereof, the Tribal Court shall issue a summons commanding the accused to appear before the Tribal Court at a specific time and place to answer to the charge.

(5) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the Tribal Court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

70.104 Arrest.

(1) Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.

(2) No Tribal law enforcement officer shall arrest any person for a criminal offense except when:

(a) the officer shall have a warrant signed by a Tribal Judge commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(b) the offense shall occur in the presence of the arresting officer; or

(c) the officer shall have probable cause to believe that the person to be arrested has committed an offense; or

(d) the officer has reasonable cause to believe that a violation of '71.114 or '71.115, being assault or threats of endangerment respectively, has taken place or is taking place and that the person who committed or is committing the violation is a spouse, a former spouse, or a person residing or having resided in the same household as the victim, may arrest the violator without a warrant for that violation, irrespective of whether the violation was committed in the presence of the officer.

70.105 Arrest Warrants.

(1) Every judge of the Tribal Court shall have the authority to issue warrants to arrest, and such warrants shall be issued only upon a showing of probable cause in sworn written statements. The Tribal Judge shall deny issuance of a warrant if he finds that there is not probable cause to believe that the offense charged has been committed by the named accused.

(2) The arrest warrant shall contain the following information:

- (a) Name or description and address, if known, of the person to be arrested.
- (b) Date of issuance of the warrant.
- (c) Description of the offense charged.
- (d) Signature of the issuing judge.

70.106 Notification of Rights at Time of Arrest.

Upon arrest, the suspect shall be advised of the following rights:

- (1) That he has the right to remain silent.
- (2) That any statements made by him may be used against him in court.
- (3) That he has the right to obtain counsel at his own expense.

70.107 Summons in Lieu of Warrant.

(1) When otherwise authorized to arrest a suspect, a Tribal police officer or a judge may, in lieu of a warrant, issue a summons commanding the accused to appear before the Tribal Court at a stated time and place and answer to the charge.

(2) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.

(3) If a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.

70.108 Search Warrant; - Defined.

A search warrant is a written order, signed by the Tribal Judge, and directed to a Tribal law enforcement officer ordering him to conduct a search and seize items or property specified in the warrant. A warrant shall describe the property or place to be searched and shall describe the items to be seized.

70.109 Issuance of a Search Warrant.

(1) Every Tribal Judge shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the Tribal Court.

(2) No warrant of search and seizure shall be issued except upon probable cause that a search will discover:

(a) stolen, embezzled, contraband or otherwise criminally possessed property; or

(b) property which has been or is being used to commit a criminal offense; or

(c) property which constitutes evidence of the commission of a criminal offense.

(3) Such probable cause shall be supported by a written and sworn statement based upon reliable information.

70.110 Execution and Return of Search Warrant.

Warrants of search and seizure shall only be executed by Tribal law enforcement officers. The executing officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void.

70.111 Search Without a Warrant.

No Tribal law enforcement officer shall conduct any search without a valid warrant except:

(1) incident to making a lawful arrest; or

(2) with consent of the person being searched; or

(3) when he has probable cause to believe that the person searched may be armed and dangerous; or

(4) when the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen or embezzled property.

70.112 Disposition of Seized Property.

(1) The police shall make an inventory of all property seized by warrant or otherwise, and a copy of such inventory shall be left with the person from whom the property was taken.

(2) A hearing shall be held by the Tribal Court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is contraband or is to be used as evidence in a pending case. Property taken as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall become the property of the Tribe and may be either destroyed, sold at a public auction, retained for the benefit of the Tribe or otherwise lawfully disposed of as ordered by the Tribal Court.

70.113 Arraignment.

(1) Arraignment is the bringing of the accused before the Tribal Court, informing him of his rights and of the charge against him, receiving his plea, and setting bail as appropriate in accordance with '70.116.

(2) 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 regularly scheduled session of court.

70.114 Rights of Accused at Arraignment.

Before an accused is required to plead to any criminal charge the Judge shall:

(1) read the accused the complaint and determine that he understands the complaint and the section of the Tribal Code which he is charged with violating, including the maximum authorized penalty; and

(2) advise the accused that he has the right:

(a) to remain silent; and

(b) to be tried by a jury; and

(c) to be represented by counsel at his own expense, and that the arraignment will be postponed should he desire to consult with counsel.

70.115 Receipt of Plea at Arraignment.

(1) If the accused pleads 'not guilty' to the charge, the Judge shall then inform him of a trial date and set conditions for bail prior to trial.

(2) If the accused pleads 'guilty' to the charge, the Judge shall determine that the plea was made voluntarily and that the accused understands the consequences of the plea, including the rights which he is waiving by the plea. The Judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to inform the Tribal Court of facts in mitigation of the sentence.

(3) If the accused refuses to plead, the Judge shall enter a plea of not guilty on his behalf.

(4) The accused may enter a plea of "no contest". If the accused pleads "no contest" to an offense, it shall be done only with the consent of the Judge and the prosecutor. If the accused chooses to plead "no contest", the Judge shall follow the same procedure required for a guilty plea; except, the Judge shall not question the accused as to the underlying facts, but shall, by some other means, obtain support for a finding that the accused has committed the offense to which he is pleading. The Judge shall state why a plea of no contest is appropriate.

70.116 Bail - Release Prior to Trial.

Every person charged with a criminal offense before the Tribal Court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

(1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.

(2) Release to the custody of a designated person or organization agreeing to assure the appearance of the person charged.

(3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.

(4) Release after deposit by the accused of a bondsman of bond in either cash or other sufficient collateral in an amount specified by the Judge or a bail schedule. The Judge,

in his discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.

(5) Release after execution of a bail agreement by two responsible members of the community.

(6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

70.117 Release by Police Officer.

Any Tribal police officer authorized to do so by the Tribal Court may admit an arrested person to bail pursuant to the bail schedule of release upon personal recognizance. Police officers shall have available a bail schedule prepared by the Tribal Court or Tribal Board of Directors which shall be used for setting money bond where such condition of release is deemed necessary. Any police officer who refuses to release an accused on bail or who specifies a bail condition which the accused is unable to satisfy shall bring the accused before a Tribal Judge for review of the release conditions at the first available opportunity and without unnecessary delay.

70.118 Bail - Release Pending Appeal.

Every person who has been convicted of a Tribal offense and who has filed an appeal or a petition of a writ of habeas corpus shall be treated in accordance with the provisions of '70.116 unless the Judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a danger to the community, to the accused or to any other person. If the Judge finds such to be the case, he may order detention of the accused.

70.119 Withdrawal of Guilty Plea.

The Tribal Court may, in its discretion, allow a defendant to withdraw a plea of guilty whenever it appears that the interest of justice and fairness would be served by doing so.

70.120 Standards Governing Appearance by Counsel.

(1) No defendant in a criminal proceeding shall be denied the right to counsel at his own expense.

(2) Counsel representing a defendant shall be admitted to practice before the Tribal Court pursuant to Tribal Code Chapter 80.

70.121 Issuance of Subpoenas.

(1) Upon request of any party to a case or upon the Tribal Court's own initiative, the Tribal Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant, necessary to the determination of the case and not an undue burden on the person possessing the evidence. The Clerk of the Court may act on behalf of the Tribal Court and issue subpoenas which have been signed by a Tribal Judge and which are to be served within the confines of the Tribe's reservation.

(2) A subpoena shall bear the signature of a Judge of the Tribal Court or of an attorney of record in the action, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(3) A subpoena issued by an attorney of record in the action has the force and effect of an order signed by the judge of that court.

70.122 Service of Subpoenas.

(1) A subpoena may be served at any place within or without the confines of the Tribe's reservation, but any subpoena to be served outside the reservation shall be issued personally by a Judge of the Tribal Court.

(2) A subpoena may be served by any Tribal police officer or other person appointed by the Tribal Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his place of residence with any person sixteen (16) years of age or older who also resides there.

(3) Proof of service of the subpoena shall be filed with the Clerk of the Court by noting on the back of a copy of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

70.123 Failure to Obey Subpoena.

In the absence of a justification satisfactory to the Tribal Court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his arrest.

70.124 Witness Fees.

(1) Each witness answering a subpoena shall be entitled to a fee of Ten Dollars (\$10.00) for each day his services are required in court. In addition, the Tribal Court may order the payment of reasonable travel and living expenses of the witness.

(2) The fees and expenses provided for in this section shall be paid by the Tribe upon completion of the trial, but such expenses may be taxed as costs against the defendant if he is found guilty, provided, however, that no defendant shall be incarcerated solely because of his inability to pay such costs immediately.

(3) If the Tribal Court finds that a complaint was not filed in good faith but with frivolous or malicious intent, it may order the complainant to reimburse the Tribe for expenditures incurred under this section, and such order shall constitute a judgment upon which execution may levy.

70.125 Trial Procedure.

(1) The time and place of court sessions, and all other details of judicial procedure not specified in this chapter or other chapters of the Tribal Code, shall be set out in rules of court adopted by the Tribal Court.

(2) The Tribal Court shall not be bound by common law rules of evidence, or the rules of evidence which pertain in state or federal courts, and may establish such rules of evidence as it deems appropriate, provided that such rules are not in conflict with any provision of the Tribal Code.

70.126 Jury Trial.

(1) Any person accused of a crime for which imprisonment is a possible penalty may request a jury trial, upon his or her request made at the time of arraignment. The Tribal Court may deny such request, but if a request for jury trial is denied the Tribal Court shall not thereafter impose a sentence of imprisonment. A jury shall consist of at least six members of the Tribe selected at random from a list of eligible jurors prepared each year by the Tribal Board of Directors or other appropriate body.

(2) An eligible juror is a Tribal member residing in Chippewa County who has reached the age of eighteen (18) years, has not been convicted of a felony, and is not other-

wise unqualified according to standards established by the Tribal Court under its general rule-making authority.

(3) Each party shall have the right to challenge an unlimited number of jurors for cause on the basis of lack of qualifications, partiality or otherwise acceptable reason. Whether or not cause exists shall be determined by the Judge in all instances. In addition, each party shall have the right to a maximum of three peremptory challenges for jurors, for which no reasons need be given and which the Judge shall not refuse to grant.

(4) The Judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law.

(5) The jury shall deliberate in secret and return a verdict of guilty or not guilty. The judge shall render judgment in accordance with the jury verdict.

(6) Each juror shall be paid out of Tribal funds a stipend for each day of service at a rate set by the Chief Judge on an annual basis, not to exceed \$25.00 per day, and shall be reimbursed for mileage from the juror's residence to and from the court at the current government rate, and for ferry expenses actually incurred.

70.127 Sentencing.

(1) Any person who has been convicted in the Tribal Court of a criminal offense shall be sentenced to one or a combination of the following penalties:

(a) Imprisonment for a period not to exceed the lesser of either:

(i) the maximum permitted by the Tribal Code provision defining the offense, if a maximum is so specified; or

(ii) one year.

(b) A money fine in an amount not to exceed the lesser of either:

(i) the maximum permitted by the code provision defining the offense, if a maximum is so specified; or

(ii) Five Thousand Dollars (\$5,000.00).

(c) Labor for the benefit of the Tribe.

(d) Rehabilitative measures.

(e) Payment of reasonable court costs.

(2) In addition to or in lieu of the penalties provided in sub. (1), the Tribal Court may require a convicted offender, who has inflicted injury upon the person or property of another, to make restitution or compensate the injured person by means of the surrender of property, payment of money damages or the performance of any other act for the benefit of the injured party.

(3) If, solely because of indigency, a convicted offender is unable to pay forthwith a money fine assessed under this section or costs assessed under this section or '70.124, the Tribal Court shall allow him a reasonable period of time to pay the entire sum or allow him to make reasonable installment payments to the Clerk of the Court at specific intervals until the entire sum is paid. If the offender defaults on such payments the Tribal Court may find him in contempt of court and imprison him accordingly.

(4) Any person convicted in the Tribal Court of a criminal offense, whether by plea or by a trial and verdict, shall be responsible for the costs incurred by the Tribe for the incarceration of that individual as provided in this subsection:

- (a) In any sentence of conviction, the Tribal Court shall include a provision mandating that the convicted offender shall be required to pay the Sault Tribe for the costs incurred by the Tribe for the incarceration of the offender from the time of arrest through completion of any sentence imposed by the Tribal Court and, to facilitate collection of these costs, requiring the offender to keep the Court Administrator informed of any changes in the offender's address, income, and employment until such time as that obligation is paid in full.
- (b) The Court shall retain the authority to modify or to waive this requirement, in whole or in part, as the interests of justice may require.
- (c) To encourage and reward prompt payment, any charges imposed under this subsection shall be reduced by 50% if those charges are paid in full within 60 days from the date that the Tribe initially bills those charges to the offender or within 60 days from the date of the offender's release from custody, whichever occurs later.

70.128 Probation.

(1) Where a sentence of imprisonment has been imposed on a convicted offender the Tribal Court may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the Tribal Court, provided that the period of probation shall not exceed one year for all offenses.

(2) Any person who violates the terms of this probation may be required by the Tribal Court to serve the sentence originally imposed or such part of it as the Tribal Court may determine to be suitable, giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the Tribal Court at which the offender shall have the opportunity to explain his actions.

70.129 Parole.

(1) Any person sentenced by the Tribal Court to detention or labor shall be eligible for parole at such time and under such reasonable conditions as set by the Tribal Court.

(2) Any person who violated the conditions of his parole may be required by the Tribal Court to serve the whole of the original sentence, provided that such revocation of parole shall not be ordered without a hearing before the Tribal Court at which the offended shall have the opportunity to explain his actions.

70.130 Appeals.

Appeals from any sentence or other final judgment or order in a criminal case may be taken in accordance with the provisions of Tribal Code Chapter 82.

70.131 Arrest on State Warrant.

Notwithstanding any other provision of this Chapter or any other chapter of the Tribal Code, Tribal law enforcement officers may arrest, remove from Tribal jurisdiction, and surrender to state authorities any person sought on a state court arrest warrant who may be found upon Tribal lands.

70.132 Protection of Traditional Anishinabe Religious and Cultural Activities.

(1) The Tribe declares that the drum and other traditional Anishinabe religious and cultural activities are sacred and entitled to protection under tribal law. Tribal law enforcement officers are directed to refrain from interfering in such activities, and to protect such activities from interference from others, whether such interference is in the guise of enforcement of criminal or civil laws or otherwise.

(2) It shall be a defense to charge of disorderly conduct under Tribal Code '70.140, or of causing or maintaining a public nuisance under Tribal Code '70.141, that the person at the time of the alleged offense was participating in a drum or otherwise engaging in a traditional Anishinabe religious or cultural activity.

(3) If a question arises as to whether a particular activity is a traditional Anishinabe religious or cultural activity, the matter shall be referred to the Anishinabe Cultural Committee, whose decision on the matter shall be final.

70.133 Authorization of Medical Examiner.

(1) The Board of Directors of the Sault Ste. Marie Tribe of Chippewa Indians hereby authorizes the Office of the Medical Examiner, of each of the counties in which Tribal Lands are located, to act as the Sault Ste. Marie Tribal Medical Examiner, and further authorizes them, or their designee, to enter upon Tribal Lands, located within their respective counties, to enforce applicable state, tribal and federal law, and to carry out

their duties and obligations as defined by state, tribal or federal law.