

Chapter V

RULES FOR CRIMINAL CASES

PART ONE - PRELIMINARY PROCEEDINGS

501. COMPLAINT

- A. Use - All criminal prosecutions for violations of Chapters VI, VII, and VIII of the Tribal Code of the Bay Mills Indian Community shall be initiated by complaint. A complaint is a written statement sworn to by the complaining witness and charging that a named individual(s) has committed a particular offense. In prosecutions for violations of Chapter VIII of the Bay Mills Tribal Code, the traffic violation ticket shall constitute the complaint.
- B. Contents - Complaints shall contain:
1. The signature of the complaining witness sworn to before a tribal judge or other officer of the court; and
 2. 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
 3. The name or description of the person alleged to have committed the offense; and
 4. The section of the Tribal Code allegedly violated.
- C. Filing - During normal business hours the Clerk of court shall be available to assist individuals in drawing up and filing criminal complaints. At all other times, a duty officer designated by the tribal police shall be responsible for rendering such assistance. Complaints shall then be submitted without unnecessary delay to the tribal judge to determine whether a warrant or summons should be issued.
- D. Warrants for arrest; summons to appear - 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 court shall issue a warrant instructing the tribal police to arrest the named suspect(s) or, in lieu thereof, the court shall issue a summons commanding the suspect(s) to appear before the court at a specified time and place to answer the charge. Such a summons shall be issued where the nature of the offenses is such that in the discretion of the court arrest is not deemed essential.

- E. Arrests without warrants - When an individual has been arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether probable cause existed for the arrest, and in no instance shall a complaint be filed later than at the time of arraignment.

502. ARREST

- A. Definition - Arrest is the taking of a person into police custody in order that he/she may be held to answer for a criminal offense.
- B. When arrest can be made - No tribal law enforcement officer shall arrest any person for a criminal offense under the Tribal Code except when the following:
 - 1. The officer shall have a warrant signed by a tribal judge commanding the arrest of such person, or the officer knows for certain that such a warrant has been issued; or
 - 2. The offense shall occur in the presence of the arresting officer; or
 - 3. The officer shall have probable cause to believe that the person arrested has committed an offense.

503. ARREST WARRANTS.

- A. Issuance - Every judge of the Tribal Court shall have authority to issue warrants to arrest, and such warrants shall be issued only upon a showing of probable cause in the complaint, or together with other sworn statements. The Tribal Judge shall deny the issuance of a warrant if he/she finds that there is not probable cause to believe

that the offense charged has been committed by the named suspect.

B. Contents - The arrest warrant shall contain the following information:

1. The name or description and address, if known, of the person to be arrested; and
2. The date of the issuance of the warrant; and
3. The description of the offense charged; and
4. The signature of the issuing judge.

504. NOTIFICATION OF RIGHTS AT TIME OF ARREST - Upon arrest the suspect shall be advised of the following rights:

1. That he/she has the right to remain silent; and
2. That any statements made by him/her may be used in court; and
3. That he/she has the right to obtain counsel at his/her own expense. Any statements made by a person in custody not preceded by advice of his/her rights, or not made following a knowing waiver of the above rights, shall not be admissible as evidence in criminal proceedings.

505. SUMMONS IN LIEU OF WARRANT

- A. When issued - When otherwise authorized to arrest a suspect a tribal police officer of authorizing judge may, in place of a warrant, issue a summons commanding the suspect to appear before the Tribal Court at a stated time and place to answer the charge.
- B. Contents - The summons shall contain the same information as a warrant, except that it may be signed by an authorized police officer.
- C. Fails to appear - If a person fails to appear in response to a summons, a warrant for his/her arrest shall be issued.

506. SEARCH WARRANTS

- A. Definition - A search warrant is a written order, signed by a tribal judge, and directed to a tribal law enforcement officer ordering him/her to conduct a search and to seize items or property specified in the warrant. A warrant shall describe the items to be seized.**
- B. Issuance of search warrant - Every tribal court 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 court.**
- C. Probable cause - No warrant of search and seizure shall be issued except by a neutral and detached judicial officer upon a finding of probable cause that a search will discover: stolen, embezzled or contraband property; property which has been or is being used to commit a criminal offense; or property which constitutes evidence of a criminal offense. Such probable cause shall be supported by a signed, written and sworn statement of a tribal police officer based upon his/her own knowledge or upon proven reliable information.**
- D. Execution and return - 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 five (5) days from the date of issuance. Warrants not returned within such time limits shall be void.**

507. SEARCH WITHOUT A WARRANT - No tribal police officer shall conduct any search without a valid warrant except:

- 1. Incident to making a lawful arrest; and then only of areas within the arrested person's immediate reach; or**
- 2. With the consent of the person being searched; or**
- 3. When he/she has probable cause to believe that the person searched may be armed and dangerous; or**

4. When the search is of a motor vehicle capable of being driven away before a warrant can be obtained, if the officer has probable cause to believe that it contains contraband, stolen or embezzled property, or other criminally related objects.

508. UNLAWFUL SEARCH AND SEIZURE - Any evidence obtained by a search which violates the Tribal Code, or the Indian Bill of Rights shall be inadmissible in criminal proceedings.

509. DISPOSITION OF SEIZED PROPERTY

- A. Inventory - The tribal 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.
- B. Hearing - A hearing shall be held by the 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 Community and may be either destroyed, sold at public auction, retained for the benefit of the tribe, or otherwise lawfully disposed of as ordered by the court.

510. ARRAIGNMENT

- A. Definition - Arraignment is the bringing of an accused before the court, informing him/her of his/her rights and the charges against him/her, receiving his/her plea and setting bail as appropriate in accordance with Section 513 of this Chapter.
- B. Procedure - An arraignment shall be held in open court without unnecessary delay after the accused is taken into custody. In no instance shall arraignment be later than the next regularly scheduled session of court, or within forty-eight (48) hours, whichever occurs first, including Saturdays, Sundays, and legal holidays.

- C. Rights of accused – Before an accused is required to plead to any criminal charge the judge shall:
 - 1. Read to the accused the section of the Tribal Code which he/she is charged with violating, including the maximum authorized penalty and to determine the he/she understands the complaint; and
 - 2. Advise the accused that he/she has the right to remain silent, to be tried by a jury; and to be represented by counsel at his/her own expense and that arraignment will be postponed should he/she desire to consult with counsel.

511. RECEIPT OF PLEA AT ARRAIGNMENT

- A. Not guilty plea – If the accused pleads “not guilty” as to the charge, the judge shall then inform him/her of a trial date, set to allow sufficient time for the accused to prepare his/her defense, and the judge shall set conditions for bail, if any, prior to trial.
- B. Guilty plea – If the accused pleads “guilty” to the charge, the judge shall determine that the plea is made voluntarily and including the rights which he/she is waiving by so pleading. The judge may then sentence defendant or defer sentencing for a reasonable time in order to obtain any information he/she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to inform the judge of facts in mitigation of the sentence.
- C. No plea – If the accused refuses to plead, the judge shall enter a plea of not guilty on his/her behalf.

512. BAIL; RELEASE PRIOR TO TRIAL – Every person charged with a criminal offense before the 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 accused at any time lawfully required:

- A. Release on personal recognizance – A person can be released on his/her own personal recognizance by a written promise to appear at trial or any and all other lawfully required times.

- B. Release to designated person – A person can be released to the custody of a designated person or organization agreeing to assure the accused’s appearance.
 - C. Release after bond money posted – Release after the deposit of a bond by the accused or a bondsman in an amount specified by the judge. The judge 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.
 - D. Other – Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.
513. BAIL; RELEASE BY POLICE OFFICER – Any tribal police officer may admit an arrested person to bail at a cash bond of ten (10) per cent of the maximum fine for the offense charged when authorized to do so by the court or when arraignment will not be held within twenty-four hours of the arrest. Any bail requirement set by a tribal police officer is subject to review by the tribal court.
514. WITHDRAWAL OF GUILTY PLEA – The court may, in its discretion, allow an accused to withdraw a plea of guilty whenever it appears that the interest of justice and fairness would be served by doing so.
515. TRIAL – Cases shall be tried by the court unless the accused demands a jury trial in writing at the time of arraignment or within a reasonable time thereafter. A demand for a jury trial shall be considered unreasonable if made after the date set for trial by the court at the accused’s arraignment.

PART TWO - CRIMINAL TRIBAL PROCEEDINGS AND JUDGMENT

516. PRESENCE OF DEFENDANT – The defendant in a criminal case shall be present in the court at arraignment, at every state of the trial proceedings, including impaneling of the jury and the return of the verdict where trial is by jury, and at the imposition of sentence.

517. **RIGHTS OF ACCUSED** - In all criminal prosecution, the defendant shall have the right to defend him/herself in person or by counsel at his/her own expense; to demand the nature and cause of the accusation against him/her, and to have a copy thereof; to meet the witnesses against him/her face to face; to have compulsory process served to obtain witnesses in his/her behalf; and to a speedy public trial by an impartial jury. No accused shall be compelled to give evidence against him/herself or be twice put in jeopardy of criminal trial and conviction for the same offense.

518. **MOTIONS**

- A. **Definitions** - A motion is the formal mode in which a party submits a proposed measure of resolution for the consideration and action of the court.
- B. **Pre-trial motions** - The following motions shall be made before trial, unless the accused shall show at trial that his/her rights will be prejudiced if the motion is not considered by the court.
 - 1. **Motion to set aside complaint** on the ground that it does not comply with the requirements of Section 501; where it is found that the defendant has been charged without probable cause; or upon a determination that the tribal court has no jurisdiction over the person or the offense.
 - 2. **Motion for bill of particulars** on the ground that the defendant must have facts other than those in his/her complaint in order to prepare his/her defense.
 - 3. **Motion for change of trial judge** on the ground that there cannot be an impartial trial by reason of the bias or prejudice of the presiding trial judge.
 - 4. **Motion to suppress evidence** which has been obtained in an unlawful manner.
- C. **Ruling on motions** - The court shall either grant or deny all motions made to him/her and have his/her order entered in the record of the case, along with his/her reasons for his/her ruling.

519. ORDER OF TRIAL PROCEDURE

- A. Jury impaneled - In a jury trial, when a jury of six (6) persons are accepted by the prosecution and defense, they shall be sworn by the Clerk of court to try the facts.**
- B. Complaint read - In any trial before a jury, the clerk or the trial judge shall then read the complaint and state the plea of the defendant to the jury.**
- C. Opening statements - Opening statements as to the facts to be proven by the evidence may be given by the tribal prosecutor, followed by the defendant or his/her counsel.**
- D. Prosecution's evidence - The tribal prosecutor shall open the case and offer evidence in support of the charge. The defendant or his/her counsel shall have the right to question any witness called to testify by the tribal prosecutor.**
- E. Defendant's evidence - The defendant or his/her counsel may then open the defense and offer evidence in support. The tribal prosecutor shall have the right to question any witness called to testify by the defendant or his/her counsel.**
- F. Final argument - When all the evidence is before the court and the jury, the tribal prosecutor, then the defendant or his/her counsel may argue the case to the court and jury.**
- G. Instructions to the jury - Upon the conclusion of the arguments, the court shall charge the jury, if one is impaneled, stating the law of the case. The court may, in its discretion, give the jury such instructions on the law applicable to the case at any time during the trial.**

520. PRESUMPTION OF INNOCENSE; REASONABLE DOUBT - A defendant in a criminal action need not testify. He/she is presumed to be innocent until the prosecution proves otherwise. The effect of this presumption is to place upon the community the burden of proving the defendant guilty beyond a reasonable doubt. The defendant's failure to testify on his/her own behalf shall in no way be held against him/her, nor shall it be commented upon by the prosecutor.

521. JOINT DEFENDANTS - When two or more defendants are jointly charged with a tribal offense, they shall be prosecuted jointly; provided that the court may, in its discretion direct that separate trials be held in the interest of justice to each defendant.
522. DISCHARGE OF JUROR; NEW TRIAL - If before the jury has returned its verdict to the court, a juror becomes ill, or for other good cause shown to the judge is found to be unable to perform his/her duty, the court may order him/her to be discharged. When a juror is discharged the court may, upon agreement of prosecution and defense, proceed in the case in the absence of said juror. In the absence of such agreement, the jury shall be discharged, and a new jury shall be impaneled to hear the case.
523. DIRECTED VERDICT - At any time after all the evidence of either side is before the court, the judge may direct the jury to return a verdict of acquittal; in the event of the failure of the jury to return a verdict of acquittal, the judge may refuse to receive any other verdict and may discharge the jury and enter a judgment of acquittal. The denial of a motion by the defendant for a directed verdict of acquittal may be reviewed on appeal to the Court of Appeals by the defendant.
524. VERDICT OF JURY - The jury must render a general verdict of “guilty” or “not guilty”, which institutes a conviction or acquittal on every allegation of fact in the complaint upon which the defendant was charged.
525. EXECUTION OF JUDGMENT
- A. Imprisonment - When judgment of imprisonment is entered, a copy thereof signed by the tribal judge shall be delivered to the tribal police, which is a sufficient warrant for its execution.
 - B. Fine - When judgment is entered imposing a fine, payment of the fine by the defendant shall cause him/her to be immediately set free unless he/she is detained for other legal cause. When judgment is entered imposing a fine and ordering the defendant to be imprisoned until the fine and costs are paid, the defendant shall be held in custody during the time specified in the judgment unless the fines and costs are sooner paid.

- C. Restitution – Where applicable, the court may order restitution.

526. IMPRISONMENT FOR FINE

- A. Inability to pay – Upon showing of indigence, a defendant may not be incarcerated solely because of his/her inability to pay the assessed fine but may, in the discretion of the court, be given the choice of:
 - 1. Performing services for the community which are within his/her range of skills and at a wage commensurate with the services rendered until such time as the assessed fine and costs have been satisfied; or
 - 2. Release on probation, one of the terms of which shall include the payment, in regular installments within his/her means, of the total fine and costs assessed.
- B. Failure to comply with sentence – A defendant, indigent or not, may be incarcerated for his/her failure to comply with the court’s order to perform services as is specified in (1) above or his/her failure to comply with the terms of his/her probation with respect to timely payments as is specified in (2) above.

527. SUSPENSION OF SENTENCE – The court may, on such term and conditions as the court may impose, suspend the sentence and release a convicted person on probation for the duration of the sentence.

528 PROBATION

- A. Conditions – The court may release on probation a convicted person on such term and conditions as are just and appropriate, taking into consideration the prior criminal record of the defendant, his/her background, character, financial condition, family obligation, and any other pertinent circumstances.
- B. Violations of probation conditions – Any person who violates the term and conditions of his/her probation or suspension of sentence shall be required at the discretion of the court to serve the original sentence.

529. PAROLE

- A. Eligibility - Any person confined to jail who shall have served without misconduct one-half ($\frac{1}{2}$) of the sentence imposed shall be eligible to be considered for parole, upon written application to the court.
- B. Granting parole - Paroles may be granted by the Court upon such term and conditions, including the requirement of personal reports from the person paroled, as the court may prescribe.
- C. Violation of parole - Any paroled person who shall violate any provision of his/her parole, at the discretion of the court, shall be apprehended and confined to serve the remainder of the original sentence, diminished as to the time the person was released on parole.

530. NEW TRIAL

- A. Application - Application for a new trial may be made only by the defendant or his/her counsel and must be made before completion of the sentence to the judge before whom the case was tried.
- B. Grounds - The judge on application from the defendant, may grant a new trial based upon a finding that any of the following has occurred:
 - 1. The jury has received any evidence, paper or document out of court not authorized by the trial judge; and
 - 2. The verdict has been decided by lot or by any other means which are not a fair expression of opinion on the part of the jury; and
 - 3. The defendant has not received a fair and impartial trial for any other cause.
- C. Effect of new trial - The granting of a new trial places the parties in the same position as if no trial has been held; all testimony must be reproduced, and the former verdict

cannot be used or referred to either in the evidence or in argument.

- D. Status on defendant - Pending a new trial, the accused shall be entitled to bail under the same conditions and qualifications as for bail before trial.
531. APPEAL FOR CONVICTION - A defendant convicted of a criminal offense under the Tribal Code may appeal that conviction to the Court of Appeals under the procedures detailed in Chapter II of this Code. Pending the hearing of such appeal, the defendant shall be entitled to bail under such conditions as the Court of Appeals shall make.