

**PRO SE GUIDE FOR SELF-REPRESENTATION  
IN RST TRIBAL CRIMINAL COURT**

**TABLE OF CONTENTS**

**1. Introduction . . . . . 3**

**2. Arrest/Summons . . . . . 3**

**3. Search Warrants . . . . . 5**

**4. The Complaint . . . . . 7**

**5. Failure to Appear . . . . . 8**

**6. Arraignment . . . . . 8**

**7. Pretrial Motions . . . . . 10**

**8. Bond . . . . . 11**

**9. Discovery . . . . . 12**

**10. Compelling Witnesses to Testify or to Bring Evidence to Court . . . . . 13**

**11. Speedy Trial . . . . . 13**

**12. Joinder of Co-Defendants . . . . . 14**

**13. Pretrial Conference . . . . . 14**

**14. Trials . . . . . 15**

**Bench/Court Trial . . . . . 16**

**Jury Trial . . . . . 19**

**15. Sentencing . . . . . 24**

**16. Judgment of Conviction . . . . . 25**

**17. Appeal . . . . . 25**

**18. Return of Property . . . . . 26**

**19. Reduction of Sentence . . . . . 27**

## **INTRODUCTION**

This guide is provided to help guide the self-represented defendant in Tribal Criminal Court. It is provided for informational purposes only and is not to be construed as giving legal advice or creating an attorney-client relationship.

For what ever reason, you have either been unable to secure legal representation or you have chosen to represent yourself on the charges without the aid of legal representation.

Pro se in its most basic terms means that you are representing yourself in court without the assistance or presence of an attorney. The Tribal Prosecutor who is prosecuting your case will more than likely be a trained attorney which could put you at a great disadvantage. An attorney has knowledge and training in the law and court procedure you may not have. You may lack the legal and court procedure knowledge and training or the courtroom skills that an attorney or Tribal Prosecutor possesses.

By representing yourself pro se, the Court will expect you to have some knowledge of Court procedure and to be competent in your representation.

This guide will cover each part of the criminal justice process you will be involved with by being charged with a crime in RST Tribal Court from beginning to end. The guide should be read in its entirety first and then you can refer to each part of the criminal justice process of this guide when you prepare for that part of the process. Hopefully this guide will you give you a better understanding of each part of the process and to help you prepare for each part of the process to mount your defense against the charges.

You should also familiarize yourself with the Tribal Rules of Criminal Procedure found in Title 7 of the Tribe's Law and Order Code, the Tribe's bill of rights in the Tribal Constitution found Article X and the Indian Civil Rights Act found at 25 USC Section 1302.

At some point you came in contact with law enforcement and were either arrested or summoned to appear in court on a criminal complaint. You were either served with or were given a criminal complaint charging with a crime or crimes in Tribal court. Or you may have been arrested on criminal charges. Either way, the Rosebud Sioux Tribe is bringing the charges against you through the Tribal Prosecutor. You are the defendant in the criminal proceedings. This guide will take you through each part of the criminal proceeding in Tribal court. It will also cover Court procedure and other requirements. This guide also refers to forms and motions found on the Court's website under "Pro Se Criminal Forms" or you can ask a clerk for a for a specific form or forms. In each section below you will be referred to a specific form or motion along with instructions and tips to use and file with the Court if a particular motion is applicable to you or your case.

## **ARREST/SUMMONS**

There are times when a person is arrested (this constitutes a seizure under the Tribe's Constitution and the Indian Civil Rights Act) and/or were searched by law enforcement in violation of the Tribe's Constitution or the Tribal Code as well as the Indian Civil Rights Act provisions against unreasonable searches and seizures. In those cases a person should file a motion to suppress any evidence or statements made to law enforcement as a result of those violations. Below are some common violations of your rights against unreasonable searches and seizures.

The Tribal code (Title Seven Section IV, Subsection B.6.) allows a law enforcement officer who is authorized to make arrests on the Reservation to arrest a person for any offense committed in their presence without a warrant. A law enforcement officer can arrest a person if the officer has probable cause that a Class A offense has been committed and that the person arrested committed it even though not committed in the presence of the officer.

So an officer can arrest a person for any crime that the officer witnesses. For example, an officer can arrest a person for any crime whether a major crime or a petty crime committed in the officer's presence.

An officer may also arrest any person if the officer has probable cause to believe that a Class A offense has been committed (the most serious offenses in the Tribal criminal code) and the person committed the Class A offense outside the presence of the officer. For example, a person commits the crime of burglary, a Class A offense in the Tribal Code, outside the presence of the officer. Several witnesses tell the officer that John Doe committed the burglary and described John Doe. The officer located John Doe and he fit the description of the witnesses. The officer could arrest John Doe for burglary, a Class A offense based on probable cause even though the crime was not committed in the presence of the officer. If the officer lacked probable cause to arrest you and only arrested you on hunch, you should file a motion to suppress any statements or evidence derived from the illegal arrest for lack of probable cause. For example, a person commits the crime of burglary, a Class A offense in the Tribal Code, outside the presence of the officer. The officer arrested John Doe before for a burglary charge so based on the prior arrest for burglary the officer has a hunch that John Doe committed the current burglary. With no other evidence the officer arrests the John Doe for burglary. If you were arrested for a Class A offense committed outside the presence of the arresting officer and the officer lacked probable cause to believe you committed the offense then you should file a **Motion to Suppress Evidence for Lack of Probable Cause to Arrest for a Class A Offense** form that can be found on the Court's website or you can ask a clerk for the form.

An officer should not arrest a person for a Class B, C or D offense not committed in the officer's presence. You should be served with a summons and complaint for any offense committed outside the presence of law enforcement. For example, a neighbor of John Doe calls law enforcement that John Doe is standing in the street yelling and being disorderly. Law enforcement locates John Doe at his home and arrests him for Disorderly Conduct, a Class D offense, not committed in the presence of law enforcement. The officer searches John Doe

incident to the arrest and finds a bag of drugs in Doe's front pocket and he is charged with possession of drugs a more serious offense. If Doe had not been arrested for Disorderly Conduct the bag of drugs would have never been found by law enforcement. If an officer arrested you for a Class B, C or D crime that was not committed in the officer's presence and after the officer arrested then searched and seized evidence from you or you make an incriminating statement after your arrest, you should file a **Motion to Suppress Evidence for Unlawful Arrest for a Class B, C or D Offense** form you can find on the Court's website or you can ask a clerk for the form.

An officer can also arrest a person with an arrest warrant issued by the Court. An arrest warrant is issued after an investigation and the Court finds probable cause to believe a Class A offense has been committed and the offense was committed by the person named in the arrest warrant.

A summons is commonly issued after an investigation that a Class B, C or D offense has been committed unless the Court has reasonable grounds to believe that the defendant will not appear on a summons it will issue an arrest warrant for a Class B, C or D. If a Class B, C or D offense is committed outside the presence of law enforcement a summons must be issued and the officer may not arrest the defendant. A summons will command a defendant to appear in court on the charges contained in the summons and complaint at a specified date and time.

The Tribe's Constitution prohibits the government of the Tribe from searching or arresting any person without informing them of their right to remain silent, to have access to an attorney, to be informed that anything they say can be used against them in a court of law, to have these rights explained at the time of the search or arrest and to ask them if they understand these rights. If law enforcement failed to inform you of your rights at the time they arrested you or at the time they searched you or your premises and seize items of evidence, they potentially violated your constitutional rights. If the officer failed to inform you of your rights upon arresting or searching you, you should file a motion to suppress any evidence derived from an illegal arrest for a violation of your constitutional rights by using the **Motion to Suppress Evidence for Failure to Advise of Rights** form you can find on the Court's website or you can ask a clerk for the form. If the officer failed to inform you of your rights upon arresting or questioning you, you should file a motion to suppress any statements derived from the illegal arrest for a violation of your constitutional rights by using the **Motion to Suppress Statements for Failure to Advise of Rights** form you can find on the Court's website or you can ask a clerk for the form. These forms can found on the website or you can ask a clerk for the form.

After your arrest, bond is normally set by a bond schedule approved by the Court. The bond schedule gives a bond amount for the type of offense or crime you are accused of. This bond is set without the Court knowing your circumstances. If you are charged with a major crime like rape or kidnaping you may be held without any bond being set until you appear before a judge for your arraignment. There is a section on bond/bail in more detail later in this guide.

## SEARCH WARRANTS

RST Constitution Article X Section 1(c) provides that the government of the Tribe shall not violate the right of the people to be secure in their persons, houses, papers, vehicles and effects against unreasonable search and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a judge, and particularly describing the place, person, house, papers, vehicle, or effects to be searched, the object and scope of such search and the you can find on the Court's website or you can ask a clerk for the form. person or thing to be seized, and any search or seizure taken in violation of this provision shall be excluded. RST Constitution Article X Section 1(d) further provides that search or arrest of any person without informing them of their right to remain silent, to have access to an attorney, to be informed that anything they say can be held against them in a court of law, to have these rights explained at the time of the search or arrest, and to ask them if they understand these rights.

Federal Statutory law found in the Indian Civil Rights Act at 25 U.S.C. §1302 a.(2) provides that no Indian Tribe in exercising powers of self-government shall violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

Search Warrants are authorized by and the requirements of such warrants are addressed in Title 7 Section I. A search warrant may only be issued by a tribal judge at the request of the tribal prosecutor or any police officer or other law enforcement officer authorized to make arrests on the Rosebud Reservation.

A warrant can be issued to search for and seize of property that constitutes evidence of the commission of a crime; contraband, the fruits of a crime or things criminally possessed, and property designed or intended for use or that has been used as the means of committing a crime.

A warrant can be issued by the Court only upon the finding of probable cause found either by sworn testimony establishing grounds for issuance or by an affidavit establishing grounds for issuance and probable cause can be based on hearsay. This information is normally provided to the Court by law enforcement. The Court may require affiant to appear and be examined under oath. Probable cause to issue a search warrant means that the facts and circumstances known to the Court at the time of request for a search warrant would cause a reasonable person to believe that a crime has been committed and that evidence of a crime is located on defendants person or property.

If a warrant is issued the warrant shall:

- (a) be directed to any police officer or law enforcement officer or official and
- (b) command person(s) to search
- (c) specify the period of time to search not to exceed ten days
- (d) command the person or place and name of property (including documents, books, papers and other tangible objects) specified in the warrant to be searched and/or seized
- (e) be served in the daytime (between 6:00 a.m. and 10:00 p.m.) unless the Judge authorizes on

the warrant a different time.

(f) be returned to the Judge after it is executed or at the end of the ten day period if it is not executed.

After a search where property is seized, the law enforcement officer seizing the property must give the person whose property was taken a copy of the warrant and a receipt for the property taken or leave a copy of the warrant and receipt at the place the property was taken. The officer must make return of the warrant to the issuing Judge promptly along with an inventory of property seized.

Tribal law provides for exceptions to the warrant requirement. A law enforcement officer may search without a warrant if:

(a) he or she knows or has reasonable cause to believe a person is engaged in the commission of an offense

(b) incident to a lawful arrest

(c) circumstances that would make it unreasonable to require the obtaining of a warrant prior to the search

(d) stop any person in a public place he/she has probable cause to believe is in the act of committing or attempting to commit an offense and demand that person's name, address and explanation of the person's actions and frisk search that person for weapons if there are reasonable grounds to believe law enforcement officer's safety or safety of others is endangered.

If you or your property was searched by law enforcement who had a search warrant you might be able to challenge the validity of the search warrant and try to have any evidence seized from the search suppressed. If the search warrant was issued without probable cause use the **Motion to Suppress Evidence Seized with a Search Warrant that Lacked Probable Cause** form found on the website or you can ask a clerk for the form.

## **THE COMPLAINT**

The Complaint is a charging document in which the Tribe brings criminal charges against you. It will contain the crimes you are accused of committing. It will state the general location where the offense or crime took place and the date and approximate time the crime was committed.

The complaint will set out the charge(s) or crime(s) you are accused of in separate counts of the Complaint along with the code section you allegedly violated (example, Count One: 5-5-2(1) First Degree Assault). Each Count will set out a brief set of alleged facts of how you allegedly committed the offense or crime in the count. Reading each count will tell you the offense or crime you are charged with in that count and a brief statement of how you allegedly committed that offense or crime. The Tribe cannot charge more than one crime in a single count.

The names of the witnesses must be inserted at the foot of the complaint or endorsed on the complaint. This will give you some idea who your accusers and who the witnesses are.

## **FAILURE TO APPEAR**

If you as the defendant fail to appear at any hearing including arraignment, pre-trial conference, motions hearings, trial or sentencing hearing without good cause or without being granted a continuance before such hearing, the Court will order that a bench warrant be issued for your arrest. You may also be charged with the crime of Failure to Appear.

## **ARRAIGNMENT**

Your first court hearing after your arrest will be at the arraignment hearing. If you haven't made bond you must be arraigned within 72 hours. At the arraignment you will be given a copy of the Complaint that charges you with crime(s) against the Tribe. The Court will advise you of the charges in the complaint and the maximum possible penalties for each count of the complaint carries. The Court will then ask you to enter a plea and if you plead not guilty the Court will schedule a trial.

Plea bargains are ordinarily offered by the Tribal Prosecutor at the arraignment. This can range from pleading guilty to the charges in exchange for a sentencing agreement to an offer to plea to one or more charges and other charges being dismissed. You will have to make your own decision whether to accept or reject any plea bargain by weighing your options.

After advising you of the charges and possible penalties, the Court will advise of your rights as a criminal defendant charged with a crime or crimes in Tribal Court. The Court will advise you that you have the rights:

1. To remain silent and anything you say may be used against you in Court.
2. To be represented in all stages of the proceedings by an attorney. You can be represented by the Public Defender or by a private attorney at your own expense or represent yourself pro se.
3. To have bail or bond be set in your case.
4. You have the right to be informed of the nature of the charges against you and to be informed of the maximum penalty that each charge carries.
5. You have the right to confront and cross-examine all witnesses against you in person or by counsel.
6. You have the right to have witnesses compelled by subpoena to appear and testify in your behalf.
7. You have the right to refuse to testify regarding the charges against you or to testify on your own behalf, however, if you do take the stand and testify in your behalf, you will be giving up



your right to refuse to testify to any matter relevant to the immediate proceedings.

8. You have the right to have a speedy and public trial by an impartial judge or jury.
9. You have the right to appeal in the event you plead not guilty, go to trial and are proven guilty.
10. You are presumed innocent until such time that you are proven guilty beyond a reasonable doubt.

The Court then will ask you to enter a plea to the charges. You can enter the following pleas: Not Guilty, Guilty, or No Contest.

1. If you plead Not Guilty you are denying the charges against you in the complaint. By pleading Not Guilty the Court will schedule you for a trial where the Tribe will have the burden of proving each and every element of the crime(s) you are charged with beyond a reasonable doubt. If you are charged with a class A offense you have the right to a jury trial. A jury trial means that 6 tribal members would be chosen from a jury pool and they would listen to all the evidence in your case and make a decision as to whether you are guilty or not guilty of the charges against you. If you want a jury trial you must request one at your arraignment. If you fail to ask for a jury trial at your arraignment you are deemed to have waived your right to a jury trial and you will have to settle for a bench trial.

If you are charged with a class B, C, or D offense or if you waive your right to a jury trial on a class A offense you are only entitled to a bench trial. A bench trial means that the judge hearing your case will listen to all the evidence in your case and the judge alone would make the decision as to whether you are guilty of the charges against you.

According to the Tribal code a defendant is entitled to a jury trial if he or she is charged with a Class A offense and requests a jury trial at his or her arraignment.

But note 25 U.S.C. §1302 (a)(10) of the Indian Civil Rights Act “No Indian Tribe in exercising powers of self-government deny any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons”. Offenses punishable by imprisonment now includes Class B offenses.

If you are charged with a Class B offense you should ask for a jury trial at the arraignment if you want a jury trial. It is unclear if the Court will grant you a jury trial for a Class B offense which now carries a penalty of up to 30 days in jail.

2. If you plead Guilty you are admitting the charges against you in the complaint and you are admitting that the complaint is true. By pleading Guilty you would be giving up the rights you have and your right to a trial where the Tribe would have the burden of proving each and every

element of the crime(s) you are charged with beyond a reasonable doubt, your right to confront and cross-examine all the Tribe's witnesses against you, your right against self-incrimination the rest of the rights I just advised you of. A Guilty plea will constitute a conviction and is the same as if you went through a trial and were found guilty beyond a reasonable doubt. By pleading Guilty you will be sentenced for the crime(s) you plead guilty to.

3. If you plead No Contest to the charges you neither admit nor deny the charges but choose not to defend against those charges. The Court will treat a No Contest plea as a Guilty plea. you would be giving up the rights you have that I just explained to you and your right to a trial where the Tribe would have the burden of proving each and every element of the crime(s) you are charged with beyond a reasonable doubt, your right to confront and cross-examine all the Tribe's witnesses against you, your right against self-incrimination the rest of the rights I just advised you of. You will also be sentenced for the crime(s) you plead No Contest to.

If you plead no contest or guilty you will be sentenced either at the arraignment if a sentence is part of the plea agreement or at a later sentencing hearing..

If you plead not guilty a trial will scheduled. You will then start to prepare for your trial.

## **PRETRIAL MOTIONS**

You may need to file pretrial motions. There are several pretrial motions in the body of this guide that you can use.

Certain motions dealing with the admissibility of evidence and other issues must be filed before trial and a decision made on each motion by the Court. If you fail to raise any of your pretrial motions you could be barred from attempting to raise them at trial. This means that if fail to file your motions well in advance of trial, the Court won't let you raise the motion at trial and you lose the ability to suppress any statement or evidence.

These motions would include all the motions contained in this guide except the motion for return of property. It would include motions for discovery, to dismiss, to suppress evidence or statements, to sever co-defendants and lack of speedy trial.

If you have some factual or legal grounds to file a pretrial motion please do so as you will not be able to do it after the pretrial conference.

The Court will make a ruling on each of your pretrial motions. The Court will either grant or deny your motion. If the Court grants your motion you will be granted the relief you sought in that motion. If the Court denies your motion you will be not be granted the relief you sought in that motion. If the Court grants a motion suppressing a piece of evidence or a statement the Tribe cannot try to introduce that evidence at your trial.

## **BOND/BAIL**

If you were arrested a bond (paying money to the court to assure your appearance at all court proceedings) will be imposed. If a cash bond is imposed you will have to pay a cash bond. Sometimes the Court will release you on a personal recognizance suspended cash bond. You can ask for a bond reduction at your arraignment. This is commonly done without any due process hearing.

You should be entitled to a bond hearing that meets the requirements of due process where you have notice of hearing and opportunity to be heard and call witnesses. If you are unable to pay the bond to secure your release from jail you should file a motion for bond reduction. Use the **Motion for Bond Reduction** form that can be found on the website or you can ask a clerk for the form. Both the Tribe's Constitution and the Indian Civil Rights Act (Federal Law) prohibit the Tribe from requiring excessive bail. Both also prohibit the Tribe from denying any person of liberty without due process of law. The current bond amount may have been set without hearing or any due process of law being afforded to you.

You should ask for a bond reduction hearing to prove your grounds for a bond reduction. At the bond reduction hearing be prepared to submit evidence (meaning financial and medical documents and witnesses) to backup your assertions in the written motion for bond reduction. If you need any witnesses who will not voluntarily appear at the bond hearing, please contact the clerk of courts to have the witnesses subpoenaed (meaning they will be ordered to appear and testify at the bond reduction hearing).

In determining bond and conditions of release, the Court will take into account:

- (a) The nature and circumstances of the charges
- (b) The weight of the evidence,
- (c) The defendant's family ties
- (d) Employment
- (e) Financial resources
- (f) Character and mental condition
- (g) The length of time on and ties to the Rosebud Indian Reservation
- (h) Ties to the Rosebud Indian Reservation
- (i) Record of convictions, record of appearance at court proceedings
- (j) Failure to appear at court proceedings
- (k) Charges of failure to appear
- (l) The risk defendant will flee the jurisdiction of the Rosebud Sioux Tribe
- (m) Whether the defendant poses a danger to the community

When released on a cash or suspended cash bond the Court may impose the following conditions of release to ensure your appearance or to protect the safety of the community:

- (a) No violations of any Federal, Tribal or State laws
- (b) No consumption or usage of any form intoxicants including alcohol or drugs unless

prescribed by a physician

- (c) Appear at all court hearings on the matter
- (d) Submit to random urinalyses or PBT at the request of law enforcement or the Court
- (e) No contact with alleged victims or their households
- (f) Place restrictions on personal association with specified individuals or places
- (g) Maintain or seek gainful employment or schooling
- (h) Participate in drug, alcohol or mental health evaluation or treatment
- (i) Place restrictions on the defendant's place of residence
- (j) Comply with a specified curfew
- (k) Attend school if applicable
- (l) Release you to the custody of an approved responsible individual who agrees to monitor the defendant
- (m) No possession of a fire arm or other dangerous weapons
- (n) Any other conditions the Court deems appropriate

A violation of any imposed condition of your release could result in your bond being revoked and you sitting in jail until your trial. You are entitled to a hearing before the Court can revoke your bond under the due process clauses of the Tribe's Constitution and the Indian Civil Rights Act.

### **GETTING DISCOVERY (FIND OUT WHAT EVIDENCE THE TRIBE PLANS TO USE AGAINST YOU AT TRIAL)**

Discovery is a means by which you obtain from the Tribe the evidence the Tribe plans on using against you at trial. It is also a means by which you obtain any exculpatory evidence in the possession of the Tribe. Exculpatory evidence is evidence that could exonerate you or tends to show you may not be guilty of the charges. Discovery will help you understand the evidence the Tribe intends to introduce at trial against you and will allow to prepare your defense and prepare questions to cross examine the Tribe's witness (questions you ask the Tribe's witnesses who testify against you).

Use the motion for discovery to get the evidence in your case that is in the possession of the Tribal Prosecutor. Use the **Motion for Discovery** form (found on the Court's website or you can ask a clerk for the form) to obtain evidence and statements that the Tribal Prosecutor may or may not use at your trial. The Tribal Prosecutor's office will hand over such information without a formal written motion but it is a good tactic to file the motion anyway. There are good reasons for this. The most important reason is that if the Tribal Prosecutor inadvertently or intentionally fails to provide the requested discovery, you may have grounds for an appeal or for a new trial. It is also important so that you know what kind of evidence the Tribe has against you and allows you to judge the strength or weakness of the Tribe's case against you. It will also help you to attack the credibility of the Tribe's witnesses against you (for example, if they have a record of convictions for crime(s) of dishonesty or any felonies you can use to impeach the witness). The Court may grant or deny in part some of your request depending on the circumstances. You are entitled to receive the evidence the Court says you can have access to found in an Order of

Discovery.

## **COMPELLING WITNESSES TO TESTIFY OR TO BRING EVIDENCE TO THE COURT BY USING SUBPOENAS**

A subpoena is an order of the court issued by a Judge, Magistrate or the Clerk of Courts either commanding a person to attend and give testimony at a specified time or commanding a person to bring some object or piece of evidence to the Court.

If you need a witness compelled to attend and testify at your trial or other hearings or if you need a person to bring some object or piece of evidence such as documents to the trial or other hearing you can file an ex parte (meaning you do not need to provide notice of the motion to the Tribal Prosecutor) motion for issuance of subpoena. You will be required to provide the name, address or location for service and any other information that will aid in the subpoena being served on the correct witness. It will also be necessary to describe the object or piece of evidence you want produced at trial and the name and address of the person or agency who has possession of the documents or other evidence as well as any other information that will aid in the subpoena being served on the correct person.

Use the ex parte **Motion to Subpoena Witnesses** form to compel a witness to testify at any hearing or the trial. You can find one on the Court's website or you can ask a clerk for the form.

Use the ex parte **Motion to Subpoena Persons to Bring Evidence to Court** form for your hearings or trial (called a subpoena duces tecum) to compel a witness to testify and bring evidence to a hearing or the trial. You can find these forms on the Court's website or you can ask a clerk for the form.

## **SPEEDY TRIAL**

The Indian Civil Rights Act (Federal Law) prohibits the Tribe from denying any person in a criminal proceeding a speedy and public trial. The Tribe's Constitution prohibits the Tribe from denying any person a speedy and public trial that shall be initiated no more than six months from the filing of criminal charges.

This means you must be given a trial within six months from the date of the filing of charges against you. However, any delays of having a trial on your charges that are caused by you (such as you being granted a continuance of the trial, you fail to appear at any scheduled court hearings or you flee the Tribe's jurisdiction) will toll the speedy trial requirement. For example, the Tribe files charges against you on January 1 and a trial is scheduled for April 1 which is 4 months from the date the charges are filed. You ask for a continuance of the trial and the court grants your motion and reschedules the trial for July 1 which is 7 months from the date the charges are filed (more than six months from the filing of charges). This would not violate the speedy trial requirement because the trial was scheduled within 4 months of the charges being filed and the 3

month delay is attributed to you because you asked for a continuance and the 3 months would be tolled. Then, either the Court continues the July 1 trial or the Tribe asks for a continuance of the July 1 trial and the court grants the Tribe's motion and reschedules the trial for October 1 which is 10 months from the date the charges are filed (more than six months from the filing of charges) but the 3 month delay caused by you make it 7 months from the date of filing charges to the time of your trial on October 1. This would violate your right to a speedy trial under the Tribal Constitution.

If you believe you have been denied a speedy trial use and file the motion for speedy trial. Use the **Motion to Dismiss for Lack of Speedy Trial** form found on the Court's website or ask the clerk for the form.

### **JOINDER OF CO-DEFENDANTS**

The Tribal code (found in Chapter Seven of the Rules of Criminal Procedure Section VI, Subsection E.) allows the Tribe to join and charge two or more defendants in a single complaint. It also allows two or more defendants to be tried together if they could have been joined in a criminal complaint. If you and other defendants are charged separately involving the same incident you will be tried together. However, if you can think you would be prejudiced with a joint trial with other co-defendants, you can file a motion for a separate trial but you will have to demonstrate to the Court that you would be prejudiced if you are tried with the other defendants. Examples of prejudice would be the nature of the Tribes's case against the individual defendants will require proof of different essential elements and the joinder of the defendants will allow the introduction of evidence against one defendant which would be inadmissible against the you but is of such a nature that it will prejudice the jury against you and deprive you of a fair and impartial trial; or that joinder of the defendants effectively prevents you from asserting your constitutional right not to testify should the co-defendant(s) take the stand and give testimony and thereby prejudice the jury against you; or that immaterial and irrelevant evidence as to you may be introduced against the co-defendant and the jury will have insurmountable difficulty in distinguishing the evidence to be considered against this defendant and evidence to be considered against the co-defendant, all to the prejudice of you; or that the only way for you to obtain a fair and impartial trial would be by a separate trial from the co-defendant.

If joinder of other co-defendants would prejudice you or your case and it would violate the due process of law clauses of the Tribe's constitution and the Indian Civil Rights Act you should file a motion to sever co-defendants and separate trials. Use the **Motion to Sever Co-Defendants and for Separate Trial** form found on the Court's website or ask the clerk for the form.

### **PRETRIAL CONFERENCE**

If you were entitled to and requested a jury trial at your arraignment, the Court will schedule a hearing before the trial called a pretrial conference. The purpose of the pretrial conference is for the parties to exchange discoverable information and the Court will consider all pretrial motions

and issue orders to regulate the conduct of the trial. Plea negotiations may also be made were a plea bargain may be offered by the Tribe or you could offer your own to the Tribe.

This is your last chance raise any defenses or objections before trial. Any pre-trial motions that could have been raised before trial are waived if you fail to do so.

## **TRIALS**

At this stage of the proceedings you are ready for a trial on the charges where the Tribe has the burden of proving that you are guilty of each charge in the Complaint beyond a reasonable doubt. This section will discuss court procedures you must be aware of before undertaking to represent yourself.

Here are some points to keep in mind. The Tribe always has the burden of proving you guilty of each element of the crime(s) you are charged with beyond a reasonable doubt. The burden is never on you to prove that you are innocent of the charges but you do need to mount a defense unless you are convinced the Tribe failed to prove you guilty beyond a reasonable doubt in their case in chief. You can choose not to testify and if you choose not to testify the jury or the Court cannot infer your guilt because you have a constitutional and statutory right not to testify or to incriminate yourself.

All criminal trials will be tried by the Court if the Defendant is charged with a Class B or C offense or if the Defendant waives their right to a Jury trial at arraignment on a Class A offenses. (Note: Failure of the defendant to request a jury trial on a Class A offense at their arraignment will be deemed a waiver of their right to jury trial are entitled to only a bench trial)

According the Tribal code a defendant is entitled to a jury trial if he or she is charged with a Class A offense and requests a jury trial at his or her arraignment.

But note 25 U.S.C. §1302 (a)(10) of the Indian Civil Rights Act “No Indian Tribe in exercising powers of self-government deny any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons”. Offenses punishable by imprisonment now includes Class B offenses.

If you are charged with a Class B offense you should ask for a jury trial if you want a jury trial. It is unclear if the Court will grant you a jury trial for a Class B offense which now carries a penalty of up to 30 days in jail.

In a court/bench trial the Court is the trier of fact and makes all legal rulings including ruling on any objections and the admissibility of evidence (testimony as well as all physical and documentary evidence).

In a jury trial the jury is the trier of fact but the Court makes all legal rulings including rulings on

any objections and the admissibility of evidence (testimony as well as all physical and documentary evidence). The Court also advises the jury on the law by reading jury instructions to the jury at the conclusion of all evidence and prior deliberating.

Regardless of the type of trial you will need to break down the elements of each crime the you are charged with. The Tribe is required to prove each element of each crime you are charged with beyond a reasonable doubt. If the Tribe fails to prove any element of a crime beyond a reasonable doubt you should be found not guilty of that crime.

The Tribe has the burden of proving each and every element of each of the crime you are charged with beyond a reasonable doubt. This burden never shifts to the defendant. Reasonable doubt is defined as proof that leaves the Court or jury firmly convinced of the Defendant's guilt. If the Court or jury is firmly convinced that the Defendant is guilty of the crime charged, the Court or jury must find him or her guilty. If, on the other hand, the Court or jury thinks there is a real possibility that defendant is not guilty, the Court or jury must give the defendant the benefit of the doubt and return a verdict of not guilty.

The admissibility of evidence in Tribal Court is governed by the Federal Rules of Evidence. These rules can be found at <https://www.law.cornell.edu/rules/re>. You should familiarize yourself with these rules well before the trial.

**Court trials** will proceed in the following manner:

1. The Tribe may make an opening statement. Next you may, but do not have to, make an opening statement. An opening statement is not evidence but is simply a summary of what the party's expect the evidence to show. It is your opportunity to point out to the Court the weaknesses of the Tribe's case.
2. The Tribe will then present its evidence. The Tribe will question each of their witnesses, including any alleged victim, about what occurred and how you were involved. You will have the opportunity to cross-examine each of the Tribe's witnesses. The Tribe will also attempt to introduce physical evidence that would prove your guilt.

The admissibility of evidence in Tribal Court is governed by the Federal Rules of Evidence. These rules can be found at <https://www.law.cornell.edu/rules/re>. You should familiarize yourself with these rules well before the trial.

You can make objections to the Tribe's witnesses' testimony if you have legal grounds to do so. You must object to the Court and give a ground for your objection. "Not relevant" and "hearsay" objections are the most common grounds for objecting to testimony. Federal Rules of Evidence Rule 401 says evidence is relevant if the evidence has a tendency to make the existence of any fact that is of any consequence to the determination of the action more probable or less probable than it would be without the evidence. In plain English, the evidence has to have some



bearing on the case or a fact in the case. Hearsay evidence is an out of court statement or assertion (either oral or written) made by someone and the person who heard or read the statement or assertion testifies about it in court. In plain English, it is when a witness testifies what they overheard another person say and the person who made the statement does not testify. An example of hearsay evidence would be a witness who testifies that “I heard my friend say they saw the defendant commit the crime”. Federal Rules of Evidence Rule 801 prohibits hearsay evidence but there are however exceptions to the hearsay rule. If you as the defendant made an incriminating statement to someone else, that person can testify to what you said even if it is hearsay, For example, if the witness testifies that “the defendant told me he committed the crime” would not be hearsay because of the exception. Such a statement is deemed to be reliable because someone would not make a statement that could send them to jail unless it was true.

You can make objections to the introduction of any physical evidence and documents if you have legal grounds to do so. “Not relevant” and “lack of foundation” are the most common grounds for objecting to the introduction of physical evidence. See the “not relevant” objection in the paragraph above. A lack of foundation objection to physical evidence is made when the Tribe failed to lay the proper foundation for the evidence to be admitted into evidence. To lay the proper foundation the Tribe must ask the witness who they are, what objects or pieces of evidence they brought to the Court, a description of the objects or pieces of evidence, how the evidence came into that persons possession, how it is evidence to support the charges and if the evidence is documents the Tribe must ask if the documents are kept in the ordinary course of business. If the Tribe fails to do so, you should object to the evidence being introduced into evidence for lack of foundation.

Cross examination of the Tribe’s witnesses against you is essential to your defense against the charges. Cross examination is your chance to ask questions of the Tribe’s witnesses. It is your opportunity to ask questions that will cast doubt on the charges. You can only ask questions of the Tribe’s witnesses during cross examination. Do not attempt to make statements or to testify during cross examination, the Court will shut you off from doing so.

Well before your trial date you should have received all the Tribe’s witnesses statements and police reports in your discovery request. You can prepare your cross examination questions from these statements and reports. Only ask questions that illicit a “yes” or “no” responses from the witnesses. More questions will become apparent when each witness testifies, so listen carefully to what they say on the stand and write down notes and questions of any inconsistencies with what their statements say and what they are testifying to. A witness may even say something that helps your case.

After your cross examination of a witness the Tribe can ask re-direct questions based on the witness testimony regarding the questions posed to the witnesses on cross-examination. Then you can re-cross the witness regarding the witnesses testimony on re-direct examination.

3. You should always make an oral motion to the Court for judgment of acquittal of each charge after the Tribe rests its case against you. The Court must dismiss any charge where the evidence is insufficient as a matter of law to sustain a conviction. Use this script to read to the Court at the close of the Tribe's case against you to move the Court for judgment of acquittal: "Your Honor, at this time I would like to move the Court for judgment of acquittal on each charge as the evidence presented is insufficient as a matter of law to sustain a conviction."

4. Following the Tribe's case, you may, but you do not have to present evidence, testify or call other witnesses. If you decide to present a defense, you will have to question each of your witnesses (this is called direct examination). The Tribe can cross-examine your witnesses. You may ask re-direct questions based on the witnesses testimony to the questions posed to the witnesses on cross-examination by the Tribe. The Tribe then may re-cross exam the witness regarding the witnesses answers on re-direct examination. Each witness is then excused.

It will be your responsibility to directly ask questions (direct examination) of your witnesses and to get your evidence introduced into the record. You can only ask questions during direct examination. Do not attempt to make statements during cross, the Court will shut you off from doing so.

Your witnesses should be asked who they are, what they know and how they know it or anything they might have observed. Like cross examination you should prepare your questions for each of your witnesses well before the trial and take notes of any strong points testified to that you can use in your closing arguments to the Court.

It will also be your responsibility to get objects and other physical evidence, such as documents, introduced into the record. You do this by laying the foundation for the admissibility of the evidence by questioning the person you subpoenaed to bring the objects or pieces of evidence you want introduced into evidence. Ask the Court to mark the evidence as an Exhibit. Then you must ask this person who they are, what objects or pieces of evidence they brought to the Court, a description of the objects or pieces of evidence, how the evidence came into that persons possession and if the evidence are documents then you must ask if the documents are kept in the ordinary course of business. Then you must ask the Court to have the evidence introduced and accepted as evidence. Only evidence accepted by the Court after it is ruled admissible will be seen or considered by the Court.

The Tribe may object to the introduction of the objects or pieces of evidence into evidence. The Court will make a ruling. If the Court allows the evidence it will be considered and weighed by the Court in deciding if you are guilty or not guilty. If the Court does not allow the evidence, it won't be considered.

After your direct examination of your witnesses the Tribe can cross examine and ask questions based on what your witnesses testify to regarding the questions posed to the witnesses on direct

examination. Then you can re-direct and ask the witness questions regarding the witnesses testimony on cross examination.

5. The Tribe can rebut your witnesses testimony presented by you in your defense with rebuttal witnesses. The Tribe can rebut any testimony or evidence introduced by you with rebuttal witnesses. You can cross-exam any rebuttal witnesses.

The Tribe can only be able to rebut testimony or evidence you introduced in your case. Any attempt by the Tribe to introduce evidence other than rebuttal evidence should be objected to.

6. The defendant may offer sur-rebuttal to any testimony presented by the Tribe in their rebuttal. The Tribe may cross-exam any sur-rebuttal witnesses.

7. When you are done with your witnesses, you can rest your case and after any rebuttal by the Tribe you should always make an oral motion to the Court for judgment of acquittal of each charge after the Tribe you rest you case. The Court must dismiss any charge where the evidence is insufficient as a matter of law to sustain a conviction. Use this script to read to the Court at the close of the Tribe's case against you to move the Court for judgment of acquittal: "Your Honor, at this time I would like to move the Court for judgment of acquittal on each charge as the evidence presented is insufficient as a matter of law to sustain a conviction."

8. After presentation of evidence is completed and you rest your case, the Tribe will make their closing arguments. Then you will give your closing arguments. The Tribe will then have the final rebuttal argument.

Closing arguments is your chance to summarize and interpret the evidence to show the Court that you are not guilty of the charges. As with opening statements, closing arguments are not evidence. You will want to argue the Tribe failed to prove the an element or elements of the charge(s) and then point out all evidence that casts doubt on your guilt.

9. The Court will then decide whether the Tribe proved beyond a reasonable doubt the elements of each and every crime you are charged with. If you are found guilty of any of the charges, you will be sentenced on those charges. If you are found not guilty of any of the charges, those charges will be dismissed.

10. The Court must enter written findings of facts and conclusions of law to support its verdict.

**Jury trials** will proceed in the following manner:

1. The first step in a jury trial is picking a fair and impartial jury to hear your case.

Potential jurors are brought into courtroom and Preliminary Jury Instructions are given to the entire group. The clerk will call 10 names from the jury list of jurors present. The Tribe will

question the panel and may challenge any juror for cause and has unlimited challenges for cause. You can then ask the panel and may challenge any juror for cause and you have unlimited challenges for cause.

The Court will excuse any juror on the panel who is found to be biased or can't be a fair and impartial juror for cause. The clerk will call a name to each juror excused for cause. Another potential juror will be called for questioning to replace the potential juror excused for cause.

You will want to question the potential jurors to find out if they can be fair and impartial and that they will not be prejudiced or biased against you. You should ask if any juror knows you, the prosecutor, the judge or any witnesses. Jurors should be asked if they had heard anything about the case or whether they are related to anyone in law enforcement. Ask if there is anything about the charges that would make them think you would be guilty. Ask if they can see you as an innocent person until the Tribe proves you guilty. There may be more questions you can ask that are specific to your individual case.

If a potential juror gives an unfavorable response to your questions ask the Court to challenge the juror for cause in that they cannot be a fair and impartial juror or that they are biased. If the Court will not excuse a potential juror for bias you will still have 2 peremptory challenges to excuse 2 jurors without having to give a reason.

Once there are no more challenges for cause the Tribe and the Defense will each be given 2 peremptory challenges to excuse 2 jurors for any reason and each juror peremptory challenged will be excused from the jury panel.

The remaining six jurors will comprise the jury that will hear your case. The remaining potential jurors will be excused. The Court will swear in the jurors and give opening jury instructions

2. The Tribe will make an opening statement to the jury. Next you will make an opening statement to the jury. An opening statement is not evidence but is simply a summary of what the party's expect the evidence to show. It is your opportunity to point out to the jury the weaknesses of the Tribe's case.

3. The Tribe will then present its evidence. The Tribe will question each of their witnesses, including any alleged victim, about what occurred and how you were involved. You will have the opportunity to cross-examine each of the Tribe's witnesses. The Tribe will also attempt to introduce physical evidence that would prove your guilt.

The admissibility of evidence in Tribal Court is governed by the Federal Rules of Evidence. These rules can be found at <https://www.law.cornell.edu/rules/fre>. You should familiarize yourself with these rules well before the trial.

You can make objections to the Tribe's witnesses' testimony if you have legal grounds to do so. You must object to the Court and give a ground for your objection. "Not relevant" and "hearsay" objections are the most common grounds for objecting to testimony. Federal Rules of Evidence Rule 401 says evidence is relevant if the evidence has a tendency to make the existence of any fact that is of any consequence to the determination of the action more probable or less probable than it would be without the evidence. In plain English, the evidence has to have some bearing on the case or a fact in the case. Hearsay evidence is an out of court statement or assertion (either oral or written) made by someone and the person who heard or read the statement or assertion testifies about it in court. In plain English, it is when a witness testifies what they overheard another person say and the person who made the statement does not testify. An example of hearsay evidence would be a witness who testifies that "I heard my friend say they saw the defendant commit the crime". Federal Rules of Evidence Rule 801 prohibits hearsay evidence but there are however exceptions to the hearsay rule. If you as the defendant made an incriminating statement to someone else, that person can testify to what you said even if it is hearsay, For example, if the witness testifies that "the defendant told me he committed the crime" would not be hearsay because of the exception. Such a statement is deemed to be reliable because someone would not make a statement that could send them to jail unless it was true.

You can make objections to the introduction of any physical evidence and documents if you have legal grounds to do so. "Not relevant" and "lack of foundation" are the most common grounds for objecting to the introduction of physical evidence. See the "not relevant" objection in the paragraph above. A lack of foundation objection to physical evidence is made when the Tribe failed to lay the proper foundation for the evidence to be admitted into evidence. To lay the proper foundation the Tribe must ask the witness who they are, what objects or pieces of evidence they brought to the Court, a description of the objects or pieces of evidence, how the evidence came into that persons possession, how it is evidence to support the charges and if the evidence is documents the Tribe must ask if the documents are kept in the ordinary course of business. If the Tribe fails to do so, you should object to the evidence being introduced into evidence for lack of foundation.

Cross examination of the Tribe's witnesses against you is essential to your defense against the charges. Cross examination is your chance to ask questions of the Tribe's witnesses. It is your opportunity to ask questions that will cast doubt on the charges. You can only ask questions of the Tribe's witnesses during cross examination. Do not attempt to make statements or to testify during cross examination, the Court will shut you off from doing so.

Well before your trial date you should have received all the Tribe's witnesses statements and police reports in your discovery request. You can prepare your cross examination questions from these statements and reports. Only ask questions that illicit a "yes" or "no" responses from the witnesses. More questions will become apparent when each witness testifies, so listen carefully to what they say on the stand and write down notes and questions of any inconsistencies with what their statements say and what they are testifying to. A witness may even say something that helps your case.

After your cross examination of a witness the Tribe can ask re-direct questions based on the witness testimony regarding the questions posed to the witnesses on cross-examination. Then you can re-cross the witness regarding the witnesses testimony on re-direct examination.

4. You should always make an oral motion to the Court for judgment of acquittal of each charge after the Tribe rests its case against you. The Court must dismiss any charge where the evidence is insufficient as a matter of law to sustain a conviction. Use this script to read to the Court at the close of the Tribe's case against you to move the Court for judgment of acquittal: "Your Honor, at this time I would like to move the Court for judgment of acquittal on each charge as the evidence presented is insufficient as a matter of law to sustain a conviction."

5. Following the Tribe's case, you may, but you do not have to present evidence, testify or call other witnesses. If you decide to present a defense, you will have to question each of your witnesses (this is called direct examination). The Tribe can cross-examine your witnesses. You may ask re-direct questions based on the witnesses testimony to the questions posed to the witnesses on cross-examination by the Tribe. The Tribe then may re-cross exam the witness regarding the witnesses answers on re-direct examination. Each witness is then excused.

It will be your responsibility to directly ask questions (direct examination) of your witnesses and to get your evidence introduced into the record. You can only ask questions during direct examination. Do not attempt to make statements during cross, the Court will shut you off from doing so.

Your witnesses should be asked who they are, what they know and how they know it or anything they might have observed. Like cross examination you should prepare your questions for each of your witnesses well before the trial and take notes of any strong points testified to that you can use in your closing arguments to the jury.

It will also be your responsibility to get objects and other physical evidence, such as documents, introduced into the record. You do this by laying the foundation for the admissibility of the evidence by questioning the person you subpoenaed to bring the objects or pieces of evidence you want introduced into evidence. Ask the Court to mark the evidence as an Exhibit. Then you must ask this person who they are, what objects or pieces of evidence they brought to the Court, a description of the objects or pieces of evidence, how the evidence came into that persons possession and if the evidence are documents then you must ask if the documents are kept in the ordinary course of business. Then you must ask the Court to have the evidence introduced and accepted as evidence. Only evidence accepted by the Court after it is ruled admissible will be seen or considered by the jury.

The Tribe may object to the introduction of the objects or pieces of evidence into evidence. The Court will make a ruling. If the Court allows the evidence it will be considered and weighed by the Court in deciding if you are guilty or not guilty. If the Court does not allow the evidence, it won't be considered by the jury.

After your direct examination of your witnesses the Tribe can cross examine and ask questions based on what your witnesses testify to regarding the questions posed to the witnesses on direct examination. Then you can re-direct and ask the witness questions regarding the witnesses testimony on cross examination.

6. The Tribe can rebut any of your witnesses testimony presented by you in your defense with rebuttal witnesses. The Tribe can rebut any testimony or evidence introduced by you with rebuttal witnesses. The Defense can cross-exam any rebuttal witnesses.

The Tribe should only be able to rebut testimony or evidence you introduced in your case. Any attempt by the Tribe to introduce evidence other than rebuttal evidence should be objected to.

7. The defendant may offer sur-rebuttal to any testimony presented by the Tribe in their rebuttal. The Tribe may cross-exam any sur-rebuttal witnesses.

8. When you are done with your witnesses, you can rest your case and after any rebuttal by the Tribe you should always make an oral motion to the Court for judgment of acquittal of each charge after the Tribe you rest you case. The Court must dismiss any charge where the evidence is insufficient as a matter of law to sustain a conviction. Use this script to read to the Court at the close of the Tribe's case against you to move the Court for judgment of acquittal: "Your Honor, at this time I would like to move the Court for judgment of acquittal on each charge as the evidence presented is insufficient as a matter of law to sustain a conviction."

9. You and the Tribal prosecutor will meet with the Court and settle final jury instructions. The Court will have a standard set of jury instructions that will instruct the jury on the law as it pertains to your case and charges. Each party can request specific instructions to the Court. The Court can either allow or reject any proposed instruction offered by a party. You probably won't need to introduce any jury instructions and can rely on the standard jury instructions used by the Court. However, if your defense is self-defense you should ask the Court for a self-defense instruction. You should always object to any jury instructions proposed by the Tribe as not relevant or that it doesn't reflect Tribal law.

10. After the presentation of evidence is completed and the Court will settle on the jury instructions, the Tribe will make their closing arguments to the jury. Then you will give your closing arguments to the jury. The Tribe will then have the final rebuttal argument.

Closing arguments is your chance to summarize and interpret the evidence to show the jury that you are not guilty of the charges. As with opening statements, closing arguments are not evidence. You will want to argue the Tribe failed to prove the an element or elements of the charge(s) and then point out all evidence that casts doubt on your guilt.

11. The Court will read the settled jury instructions to the jury.

12. The jury will then adjourn to the jury room in private and will deliberate and hopefully make a decision of whether you are guilty or not guilty. The deliberations will normally involve discussion of the facts introduced into evidence and the law as the jury instructed by the Court. The jury will decide whether the Tribe proved beyond a reasonable doubt the elements of each and every crime you are charged with. A verdict must be unanimous meaning that all six jurors must agree on a verdict of either guilty or not guilty. If all six jurors cannot agree on a verdict, the Court will declare a mistrial. If a mistrial is declared by the Court, the Tribe has the option to retry you on the charges or to dismiss the charges if the Tribe doesn't think it can get a conviction.

If you are found guilty of any of the charges, you will be sentenced on those charges. If you are found not guilty of any of the charges, those charges will be dismissed.

## **SENTENCING**

After either pleading guilty or being found guilty of any of the charges you will be sentenced by the Court without unnecessary delay. It is normal that if you are offered a plea bargain it will have a sentencing recommendation. If so there is no need for a sentencing hearing. If you plead guilty or are found guilty after a trial you should request a sentencing hearing where the Tribal Prosecutor can present evidence of aggravating circumstances (meaning evidence that could lead to a harsher sentence) and where you can present evidence of mitigating circumstances (meaning evidence that could lead to a lighter sentence).

If the sentencing is delayed, you can either be committed to jail until your are sentenced or you could be released on bail until the sentencing hearing date. Always ask to released on bond while awaiting sentencing.

The Tribal Prosecutor may introduce evidence of aggravating circumstances of why you should receive a harsher sentence. This may include your criminal history and record, witnesses who testify at the sentencing hearing, victim statements and documentary evidence such as medical and mental health records.

You may rebut this with evidence of mitigating circumstances of why you should receive a more lenient sentence. This may include witnesses, victim statements and documentary evidence such as medical and mental health records. You should introduce evidence (either documentary or testimony) of your employment history and current employment, that you caring for a child or disabled adult, are breast-feeding or you have a medical or mental condition. You can and should subpoena any relevant witnesses to give testimony or documents to your sentencing hearing. See the section Compelling Witnesses to Testify or to Bring Evidence to Court above.

The Court when imposing a sentence can consider and weigh the following factors:

- (a) the seriousness of the offense
- (b) the defendant's past criminal record



- (c) the events surrounding the charge
- (d) the best interests of the community
- (e) the defendant's employment history
- (f) the defendant's financial resources and circumstances
- (g) the defendant's mental and physical condition
- (h) any victim's statements
- (i) any character witness testimony or statements in favor of the defendant

The maximum sentences under the code are:

- (a) Class A offense-up to 1 year in jail and/or \$5000.00 fine
- (b) Class B offense-up to 6 months in jail and/or \$500.00 fine
- (c) Class C offense-up to a \$500.00 fine
- (d) Class D offense-up to a \$100.00 fine

The Court can sentence you to probation with conditions with or without jail or impose up to the maximum penalty provided for in the code including jail and a fine and the Court may suspend any portion of the sentence taking into consideration of the factors set out above.

If you are sentenced to jail and you are employed you can ask the Court for work release where you could be released during your work schedule and housed in jail when not on your work schedule. You need to ask the Court for work release immediately upon being sentenced to jail. The Court will need to verify your employment and hours before granting you work release.

## **JUDGMENT OF CONVICTION**

After you are sentenced the Court will issue and file a judgment of conviction. The judgment must be in writing and set forth:

- (a) the pleas
- (b) the verdicts
- (c) the adjudications
- (d) the sentence imposed
- (e) state if the defendant is found not guilty
- (f) be signed by the judge
- (g) be entered by the clerk of courts.

The judgment of conviction will be filed and recorded. This will be on your record where it can be revealed on any background check.

## **APPEAL**

You can appeal your conviction if you feel the Court made a legal error or the Court or jury made a mistake of fact. You must file a Notice of Appeal with the Clerk of Court of the Tribal Court within 10 days of notice of entry of the final judgment of conviction or other appealable order in

all Criminal cases.

You can ask the Court to stay your sentence pending your appeal. The Tribal code allows the Court in its discretion to stay a sentence of imprisonment where you would have to post a bond. It also allows the Court in its discretion to stay a sentence to pay a fine or costs or an order of probation. A stay means the sentence or order of probation will be suspended pending your appeal. If any imprisonment is stayed pending appeal, you will have post a bond before being released pending appeal.

If you file an appeal you should also file a motion to stay your sentence or probation pending appeal with the Tribal Court that sentenced you. Use the **Motion to Stay Sentence Pending Appeal** form found on the Court's website or ask the clerk for the form.

## **RETURN OF PROPERTY**

You can use the **Motion for Return of Property** form (found on the Court's website or ask the clerk for the form) if law enforcement seized and took custody of your property in a criminal matter. Law enforcement can seize and take custody of property for safekeeping, as evidence in a crime, or the property is alleged to be contraband that may be subject to forfeiture. Both the Tribe's Constitution and the Indian Civil Rights Act (Federal Law) prohibit the Tribe from denying any person of their property without due process of law.

### **1. Law Enforcement Seizure of Property for Safekeeping.**

Property seized for safekeeping that is not evidence or contraband should be returned to you when you are released from custody. If Law Enforcement fails to do so the Court should grant your motion without a hearing but should not deny your motion without a hearing on your motion. The only reason the Court would deny your motion is if there is some question of ownership or whether the seized property is evidence and the case and the time for appeal has not run or whether the seized property is alleged to be contraband.

At a hearing you may have to prove that you own the property and that it is not or no longer evidence in the case. If the Tribe argues the seized property is contraband, the Tribe has the burden of proving that the seized property is contraband. If the Tribe does not prove the seized property is contraband it will returned to you.

### **2. Law Enforcement Seizure of Property as Evidence of a Crime.**

Law Enforcement may seize and retain custody of property the Tribe plans on using as evidence in criminal proceedings. The Court will not entertain your motion for return of property until the case is completed and the time for appeal has run.

If you are convicted the Court may declare seized property to be contraband and order that it be

forfeited without a hearing. If you are found not guilty, you are entitled to notice and a hearing if the Tribe alleges the seized property is contraband and should be forfeited.

### 3. Law Enforcement Seizure of Property Alleged to be Contraband and Subject to Forfeiture.

The Tribe's Forfeiture law allows for the forfeiture of the seized property if the property is found to be contraband by the Court.

The Forfeiture law, in essence, defines contraband as property which was or is used to violate any law, ordinance or resolution of RST (for example if you use your vehicle to commit a crime the vehicle could be declared contraband and forfeited), any property that is possessed in violation of any law, ordinance or resolution of RST (for example if you are arrested for possession of illegal firearm such as a sawed off shotgun, the weapon could be declared contraband and forfeited), or any property that was obtained in violation of any law, ordinance or resolution of RST (for example if you are arrested for possession of an illegal drug or paraphernalia, these items would be considered contraband and forfeited).

There are several ways seized property can be declared contraband and ordered forfeited.

If the property was seized pursuant to a lawful arrest and you are convicted of the crime(s) associated with the seized property, the Court may declare seized property to be contraband and order that it be forfeited without a hearing.

If the property was seized pursuant to a lawful arrest and you are found not guilty, you are entitled to notice and a hearing if the Tribe alleges the seized property is contraband and should be forfeited. The Tribe has the burden of proving that the seized property is contraband. If the Tribe does not prove the seized property is contraband it should be returned to you.

If the property was not seized pursuant to a lawful arrest and you are convicted of the crime(s) associated with the seized property, a hearing must be held within 10 days of seizure to determine if the seized property is contraband. The Tribe has the burden of proving that the seized property is contraband. If the Tribe does not prove the seized property is contraband it should be returned to you.

More than likely, the Tribe will file a petition or motion to declare the property contraband and for forfeiture. If they do, filing a motion for return of property would be unnecessary.

**CAVEAT:** If another agency has custody of your property, such as the FBI, Tribal Court cannot order your property returned to you. This must be done in Federal Court.

### **REDUCTION OF SENTENCE**

There is no direct statutory or constitutional authority for the sentencing Court to reduce a jail

sentence. But it may be a custom of the Court to entertain a motion for sentence reduction. Denying your request for a hearing for a sentence reduction may also violate your constitutional right to due process of law. You can use the **Motion for Sentence Reduction** form found on the Court's website or ask the clerk for the form

Your chances of a reduction in your jail sentence are better if you have served over half your jail sentence and you can show the Court you have been a model inmate and/or have extraordinary circumstances that would warrant a reduction in your jail sentence. You will want to get any statements from someone to show you have been a model inmate. You will want to show the Court any documents of any medical or personal or family issues that would warrant a reduction in your jail sentence. You can attach copies of any documents to the motion before you file the motion. If you are given a hearing on your motion, you can call witnesses to verify your circumstances that would warrant a sentence reduction.