

CRIMINAL PROCEDURES ORDINANCE

Ordinance # 03-300-03

Article I. Purpose; Findings

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

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to A...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]@ *Article IV, Section 7(a).*

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted by resolution # 11-1109-381.

2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution and any rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.03. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions.

3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word Ashall@ is always mandatory and not merely advisory.

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

3.03. *Indian* means any person who is

- a. a member of the Little River Band of Ottawa Indians; or
- b. a member of any federally-recognized Indian tribe, band, or group; or
- c. a person of Indian blood who is generally considered to be Indian by the Little River Band of Ottawa Indians.

3.04. "*Membership-Based Jurisdiction*" means the inherent jurisdiction the Little River Band of Ottawa Indians shall exercise jurisdiction over its members with regard to any matter (regardless of the location of the actions giving rise to that matter) implicating or affecting internal Tribal relations, or the Tribe's powers of self-government, or the health, safety, morals or welfare of the Tribe or its members. This membership-based jurisdiction shall be exercised to the fullest extent consistent with the Constitution, the sovereign powers of the Tribe, and federal law.

3.05. "*Territorial Jurisdiction.*" The territorial jurisdiction of the Little River Band of Ottawa Indians shall encompass all lands which are now or hereinafter owned by or reserved for the Tribe or

for Tribal members, including but not limited to the Manistee Reservation in Manistee County (Michigan), and Custer and Eden Townships in Mason County (Michigan), or are held in trust for the Tribe or any member of the Tribe by the United States of America. The Tribe's territorial jurisdiction shall be exercised to the fullest extent consistent with this Constitution, the sovereign powers of the Tribe, and federal law.

3.04. *Tribal Court* means the court of the Tribe established pursuant to Article VI of the Constitution of the Little River Band of Ottawa Indians.

3.05. *Tribe* or *Tribal* means (or refers to) the Little River Band of Ottawa Indians.

3.06. *Tribal Judge* means a member of the Tribal Court of the Little River Band of Ottawa Indians duly seated in accordance with the Constitution.

Article IV. Complaint; Arrest

4.01. *Complaint.*

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

b. Complaints shall contain:

1. the signature of the Tribal Prosecutor;
2. a written statement describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained;
3. the name or description of the person alleged to have committed the offense;
4. the section of the Tribal Code allegedly violated; and
5. jurisdictional allegations.

c. In the exercise of his discretion, the Tribal Prosecutor may decline to sign and file a complaint.

d. If the complaint, or the complaint together with other statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the Tribal Court may issue a summons commanding the accused to appear before the Tribal Court at a specific time and place to answer the charge or, in lieu thereof, the Tribal Court may issue a warrant instructing the Public Safety officer to arrest the named accused.

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

4.02. *Arrest.*

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

b. No Public Safety officer shall arrest any person for a criminal offense except when:

1. the officer shall have a warrant signed by a Tribal Judge commanding the arrest of such person, or the Public Safety officer knows for a certainty that such a warrant has been issued;
2. the offense shall occur in the presence of the arresting Public Safety officer;
3. the Public Safety officer has probable cause to believe that an assault or threats of endangerment has taken place or is taking place and that the person who committed or is committing the violation is a spouse, a former spouse, or a person residing or having resided in the same household as the victim, may arrest the violator without a warrant for that violation, irrespective of whether the violation has committed in the presence of the Public

Safety officer.

4.03. *Arrest Warrants.*

- a. Any Tribal Judge shall have the authority to issue warrants to arrest, and such warrants shall be issued only upon a showing of probable cause in sworn statements. The Tribal Judge shall deny issuance of a warrant if he finds that there is not probable cause to believe that the offense charged has been committed by the named accused.
- b. The arrest warrant shall contain the following information:
 1. Name or description and address, if known, of the person to be arrested.
 2. Date of issuance of the warrant.
 3. Description of the offense charged.
 4. Signature of the issuing judge.

4.04. *Notification of Rights at Time of Arrest.* Upon arrest, the accused shall be advised of the following rights, that:

- a. The accused has the right to remain silent.
- b. Any statements made by the accused may be used against him or her in court.
- c. That the accused has the right to obtain counsel at his or her own expense.

4.05. *Summons in Lieu of Warrant.*

- a. When otherwise authorized to arrest an accused a Public Safety officer or the Tribal Court may, in lieu of a warrant, issue a summons commanding the accused to appear before the Tribal Court at a stated time and place and answer to the charge.
- b. The summons shall contain the same information as a warrant, except that it may be signed by a Public Safety officer.
- c. If a defendant fails to appear in response to a summons, a warrant for his or her arrest shall be issued.

Article V. Search Warrant

5.01. *Search Warrant; Defined.* A search warrant is a written order, signed by the Tribal Judge, and directed to a Public Safety officer ordering him or her to conduct a search and seize items or property specified in the warrant. A warrant shall describe the property or place to be searched and shall describe the items to be seized.

5.02. *Issuance of a Search Warrant.*

- a. Any Tribal Judge shall have the power to issue warrants for the search of premises and seizure of property and premises of any person under the jurisdiction of the Tribal Court.
- b. No warrant of search and seizure shall be issued except upon probable cause that a search will discover:
 1. stolen, embezzled, contraband or otherwise criminally possessed property; or
 2. property which has been or is being used to commit a criminal offense; or
 3. property which constitutes evidence of the commission of a criminal offense.
- c. Such probable cause shall be supported by a written sworn statement based upon reliable information.

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

5.04. *Search Without a Warrant.* No Public Safety officer shall conduct any search without a valid warrant

except:

- a. incident to making a lawful arrest; or
- b. with consent of the person being searched; or
- c. when he or she has probable cause to believe that the person searched may be armed and dangerous; or
- d. when the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen or embezzled property.

5.05. *Disposition of Seized Property.*

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

Article VI. Arraignment

6.01. *Arraignment.*

- a. Arraignment is the bringing of the accused before the Tribal Court, informing him or her of their rights and of the charge against him or her, receiving his or her plea, and setting bail as appropriate.
- b. Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of court.

6.02. *Rights of Accused at Arraignment.* Before an accused is required to plead to any criminal charge the Tribal Judge shall:

- a. read the accused the complaint and determine that he or she understands the complaint and the section of the Tribal Code which he or she is charged with violating, including the maximum authorized penalty; and
- b. advise the accused that he or she has the right:
 1. to a hearing
 2. to be represented by council at his or her own expense
 3. to remain silent
 4. to confront witnesses
 5. to call and obtain witnesses on his or her own behalf
 6. to a trial by jury if jail may be imposed.

6.03. *Receipt of Plea at Arraignment.*

- a. If the accused pleads 'not guilty' to the charge, the Tribal Judge shall then inform him or her of a pre-trial conference date and set or review bond conditions prior to trial.
- b. If the accused pleads 'guilty' to the charge, the Tribal Judge shall determine that the plea was made voluntarily and that the accused understands the consequences of the plea, including the rights which he or she is waiving by the plea. The Tribal Judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information deemed necessary for the imposition of a just sentence.
- c. If the accused refuses to plead, the Tribal Judge shall enter a plea of not guilty on his or her behalf.

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

- a. Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.
- b. Release to the custody of a designated person or organization agreeing to assure the appearance of the person charged.
- c. Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.
- d. Release after deposit by the accused of a bond in either cash or other sufficient collateral in an amount specified by the Tribal Judge or a bond schedule. The Tribal Judge, in his discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.
- e. Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

6.05. *Release by Police Officer.* Any Public Safety officer authorized to do so by the Tribal Court may release an arrested person to bond pursuant to the bond schedule. Public Safety officers shall have available a bond schedule prepared by the Tribal Court which shall be used for setting money bond where such condition of release is deemed necessary. Any Public Safety officer who refuses to release an accused on bond or who specifies a bond condition which the accused is unable to satisfy shall contact a Tribal Judge for review of the release conditions at the first available opportunity.

6.06. *Bail - Release Pending Appeal.* Every person who has been convicted of a Tribal offense and who has filed an appeal or a petition of a writ of habeas corpus shall be afforded an opportunity to address bond unless the Tribal Judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a danger to the community, to the accused or to any other person. If the Tribal Judge finds such to be the case, he may deny bond.

Article VII. Subpoenas

7.01. Issuance of Subpoenas.

- a. Upon request of any party to a case, or the Tribal Court's Probation Officer for a probation violation hearing, the Tribal Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant, necessary to the determination of the case and not an undue burden on the person possessing the evidence. The Clerk of the Court may act on behalf of the Tribal Court and issue subpoenas which have been signed by a Tribal Judge.
- b. A subpoena shall bear the signature of a Tribal Judge and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

7.02. Service of Subpoenas.

- a. A subpoena may be served at any place within or without the confines of the Tribe's reservation.
- b. A subpoena may be served by any Public Safety officer or other person appointed by the Tribal Court for such purpose. Service of a subpoena may be made; by first class mail, by delivering a copy of it to the person named, or by leaving a copy at his or her place of residence with any person sixteen (16) years of age or older who also resides there and informing the recipient that it is a

subpoena.

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

7.03. *Failure to Obey Subpoena.* In the absence of a justification satisfactory to the Tribal Court, a person who fails to obey a subpoena may be deemed to be in civil contempt of court and the Tribal Court may set a show cause hearing for the matter. If the subject fails to attend the hearing after receiving proper notice the Tribal Court shall issue a bench warrant for his or her arrest.

7.04. *Witness Fees.*

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

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

Article VIII. Trial

8.01. *Trial Procedure.*

a. The time and place of court sessions, and all other details of judicial procedure not specified in this chapter or other chapters of the Tribal Code.

b. The Tribal Court shall not be bound by common law rules of evidence, or the rules of evidence which pertain in state or federal courts, and may establish such rules of evidence as it deems appropriate.

8.02. *Jury Trial.*

a. Any person accused of a crime for which jail is a possible penalty may request a jury trial.

b. A jury shall consist of at least six members of the Tribe selected at random from a list of eligible jurors prepared not less than once each year by the Tribal Court.

8.03. *Sentencing.*

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

1. Jail for a period not to exceed the lesser of either:

A. the maximum permitted by the Tribal Code provision defining the offense, if a maximum is so specified; or

B. one year.

2. A money fine in an amount not to exceed the lesser of either:

A. the maximum permitted by the code provision defining the offense, if a maximum is so specified; or

B. five thousand dollars (\$5,000.00).

3. Labor for the benefit of the Tribe.

4. Rehabilitative measures.

5. Payment of reasonable court costs.

6. Imposition of reasonable limitations on access to Tribal lands.

b. In addition to or in lieu of the penalties provided in sub. (a), the Tribal Court may require a

- b. In addition to or in lieu of the penalties provided in sub. (a), the Tribal Court may require a convicted offender, who has inflicted injury upon the person or property of another, to make restitution or compensate the injured person by means of the surrender of property, payment of money damages or the performance of any other act for the benefit of the injured party.
- c. If, solely because of indigence, a convicted offender is unable to pay forthwith a money fine or costs assessed under this section the Tribal Court shall allow him a reasonable period of time to pay the entire sum or allow him to make reasonable installment payments to the Clerk of the Court at specific intervals until the entire sum is paid. If the offender defaults on such payments the Tribal Court may find him in contempt of court and imprison him accordingly.

8.04. *Probation.*

- a. Where a sentence of jail has been imposed on a convicted offender the Tribal Court may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the Tribal Court, provided that the period of probation shall not exceed one year for all offenses.
- b. Any person who violates the terms of this probation may be required by the Tribal Court to serve the sentence originally imposed or such part of it as the Tribal Court may determine to be suitable, giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the Tribal Court at which the offender shall have the opportunity to explain his actions.

8.05. *Appeals.* Appeals from any sentence or other final judgment or order in a criminal case may be taken in accordance with the provisions of the Tribal Court Rules.

8.06. *Arrest on State Warrant.* Notwithstanding any other provision of this Ordinance or any other Ordinance of the Tribal Code, Public Safety officers may arrest, remove from Tribal jurisdiction, and surrender to state authorities any person sought on a state court arrest warrant who may be found upon Tribal lands.

8.07. *Limitation of Actions.* Except as otherwise provided in this Ordinance, no person shall be prosecuted, tried or punished for any offense unless the complaint is filed within five (5) years after the offense was committed.

8.08. *Jurisdiction.* The Tribal Courts shall have jurisdiction over any individual for any action that is made a criminal offense under an applicable Tribal Ordinance or other Tribal law and that arose within the territorial jurisdiction of the Tribe, as that term is defined in this Ordinance. The Tribal Courts shall further have jurisdiction over Tribal members for any offense arising within its membership-based jurisdiction as that term is defined in this Ordinance.

CERTIFICATION

I, Janine M. Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Criminal Procedures Ordinance, Ordinance #03-300-03 adopted by the Tribal Council on November 9, 2011.



Criminal Procedures Ordinance
Ordinance # 03-300-03
Final Adoption -- November 9, 2011 by Resolution # 11-1109-380



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