

Chapter 1 Criminal Procedures

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CHAPTER 1 CRIMINAL PROCEDURES

1.000 Criminal Procedures

1.100 Scope, Purpose and Construction.

- (A) These Court Rules govern the procedure in all adult criminal proceedings in the Little Traverse Bay Bands of Odawa Indians (LTBB) Tribal Court;
- (B) Every proceeding in which any member of LTBB or other Indian is charged with a criminal offense;
- (C) These Court Rules are intended to provide for the just determination of every criminal proceeding. These rules shall be construed to foster understandable procedure, fairness in administration of justice and the elimination of unjustifiable delay;
- (D) In any case wherein no particular procedure is provided herein, the Court may proceed in any lawful fashion while protecting the rights of the defendant and enforcing the laws of the community; and
- (E) These rules shall be applied in a manner that is consistent with tribal law and federal law, where applicable.

1.101 Jurisdiction and Definitions.

- (A) For the purposes of this Rule
 - 1. Indian means any person who is either:
 - a. A member of the Little Traverse Bay Bands of Odawa Indians;
 - b. A member of any federally-recognized Indian tribe, band or group; or
 - c. Any person of Indian blood who is generally considered to be American Indian by the Little Traverse Bay Bands of Odawa Indian community.
- (B) These criminal procedures shall apply to all criminal matters wherein the defendant is 18 years of age or older or has been transferred as an adult to the criminal division under WOTC Juvenile Justice Statute, Section VI. H.
- (C) The criminal jurisdiction of LTBB shall extend to:
 - 1. All land and waters described in Article 1 Third and Article 1 Fourth of the Treaty of Detroit of July 31, 1855, 11 Stat. 621;
 - 2. All trust land held now or in the future by the United States for the benefit of LTBB; or
 - 3. The activities of LTBB members when exercising treaty hunting and fishing rights wherever such activity occurs.

4. All Special Domestic Violence Jurisdiction over non-Indians committing domestic violence against Indians pursuant to the Violence Against Women Act, 25 USC 1304, Tribal Code 9.704B, or successor statute.

1.200 Preliminary Provisions

1.201 Prosecution of Offenses.

- (A) No person shall be punished for an offense except upon a legal conviction by a court.
- (B) All criminal proceedings shall be prosecuted in the name of the Tribe as plaintiff against the person charged with an offense, referred to as the defendant.
- (C) The case number prefix assigned to criminal actions shall be sufficiently different and unique from the prefix assigned to other types of cases to clearly distinguish them.

1.202 Prosecution Responsibility.

- (A) No person shall be prosecuted, tried or punished for any criminal offense unless the prosecution is initiated within one (1) year after both of the following conditions have been met:
 1. Discovery by Law Enforcement that an offense has been committed; and
 2. Discovery by Law Enforcement of the identity of the person who allegedly committed the offense.
- (B) If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be complete occurred.
- (C) Time spent outside the jurisdiction of the Tribe shall not be counted toward the statute of limitations to begin prosecution.
- (D) No act or failure to act shall be subject to criminal prosecution unless an offense by some statute of the Tribe has been violated.

1.203 Rights of Defendant. In all criminal proceedings, the defendant shall have the following rights:

- (A) To be represented by an attorney or a court- appointed attorney upon a finding of indigency, or to self- representation upon a knowing and voluntary waiver of counsel if the Court finds that such choice was competently made.
- (B) To be informed of the nature of the charges in writing.
- (C) To testify on his or her own behalf, or to refuse to testify regarding the charge against him or her. However, once a defendant takes the stand to testify on any matter relevant to the immediate proceeding, he or she shall be deemed to have waived all right to exercise his or her right to remain silent and may be cross-examined.
- (D) To confront and cross-examine all witnesses.

- (E) To compel by subpoena the attendance of witnesses.
- (F) To have a jury trial of composed of 6 members for any criminal offense, unless defendant is facing the possibility of more than a year in jail, in which case the jury shall be composed of 12 members.
- (G) To have a speedy and public trial. The defendant and the Tribe are entitled to a speedy trial and resolution of all matters before the Court. The trial court has the responsibility to establish and control a trial calendar. In assigning cases to the calendar, and insofar as it is practical, the trial of criminal cases must be given preference over the trial of civil cases, and the trial of defendants in custody must be given preference over other criminal cases.
- (H) To appeal consistent with LTBB's Rules of Appellate Procedures.
- (I) Not to be prosecuted by the Tribe twice for the same offense.
- (J) To a fair trial and due process of law.

1.204 Telephone Appearance. The Tribal Court may authorize telephone appearances for any purpose consistent with due process and the administration of justice.

1.300 PROCEEDINGS BEFORE TRIAL

1.301 Citation and Complaint.

- (A) Whenever a law enforcement officer who would be empowered to make an arrest without a warrant for an offense has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, the officer may, in his or her discretion, issue the defendant a citation instead of taking said person into custody. Such citation, signed by the law enforcement officer, shall be forwarded to the prosecutor for consideration of filing a formal complaint.
- (B) The citation shall contain:
 - 1. The name and address of the Court.
 - 2. The name of the defendant.
 - 3. The dated signature of the law enforcement officer who issued the citation.
 - 4. The location where the offense was committed.
 - 5. The date and approximate time of the commission of the offense.
 - 6. The general name and Tribal Code title and section number of the alleged offense and the maximum possible penalty.
 - 7. The designation of Indian or non-Indian status.
- (C) The citation shall contain a notice that a bench warrant may be issued upon defendant's failure to appear and that the defendant may be further charged with contempt of court.

- (D) One (1) copy of the citation shall be given to the defendant and two (2) copies shall be given to the prosecutor.
- (E) Every criminal proceeding shall be commenced by the filing of a criminal complaint. The complaint is a sworn written statement of the essential facts alleging that a named individual has committed a particular offense.
- (F) The complaint shall contain:
1. The name and address of the Court.
 2. The name of the defendant, if known, or some other name if not known, plus whatever description of the defendant is known.
 3. The signature of the prosecutor and his or her typewritten name.
 4. The Tribal Code title and section number of the alleged offense and the maximum possible penalty.
 5. The location where the offense was committed.
 6. A short, concise statement of the alleged act or omission.
 7. The person against whom, or against whose property, the offense was committed.
 8. The approximate date and time of the commission of the offense.
 9. The designation of Indian or non-Indian status.
 10. The Court may permit the prosecutor to amend the complaint or citation before, during or after trial. Any post-trial amendments made pursuant to this rule shall not substantively alter the content of the complaint or citation. No minor omission or error in the form of the citation or complaint shall be grounds for dismissal of the case. In addressing any objection raised by the Defendant related to amendments made to the complaint or citation pursuant to this rule, the Court shall first consider a continuance, adjournment or delay in proceedings to address any objection raised by the Defendant arising from the proposed amendment, before considering or denying such amendment.
 11. A complaint may be filed at any time within the period prescribed by Section 1.202 of this Court Rule, provided, that if an accused has been arrested without a warrant, a complaint shall be filed promptly and in no case later than the time of arraignment.

1.302 Joinder.

- (A) Two or more offenses may be charged in one complaint, so long as they are set out in separate counts.
- (B) Two or more defendants may be joined in one complaint, if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each defendant need not be charged in each count.

1.303 Summons to Appear.

- (A) After receiving the complaint, the Tribal Court shall forward a copy of the complaint and issue a summons to bring the defendant before the Tribal Court.
- (B) Within the contents of the summons, a summons shall order the defendant to appear on a specific day before the Tribal Court to enter a plea to the charge, and a notice that if the defendant fails to appear a bench warrant may be issued and the defendant may be further charged with contempt of court.
- (C) A summons may be served by any law enforcement officer or any adult person authorized in writing by the Tribal Court, or by certified mail return receipt of addressee required.
- (D) To show proof of service, the date, time, and place of service shall be written on the summons along with the signature of the person serving such, and the summons shall be returned to the Court. A copy, so signed, shall be given to the person served.

1.304 Arrest Warrant.

- (A) An arrest warrant may be issued only with the prosecutor's approval and only upon testimony or an affidavit alleging an offense committed by the defendant through which the Court can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it. A finding of probable cause may be based on hearsay evidence in whole or in part.
- (B) A summons may be issued instead of an arrest warrant at the discretion of the Tribal Court.
- (C) **Contents of Arrest Warrants.** The warrant of arrest and affidavit taken together shall have the following:
 - 1. The name and address of the Court.
 - 2. The name of the defendant if known or some other name if not known plus whatever description of the defendant is known.
 - 3. The Tribal Code title and section number of the alleged offense and the maximum possible penalty.
 - 4. The grounds for probable cause.
 - 5. The signature of the issuing judge.
 - 6. The approximate location where the offense was committed.
 - 7. The person against whom, or against whose property, the offense was committed.
 - 8. The date and approximate time of the commission of the offense.

9. An arrest warrant must have an attached sworn, written and signed statement setting forth the grounds of the alleged act or omission.
10. The designation of Indian or non-Indian status.

(D) Service of Warrants.

1. To show proof of execution of an arrest or bench warrant, the date, time, and place of arrest shall be written on the warrant along with the signature of the person executing the warrant, and it shall be returned to the Court. A copy, so signed, shall be given to the person arrested at the time of arrest, if reasonably possible, or as soon thereafter as is reasonably possible.
2. An officer need not have the warrant in his or her possession at the time of arrest, but if not, he or she shall inform the defendant of the charge, that a warrant of arrest has been issued, and shall provide the defendant a copy of the warrant as soon as possible.

1.305 Search and Seizure.

(A) Search Warrants. A search warrant is an order directed to any law enforcement officer directing the officer to search a particular place for described persons or property and, if found, to seize them. Such warrants may be issued by tribal, state or federal courts at the request of law enforcement. Warrants initially issued by federal or state courts may be confirmed by tribal courts and served by law enforcement.

(B) A warrant shall be issued only by sworn affidavit or affidavits, with the prosecutor's approval, before the Court and establishing grounds for issuing the warrant. If the Court is satisfied that there is probable cause to believe that evidence would be found on the premises or person to be searched, he or she shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part, where such evidence is found to be reliable. Before ruling on a request for a warrant, the Court may require the affiant to appear personally and be examined under oath. If examination is required it shall be recorded.

(C) Contents of Search Warrants. The search warrant and affidavit taken together shall have the following:

1. The name and address of the court.
2. The signature of the issuing judge.
3. A specific description of the place to be searched, and the items or person to be searched for and seized.
4. A direction that any law enforcement officer execute the search warrant.
5. The grounds for probable cause.
6. The time and date of issuance.

(D) **Service and Execution of Search Warrants.** Search warrants shall be served by any law enforcement officer. A copy of the warrant shall be left with an occupant or owner, who is at least eighteen (18) years of age or older, at the place being searched if present during said search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the premises. The officer may break open any outer or inner door or window of the place to be searched, or any part of any place to be searched, or anything therein to execute a search warrant, if, after notice of his or her authority and purpose, the officer is denied or refused admittance, then when necessary to liberate himself or herself, or when the premises to be searched are unoccupied at the time of the search. Notice of his or her authority and purpose shall not be required if the law enforcement officer has a reasonable belief that such notice will lead to the destruction of the evidence sought or in danger the officer or others.

(E) **Inventory.** The officer serving a search warrant shall make a signed inventory of all property seized and attach such inventory to the warrant. A copy of the inventory and warrant shall be left with an occupant or owner eighteen (18) years of age or older if present during the search or left in a conspicuous place, if an occupant is not present during the search.

(F) **Return of Search Warrants.**

1. The officer serving the warrant shall sign and date the warrant indicating the date, time, and place of service.
2. The warrant shall be promptly returned to the Court with an inventory of property seized.
3. If the warrant is not executed it shall be returned to the Court within fifteen (15) days.

(G) **Property Subject to Seizure.** Property is subject to seizure when there is probable cause to believe such property is:

1. Stolen, embezzled, contraband, or otherwise criminally possessed;
2. Has been used to commit a criminal offense; or
3. Evidence of the commission of a criminal offense.

(H) **Warrantless Searches.** A law enforcement officer may conduct a search without a warrant only if the search is any of the following:

1. Incident to a lawful arrest.
2. With the consent of the person to be searched.
3. With the consent of any person eighteen (18) years or older having actual possession and control of the property to be searched.
4. When the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains property subject to seizure.
5. After the vehicle is impounded and seized for an inventory of the vehicle.

6. Where an officer is legitimately on the premises and the officer has probable cause to believe that the objects in plain view are contraband or evidence of a crime.
7. Warrantless search can occur if it's a condition of probation or release pending further hearing.
 - (I) A person aggrieved by an unlawful search and/or seizure may move the Tribal Court for the return of any property, except contraband, on the grounds that the search was illegal and/or the property was illegally seized. The judge may receive evidence on any issue of fact necessary to decide on the motion. If the motion is granted, the property shall be returned, except contraband, and the property shall not be admissible by the prosecution as evidence at any hearing or trial. The Court will make a determination as to the distribution or destruction of contraband and or evidence once a case has ended and appeal period has run.
 - (J) A law enforcement officer may stop any person in a public place whom he or she has reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand the person's name, address, and an explanation of his or her actions and may, if the officer has reasonable grounds to believe his or her own safety or the safety of others nearby is endangered, conduct a frisk type search of such person for weapons.

1.306 Criminal Protection Orders.

- (A) A restraining order may be sought by any law enforcement officer or the prosecutor or the Court on its own motion may issue a criminal restraining order without prior notice to the restrained party. The restraining order must set out with specificity the action(s) prohibited, and must be served upon the restrained party as soon as reasonably possible.
- (B) Said order must set out an expiration date of not more than one year from the date of issuance. The restrained party must seek relief within seven court days or the order will be good for one year from the date of issuance.
- (C) At the one-year expiration, the party or victim may seek, after notice to the restrained person, a permanent restraining order. Once a permanent restraining order is issued, it can only be dismissed after a motion to the Court that notices the party or victim of the request.
- (D) Any restraining order issued where the defendant and victim share legal custody of minor child(ren) will make temporary custody and visitation orders that will be reviewable by the court at any time during the restraining order period, and indicate whether or not the family court is authorized to make superseding custody orders.

1.307 Arrest.

- (A) An arrest is the taking of a person into custody in the manner authorized by law.
- (B) A law enforcement officer may make an arrest in obedience to an arrest warrant, or other court order, or without a warrant, arrest a person:
 1. When he or she has probable cause to believe that an offense has been committed in his or her presence.

2. When he or she has probable cause to believe that the person has committed an offense, although not in his or her presence, and there is reasonable cause for believing that such person, before a warrant can be obtained, may:
 - a. flee the jurisdiction or conceal himself or herself to avoid arrest;
 - b. destroy or conceal evidence of the commission of an offense;
 - c. injure or harass another person or damage property belonging to another person; or
 - d. may become a danger to himself or herself.

(C) A law enforcement officer, upon making an arrest:

1. Must inform the person of the intention to arrest, the cause for the arrest, and the authority to make the arrest. No notice is needed when the person to be arrested is actually engaged in the commission of, or an attempt to, commit an offense, or is pursued immediately after its commission.
2. Must show the warrant of arrest as soon as is practicable.
3. May use reasonable force to effectuate the arrest.
4. Shall as soon as is reasonably possible, deliver the person arrested to the proper authority or do as commanded by the arrest warrant.

1.308 Arrest in Hot Pursuit. Any law enforcement officer otherwise empowered to arrest a person within this jurisdiction may continuously pursue such person from a point of initial contact within the jurisdiction of the Tribe to any point of arrest within or without the jurisdiction of the Tribe and such arrest shall be valid. Such officer shall respect and comply with any applicable extradition requirements of the jurisdiction in which the arrest is finally made.

1.309 Notification of Rights.

(A) Upon arrest, the defendant shall be notified that he or she has the following rights:

1. The right to remain silent and that any statements made may be used against him or her in Court.
2. The right to obtain an attorney and to have the attorney present at any questioning.
3. The right to stop answering questions, and to request time to speak with an attorney at any point in the questioning.

(B) Prior to conducting a consensual warrantless search, the officer shall specifically inform the person to be searched or the person in charge of the property to be searched that:

1. Any search other than of the person for custodial purposes will be conducted only with the person's consent.
2. If the person refuses to consent to the non-custodial search, the officer will not search the person or property without first obtaining a warrant from the Court.

1.310 Arraignment.

- (A) The purpose of an arraignment is to bring the accused person before the Court; to allow him or her to be informed of the charges and his or her rights, including the right to request a jury trial; to accept the plea; and to set bail and/or any release conditions.
- (B) Arraignment shall be held in open court upon the appearance of an accused in response to a summons or citation or, if the accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and tribal holidays excepted.
- (C) Arraignments shall be conducted in the following order:
 - 1. The Court shall read the charges, deliver a copy of the complaint to the defendant unless he or she has previously received a copy thereof, and state the minimum and maximum authorized penalties.
 - 2. The Court shall explain the charges and the defendant's rights, including the right to seek federal habeas corpus relief and a stay of the proceedings in federal court to challenge the validity of any detention order.
- (D) The Court shall ask the defendant if he or she wishes to obtain an attorney and, if he or she so desires, the defendant will be given a reasonable time to obtain an attorney.
- (E) The Court shall ask the defendant whether he or she wishes to plead "guilty", "no contest", or "not guilty".

1.311 Right to Request Alternative Dispute Resolution. The tribal prosecutor or judge may at any point in the proceedings refer a pending matter to alternative dispute resolution.

- (A) Upon receipt of a referral, the Chief Judge will assign a judge or designated mediator to attempt resolution between the parties. If the mediation or the enforcement of the resolution fails at any point, the matter may proceed as a criminal matter but not before the dispute mediation judge. All mediations shall be confidential.
- (B) If a resolution is reached between the parties, the stipulation will be written up by the Court, each party will sign the agreement, the Court will sign it and it will become an enforceable order. The agreement will set out the terms of enforcement.

1.312 Diverted/Deferred Prosecution. The defendant, the prosecutor, or the Court on its own motion may seek to enter into an agreement to divert prosecution of an offense or defer the entry of judgment on an offense. If such agreement is entered, the terms will be specifically set out including the possible dismissal date. Failure to complete diversion or deferred entry of judgment condition may result in reinstatement of prosecution.

1.313 Receipt of Plea.

- (A) The defendant shall plead "guilty", "no contest", or "not guilty" to the offense charged.

- (B) If the defendant refuses to plead, the judge shall enter a plea of "not guilty" for him or her and the judge shall set a pre-trial hearing, scheduling conference or trial date and conditions for bail prior to trial.
- (C) If the defendant pleads "not guilty," the judge shall set a pre-trial hearing, scheduling conference or trial date and conditions for bail prior to trial.
- (D) If the defendant pleads "no contest" or "guilty", the judge shall question the defendant to personally determine that he or she understands the nature of his or her action, the rights that he or she is waiving, and that his or her action is voluntary. The judge may refuse to accept a guilty plea or a no contest plea. If the guilty or no contest plea is accepted, the judge may immediately sentence the defendant or order a sentencing hearing.

1.314 Withdrawing Guilty Plea. The decision to grant the motion shall be at the discretion of the court except that a plea may be withdrawn if the court rejects a plea bargain agreement.

1.315 Bail or Conditions of Release.

- (A) At arraignment, the Court shall address the issue of bail/bond and decide whether the defendant should be released on their own recognizance, or be required to post a cash or surety bond with the Court, and if so, designate the amount. The Court shall also determine whether any conditions of release are appropriate to the case, and order same. Conditions may include, but are not limited to, the following:
 - 1. Placing the defendant in the care and custody of a designated responsible adult or organization who has agreed to supervise him or her during the pendency of the case.
 - 2. Placing restrictions on travel, association, or residence of defendant during the pendency of the case.
 - 3. Prohibiting contact with any victim or witness in the case or their immediate family members, which could include that person's residence, workplace, or any other place they are known to frequent.
 - 4. Prohibiting the use of alcohol or controlled substances, and drug or alcohol testing at a frequency decided by the Court.
 - 5. Wearing of a tether, GPS unit, or other electronic monitor in order to monitor the defendant's whereabouts, to confine him or her to their home, or to detect the use of any alcohol or controlled substances.
 - 6. The use of a SCRAM, sober link, or other similar device in order to ensure they are not driving a vehicle under the influence of alcohol or controlled substances.
 - 7. Participate in a substance abuse program treatment or any educational program.
 - 8. Not possess firearms or other dangerous weapons.
- (B) All bond orders shall have the following standard conditions for defendants:
 - 1. They shall appear at all court ordered hearings.

2. They shall not break the law or commit any new crimes while on bond.
3. They shall not threaten, intimidate, influence, or attempt to threaten, intimidate or influence any victim, informant, potential witness, potential or actual juror, police officer, court staff, or member of the Prosecutor's Office, nor tamper with, remove, or destroy any evidence that may be used against them in the case.

- (C) In determining the conditions of bond and/or release, the Court shall consider the nature and circumstances of the offense charged, public safety concerns/dangerousness to the community, any prior criminal record, the likelihood of appearance at future court proceedings, including any prior history of appearances or failures to appear at Court and/or flight to avoid prosecution, family ties, employment, financial resources, character and mental condition, and length of residency in the community.
- (D) The Court shall indicate on the record in the presence of the defendant the bond amount and any conditions imposed, and the reasons for them. It shall also issue a written bond order setting forth the amount, terms, and any conditions imposed, the bond order shall set forth the penalties for violation, including a bench warrant, contempt of court, and potential revocation of bond. A copy of the bond order shall be provided to the defendant and LTBB Law Enforcement.
- (E) If the conditions of bond are violated, the Court may forfeit any cash or surety that has been posted with the Court to secure the release of the defendant in addition to imposing any of the measures indicated in section (D).
- (F) The Court may also authorize and establish a Law Enforcement Bail Schedule for certain offenses or classes of offenses through which a person arrested may post bail with LTBB Law Enforcement or other designated official for transmittal to the court clerk and obtain his or her release prior to his or her appearance before the Court.

1.316 Penalties for Failure to Appear. Whoever, having been released pursuant to these procedures, willfully fails to appear before the Court as required, may incur a forfeiture of any security which was given or pledged for his or her release, and in addition, may be subject to additional fines, costs or imprisonment.

1.317 Plea Bargaining.

- (A) Whenever the defendant pleads guilty as a result of a plea arrangement with the prosecutor, the full terms of such agreement shall be disclosed to the Court and the Court in its discretion is not required to honor such agreement. In the event the judge decides not to honor such agreement, he or she should offer the defendant an opportunity to withdraw his or her plea and proceed to trial.
- (B) Absent good cause, the Court will not accept plea bargains to reduced charges or sentencing recommendations on the day of trial. All agreements to reduced charges or sentencing recommendations must be submitted to the Court prior to the day of trial.

1.318 Motions Before Trial: Defenses and Objections. Motions raising defenses and objections may be made as follows:

- (A) Any defenses or objections which are capable of determination other than at trial, must be raised before trial by motion.

- (B) **Defenses and objections.** Legal defenses based on defects in the institution of the prosecution of the complaint, failure to charge an offense or lack of jurisdiction must be raised on motion made before trial and properly noticed for hearing, as these are legal defenses to be decided by the court. If these issues have not been raised and litigated prior to trial, and are raised for the first time at trial, sanctions may be imposed but they are still to be decided by the court, outside the presence of the jury. Juries will decide factually whether the crime occurred in the location alleged by the prosecutor.
- (C) Defenses of alibi, self-defense and mental incompetence must be raised by written motion. Failure to timely file notice will constitute a waiver of such defenses.
- (D) Motions shall be made in writing and filed with the Court at least five (5) court days before the day set for trial or by such date set by the Court. Such motions will be argued before the Court on the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the Court and not by the jury.

1.319 Concurrent Trial of Defendants or Charges.

- (A) The Court may order two or more defendants tried together if they could have been joined in a single complaint, or may order a single defendant tried on more than one complaint at a single trial.
- (B) If it appears that a defendant or the prosecution are prejudiced by a joinder of offenses or other defendants for trial, the court may order separate complaints and may order separate trials or provide such other relief as justice requires.

1.320 Discovery and Inspection.

- (A) The prosecutor shall make available, at least five (5) court days before trial, to the defendant or his or her attorney any of the following that may be used at trial: copies of any statements or confessions, reports of physical, mental or scientific test or examinations relating to the defendant, if such are within the possession or control of or reasonably obtainable by the prosecution.
- (B) The defendant or his or her attorney shall reveal by written notice to the Court and the prosecutor at least five (5) court days before trial or such date as set by the Court, the names and addresses of any witnesses upon whom the defense intends to rely to provide an alibi or insanity defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted. In such cases, the Court may order the trial delayed or make such other orders to assure a just determination of the case.

1.321 Subpoena.

- (A) The defendant and the prosecutor shall have the right to subpoena through a request to the Court any witnesses reasonably deemed necessary. Subpoenas shall be issued, served and returned to the Court. The party requesting the subpoena shall be responsible for payment of witness attendance and mileage fees, unless otherwise ordered by the Court.
- (B) Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of court, and prosecution thereof may proceed upon the order of the Court. No contempt shall be

prosecuted unless a return of service of the subpoena has been made on which the date, time and place of service and the person performing such service is indicated.

1.400 TRIAL

1.401 Trial by Jury or by the Court.

- (A) Defendants have the right to a speedy trial. A trial shall be held within ninety (90) days of arraignment. A defendant has the right to waive his or her right to a speedy trial.
- (B) The defendant is entitled to a jury trial whenever facing criminal charges.
- (C) Juries shall be comprised of 6 members, unless the Tribal Council passes the Tribal Law and Order Act, P.L. 111-211 (TLOA) and the defendant is facing the possibility of more than a year in jail, in which case it shall be comprised of 12 members. The court may select alternate jurors as it sees fit.
- (D) In a case tried without a jury, the Court shall make a finding of guilty or not guilty.
- (E) Any requests for presentencing orders will be decided at this time. In addition, the Court may order a presentencing report, along with progress reports.

1.402 Trial Jurors. Jurors shall be selected in accordance with applicable Little Traverse Bay Bands of Odawa Indians Court Rules, Chapter 8, Rules for Jury Selection.

1.403 Instructions. At the close of evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission unless he or she objects before the jury retires to consider its verdict, stating distinctly the matter to which he or she objects and the grounds of the objection. Opportunity to object shall be given out of the hearing and out of the presence of the jury.

1.404 Order of Trial. The trial of all criminal offenses shall be conducted in the following manner:

- (A) The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its discretion.
- (B) If the parties are ready to proceed, and if the case is to be tried by jury, the Court shall require all prospective jurors to swear to decide the case in a fair and impartial manner if selected for jury duty.
- (C) The Court shall read the criminal complaint and request opening statements. Prior to reading the complaint, the Court should explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense(s) charged against the defendant. The Court should also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

- (D) The defense may reserve the opening statement until the beginning of the presentation of the defense's evidence.
- (E) The prosecutor shall then present his or her evidence followed by the defendant's presentation of his or her defense evidence. After the defendant has presented his or her evidence, the prosecutor may present evidence in rebuttal.
- (F) The prosecutor shall then present his or her closing argument, the defendant his or her closing argument, and the prosecutor shall be allowed to present a rebuttal.
- (G) If trial is to a jury, the judge should give instructions and it shall retire to decide the verdict. If trial is to the judge, he or she shall then make his or her decision or announce the time at which his or her decision will be made.
- (H) If the verdict is "not guilty," the defendant should be discharged and bail exonerated. If the verdict is "guilty" the Court will enter a judgment of conviction.
- (I) After sentencing, the Court may hold a hearing to determine an appeal bond if an appeal is filed.

1.405 Judge Disability.

- (A) If by reason of death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, and with consent of the defendant, any other judge may, upon certifying that he or she has familiarized himself or herself with the record of the trial, proceed with the trial.
- (B) If by reason of death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the required duties of a judge after the verdict or finding of guilt, any other tribal judge may perform those duties unless such judge feels he or she cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

1.406 Evidence. The admissibility of evidence and the competence and privileges of witnesses shall be governed by the Federal Rules of Evidence until the Court adopts its own evidence rules.

1.407 Expert Witnesses and Interpreters.

- (A) Either party may select and call expert witnesses and shall bear the cost of such witnesses. The court will determine whether or not the witness is qualified as an expert witness.
- (B) Expert witnesses may testify by telephone. The party seeking such testimony must file a motion setting forth the name of the expert, the expert's resume, and a summary of the proposed testimony. The request must also state if a written report will be prepared and if so indicate the date it will be filed.
- (C) The Court may appoint an interpreter of its own selection and each party may provide its own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

(D) The trial judge or clerk may act as interpreter only with the consent of all parties.

1.408 Child Witness Provisions. The Court will determine the competency of any child witness under the age of nine (9) years. The party calling said witness must establish competency by testimony including but not necessarily limited to whether the child knows right from wrong, the truth from a lie, and /or the difference between reality and pretending. The Court in its discretion may make alternate provisions for a child to testify which may protect the child from a direct confrontation with a defendant while still protecting the defendant's right to confrontation.

1.409 Motion for Judgment of Acquittal. The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed, if the evidence is insufficient as a matter of law to sustain a conviction for such offenses. A motion for acquittal by the defendant does not affect his or her right to present evidence. If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

1.410 Verdict.

- (A) The verdict of a jury shall be agreed upon unanimously. If a jury cannot agree on its verdict, a mistrial may be declared, and the defendant may be retried before a new jury.
- (B) If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.
- (C) If the evidence is found to support such verdict, the defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or a lesser included offense without having been formally charged with the lesser included offense or attempt.
- (D) The jury may be polled at the request of either party, and if there is not unanimity by all jurors, they may be ordered to retire for further deliberation, or may be discharged.
- (E) After return of the verdict, the jury may, in the judge's discretion, be requested to recommend the punishment to be imposed after a hearing at which both parties have the opportunity to present evidence in mitigation or aggravation of the sentence. The jury's recommendation in such cases shall not be binding on the judge at sentencing except as otherwise provided in the case of sentences of banishment.
- (F) Any requests for presentencing orders will be decided at this time. In addition, the Court may order a presentencing report, along with progress reports.

1.500 JUDGMENT, SENTENCE, AND PROBATION

1.501 Judgment. A judgment of conviction shall set forth, in writing, the charge, plea, verdict or findings, and the sentence imposed. If the defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

1.502 Sentencing. Sentence shall be set forth as follows:

- (A) Sentence shall be imposed within twenty-eight (28) court days of conviction in accordance with the provisions of the criminal statute or ordinance violated. Pending sentence the Court may commit the defendant to jail or continue or alter the bail and will set release or continued release conditions.
- (B) When a presentencing report is ordered it must be prepared, filed and served on the parties three (3) court days in advance of the sentencing hearing.
- (C) Before imposing sentence, the Court shall allow the defendant or counsel an opportunity to speak on behalf of the defendant. The Court shall allow the presentation of a victim impact statement. Before the imposition of sentence, the Court shall address the defendant personally and ask him or her if he or she wishes to make a statement on his or her own behalf and to present any information in mitigation of punishment.
- (D) After imposing sentence, the Court shall inform the defendant of his or her right to appeal, and if so requested, shall direct the clerk to file a notice of appeal on behalf of the defendant. At any time after a notice of appeal is filed, the Court may entertain a motion to set bail pending appeal.
- (E) Time served in jail prior to the judgment and sentence while awaiting or during trial may be allowed as a credit toward any sentence of imprisonment or banishment imposed.

1.503 General Sentencing Provision Statement of Policy. The sentencing policy of the Tribe in criminal cases is to strive toward restitution and reconciliation for the victim and Tribal community. Sentencing shall contribute to the rehabilitation of the individual offender seeking to assure the offender's assumption of a positive role in the tribal community. While one goal of sentencing is to impress upon the wrongdoer the wrong he or she has committed, the paramount goal is to restore the victim and Tribe to the position that existed prior to the commitment of the offense, and to restore the offender to harmony with them and the community by requiring the defendant to right the wrongdoing. Therefore, with consideration of these goals in mind, the provisions of these procedures shall govern sentencing for criminal offenses:

- (A) Unless the Court determines that the ends of justice will not be served thereby, or that a civil action will more adequately adjudicate damages in the specific case at hand, then in addition to any sentence otherwise provided by law the Court shall:
 - 1. Order the offender to pay restitution to the victim in money, property, or services; and/or
 - 2. Order the offender to pay restitution to the Tribe in money, property, or services.
- (B) In effectuating Tribal sentencing policy, if the offender recognizes the wrong, the Court may, paying particular attention to prior offenses, in its discretion:
 - 1. Allow such offender to exchange actual work performed for the Tribe in lieu of a fine or imprisonment.
 - 2. Place the offender on probation under such reasonable conditions as the Court may direct for a period not exceeding three (3) times the amount of the maximum sentence allowed.
 - 3. Place the offender on probation under such reasonable conditions as the Court may direct for a period not exceeding three (3) times the amount of the maximum sentence allowed; except in the case of individuals who are sentenced to participate in the Waabshkii-Miigwan Drug Court Program (“WMDCP”), the term of the probation on their underlying

offense shall be extended until they successfully complete their probation or are otherwise discharged from the WMDCP program.

4. Allow the offender to pay a fine in goods or commodities at the fair market value of the goods or commodities to be surrendered, provided that the Tribe shall not reimburse the offender for any excess value for property surrendered.

1.504 Probation Supervision. The probation department is supervised by the Court. The probation officer will be responsible for supervising probationers and those released on pre-sentencing release. Terms of release or probation will be set by the Court upon recommendation of the probation officer.

- (A) The probation officer may upon direct knowledge or receipt of reliable information take into custody a person who the probation officer reasonably believes has violated terms of pre-sentencing release. Said person must be brought before the Court for confirmation of detention within 72 court hours and to establish succeeding court dates as required by these rules.
- (B) The probation officer may upon direct knowledge or receipt of reliable knowledge take a probationer into custody for violation of terms of probation. The probation officer must file a petition for revocation of probation listing the reasons for violation and the basis for violation. Said petition will proceed through Court on the same time schedule as a criminal complaint.
- (C) If a person on pre-sentence release or a person on probation is accused of another crime, the probation officer must determine whether or not to revoke pre-sentencing release or take the person into custody and file a petition to violate the person's probation.
- (D) If a person is placed on probation, the court will set dates for progress reports and dismissal dates. The probation officer will draft reports for each hearing and they will be filed three (3) court dates in advance of hearing.
- (E) The probation officer or prosecutor may petition the court to alter any term of probation at the discretion of the probation officer.
- (F) The probation officer may be requested to visit any person who is in jail, in a treatment facility or other facility by order of the Court.

1.505 New Trial. The Court, on motion of a defendant, may grant a new trial to him or her if required in the interest of justice. If the trial was by the Court without a jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one month after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven (7) days after a verdict or a finding of guilty or within such further time as the Court may fix during the seven-day period.

1.506 Motion for Summary Judgment. The Court, on motion of a defendant, shall dismiss the action if the complaint does not charge an offense or if the Court lacks jurisdiction over the offense charged. The motion for summary judgment shall be made within seven (7) days after verdict or finding of guilty or plea of guilty, or within such further time as the Court may fix during the seven day period.

1.507 Correction or Reduction of Sentence. The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within twenty-eight (28) days after the sentence is imposed, or within twenty-eight (28) days after receipt by the Court of a mandate issued upon affirmance

of the judgment or dismissal of the appeal. The Court may also reduce a sentence upon revocation of probation.

1.508 Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court. Revised findings shall be served upon the parties.

1.600 Appeal. The appeal process shall be in accordance with Little Traverse Bay Bands of Odawa Indians Court Rules, Chapter 7, Appellate Procedures.

1.700 Certification as Child. Upon completion of a certification hearing, if the accused person is certified as a child in the Children's Court Division of the Tribal Court, then all adult court records relative to the accused person and the instant charge shall be expunged and any mention of the accused person shall be removed from public record.

1.701 Final Order. An order certifying a person as a child or denying the request for certification as a child pursuant to this Section shall be a final order, appealable when entered.

1.800 Short Title and Effective Date

1.801 Short Title. These procedures shall be titled "Criminal Procedures".

1.802 Effective Date. These procedures become effective when adopted by the Tribal Judiciary of the Little Traverse Bay Bands of Odawa Indians and signed below by the Chief Judge and Court.

CERTIFICATION OF ADOPTION

The Tribal Judiciary unanimously adopted the above procedures on June 22, 2022.



Honorable Allie Greenleaf Maldonado, Chief Judge