

Chapter 3. Criminal Proceedings

Legislative History

This revised chapter was enacted by the Tribal Council on September 13, 1988.

Sec. 1. Jurisdiction of the Court.

The Fort McDermitt Tribal Court shall have exclusive criminal jurisdiction over all tribal law criminal offenses occurring within Fort McDermitt Nevada Indian Country except that prohibited by federal law. Until such time as Public Law 280 criminal jurisdiction is retroceded by the State of Oregon and such retrocession is approved by the Federal government, the State of Oregon will continue to exercise exclusive criminal jurisdiction over criminal acts occurring within the Oregon lands. However, when the State of Oregon effectively retrocedes criminal jurisdiction over the Oregon lands, and the Federal government approves same, the Tribal Court will assume exclusive criminal jurisdiction except that prohibited by federal law.

Sec. 2. Complaints; Form; Requirements.

No criminal complaint filed with the Fort McDermitt Tribal Court shall be valid unless its form meets the requirements of the Rules of Court and the complainant's signature shall have been witnessed by either a judge of the court, the Court Clerk, a Bureau of Indian Affairs police officer or other qualified tribal official.

Sec. 3. Juries.

- (a) Right to Jury; Number of Jurors. In any case where a defendant is accused of any tribal offense punishable by imprisonment, that person shall have the right, upon request to a trial by jury of not less than six persons.
- (b) Juror Lists. The Court Clerk shall obtain a list of all tribal members from the Chairman of the Enrollment Committee each year and shall call prospective jurors from such list in sufficient number to ensure that a jury shall be available at each jury trial.
- (c) Juror Pay. Each juror who sits on a jury and hears testimony shall be paid by the unsuccessful party (Defendant or Prosecuting Complainant) at least four hours pay at the prevailing minimum wage pay scale as established by the Federal Fair Labor Standards Act, 29 U.S.C.A. 206.

Sec. 4. Witnesses.

- (a) Issuance of Subpoenas. Any judge of the Fort McDermitt Tribal Court is authorized to issue subpoenas for the attendance of witnesses either on their own motion or on the request of any party in any criminal proceeding. All subpoenas shall bear the signature of the judge issuing it.
- (b) Witness Pay. Witnesses answering subpoenas issued to the party calling them by the Tribal Court on its own motion or those witnesses considered hostile shall be entitled to at least four hours pay at the prevailing Federal minimum wage scale as established by the Federal Fair Labor Standards Act, 29 U.S.C.A. 206, paid by the court. Witnesses who testify voluntarily and who are not hostile to the party calling them, with or without the issuance of a subpoena, shall be paid by the party calling them. Any party paying any witness more than the prevailing minimum wage scale shall advise the court of such by a sworn affidavit.

Sec. 5. Arrests.

No police officer or other law enforcement officials of the Fort McDermitt Tribe or those Bureau of Indian Affairs stationed at the Fort McDermitt Indian Reservation shall arrest any person for any tribal criminal offense, defined in Chapter 7 of this Law and Order Code, unless the offense shall occur in the presence of the arresting officer or he shall have reasonable evidence that the person arrested has committed an offense or the officer shall have an arrest warrant commanding him or her to apprehend such named or described person.

Sec. 6 Citation in Lieu of Arrest.

All police officers or other law enforcement officials of the Fort McDermitt Tribe or Bureau of Indian Affairs may, in their discretion, when circumstances warrant it, issue a citation, approved by the Tribal Council, in lieu of incarcerating such person. The person offered the opportunity to sign an approved citation shall sign their name agreeing to appear in Tribal Court at the time and date so stated without pleading guilty by affixing their signature.

Sec. 7. Arrest Warrants.

- (a) Conditions for Issuance. Every judge of the Fort McDermitt Tribal Court shall have the authority to issue arrest warrants only after a valid complaint has been filed with the court, bearing the signature of the tribal member who is the complaining witness. Telephonic arrest warrants may be granted any Bureau of Indian Affairs Police Officer, who desires such, only after sufficient information is presented a judge of the Fort McDermitt Tribal Court verbally and the officer takes an oath, subject to criminal punishment in a court of competent jurisdiction, for presenting false or misleading information to the judge which causes a violation of the Indian Civil Rights Act of 1968.
- (b) How Served. Service of Arrest Warrants shall be conducted by a Police Officer of the Bureau of Indian Affairs. No warrant need be served if it violates any provision of the Law & Order Code of the Fort McDermitt Tribe or the Indian Civil Rights Act of 1968. The Chief Judge of the Fort McDermitt Tribal Court shall be notified, in writing, in each instance that an arrest warrant is suspected of violating the civil rights of the person or persons identified in the arrest warrant within 72 hours of the discovery of such possible violation of civil rights.

Sec. 8. Search Warrants.

- (a) Conditions for Issuance. Every judge of the Fort McDermitt Tribal Court shall have the authority to issue search warrants for specific locations, premises and property of any person under the jurisdiction of the court. No warrant shall issue except upon a duly signed and written complaint, based upon reliable information or belief, and charging the commission of a crime under tribal law, against the dignity of the people of the Fort McDermitt Tribe. All search warrants shall contain the name and description of the person or property to be seized, if possible. A search warrant for illegal narcotics or contraband shall be valid as long as the location of the search is identified, e.g., HUD Unit 92—000, master bedroom.
- (b) How served. Service of Search Warrants shall be conducted by a Police Office of the Bureau of Indian Affairs. No search warrant need be served if it violates any provision of the Law & Order Code of the Fort McDermitt Tribe or the Indian Civil Rights Act of 1968. The Chief Judge of the Fort McDermitt Tribal Court shall be notified, as identified in Section 7 of

this chapter, above, when a search warrant is suspected of violating any person's civil rights.

Sec. 9. Bail or Bond; Form; Requirements.

- (a) Right to Bail or Bond. Every person charged with an offense before the Fort McDermitt Tribal Court, except in the case of Murder, Rape, or Robbery with a deadly weapon, shall be admitted to bail or bond.
- (b) Method of Bail or Bond. Bail shall be by either cash bond or by the signing of an agreement by two reliable members of any Indian tribe who shall appear before a judge of the Tribal Court where the complaint has been filed and there execute an agreement in an acceptable form.
- (c) Form; Requirements. The form utilized by any judge of the Fort McDermitt Tribal Court to allow two Indians to be responsible for the person arrested shall require the persons to be responsible for the actions of the person arrested until such time that they notify the court that they no longer wish to be responsible. The form shall also specify that the penalty for violating conditions of release shall not exceed twice the maximum penalty set by the violation in Chapter 7 of the Law & Order Code with which the accused is charged.

Sec. 10. Appeals.

- (a) Court of Appeals. The Court of Appeals of the Fort McDermitt Tribe is hereby abolished because it was never used by the previous judges of the Tribal Court; appeals have always been forwarded to the BIA Court of Appeals for Western Nevada Agency in violation of tribal law. Effective this date, SEPTEMBER 15, 1988, all appeals shall be made to the Court of Appeals for Western Nevada Agency, Carson City, through the Court Clerk, Fort McDermitt Tribal Court. At such time as the State of Oregon shall retrocede Public Law 280 criminal jurisdiction to the Fort McDermitt Tribe, and Federal government approves such retrocession, appeals shall be made to either the Court of Appeals established by the Warm Springs Agency or the Western Nevada Agency, whichever proclaims jurisdiction over the Oregon lands of the Fort McDermitt Tribe by its Rule of Court and/or Criminal Procedures.
- (b) Method of Appeal; Cash Bond; Time Limit. The party wishing to appeal from a decision of the Fort McDermitt Tribal Court shall do so according to the Rules of Court and Criminal Procedures of the BIA, Western Nevada Agency, Court of Appeals. Absent such Rules of Court or Criminal Procedure, all appeals shall be made, in writing, to the Court Clerk of the Tribal Court within 20 working days of the decision by 3:00 P.M. of the final day. A bond of \$50.00 shall be paid in cash, Money Order or Cashier's Check at the time the appeal is filed with the Clerk of the Tribal Court.
- (c) Travel and Related Expenses of Witnesses. In no event shall the Fort McDermitt Tribe or Tribal Court be financially responsible for any costs of appeal.
- (d) Who may Appeal. Because the Judicial Services budget afforded the Fort McDermitt does not allow it to provide the basic elements of a modern court system, e.g., Prosecutor or Public Defender, and no tribal member currently is employable as a Tribal Court Advocate, because no Legal Services Corporation entity provides criminal representation in our Tribal Court, because no licensed attorney provides legal services in Tribal Court matters on a regular basis, and because of human nature, any party, including the prosecuting complainant, may appeal a final decision of a judge of the Fort McDermitt Tribal Court.

Sec. 11. Sentencing; Nature; Probation; Parole.

- (a) Sentencing; Nature. Any person who has been convicted in a proceeding before the Fort McDermitt Tribal Court shall be sentenced to either work for the benefit of the Tribe and its members and elders, fined in an amount appropriate for the offense, and/or incarcerated for an appropriate time limit.
- (b) Probation. Any person who has been convicted in a proceeding before the Fort McDermitt Tribal Court shall be entitled to have a sentencing report completed by the court personnel, law enforcement officials, social services staff of the Tribe and others to assist the court in determining whether or not probation, in the specific case, would be a viable alternative form of punishment or rehabilitation.
- (c) Parole. Any person who has been convicted in a proceeding before the Fort McDermitt Tribal Court shall be entitled to have their request for parole heard by a judge originally sentencing them or the Chief Judge every 90 days if the sentence runs longer than 90 days or after 60 days of time served if the sentence is less than 90 days but more than 60 days.

Sec. 12. Incarceration Prior to Arraignment; Time Limit.

No person arrested and incarcerated shall be held for violating tribal law longer than 72 hours unless an order, duly signed by a judge of the Fort McDermitt Tribal Court, is issued. If no order has been issued, the person having custody of the person incarcerated shall release him upon their request.

Sec. 13. Credit for Time Served Prior to Arraignment.

In determining the sentence to be served for violating tribal law, the judges of the Tribal Court may grant credit for time served prior to arraignment or afterwards if the person is not released pending trial.

Sec. 14. Severability.

Should any sections of this chapter be disapproved by the Secretary of the Interior, in accordance with the Constitution, or be found unconstitutional or in violation of tribal or federal law by any court of competent jurisdiction, such declaration shall not affect the remaining terms or sentences of any section or the remaining sections of this chapter.