

# CRIMINAL PROCEDURE

## CHAPTER FOUR

### JUDGMENT AND SENTENCE

#### **Section 401. 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.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

#### **Section 402. Sentence**

Sentence shall be set forth as follows:

(a) Sentence shall be imposed without unreasonable delay in accordance with the provisions of the criminal statute or ordinance violated, and this Title. Pending sentence the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall allow counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement on his own behalf and to present any information in mitigation of punishment.

(b) After imposing sentence, the Court shall inform the defendant of his 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.

(c) Time served in jail prior to the judgment and sentence while awaiting or during trial shall be allowed as a credit toward any sentence of imprisonment or banishment imposed.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

#### **Section 403. General Sentencing Provisions**

**Statement of Policy.** The sentencing policy of the Tribe in criminal cases is to strive toward restitution and reconciliation of the offender and the victim and Tribe. While one goal of sentencing is to impress upon the wrongdoer the wrong he 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 him to right his wrongdoing. Therefore, with consideration of these goals in mind, the provisions of this Chapter shall govern Tribal 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

## CRIMINAL PROCEDURE

(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 he has committed, and earnestly repents of such wrong, the Court, paying particular attention to prior offenses, in its discretion may:

(1) Allow such offender to exchange actual work performed for the Tribe in lieu of a fine or imprisonment, at the rate of eight (8) hours of work per twenty-five dollars (\$25.00) of fine; or

(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; or

(3) Defer entering the judgment and imposing sentence for a period not exceeding four (4) times the maximum sentence allowed on condition that if the defendant violated no law and satisfies such other reasonable conditions such as restitution as may be imposed, the plea or verdict guilty will be withdrawn and said charges will be dismissed.

(4) In the discretion of the Court, 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 of the property surrendered.

### **Section 404. Sentence of Banishment**

(a) **Banishment Defined.** Banishment is the traditional and customary sentence imposed by the Tribe for offenders who have been convicted of offenses which violate the basic rights to life, liberty, and property of the community and whose violation is a gross violation of the peace and safety of the Tribe requiring the person to be totally expelled for the protection of the community. During the term of banishment, a person who is banished from the territory and association of the Tribe shall:

(1) Be considered legally dead and a nonentity with no civil rights to engage in contracts or come before the courts of the Tribe for any reason not related to the original conviction, provided, that the banished person retains all rights of a criminal defendant during any prosecution for an offense during the term of banishment, and while attending a going directly to or from any Court, or a proceeding involving a criminal action to which he is a party including the appeal of his case.

(2) Be expelled from the jurisdiction of the Tribe and not be allowed to return for any reason during the period of banishment except when required to attend court.

(3) Forfeit all positions or offices of honor or profit with the Tribe.

(4) Be absolutely ineligible for any service, monies, or benefits provided by the Tribe, or due as a result of citizenship in the Tribe.

(5) Be absolutely ineligible to vote in any election conducted by or hold any office in the Tribe.

## CRIMINAL PROCEDURE

(6) Be grounds for any debtor of the banished person to apply for an order attaching the banished person's personal property within this jurisdiction and bringing execution thereon to satisfy the debt.

**(b) Violation of Banishment.**

(1) If the person banished be found within the jurisdiction of the Tribe not going directly to, attending, or returning from a Court hearing required in his case, such act shall be considered criminal contempt in violation of a lawful order of the court and may be punished accordingly.

(2) A person under a decree or judgment of banishment found unlawfully within the jurisdiction of the Tribe shall, upon conviction, and in addition to any other punishment imposed for disobedience of a lawful order of the court, forfeit to the Tribe all personal property brought by him into the jurisdiction of the Tribe or in his immediate control therein, whether ownership of said property is in the banished person or another, as civil damages for breach of the peace and safety of the Tribe.

**(c) Expiration of Banishment Term.** Upon expiration of the term of banishment and satisfaction of any other terms imposed by the sentence, the banished person shall be restored to all rights forfeited during the banishment and shall thereafter be treated as if banishment had never been imposed.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

### **Section 405. New Trial**

The Court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If 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 verdict or finding of guilty or within such further time as the Court may fix during the seven day period.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

### **Section 406. Arrest of Judgment**

The Court, on motion of a defendant, shall dismiss the action if the complaint does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion in arrest of 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.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

### **Section 407. Correction or Reduction of Sentence**

The Court may correct an illegal sentence at any time and may correct a sentence imposed

## CRIMINAL PROCEDURE

in an illegal manner within thirty days after the sentence is imposed, or within thirty 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.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

### **Section 408. 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 at any time and after such notice, if any, as the Court orders.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]