

CRIMINAL PROCEDURE

CHAPTER SIX

OTHER PROVISIONS

Section 601. Search and Seizure

(a) **Search Warrants.** A search warrant is an order directed to any Tribal or Federal law enforcement officer directing him to search a particular place for described persons or property and if found to seize them.

(b) A warrant shall issue only on an affidavit or affidavits sworn to before a Tribal Judge or Magistrate and establishing grounds for issuing the warrant. If the Judge or Magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he 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. Before ruling on a request for a warrant, the judgment may require the affiant to appear personally and be examined under oath.

(c) **Contents of Search Warrants.** Every search warrant shall contain the name and address of the Court and the signature of the Judge or Magistrate issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The warrant shall be directed by any Tribal or Federal police or law enforcement officer or official and shall command such person or persons to search, within a specified period of time not to exceed 10 days, the person or place named for the property or persons specified, and contain the date on which it was issued.

(d) **Service of Search Warrants.** Search warrants shall be served by any Tribal or Federal law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m., unless otherwise directed on the warrant by the Judge or Magistrate who issued it. A copy of the warrant shall be left with an occupant or owner over sixteen (16) years of age of the place 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 a place to be searched, or any part of any place to be searched, or anything thereon to execute a search warrant, if after notice of his authority and purpose, he is denied or refused admittance, when necessary to liberate himself, or a person aiding in the execution of the warrant or when the premises to be searched are unoccupied at the time of the search.

(e) **Inventory.** The officer serving a search warrant shall make a signed inventory of all property seized and attached such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen (16) years of age if present during the search or left in a conspicuous place with the search warrant if an occupant is not present during the search.

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

(1) the officer shall endorse on the warrant the date, time, and place of service and the signature of the officer serving it.

(2) The warrant shall be returned to the Court with an inventory of property seized within twenty-four (24) hours of service, Saturdays, Sundays, and legal holidays excluded.

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(3) In every case the warrant shall be returned within ten (10) days of the date of issuance, unless return be due on a Saturday, Sunday, or legal holiday, in which case, the return shall be made on the next business day.

(g) **Property Subject To Seizure.** Property which is subject to seizure is property in which there is probable cause to believe such property is:

- (1) Stolen, embezzled, contraband, or otherwise criminally possessed; or
- (2) Which is or has been used to commit a criminal offense; or
- (3) Property which constitutes evidence of the commission of a criminal offense.

(h) **Warrantless Searches.** A law enforcement officer may conduct a search without a warrant only:

- (1) Incident to a lawful arrest; or
- (2) With the consent of the person to be searched, or
- (3) With the consent of the person having actual possession and control of the property to be searched; or
- (4) When he has reasonable grounds to believe that the person searched may be armed and dangerous; or
- (5) 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, or upon inventory of such vehicle after impoundment and seizure.
- (6) In any other circumstances wherein federal law has held that a search without obtaining a warrant prior to the search in those circumstances would not be unreasonable.

(i) A person aggrieved by an unlawful search and seizure may move the Tribal Court for the return of the property, not contraband, on the ground that he is entitled to lawful possession of the property illegally seized. The judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned, if not contraband, and shall not be admissible at any hearing or trial.

(j) A law enforcement officer may stop any person in a public place whom he 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 of him his name, address, an explanation of his actions and may, if he has reasonable grounds to believe his own safety or the safety of other nearby is endangered, conduct a frisk type search of such person for weapons.

(k) The term "property" is used in this Section to include documents, books, papers, and any other tangible object.

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

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Section 602. Arrest

(a) An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by either a police or law enforcement officer or by a private person.

(b) A police or law enforcement officer may make an arrest in obedience to an arrest warrant, or he may, without a warrant, arrest a person:

(1) When he has probable cause to believe that an offense has been committed in his presence.

(2) When he has probable cause for believing the person has committed an offense, although not in his presence, and there is reasonable cause for believing that such person before a warrant can be obtained may:

(i) flee the jurisdiction or conceal himself to avoid arrest, or

(ii) destroy or conceal evidence of the commission of an offense, or

(iii) injure or annoy another person or damage property belonging to another person.

(c) A private person may arrest another, for prompt delivery to a law enforcement officer.

(1) When an offense is committed or attempted in his presence;

(2) When an arrest warrant for that person is in fact outstanding.

(d) Any person making an arrest may orally summon as many persons as he deems necessary to help him.

(e) If the offense charged is an offense punishable by banishment or in violation of the federal major crimes act, the arrest may be made at his residence at any time of the day or night. Otherwise the arrest pursuant to a warrant can be made at a person's residence only between the hours of 7:00 a.m. and 9:00 p.m. unless arrest at night at the residence is specifically authorized by the issuing Judge. Arrest at places other than at the residence may be made at any time.

(f) Any person, upon making an arrest:

(1) Must inform the person to be arrested of his intention to arrest him, of the cause or reasons for the arrest, and his authority to make it, except 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 or an escape if such is not reasonably possible under the circumstances;

(2) Must show the warrant of arrest as soon as is practicable, if such exists and is demanded;

(3) If a law enforcement officer, may use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly

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resists after receiving information of the officer's intent to arrest except that deadly force may be used only as otherwise provided by law;

(4) If a law enforcement officer, may break open a door or window of a building in which the person to be arrested is, or is reasonable believed to be, after demanding admittance and explaining the purpose of which admittance is desired;

(5) May search the person arrested and take from him and put into evidence all weapons he may have about his person;

(6) Shall as soon as is reasonably possible, deliver the person arrested to a police office or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

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

Section 603. Arrest in Hot Pursuit

(a) 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, provided, that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made.

(b) Any law enforcement officer commissioned by the Federal Government, any Indian Tribe, or State of when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction may validly arrest such person within the jurisdiction of the Tribe, provided, that any person so arrested shall be forthwith delivered to a Tribal Police Chief for a show cause hearing pursuant to the extradition laws of the Tribe.

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

Section 604. Limitation on Arrests in the Home

A person may be arrested in his own home only:

(a) By a law enforcement office pursuant to an arrest warrant.

(b) By a law enforcement officer for an offense committed in the home in the presence of the officer.

(c) By a law enforcement officer in continuous pursuit of a person who flees to his home to avoid arrest.

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

Section 605. Notification of Rights

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

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(1) The right to remain silent and that any statements made by him may be used against him in Court.

(2) That he has the right to obtain an attorney at his own expense and to have an attorney present at any questioning.

(3) That if he wishes to answer the questions of the police he may stop or request time to speak with his attorney at any point in the questioning.

(b) Prior to conducting a consensual warrantless search pursuant to Section 601(h) (2) or (3) of this Chapter, the officer shall specifically inform the person to be searched or the person in charge of the property to be searched that:

(1) The search will be conducted only with the person's consent.

(2) That the person is under no obligation or requirement to consent to the search and may refuse to consent to the search if he chooses to do so, or request the advice of an attorney at his own expense prior to responding to the requested consent to the search.

(3) That if the person refuses to consent to the search, the officer will not search the person or property without first obtaining a warrant from the Courts.

(c) Whenever possible, the officer should obtain a written statement that the person known these rights, understands, and waives them prior to taking a voluntary statement from a defendant or conducting a warrantless consensual search, provided that the absence of such a written statement does not preclude the admission of the statement or other evidence if the Court determines that the statement or consent to search were voluntary.

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

Section 606. Executive Order for Relief From Judgment

(a) The Chief Executive Officer of the Tribe shall have authority to pardon, or commute any judgment and sentence imposed for any criminal offense upon a determination that a pardon or commutation of sentence promotes the ends of justice.

(b) Such pardon or commutation will be entered by filing a copy of the proposed action with the Court Clerk for a period of sixty (60) days after a copy of the proposed executive action has been submitted for approval to each Justice of the Supreme Court and to each member of the Tribal Legislative Body. If, within sixty (60) days after the filing thereof, with proof of service, any such Justice or Legislator shall disapprove the proposed pardon or commutation with written reasons, in a writing delivered to the Chief Executive Officer and filed with the Court Clerk, such proposed pardon or commutation shall not be approved. Otherwise, upon expiration of the sixty (60) day period, the pardon or commutation may be issued by the Chief Executive Officer of the Tribe.

(c) Upon the filing of written reasons for disapproval of such proposed pardon or commutation by any Justice or Legislator referred to in (b) above, the Chief Executive Officer may order the proposed pardon or commutation to be placed on the ballot for the next regularly scheduled election to determine, by referendum vote of the Tribe, whether such pardon or

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commutation shall be granted. The vote of the People of the Tribe shall be conclusive.

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

Section 607. Arrest in Cases of Domestic Abuse

Notwithstanding the provisions of Section 604 of this Title,

(a) As used in this section:

(1) “Domestic Abuse” means any criminal offense defined by Chapter 2 of Title 10 of the Sac and Fox Tribal Criminal Code when the victim and the perpetrator are family or household members.

(2) “Family or Household Members” means spouses, ex-spouses, former spouses, parents, children, persons otherwise related by blood or marriage, or persons living in the same household or who formerly lived in the same household, including the elderly and the handicapped.

(b) A law enforcement officer may arrest without a warrant a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person within the preceding four (4) hours, has committed an act of domestic abuse as defined by this section, although the assault did not take place in the presence of the law enforcement officer, if the law enforcement officer has first observed a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

(c) A law enforcement officer shall not discourage a victim of domestic abuse from pressing charges against the assailant of the victim, provided, that the law enforcement officer may require the victim to sign a complaint in such matters.

[History: PUBLIC LAW #SF-89-90, July 27, 1989]