

TUNICA-BILOXI CODE
OF CRIMINAL PROCEDURE

Article 1. Purpose

The purpose of this Code of Criminal Procedure is to provide a simple, fair and expedient manner of processing criminal complaints.

Article 2. Complaint

A. All criminal prosecutions for violation of the Tunica-Biloxi Criminal Code shall be initiated by complaint. A complaint is a written statement sworn to by the complaining witness and charging that a named individual(s) has committed a particular criminal offense.

B. Complaint shall contain:

1. The signature of the complaining witness sworn to before a tribal judge or other officer of the Court; or appointee of the Tribal Council.
2. A written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained; and
3. The name or description of the person alleged to have committed the offenses; and
4. The section of the Tribal Code allegedly violated.

C. During normal business hours the Clerk of the Court shall

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 tribal law enforcement officer shall arrest any person for a criminal offense set out in the Tunica-Biloxi criminal Code except when:

1. The officer shall have a warrant signed by a tribal judge or an appointee of the Tribal Council commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or
2. The offense shall occur in the presence of the arresting officer, or
3. The officer shall have probable cause to believe that the person arrested has committed an offense.

C. Whenever an arrest without a warrant is made, the arresting officer shall file an arrest report with the Clerk of the Court.

Article 4. Arrest Warrants

A. Every judge of the Tribal Court shall have authority to issue warrants to arrest and such warrants shall be issued only upon a showing of probable cause in the complaint. The tribal judge shall deny the issuance of a warrant if he/she finds that there is not probable cause to believe that the offense charged has been committed by the named suspect.

B. The arrest warrant shall contain the following inform-

as a warrant, except that it may be signed by an authorized police officer.

C. If a defendant fails to appear in response to a criminal summons a warrant for his/her arrest shall be issued.

Article 7. Search Warrant - - Defined

A search warrant is a written order, signed by a tribal court judge, and directed to a tribal law enforcement officer ordering him/her to conduct a search and seize items on property specified in the warrant. A warrant shall describe the property or place to be searched and shall describe the items to be seized.

Article 8. Issuance of Search Warrant

A. Every tribal court judge shall have the power to issue warrants for the search of premises and property, and seizure of property of any person under the jurisdiction of the Court.

B. No warrant of search and seizure shall be issued except upon probable cause that a search warrant will discover:

1. Stolen, embezzled or contraband property;
2. Property which has been or is being used to commit a criminal offense;
3. Property which has been or is being used to commit a criminal offense;

C. Such probable cause shall be supported by a duly signed, written and sworn statement based upon reliable information.

Article 9. Execution and Return of Search Warrant

Warrants of search and seizure shall only be executed by

perty of the community and may either be destroyed, sold at public auction, retained for the benefit of the Tribe, or otherwise lawfully disposed of as ordered by the Court.

Article 12. Arraignment

A. Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charge against him/her, receiving his/her plea, and setting bail.

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 twenty four hours from the person was arrested.

Article 13. Rights of Accused At Arraignment

Before an accused is required to plead to any criminal charge the Judge shall:

A. Read to the accused and determine that he/she understands the complaint and the article of the Tribal Criminal Code which he is charged with violating including the maximum authorized penalty; and

B. Advise the accused that he/she has the right to remain silent; to be tried by a jury; and to be represented by counsel and that the arraignment will be postponed should he desire to consult with counsel. If the accused cannot afford counsel, the Court shall appoint legal counsel for his defense.

Article 14. Receipt of Plea At Arraignment

A. If the accused pleads "not Guilty" to the charge, the

organization agreeing to assure the accused's appearance;

3. Released with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.

B. If the Court has reason to believe that the person might leave the area either because the person has so stated his/her intentions or because the person lacks ties with the community, the Court may:

1. Release him/her after the deposit by the accused or a bondsman a cash bond in an amount specified by the judge or in a bail schedule. The judge, in his/her 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.
2. Release him/her after execution of a bail agreement by two responsible members of the community.
3. Release him/her upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

Article 16. Bail - Release By Police Officer

A. Any trial police officer authorized to do so by the Court may release an arrested person upon his/her own personal recognition or admit him/her to bail pursuant to the bail schedule.

B. A police officer shall have available a bail schedule

draw a plea of guilty whenever it appears that the interest of justice and fairness would be served by doing so.

Article 20. Standards Governing Appearance of Attorneys and Counselors

A. No defendant in a criminal proceedings shall be denied the right to counsel.

B. The Tribal Court may prescribe in writing standards governing the admission and practice in Tribal Court of professional attorneys and lay advocates.

Article 21. Trial Procedure

A. The time and place of court sessions, and all other details of judicial procedure shall be set out in rules of court approved by the Tribal Council.

B. The Court shall be bound by the Federal Rules of Evidence.

Article 22. Pretrial Conferences

A. At any time after arraignment the Court, at the request of any party or upon its own motion, may order one or more conferences to consider such matters as will promote a fair and expeditious trial.

B. Such a conference shall be held only if the defendant is represented by an attorney or spokesman to act in his/her behalf.

C. At the conclusion of the conference the Court shall prepare and file a memorandum of the matters agreed upon and any orders that the Court deems appropriate to the case.

Article 23. Rights of Defendant

In all criminal proceedings, the Defendant shall have the following rights:

- (1) To appear and defend in person or by counsel;
- (2) To be informed of the nature of the charges against him and to have a copy thereof;
- (3) To testify in his own behalf, or to refuse to testify regarding the charge against him, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to refuse to testify in that criminal proceeding;
- (4) To confront and cross examine all witnesses against him, subject to the Federal Rules of Evidence;
- (5) To compel by subpoena the attendance of witnesses in his own behalf;
- (6) To have a speedy public trial by an impartial judge or jury as provided in these rules;
- (7) To file a Petition for Review with the Tribal Council;
- (8) To prevent his present spouse from testifying against him, except;
 - (a) in any case in which the offense charged is alleged to have been committed against the spouse, or the children of either the spouse or the defen-

enter a plea of not guilty. The Court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

(2) The defendant, with the consent of the Court and of the prosecuting attorney, may plead guilty to any lesser offense than that charged which is included in the offenses charged in the complaint or to any lesser degree of the offense charged.

Article 37. Pleadings and Motions Before Trial; Defenses and Objections

(1) Pleadings in criminal proceedings shall consist of the complaint and the plea of either guilty or not guilty. All other pleas and motions shall be made in accordance with these rules.

(2) Motions raising defenses and objections may be made as follows:

(a) Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.

(b) Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own motion at any stage of the proceeding.

the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control of reasonably obtainable by the police or prosecution. The police and prosecution shall make similarly available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendants.

(2) The defendant or his attorney shall reveal by written notice to the Court at least five (5) working days before trial the names of any witnesses upon whom the defense intends to rely to provide an alibi 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 which case the judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

Article 40. Subpoena.

(1) A subpoena is an order of court by a judge or the clerk of the Court. It shall contain the name of the Court, the title of the case, and shall command each person to whom it is directed it attend and give testimony or produce for use at trial objects names, at the time and place specified therein. The clerk may issue subpoenaed, to a defendant upon request.

(2) A subpoena may be served by any police officer or court employee or any person over the age of 18 years who is not a party. Service shall be accomplished by handing a copy of the subpoena to the person named therein. No fees or mileage allowance

(1) 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 in the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his right to present evidence.

(2) If a motion for judgment of acquittal is made at the close of all 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.

Article 44. Sentence and Judgment

(1) A judgment of conviction shall set forth the plea, the findings, and the adjudication and sentence when imposed. If the Defendant is found not guilty or for any other reasons entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the Clerk.

(2) Sentence shall be set forth as follows:

(a) Sentence shall be imposed without unreasonable delay as provided in this Code. Pending sentence the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall afford 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 in his own behalf and to present any information in mitigation of punishment.

if the complaint does not charge an offense of 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 within such further time as the Court may fix during the seven-day period.

Article 47. 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 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 as provided in this Code.

Article 48. 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 order.

Article 49. Right of Appeal; How Taken

(1) The defendant has the right to appeal by Petition for Review from the following:

- (a) A final judgment of conviction;
- (b) From an order made, after judgment affecting his substantial rights.

(2) The Tribe has the right to appeal by Petition for Review from the following:

- (a) A judgment of dismissal in favor of the Defendant upon a motion to dismiss based on any procedural

(1) The prosecuting attorney or representative of the Tribe serving as prosecuting attorney may move that a complaint be dismissed and upon the Court's granting such motion the prosecution of that complaint shall cease, the defendant shall be released and any bail or bail bond released. Such a dismissal shall not be made during trial without the consent of the defendant.

(2) If there is an unreasonable and unnecessary delay in bringing a defendant to trial, the Court may, on motion of the defendant or its own motion, dismiss the complaint.

Article 53. Service and Filing of Papers.

(1) Written motions other than those which are heard ex parte, written notices and similar papers shall be served on each party in the manner provided for in civil actions.

(2) All papers required to be served shall also be filed with the Court.

Article 54. Calendars

(1) The Tribal Court shall provide for the placing of criminal proceedings on the court calendar with as little delay as is reasonably possible.

(2) The Tribal Court shall schedule criminal trials no less frequently than one day per month.

(3) The Court may for good cause shown by either party direct that a trial be postponed to the next or some succeeding month. However, if the prosecution, for good cause shown, requests and is granted a delay, and if the defendant is incarcerated not having made bail, the defendant shall be released on his own recognizance pending the rescheduled trial.

The Court shall pass sentence upon defendant in accordance with the provisions of the Tunica-Biloxi Criminal Code, upon a plea of guilty or decision of guilty by the court. The Court may make a pre-sentence investigation before sentencing, and provide a copy of the written pre-sentence investigations report 10 days before the imposition of sentence.

Article 59. Presence of Defendant; Preference for Fines

Section 1. The Defendant shall be personally present at the imposition of sentence, which shall be at least 15 days after the finding of guilt, although defendant may request immediate sentencing.

Section 2. The Tribal Court shall preferably sentence defendant to payment of a fine rather than imprisonment.

Section 3. If a sentence of imprisonment is imposed, defendant shall be remanded to the custody of the Avoyelles Parish Sheriff's Office, pursuant to an agreement between the Tribe and the Sheriff.

Section 4. Decision to Impose a Fine

In determining whether to impose a fine and its amount, the Court should consider:

- (1) The financial resources of the defendant and the burden that payment of a fine will impose with due regard to his other obligations;
- (2) The ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the Court;
- (3) The extent to which payment of a fine will interfere with the ability of the defendant to make an ordered restitution

that such be the result.

Section 6. Credit

(1) Credit against a term of imprisonment imposed following an adjudication of guilty shall be given to a defendant for all time spent in custody as a result of the criminal charge for which the sentence is imposed or as a result of the conduct on which such charge is based. Such credit shall apply to time spent in custody prior to trial, during trial, pending sentence, and pending resolution of an appeal.

(2) In case of re-prosecution for any reason of the same offense or an offense based on the same conduct for which a defendant has been imprisoned, credit shall be given for all time spent in custody under the prior prosecution as provided in subsection 1) above.

(3) Credit as provided in this section shall be considered and computed by the Court at the time of sentencing.

Section 7. Reduction of Sentencing

(1) The Court may, upon motion of any party or its own motion, reduce or modify a sentence within a reasonable time after its imposition as provided in the Rules of Criminal Procedure if new factors bearing on the sentence become known. Such reduction or modification shall be done in open court.

(2) In the event that commitment to a special type of facility other than a jail or penitentiary is imposed or accepted as a condition of probation or parole, the Court may for good cause shown terminate or reduce such commitment.

(3) The Court shall have authority to terminate at any time

The Clerk of Court shall keep records in criminal proceedings as the Chief Judge shall by rule direct. Among the records required to be kept by the Clerk shall be a book known as the "Criminal Docket" in which, among other things, shall be entered each order or judgment of the Court and the date thereof.

Article 64. Rule of Court

(1) The Judge may, in conjunction with the other Tribal judges, promulgate rules governing criminal procedure not inconsistent with these articles and supplement thereto, and copies of such rules shall be made available for public inspection and copying.

(2) If no procedure is specifically prescribed by rule, the Court may proceed in any lawful manner not inconsistent with these rules or the principle of justice and fairness underlying these rules.