

# TITLE III

## CRIMINAL PROCEDURES

**Ordinance No. 324-16**

**Standing Rock Sioux Tribal Code of Justice**



**Resolution No. 005 -16**

**Approved  
January 5, 2016**

**BY**

**\*\*\***

**Standing Rock Sioux Tribal Council**

## ORDINANCE NO. 324-16

**NOW THEREFORE BE IT RESOLVED**, that **TITLE III – CRIMINAL PROCEDURE** of the Tribal Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby amended.

[DOCUMENT ATTACHED – 19 pages]

## RESOLUTION NO. 005-16

**WHEREAS**, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934 [48 Stat. 984], with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

**WHEREAS**, the Standing Rock Sioux Tribal Council, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[c], 1[m], and Section V, are authorized to promote and protect the health, education and general welfare of the members of the Tribe, to engage in any business that well further the economic development of the Tribe and its members, and to propose and enact ordinances, provided they are posted for not less than ten [10] days prior to final adoption by the Tribal Council;

**WHEREAS**, on March 3, 2015, the Tribal Council moved to post, and thereafter posted, for 60 days, amendments to **TITLE III – CRIMINAL PROCEDURE** of the Standing Rock Sioux Tribal Code of Justice;

**NOW THEREFORE BE IT RESOLVED**, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under Article IV and Article VII of the Constitution of the Standing Rock Sioux Tribe, that **TITLE III – CRIMINAL PROCEDURE** of the Code of Justice, be and the same is hereby further amended and replaced with the attached new **TITLE III – CRIMINAL PROCEDURE**; and

**BE IT FURTHER RESOLVED**, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

## CERTIFICATION

**We**, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of 17 members, of whom 16 constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held on the 05<sup>th</sup> day of **JANUARY, 2016**, and that the foregoing resolution was duly adopted by the affirmative vote of 11 members, with 0 opposing, and with 6 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

**DATED THIS 05<sup>th</sup> DAY OF JANUARY, 2016.**

ATTEST:  


Adele M. White, Secretary  
Standing Rock Sioux Tribe

  
Dave Archambault II, Chairman  
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

**TITLE III  
CRIMINAL PROCEDURE  
ORDINANCE NO. 324-16**

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## TITLE III. CRIMINAL PROCEDURE

### Chapter 1. General

#### 3-101. Applicability.

Except as otherwise provided in any specific provision of the Standing Rock Sioux Tribal Code of Justice, including in Chapter 17 of Title IV where additional criminal procedures are set forth to be followed for any offenses contained therein, the provisions in this Title shall be followed in the investigation and prosecution of any criminal offense enumerated in any Title of the Standing Rock Sioux Tribal Code of Justice.

### Chapter 2. Complaint and Arrest

#### 3-201. Complaint.

(a) A complaint is the written statement of the essential facts charging that a named individual has committed a particular criminal offense. All criminal prosecutions shall be initiated by a complaint filed with the Court and sworn to by:

1. A person having a personal knowledge of the offense;
2. The parent or guardian of a child who has personal knowledge of the offense; or
3. A law enforcement officer having probable cause to believe the offense has been committed.

(b) Complaints shall be in writing and in the name of the Standing Rock Sioux Tribe, and shall contain:

1. The signature of the complaining witness, or witnesses, sworn to before a Judge, a clerk or assistant clerk or any law enforcement officer;
2. A written statement by the complaining witness or describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained:

3. The name of the person alleged to have committed the offense, or – if the name of such person is unknown – a description of the person by which he can be identified with reasonable certainty; and
4. A description of the offense charged.

Law enforcement officers shall submit complaints without unnecessary delay to the Chief Prosecutor or Assistant Prosecutor who shall screen them for sufficiency. Complaints shall then be submitted without unnecessary delay to a Judge who will determine whether an arrest warrant or summons should be issued.

**3-201.1. Complaints under Title IV, Chapter 17.**

- (a) When a crime involves a non-Indian properly charged with an offense in Tribal Court, the complaint shall also allege, and the prosecution must move:
  - a. That the defendant is a non-Indian;
  - b. That the victim is an Indian;
  - c. That the offense occurred within the exterior boundaries of the Standing Rock Sioux Tribe Reservation;
  - d. That the defendant has sufficient ties to the Standing Rock Sioux Tribe, such that:
    - i. The defendant resided within the exterior boundaries of the Standing Rock Sioux Tribe Reservation at the time of the offense;
    - ii. The defendant was employed within the exterior boundaries of the Standing Rock Sioux Tribe Reservation at the time of the offense; or
    - iii. At the time of the offense, the defendant was a spouse or intimate partner – as defined in Title IV of the Standing Rock Sioux Tribal Code of Justice – of either:
      1. A member of the Standing Rock Sioux Tribe; or
      2. A non-member Indian who resides within the exterior boundaries of the Standing Rock Sioux Tribe Reservation.
- (b) For purposes of crimes involving non-Indian protection order violations, the complaint shall also allege, and the prosecution must prove:
  - a. That the defendant is a non-Indian;
  - b. That the protection order was granted against the defendant;
  - c. That the protected person is an Indian;
  - d. That the violation occurred within the exterior boundaries of the Standing Rock Sioux Tribe Reservation;
  - e. That the protection order is consistent with 18 U.S.C. 2265(b); and

- f. That the violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

**3-202. Time Limit for Commencing Criminal Prosecution.**

- (a) No prosecution for an offense under this Code shall be maintained unless the complaint is filed within:
  - 1. One (1) year after the commission of the offense, if the offense is a misdemeanor or an infraction; or
  - 2. Six (6) years after the commission of the offense, if the offense is a felony.
- (b) Time during which the accused is outside the jurisdiction of the Court, for whatever reason, shall not be included in this one (1) year time limit.
- (c) If the victim of a sex offense is under the age of fifteen, the applicable period of limitation, if any, does not begin to run until the victim has reached the age of fifteen.

**3-203. Arrest.**

- (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 law enforcement officer shall arrest any person for a criminal offense except when:
  - 1. A Judge has signed a warrant commanding the arrest of such person and the arresting officer has the warrant in his possession or knows for a certainty that such a warrant has been issued;
  - 2. The offense has occurred in the presence of the arresting officer; or
  - 3. In the case of a felony, an officer has probable cause to believe that the person arrested committed the offense.

**3-204. Arrest Warrants.**

- (a) Judges shall have authority to issue warrants to arrest if they find that there is probable cause to believe that an offense against tribal law has been committed by the named or described accused, based on sworn written statements or sworn oral testimony.
- (b) The arrest warrant shall contain the following information:
  - 1. Name or description of the person alleged to have committed the offense and address, if known, of the person to be arrested;
  - 2. Date of issuance of the warrant;
  - 3. Description of the offense charged; and
  - 4. Signature of the issuing Judge.
- (c) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request shall, as soon as possible, show it to the defendant.
- (d) A warrant shall not be executed outside the boundaries of the Reservation.

**3-205.            Notification of Rights at Time of Arrest.**

Upon arrest the suspect shall be advised immediately of the following rights:

- (1) That he has the right to remain silent;
- (2) That any statements made by him may be used against him in subsequent Court proceedings;
- (3) That he has the right to obtain counsel at his own expense prior to questioning; and
- (4) That he has the right to make at least one completed telephone call to a friend and at least one completed call to a lay counselor or attorney immediately after being registered and identified at the jail, or sooner if there is an unreasonable delay in taking the accused to the jailor in processing at the jail.

If, at any point during questioning, the suspect indicates that he or she wishes to remain silent, the questioning shall cease. Any statement obtained in violation of these rights shall not be admitted to



evidence, and the fact that a person has invoked their right to remain silent may not be used against him or her in any subsequent criminal proceeding.

**3-206. Summons in lieu of Warrant.**

- (a) A law enforcement officer or a judge may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court at a stated time and place and answer to the charge.
- (b) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.
- (c) The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.
- (d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his usual residence or place of business with a person of suitable age and discretion who also resides or works there. Services shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the records of the case.

## **Chapter 3. Searches**

**3-301. Search Warrant.**

- (a) A search warrant is a written order, signed by a Tribal Judge, directing a law enforcement officer to conduct a search and seize property specified in the warrant. A warrant shall describe the person, property, or place to be searched and shall describe the property to be seized.
- (b) A search warrant shall be issued only by a Judge and only upon probable cause that a search will discover: (1) stolen or embezzled property, contraband or otherwise unlawfully possessed property; (2) property which has been or is being used to commit a criminal offense; or (3) property which constitutes evidence of the commission of a criminal offense. Such probable cause shall be supported by a sworn written statement or sworn oral testimony. Warrants shall be served only by authorized law enforcement officers.

**3-302. Execution and Return of Search Warrant.**

The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void. The warrant shall be served between 7:00 a.m. and 9:00 p.m., unless the Judge, upon a showing of good cause therefore, inserts a direction that it may or shall be served at some other time.

**3-303. Search without a Warrant.**

The Tribe shall not violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

**3-304. Disposition of Seized Property.**

- (a) The officer serving and executing a warrant shall make an inventory of all property seized and a copy of this inventory shall be left with every person from whom property is seized.
- (b) A hearing shall be held by the Court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless the property is contraband or is to be used as evidence in a pending case. Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court.

**3-305. Exclusion of Unlawfully Obtained Evidence.**

The Court shall prohibit the introduction or use at trial of any evidence seized in a search conducted in violation of Section 3-303 of this Title and may, in addition, recommend to the chief law enforcement officer of the Reservation any appropriate disciplinary actions against the law enforcement officer(s) conducting the unlawful search.

## Chapter 4. Arraignment and Release

### 3-401. Arraignment.

- (a) Arraignment is the bringing of an accused before the Court, informing him of his rights and of the charge against him, receiving his plea, and setting conditions of pre-trial release as appropriate in accordance with this code.
- (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 the next regular session of Court.
- (c) Before an accused is required to plead to any criminal charges the Judge shall:
  - 1. Read the complaint to the accused and determine that he understands the complaint and the section of the tribal code which he is charged with violating, including the maximum authorized penalty; and
  - 2. Advise the accused that he has the right: (a) to remain silent; (b) to have a speedy and public trial where he will be confronted with witnesses against him after he has had sufficient time to prepare his defense if he pleads "not guilty;" (c) to be tried by a jury if the offense charged is punishable by imprisonment; (d) to be represented by counsel at his own expense or by a public defender provided by the Tribe if available and/or required under Section 1-508(a) of the Code of Justice; and (e) any other rights which the Code of Justice may require an individual accused of a particular offense be advised of at their initial appearance.
- (d) If the arrest was without a warrant, and the defendant is to be continued in custody the Judge shall also determine during arraignment whether there is probable cause to believe that an offense against tribal law has been committed by the named accused.
- (e) The Judge shall call upon the defendant to plead to the charge:
  - 1. If the accused pleads "not guilty" to the charge, the Judge shall then set a trial date and consider conditions for release prior to trial as provided in Section 3-402(a).
  - 2. If the accused pleads "guilty" to the charge, the Judge shall accept the plea only if he is satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights which he is waiving by the plea. The Judge may then impose

sentence or defer sentencing for a reasonable time in order to obtain any information he deems necessary for the imposition of a just sentence, including through a pre-sentence investigation. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing.

3. If the accused refuses to plead, the Judge shall enter a plea of “not guilty” on his behalf.

**3-402. Release before Final Judgment of Conviction.**

- (a) Prior to trial. At arraignment, the Judge shall decide whether to release the defendant from custody pending trial. As conditions of release, the Judge may, to assure the accused’s appearance at all times lawfully required and for the protection of any individual pending disposition of the criminal charges:
  1. Require the accused to deposit cash or other sufficient collateral, in an amount specified by the Judge;
  2. Require the accused, and/or any other designated person or organization satisfactory to the Judge, to execute a written promise to appear or to deliver the accused at all required times;
  3. Impose reasonable restrictions on the travel, association – including a no contact order - or place of residence of the accused; and/or
  4. Impose any other condition deemed reasonably necessary to assure the appearance of the accused as required.
- (b) By Police Officer. Any law enforcement officer authorized to do so by the Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the Court.
- (c) Pending Appeal. A convicted person may be released from custody pending appeal on such conditions as the Judge determines will reasonably assure the appearance of the accused unless the Judge determines that release of the accused is likely to pose a danger to the community, to himself, or to any other person.

- (d) The Court may revoke its release of the defendant and order him committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

**3-403. Withdrawal of Guilty Plea.**

The Court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice and fairness would be served by doing so.

## **Chapter 5. Trial Proceedings**

**3-501. Rights of Defendant in Criminal Cases.**

Every defendant is entitled to those rights enumerated in Article XI of the Constitution of the Standing Rock Sioux Tribe and the Indian Civil Rights Act, 25 U.S.C. 1302, and no provision of the Standing Rock Sioux Tribal Code of Justice shall be construed to violate the same:

- (a) No person shall twice be put in jeopardy for the same offense;
- (b) No person shall be compelled in any criminal case to be a witness against himself;
- (c) The accused shall have the right to a speedy and public trial;
- (d) The accused shall have the right to be informed of the nature and cause of the accusation;
- (e) The accused shall have the right to be confronted with witnesses against him, and to have compulsory process for obtaining witnesses in his favor;
- (f) The accused shall have the right to effective assistance of counsel at his own expense – or by a public defender provided by the Tribe if available and/or required under Section 1-508(a) of the Code of Justice;
- (g) The Tribe shall not require excessive bail, impose excessive fines, or inflict cruel and unusual punishment;
- (h) The Tribe shall not violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the person or thing to be seized;
- (i) The accused shall have the equal protection of the law;
- (j) The accused shall not be subject to any bill of attainder or ex post facto law;
- (k) The accused shall have the right to demand trial by an impartial jury of no less than six (6) persons if the offense, or combination of offenses, charged is punishable by imprisonment.

**3-502. Issuance of Subpoenas.**

- (a) Upon request of the defendant or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by a Tribal Court Judge and which are to be served within the confines of the Reservation.
- (b) A subpoena shall bear the signature of the Chief Judge or an Associate Judge of the Court and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

**3-503. Service of Subpoenas.**

- (a) A subpoena may be served at any place within or without the confines of the Reservation, but any subpoena to be served outside the Reservation shall be issued personally by a Judge of the court.
- (b) A subpoena may be served by any law enforcement officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his usual place of residence or business with any person of suitable age and discretion who also resides or works there.
- (c) Proof of service of the subpoena shall be filed with the Court by noting on the back of a copy of the subpoena the date, time, and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

**3-504. Failure to Obey Subpoena.**

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be deemed to be in contempt of court.

**3-505. Witness Expenses.**

- (a) Each witness answering a subpoena shall be entitled to reimbursement for mileage expenses at the current rate paid by General Services Administration and a \$25 witness fee.
- (b) The expenses provided for in this section shall be paid by the Tribe upon disposition of the case. Witness fees and expenses may be taxed as costs against a defendant who is found guilty and in such case a judgment for the costs shall be entered against the defendant; provided, however, that no defendant shall be imprisoned solely because of an inability to pay such costs. No Tribal Court employee or law enforcement officer is entitled to a witness fee or mileage if subpoenaed to testify in an official capacity.
- (c) If the Court finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the Tribe for expenditures incurred under this section, and such order shall constitute a judgment against the complainant.

**3-506. Trial Procedure.**

- (a) The time and place of Court sessions, the rules of evidence to be followed by the Court and all other details of judicial procedure may be set out in rules of court as provided in Section 1-104 of the Standing Rock Sioux Tribal Code of Justice.
- (b) The defendant shall be present in court at every stage of the trial, including impaneling the jury, return of the verdict, and imposition of the sentence.
- (c) All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court and made available to the defendant.
- (d) The defendant is presumed to be innocent. The prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt, including the facts that a crime has actually been committed, and that the defendant committed it with the requisite intent, when intent is an element of the offense.
- (e) The prosecution shall present its case first, followed by the case of the defendant. If rebuttal is required, the prosecution shall proceed first, followed by the defendant.

- (f) At the conclusion of the evidence, the prosecution and defendant each in turn shall summarize the proof and make final argument, with the prosecution having the right of final rebuttal.
- (g) All records relating to statements or confessions of the defendant - or reports of physical, mental, or other scientific tests or examinations relating to or performed on the defendant, when in the possession or control of the Tribe - shall be open to inspection and copying by the defendant.
- (h) At any time in the trial process, the Judge may appoint an interpreter of his own selection and may fix the reasonable compensation of such interpreter. An interpreter through whom testimony is communicated shall be put under oath to faithfully and accurately translate and communicate as required by the Judge.
- (i) Upon the rendering of a "Guilty" verdict – or, if tried by a Judge, a "Guilty" judgment - the Judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he deems necessary for the imposition of a just sentence, including through a pre-sentence investigation. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing.

**3-507.            Right to Jury Trial.**

- (a) Any person accused of a crime punishable by imprisonment shall be granted a jury trial, upon his or her request made at time of arraignment. A jury shall consist of at least six impartial persons selected at random from the master jury list of the Tribal Court as provided in this Section.
- (b) The Tribal Court shall maintain a master jury list of eligible jurors as the term is defined under both subsections (c) and (d) of this Section. The master jury list shall be updated from time to time, but no less than once each year.
- (c) An eligible juror for any matter where the defendant is an Indian is any individual:
  - 1. Who is a member of the Standing Rock Sioux Tribe;
  - 2. Who has reached the age of 18 years;
  - 3. Is of sound mind and discretion;



4. Has not been convicted of a felony;
  5. Has not been dishonorably discharged from the Armed Services;
  6. Is not currently a member of the Tribal Council;
  7. Is not currently a Judge, officer, or employee of the Court
  8. Is impartial in the matter for which they would serve as a juror; and
  9. Is not otherwise disqualified according to standards established by the Court.
- (d) An eligible juror for any matter where the defendant is a non-Indian, and for any Indian requesting such expanded jury pool under Chapter 17 of Title IV, is any individual:
1. Who lives within the exterior boundaries of the Standing Rock Reservation; and
  2. Would not otherwise be disqualified from jury duty under subsection (c) of this Section.
- (e) When preparing a jury pool for a trial scheduled under this Title, the Court shall select and summons at least 21 eligible jurors for each pool.
- (f) At a reasonable time prior to trial, both the prosecutor and defendant – of the defendant’s attorney if one is retained – shall be provided with a list of the individuals who will make up the jury pool for the trial. At trial, under the supervision of the presiding Judge, a panel of jurors shall be drawn by lot from the jury pool, and through ensuring that jurors do not have an interest in the matter and after providing for any permissible challenges under this Section, the final trial jury shall be seated, consisting of six (6) qualified jurors selected from a panel of ten (10) eligible persons taken from the jury list. No person shall be seated on the final jury if he or she has an interest in the case, which for the purposes of jury selection shall include individuals who:
1. Are related as spouse, parent, brother or sister to any of the parties or their attorneys or the alleged victim;
  2. Is or has been involved in any business, financial, professional or personal relationship with the defendant or alleged victim;
  3. Has had any previous involvement in a civil or criminal lawsuit or dispute with the defendant or alleged victim;
  4. Has a financial or personal interest in the outcome of the action before the Court; or

5. Has formed an opinion as to the defendant's guilt.

If the jury pool is exhausted before a sufficient number of jurors are selected for the trial jury, additional jurors shall be drawn by lot from the master jury list for the pool until a trial jury is selected.

- (g) The Judges of the Court shall have the power to issue subpoenas to compel the attendance of members of the jury panel and of trial jurors. Subpoenas shall be signed by the Judge issuing them. Any individual who is properly subpoenaed to attend jury service and who fails to respond to the subpoena shall be subject to being found in contempt of court, as provided in the Standing Rock Sioux Tribal Code of Justice, in the discretion of the Tribal Court.
- (h) Individuals who report for jury duty – whether or not ultimately selected for the jury panel that will hear the case – shall not be penalized by their employer for time validly spent at jury duty under the summons.
- (i) The Judge assigned to the case shall have the power to excuse persons from jury duty on account of sickness or disability, or for other good cause, including undue hardship. Where an individual wishes to be excused for disability or other good cause, including undue hardship, she or he must submit a written request to the Court to be excused, explaining the hardship, before the trial date. Whether to excuse an individual from jury duty is within the discretion of the Court.
- (j) Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury.
- (k) In criminal cases, in addition to disqualifying jurors for cause as determined by the Judge, the prosecution and the defendant shall each be entitled to two peremptory challenges without assigning any cause. Where there is more than one defendant, they must join in a challenge before it can be made unless the Court, for due cause shown, shall permit otherwise, or shall permit each defendant to exercise two peremptory challenges.
- (l) Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to compensation at a rate to be fixed by the Court, and may, in the discretion of the presiding Judge, be allowed mileage at a rate to be fixed by the Court. All payments of per diem and mileage shall be supported by vouchers signed by the presiding Judge. Such vouchers shall be paid in order of presentation, from available funds on deposit for the purpose.
- (m) The Judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law. At the close of evidence or at such earlier time during

the trial as the Judge directs, any party may file with the Judge written instructions on the law which the party requests the Judge to deliver orally to the jury. At the same time copies of such requests shall be furnished to the opposing party. The Judge shall inform each party of his proposed action upon each request prior to the arguments to the jury, but the Judge shall deliver his instructions to the jury after arguments are completed. No party may assign as error any portion of the Judge's charge or any omission unless he makes his objection and gives his reasons for it before the jury retires to consider its verdict. Opportunity shall be given to make the objection out of the hearing of the jury.

- (n) After deliberation in private, the jury in criminal cases shall return to the Judge in open court a verdict of "Guilty" or "Not Guilty" with respect to each defendant. A verdict in criminal cases shall be rendered by the jury unanimously.

## **Chapter 6. Sentences**

### **3-601. Sentences.**

Any person who has been convicted of an offense enumerated in this Code may be sentenced by the Court to one or a combination of the following penalties:

- (a) Imprisonment for a period not to exceed the maximum permitted by the Standing Rock Sioux Tribal Code of Justice provision defining the offense. Imprisonment may be continuous or intermittent. On any sentence of imprisonment, credit shall be given for all time spent in custody in an institution as a result of the charge for which the sentence was imposed. Imprisonment may include commitment to an appropriate institution or program, either on or off the Reservation, for care, treatment, evaluation, or rehabilitation of the offender. Anyone receiving physical custody of a person sentenced by the Court shall be acting solely as an agent of the Tribe and Court. Jurisdiction over a person sentenced to a program or institution off the Reservation shall be absolutely retained by the Tribe and the Court. No placement off the Reservation shall be valid unless first approved in writing by the Chief Judge and any order of such placement shall specify that the Tribe and the Court retain jurisdiction over any person so placed. Any agreement by the Court with another agency to provide for the care and custody of any Indian shall be null and void if set aside by a majority vote of the Tribal Council as not in the best interests of the Tribe.
- (b) A money fine in an amount not to exceed the maximum permitted by the Standing Rock Sioux Tribal Code of Justice provision defining the offense. If the Court determines that a convicted offender is unable to pay forthwith a money fine assessed under this section or costs assessed under Section 3-505(b) of this Code, the Court shall allow him a reasonable period of time to pay

the entire sum or allow him to make installment payments to the Clerk of the Court at specified intervals until the entire sum is paid. If the offender defaults on such payments the Court may find him in contempt of court and punish him accordingly, but no person shall be held in contempt of court where nonpayment is because of indigency. Any convicted person may, if he so chooses, elect to serve time in prison at the rate of five (5) dollars per day to be credited against any fine or costs such person owes.

- (c) In addition to or in lieu of the penalties provided above, the Court shall require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensation to the injured person for their actual damages by means of the surrender of property, payment of money damages, or the performance of any other act, including appropriate work detail, for the benefit of the injured party. Such restitution order must be accompanied by a payment plan. The length, terms and payment amounts under such payment plan shall be within the discretion of the Court, provided that:
1. For a restitution order in an amount less than one thousand dollars (\$1,000.00), the payment plan shall be structured in a way that the entire sum be paid in full within six (6) months of the date of judgment; and
  2. For a restitution order in an amount equal to or exceeding one thousand dollars (\$1,000.00), the payment plan must require payments calculated between whichever of the following would result in the greater monthly payment: (1) an amount no less than ten (10) percent of his or her annual disposable wages but no more than 25 percent of his or her annual disposable wages, which amount is then divided by 12 to be paid in monthly installments; or (2) 200 dollars per month.
  3. For the purpose of subsection (c)(2) of this Section, disposable wages means that part of the wages of an individual left after the deduction from those earnings of, if applicable, federal tax withholdings, social security withholdings, and any other amounts required by applicable law to be withheld by the employer.
- (d) In addition to or in lieu of the penalties provided above, the Court may sentence a convicted offender to a term of probation not to exceed five (5) years for a felony or two (2) years for a misdemeanor.
- (e) In its discretion, unless prohibited for a specific offense, the Court may suspend all or any portion of such sentence at any time, and release the convicted offender on probation under any reasonable conditions imposed by the Court. These conditions may include a requirement that the convicted offender perform labor for the benefit of the Tribe under the supervision of

such person as the Court shall direct. If the convicted offender violates the conditions of his probation, the Court may, after giving him notice and the opportunity for a hearing in open court, revoke or alter the terms of his probation, and may, as a penalty for violation of the probation, impose an additional fine or imprisonment.

- (f) In determining the character and duration of the sentence to be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, and whether the defendant has attempted to make amends, and shall give due consideration to the extent of the defendant's financial resources and the needs of his dependents.
- (g) Banishment, as may be subsequently provided in any Title of the Standing Rock Sioux Tribal Code of Justice adopted by the Standing Rock Sioux Tribal Council.

**3-602.            Forfeiture of Weapons.**

Any person owning and using a firearm, or any sharp or dangerous weapon, in the commission of an offense, shall forfeit such weapon to the Tribe as a part of the sentence. Upon order of the Court, such weapon shall be destroyed, or sold at public sale after appropriate public notice, pursuant to the direction of the Court.

**3-603.            Notification of Right to Appeal.**

Following the imposition of judgment of guilt, except upon a plea of guilty, the Court shall inform the defendant that he has a right to appeal. If the defendant requests, the clerk of the Court shall prepare and file a Notice of Appeal on behalf of the defendant.

## **Chapter 7. Habeas Corpus**

**3-701.            Who May File.**

Any person whose liberty has been restrained by the Standing Rock Sioux Tribe may prosecute a civil writ of habeas corpus in Tribal Court to inquire into the cause of such restraint and, if illegal, to be delivered from such restraint.

**3-702.            Who May Not File.**

Notwithstanding Section 3-701 of this Title, the following persons are not eligible to prosecute a writ of habeas corpus:

- (a) Any person who has been adjudged guilty of an offense in the trial court and is or was eligible to obtain post-conviction relief under Tribal law, which shall be included in any Rules of Court adopted pursuant to Section 1-104 of the Code of Justice. If post-conviction relief procedures are not provided in Rules of Court adopted pursuant to Section 1-104 of the Code of Justice, those procedures provided for in the Federal Rules of Criminal Procedure shall be allowed and made available to a person convicted in Tribal Court;
- (b) Any person seeking to attack the legality of an order revoking a suspended or deferred sentence;
- (c) Any person whose claim has already been adjudged on a writ of habeas corpus except as provided in this Chapter; and
- (d) Any person seeking release due to a technical deficit in commitment that does not affect the person's substantive rights provided in this Title, the Constitution of the Standing Rock Sioux Tribe, and/or the Indian Civil Rights Act, 25 U.S.C. 1302.

**3-703.        Petition.**

A person prosecuting a writ of habeas corpus shall state in substance the following which must be declared to be true to the best of the declarant's belief subject to the penalty of perjury:

- (a) That the party in whose behalf the writ is petitioned is illegally imprisoned or restrained of liberty;
- (b) How the person's liberty has been restrained;
- (c) That the petition is not barred by Section 3-702 of this Title;
- (d) Why the restraint is illegal;
- (e) Where or by whom the petitioner is restrained; and

- (f) Name the Chief of Police, or any other person who the Petitioner claims has restrained their liberty, as Respondent.

**3-704.            Granting of Writ.**

The judge to whom a petition for writ of habeas corpus is presented shall without delay, unless the petition on its face is barred by Section 3-702 of this Title or is otherwise frivolous, issue an order directing the Respondent to show cause why the writ should not be allowed. The Tribal Court Prosecutor shall represent the named Respondent in the proceedings. Such order shall be served on both the Respondent and the Tribal Court Prosecutor. Upon issuance of a show of cause order, the following shall apply:

- (a) The judge shall order the Respondent to appear in writing in opposition to the issuance of the writ as soon as is practicable and not more than 14 days from the date that the show cause order was issued.

- (b) The judge shall rule on the show cause order within 7 days after either the Respondent files a written appearance in opposition or the appearance period expires, whichever occurs first. Upon making a ruling, the judge shall do one of the following, as appropriate:

1.     If the motion and the files and records of the case conclusively show that the Petitioner is not entitled to relief, issue a judgment denying the petition without prejudice and setting forth the reason for the denial; or
2.     Issue a writ of habeas corpus requiring that a return be made and proceed in a summary way to hear such evidence and argument as may be produced in support of or against the petition and dispose of the matter as law and justice may require. If a writ is issued it shall, at a specified time and place, require the Respondent to file a return that states the time and cause of the Petitioner’s restraint. The writ shall not command the Respondent to produce the Petitioner before the court issuing the writ unless the Court, in its absolute discretion, so orders. If after hearing the evidence and argument there is found to be no legal cause for the restraint of liberty, the Court shall discharge the Petitioner from the restraint under which the Petitioner is held.

**3-705.            Contents of Return.**

The person on whom a writ has been served shall state in the return whether the person has the Petitioner in custody or otherwise under restraint, and if not, whether they had the Petitioner in custody or under restraint at any time, and at what time, prior to or subsequent to the date of the writ. If the person has the Petitioner in custody or otherwise under restraint, the return shall state the authority and cause of such restraint. If the Petitioner is restrained by written authority, a copy of that authority shall be included with the return. If the person on whom the writ was served had the Petitioner in custody or under restraint at any time before or after the date of the writ, but has transferred custody or restraint to another, the return shall state to whom, at what time, for what cause, and by what authority the transfer occurred. The return shall be signed by the person making the return, and such return shall be subject to the penalty of perjury.

**3-706. Conclusiveness of Judgment.**

Any party to a proceeding by habeas corpus may appeal any final order of the court. No question once finally determined upon a proceeding by habeas corpus may be re-examined through another habeas corpus proceeding unless the court finds that:

- (a) Newly discovered evidence, viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would have found the Petitioner guilty of the offense; or
- (b) A new rule of tribal constitutional law, tribal law interpreting rights granted to a criminal Defendant in Tribal Court under the Standing Rock Sioux Tribal Code of Justice, the Constitution of the Standing Rock Sioux Tribe, or binding federal law addressing rights enumerated in the Indian Civil Rights Act, made retroactive to cases on collateral review by the Tribe's Appellate Court or the United States Supreme Court, that was previously unavailable.

**3-707. Federal Habeas Corpus.**

Before an individual may seek federal habeas corpus relief, she or he must first exhaust all available Tribal remedies.