

NORTHERN ARAPAHO CODE

TITLE 21. CODE OF CRIMINAL PROCEDURE

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CHAPTER 1: GENERAL PROVISIONS

Section 101 - Introductory Provisions.

(a) The prosecution of all offenses that are prohibited by this Code shall lie in the discretion of the tribal prosecutor whose duties are to guard the interests of the Northern Arapaho Tribe in all matters of a criminal nature.

(b) Jurisdiction of the Northern Arapaho Tribal Court.

(1) The court shall have jurisdiction of all offenses in this Code;

(2) The criminal jurisdiction of the court shall be limited to Indians, until the United States Courts or Congress permit Tribes to exercise jurisdiction over non-Indians; and

(3) A person is subject to prosecution in court for any offense which he commits, while either within or outside of the Wind River Indian Reservation, by his own conduct or that of another for which he is legally accountable.

(c) There is an acquittal if the prosecution results in a finding of not guilty or in a determination that there was insufficient evidence to warrant conviction.

(d) There is a conviction if a plea of guilty is accepted by the court or where there is a finding of guilt resulting in a judgment.

Section 102 - Purpose and Construction.

(a) The provisions of this Code shall be construed in accordance with the general principles and purposes:

(1) To forbid and prevent the commission of offenses and warn of conduct declared an offense;

(2) To define the conduct and mental state which constitutes each offense; and

(3) To prescribe penalties which are proportionate to

the seriousness of the offense and promote the correction and rehabilitation of such persons, while recognizing the rehabilitative needs of the offender and the needs of society to protect against arbitrary and oppressive treatment of persons accused or convicted of offenses.

(b) Any reference in this Code to the pronoun "he," "him," or "his" shall be interpreted to include "she," "her," or "hers," as the case may be, so that it effectively includes both the male and female genders. Any reference in this Code to the singular or the plural shall be interpreted to include either or both.

CHAPTER 2: LESSER INCLUDED OFFENSES AND DOUBLE JEOPARDY

Section 201 - Lesser Included Offenses. A defendant may be convicted of an offense included in an offense charged in the complaint without having been specifically charged with such included offense. An offense is so included when:

(a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged.

(b) It consists of an attempt or solicitation to commit the offense otherwise included therein.

(c) It differs from the offense charged only in the respect that a less serious injury or risk to the same person, or private or public interest or a lesser kind of culpability suffices to establish commission.

Section 202 - Double Jeopardy.

(a) If a defendant has been prosecuted for one or more offenses arising out a single criminal episode or same set of facts as the original prosecution, a subsequent prosecution for the same or a different offense arising out of these same facts is barred if the subsequent prosecution is for an offense that was or should have been tried under this Code in the former prosecution and the former prosecution resulted in a final judgment by the trier of fact.

(b) The finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser is subsequently reversed, set aside, vacated or remanded.

CHAPTER 3: BURDEN OF PROOF

Section 301 - Burden and Presumption of Innocence.

(a) A defendant in a criminal proceeding is presumed innocent until each essential element of the offense against him is proved beyond a reasonable doubt. In the absence of such proof, the defendant shall be acquitted.

(b) The term "essential element of the offense" means:

(1) The conduct, circumstances and result of conduct prescribed, prohibited or forbidden in the definition of the offense; and

(2) The culpable mental state required.

Section 302 - Presumption of Fact. Any evidentiary presumption established by law has the following consequences:

(a) When the evidence of facts which support the presumption exists, the issues of the existence of the presumed fact must be submitted to the jury unless the judge is satisfied that the evidence as a whole clearly negates the presumed fact.

(b) The burden of proving a presumed fact must, in every instance, be beyond a reasonable doubt; however, the law regards any fact that gives rise to a presumed fact as evidence of a presumed fact.

CHAPTER 4: LAW ENFORCEMENT OFFICERS

Section 401 - Law Enforcement Officers.

(a) The terms "officer" or "police officer" shall mean any member of the Indian Police of the Bureau of Indian Affairs, any member of the Wind River Tribal Police Department whenever the

Tribes choose to operate that department, or any authorized law enforcement officer pursuant to Northern Arapaho Business Council action.

(b) Officers shall enforce this Code and carry out the orders of the court as provided in Title 17, Section 604, of this Code.

(c) Prior to or within one (1) year after employment, an officer must have successfully completed a full course of instruction at an accredited Police Academy approved by the Tribes.

(d) Officers shall use reasonable force in discharge of their duties; deadly force is authorized only to protect human life.

(e) Probation officer shall mean the person filling the position of probation officer or, in the event of a vacancy, the person(s) appointed to assume to duties of such officer.

CHAPTER 5: CRIMINAL RESPONSIBILITY

Section 501 - Voluntary Act; Possession.

(a) A material element of every offense is a voluntary act, which includes an omission to perform a duty imposed by law in the offender and which he is capable of performing.

(b) Possession is a voluntary act if the offender knowingly procures, receives, possesses the article, or was aware of his control over said article for a sufficient time to have been able to terminate his control.

Section 502 - Act and Mental State.

(a) A person is not guilty of an offense other than one which involves absolute liability unless he acts while having the mental state required in the offense.

(b) A person's reasonable belief that his conduct does not constitute an offense is not a defense unless the law is defective.

Section 503 - Conduct and Result.

(a) Conduct is the cause of a result when:

(1) It is an antecedent but for which the result in question would not have occurred; and

(2) The relationship between the cause and result satisfies any additional causal requirements imposed by the definition of the offense.

(b) When a particular mental state is specified in conjunction with an element of an offense, proof of that element is not avoided because the actual results differed:

(1) From that intended;

(2) From that which was probable or likely under the circumstances; or

(3) In kind, degree or because a different person or property was injured or affected from that person or property intended or that which was probable or likely under the circumstances;

unless such difference is sufficient, without consideration of the mental state involved, to constitute a defense or avoidance or is of such a magnitude that it would be unjust to find the element involved in light of such difference.

Section 504 - Liability for Conduct of Another.

(a) A person is guilty of an offense as a principle if it is committed by another person for whom he is legally accountable.

(b) A person is legally accountable for the conduct of another person when:

(1) He acts with the sufficient kind of culpability required in the offense;

(2) He is made accountable for the conduct of another person by this Code and said person commits the offense; or

(3) He is an accomplice of such person in the commission of the offense.

(c) A person is an accomplice of another in the commission of an offense if:

(1) With the purpose of promoting the commission of an offense, he:

(A) Solicits such other person to commit it;

(B) Aids, agrees or attempts to aid such other person in planning or committing it; or

(C) Having the legal duty to prevent the commission of the offense, fails to make proper effort to do so; or

(2) His conduct is expressly declared by law to establish his complicity.

(d) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

(e) A person is not an accomplice in an offense when committed by another person if:

(1) He is a victim of that offense; or

(2) He terminates his complicity prior to the commission of the offense and:

(A) Wholly deprives it of effectiveness in the offense; or

(B) Gives timely warning to law enforcement authorities or otherwise makes an effort to prevent the commission of the offense.

(f) An accomplice may be convicted as a principle on proof of the commission of the offense and of his complicity therein even though the person claimed to have committed the offense:

- (1) Has not been prosecuted or convicted;
- (2) Has been convicted of the offense or a different offense;
- (3) Has immunity from prosecution; or
- (4) Has been acquitted.

Section 505 - Corporations and Unincorporated Association.

- (a) A person is legally accountable for any conduct he performs or causes to be performed in the name of a corporation, unincorporated association, or in its behalf of the same extent as if it were performed in his own name or behalf.
- (b) Whenever a duty to act is imposed by law upon a corporation or unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for an omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.
- (c) When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense.

Section 506 - Duress.

- (a) It is an affirmative defense that the actor engaged in conduct alleged to constitute an offense, because he was coerced to do so by the threat to use or actual use of unlawful force against his person or the person of another, which unlawful force a person of reasonable firmness in his situation would have been unable to resist.
- (b) This defense is unavailable to a person who intentionally, knowingly or recklessly places himself in a situation in which it is probable that he will be subject to duress.

(c) This defense is unavailable in any situation where the coerced conduct threatens to cause serious bodily harm to some person other than the actor.

Section 507 - Consent.

(a) The consent of the victim to conduct alleged to constitute an offense or to the result thereof is a defense if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(b) When conduct is charged to constitute an offense because it threatens to cause or causes bodily harm, consent to such conduct or to the infliction of such harm is a defense only if:

(1) The bodily harm or threat consented to is not serious;

(2) The conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest, competitive sport or other lawful activity; or

(3) The consent establishes a justification for the conduct under this Code.

(c) Assent does not constitute consent if it is:

(1) Given by a person who is legally incompetent to authorize the conduct;

(2) Given by a person who, by reason of youth, mental defect, mental disease or intoxication, is manifestly unable, or known to the actor to be unable, to make a reasonable judgment as to the nature or the harmfulness of the conduct;

(3) Given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(4) Induced by force, duress or deception.

Section 508 - Entrapment.

(a) A law enforcement officer or official or a person acting in cooperation with such an officer or official perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting an offense by either:

(1) Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(2) Employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

(b) A person prosecuted for an offense shall be acquitted if he proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the court and not by a jury. Evidence of past offense shall be admissible only if the defendant takes the stand in his own defense.

Section 509 - Justification. Conduct is justified and constitutes a defense to the charge of an offense based on that conduct when conduct is:

(a) In defense of persons or property described in Sections 510, 511 or 512 of this Code.

(b) Reasonable and fulfills his duties as a law enforcement official.

(c) Reasonable discipline of a minor by a parent, guardian, custodian, teacher or other person in *loco parentis*.

(d) Reasonable discipline of a person in custody pursuant to this Code.

Section 510 - Force in Defense of Persons.

(a) A person is justified in the use of force or threat to

use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force.

(b) A person is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent threat of death or of serious bodily harm to himself or another.

Section 511 - Force in Defense of Habitation. A person is justified in using force, other than deadly force against another, when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his place of habitation.

Section 512 - Force in Defense of Property. A person is justified in using force, other than deadly force, against another when and to the extent that he reasonably believes that force is necessary to prevent or terminate criminal interference with real or personal property:

(a) Lawfully in his possession.

(b) Lawfully in the possession of his immediate family or household.

(c) Belonging to a person whose property he has a legal duty to protect.

Section 513 - Use of Force by Aggressor. The above-described justification for the use of force is not available to a person who:

(a) Is attempting to commit, committing or escaping after the commission of an offense involving the use of force.

(b) Purposely or knowingly provokes the use of force against himself, unless:

(1) Such force was so great that he reasonably believed that he was in imminent danger of death or serious

bodily harm and had exhausted every reasonable means to escape such danger other than the use of force likely to cause death or serious bodily harm to the assailant; or

(2) In good faith, he withdrew from physical contact with the assailant and indicated clearly that he desired to withdraw and terminate the use of force, but the assailant continued or resumed the use of force.

CHAPTER 6: SENTENCE AND FINES

Section 601 - Sentencing.

(a) In all cases in which a defendant is convicted of a criminal offense, by jury or court, sentence may be imposed as provided in the offense, and where both confinement or imprisonment and fines are allowed, a sentence can consist of both. No confinement or imprisonment for a single offense shall exceed one (1) year and no fine shall exceed Five Thousand Dollars (\$5,000).

(b) "Days payable" means that the sentence can be paid at a rate of Four Dollars (\$4) per day instead of time served.

(c) "Days in jail," "imprisonment" or "flat" shall be presumed in any instance where an offense sets forth a sentence of imprisonment, confinement or detention without reference to the term "payable" and shall mean that defendant cannot pay the sentence, but must serve the specified numbers of days in jail.

(d) Each sentence shall take into account the gravity of the offense committed, the willfulness of the action by the defendant, the willingness of defendant to make amends and his ability to do so, and the defendant's past record while insuring that justice is served and injured parties are compensated for the wrongful conduct of others.

(e) Whenever a defendant has destroyed, injured or taken the property of another, the judge may, in addition to any other sentence allowed in the offense, order restitution to the injured party for damage.

(f) Whenever appropriate the court may, and in every case where the defendant is under eighteen (18) years of age the court

shall, order a pre-sentence report be prepared by a probation officer for a sentencing hearing to be held within a reasonable time of the plea or of a conviction having been entered.

Section 602 - Confinement or Imprisonment. In the event of confinement or imprisonment, the court shall:

(a) Order those persons eighteen (18) years of age or older to an adult jail or detention facility.

(b) Order those minors sixteen (16) to eighteen (18) years of age to a jail or facility used for the detention of adults if:

(1) A juvenile facility is not reasonably available or would not assure adequate supervision;

(2) Whenever possible, detention is in a cell separate and removed from sight and sound of adults; and

(3) A facility is available that provides adequate twenty-four (24) hour supervision.

(c) Order those minors under sixteen (16) years of age to a detention facility approved by the Tribe or to electronically monitored home detention provided:

(1) Whenever a minor is placed in a facility located outside the boundaries of the reservation, the court shall require an agreement that the minor be returned to court upon order of the court;

(2) Whenever possible, the minor is allowed to attend the school in which he is enrolled and, in any event, the minor in a detention facility is provided his school work and educational assistance;

(3) A minor is allowed to attend traditional religious ceremonials or funerals of extended family members, natural or adopted, provided that he is accompanied by a parent, guardian or custodian, has received consent to do so by the court, and returns immediately to the detention or shelter care facility;

(4) The minor is not locked alone in a room unless

there exists a reasonable belief that such confinement is necessary to prevent him from physically injuring himself or others if not locked alone, provided the minor is visited at least once an hour; and

(5) The minor is not punished by physical force, solitary confinement, or deprivation of meals or family visits.

Section 603 - Probation Prior to Conviction. The court, with the consent of the defendant and the tribal prosecutor and without entering a judgment of guilt or conviction, may defer further proceedings and place the person on probation for a term not to exceed one (1) year upon terms and conditions set by the court, which shall include a report to the court at least every six (6) months at times and places fixed in the order and requirements that the defendant:

(a) Conduct himself in a law-abiding manner.

(b) Not leave the jurisdiction of the court without the consent of the court.

(c) Conform his conduct to any other terms of probation the court finds proper.

(d) Pay restitution to each victim.

Section 604 - Suspension of Sentence.

(a) Any sentence may be suspended and the defendant placed on probation. As a condition of any probation, the court may impose, and at any time modify, conditions of probation including a condition that the defendant perform community service work for a specified length of time not to exceed one (1) year, successfully complete a treatment program for alcohol and/or drug abuse, submit to a mental evaluation and treatment, or any other condition found reasonable and appropriate by the court.

(b) Upon the satisfactory fulfillment of the conditions of probation, the court shall enter an order discharging the defendant.

(c) Upon a violation of a condition of probation during the probationary period, revocation proceedings shall be commenced within thirty (30) days thereafter, in which case the court shall issue a warrant and cause the defendant to be arrested. If, after hearing, the court determines that the defendant violated any of the terms of probation, the court shall proceed to deal with the case as if no suspension of sentence or probation had been ordered.

Section 605 - Concurrent and Consecutive Sentences.

(a) Unless the court shall otherwise direct in its pronouncement of sentence, all sentences shall run concurrently and not consecutively.

(b) In no event shall the maximum term of imprisonment imposed for each violation exceed one (1) year.

(c) Whenever sentences run concurrently, the greater sentence shall be the term to be served and all lesser sentences shall merge therein, or if equal sentences are imposed, they shall merge into one (1) sentence.

Section 606 - Credit to Prisoners.

(a) Upon his request, the defendant shall be allowed credit for time he has served or worked prior to sentence as a result of the criminal charge for which the sentence is imposed.

(b) Each prisoner who serves one (1) day shall be given Four Dollars (\$4) credit off his sentence, if it is a fine or a payable sentence.

(c) A prisoner who is considered to be trustworthy can be made a "trustee" by the jailer and allowed outside of his cell in order to perform work for the police department, the court system, or any other duty beneficial to the Tribe. Each trustee who works shall receive credit at a rate equal to three (3) times that for one (1) day served, or Twelve Dollars (\$12) per day.

Section 607 - Work Release.

(a) Any prisoner who is considered to be trustworthy and who is requested to work for a nonprofit, tribal or community organization may be allowed to work during the day and go home at night until he has worked off his sentence.

(b) Each employer under the terms of a work release shall enter into an agreement with the court whereby they supervise prisoners in their care.

(c) Any prisoner who violates a work release agreement must serve or pay the remainder of his sentence.

(d) Each defendant who participates in a work release program shall receive credit at a rate equal to three (3) times that for one (1) day served, or Twelve Dollars (\$12) per day.

Section 608 - Payment of Fines and Other Monies.

(a) All fines and payable sentences shall be paid in cash to a bonded collector of the Tribe or by money order and are due when imposed by the court.

(b) Fines and payable sentences may, upon the request of defendant, be allowed by the court to be paid in installments tailored to the needs and abilities of the defendant and in the form of a temporary release. However, if any payment is delinquent, a bench warrant shall be issued and the defendant brought before a judge to show cause why the temporary release should not be rescinded and a sentence imposed.

(c) Incarceration should not be imposed as an automatic alternative to payment of a fine or a payable sentence, but the court should examine the reason for default and may, if justice requires, order the sentence or fine served at the rate of Four Dollars (\$4) per day.

(d) When justice requires, the court, on any unpaid portion of a fine or payable sentence, may reduce a sentence pursuant to Title 23, Rules of Criminal Procedure.

Section 609 - Sale of Unclaimed or Stolen Property.

(a) Whenever any property stolen, embezzled or obtained under false pretenses shall, after conviction of the person charged with an offense punishable under this Code remain in the possession of any law enforcement officer, unclaimed by the owner for more than three (3) months, the same shall, after public notice in a newspaper of general circulation on the reservation or the posting of notices, pursuant to an order of the court, be sold at auction to the highest bidder, under the direction of the tribal prosecutor. The proceeds thereof shall be paid over to the Office of Northern Arapaho Finance for use as the Northern Arapaho Business Council might designate.

(b) In case an alleged thief shall not be taken or if he escapes, any property alleged to have been stolen, embezzled or obtained under false pretenses shall be disposed as provided in this Section after the expiration of one (1) year.

Section 610 - Disposition of Seized Property.

(a) The law enforcement officer shall make an inventory of all property seized by warrant or otherwise, and a copy of such inventory shall be left with the person from whom it was taken.

(b) Property taken as evidence shall be kept in the Wind River Police Department evidence storage under the control and custody of the department or kept by the tribal prosecutor until it is used in the trial or hearing on the matter, and after trial, unless it is considered contraband, returned to the owner. If not intended to be used in trial or hearing, it shall be returned to the owner upon satisfactory proof of ownership.

(c) Property confiscated or seized as contraband shall become the property of the Tribe and may be ordered either destroyed, sold at public auction, retained for the benefit of the Tribe, or otherwise lawfully disposed of by the court.

(d) Contraband shall mean any property which is illegal to possess under this Code.

CHAPTER 7: PROBATION, PAROLE

Section 701 - Probation.

(a) As provided in this code, the court shall have the authority to suspend either the proceedings or the imposition of sentence on a person who has been charged or convicted of an offense and place him on probation. In cases where the defendant is eighteen (18) years of age or older, probation shall be either unsupervised or supervised as ordered. In all cases where the defendant is less than eighteen (18) years of age, the probation shall be supervised.

(b) Each probation shall be for a period specified by the court; provided, however, that the maximum period shall not exceed two (2) years, and upon termination of the period, the defendant shall be relieved of any obligations imposed by the court and shall have satisfied his sentence.

(c) Unsupervised probation shall be conditioned upon the defendant not committing any further offense prohibited by this Code within the probation period.

(d) Supervised probations shall be carried out under the supervision of a probation officer and may contain as many reasonable conditions which relate to the offense as set by the court, which are to be carried out under the supervision of the probation officer. These may include, but are not limited to, the following:

(1) Meet family responsibilities;

(2) Undergo medical, psychiatric or other rehabilitative treatment and enter and remain in a specified institution;

(3) Undergo any outpatient rehabilitative treatment as prescribed in the order;

(4) Refrain from the use of all intoxicants, narcotics or illegal drugs unless prescribed by a physician;

(5) Do not possess firearms or other dangerous weapons;

(6) Make restitution of the fruits of his crime or reparation in the amount of the loss or damage caused thereby;

(7) Remain in the jurisdiction of the court and notify the court or probation officer of any change of address or employment;

(8) Report to the probation officer and/or allow the officer to visit his home, school or place of employment;

(9) Post a bond conditioned on the performance of any obligation or condition; and/or

(10) Any other reasonable condition.

(e) The offender shall be allowed his freedom upon his signing the probation agreement after the judge's approval.

Section 702 - Modification of Probationary Terms. During the period of probation, the court may, on application of the probation officer, defendant or on its own motion, modify the requirements imposed on defendant, add further requirements or discharge the defendant.

Section 703 - Violation of Probationary Terms.

(a) Unless he is already before the court, the court shall summons or issue a bench warrant for the defendant to appear based on a showing of probable cause by the probation officer or a law enforcement officer that the defendant has violated the terms of probation.

(b) If satisfied that the defendant has inexcusably failed to comply with the terms and conditions of probation, or if he has been convicted of another offense prohibited by this Code, the court shall revoke the probation and impose a penalty of one and one-half (1½) times the original sentence and order that it be served.

Section 704 - Parole.

(a) A defendant sentenced and having served at least one-half (½) of that sentence shall be eligible to request the court grant him a release on parole.

(b) Parole may be granted to a defendant who has demonstrated good behavior and faithful performance of duties while incarcerated.

(c) Once parole is granted, the defendant may be subject to the same terms and conditions as if he were placed on probation and, in cases where the defendant is eighteen (18) years of age or older, he may be supervised or unsupervised. In all cases where the defendant is less than eighteen (18) years of age, parole shall be supervised by a probation officer.

(d) The offender shall be allowed his freedom upon his signing the parole agreement after the judge's approval.

Section 705 - Modification of Parole Terms. The terms and conditions of parole may be modified by the court during the period of parole upon application of the probation officer, defendant or the court's own motion. The court may also add requirements or discharge the defendant in the same manner.

Section 706 - Violation of Parole Terms.

(a) Unless he is already before the court, the court shall summons or issue a bench warrant for the defendant to appear based upon a showing of probable cause that the defendant has violated said terms.

(b) If satisfied that the defendant has inexcusably failed to comply with the parole agreement or if he has been convicted of another offense prohibited by this Code, the court shall revoke the parole and impose the whole of the original sentence and order that it be served.

History: Title 21. The Northern Arapaho Code of Criminal Procedure (modeled on the Code of Criminal Procedure of the Shoshone and Arapaho Law and Order

Code) was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated August 17, 2016, Resolution No. NABC-2016-704, and additional technical amendments were enacted on August 31, 2016, by Resolution No. NABC-2016-713.