

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 22

PROCEEDINGS BEFORE TRIAL

S.W.S.T. CODE  
 Amendment  
 New Adoption  
Judicial Approved  
08-02-83  
Council Adopted  
08-02-83

22-01-01 COMMENCEMENT OF CRIMINAL PROCEEDINGS

22-01-02 Complaint

A complaint is the written statement of the essential facts constituting the offense charged. Criminal proceedings shall be commenced by filing a written complaint with the Court. No complaint shall be accepted for filing unless it satisfies the requirements of Section 22-01-03 hereof.

22-01-03 Contents of the Complaint

The complaint shall state the essential facts constituting the offense charged. It shall be sworn to and signed by the complainant or complaining witness before a Clerk of Court and shall be signed by a Clerk of Court.

22-01-04 Limitation of Time on Filing Complaints

No complaint, charging the commission of an offense one (1) year or more, prior to the date the complaint is filed, shall be valid; provided, that the absence of the person charged, from the Reservation to avoid service of summons or arrest, shall toll the time and shall not count in computing the one year.

S.W.S.T. CODE  
 Amendment  
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05-28-86  
Council Adopted  
04-86

22-02-01 SUMMONS TO APPEAR

22-02-02 Issuance of Summons

The Court may issue a summons instead of a warrant where the Court, in its discretion, deems that arrest is not essential. The summons shall direct the defendant to appear before the Court at a stated time and place, to plead in response to the complaint. The summons shall notify the defendant that a warrant for his arrest will be issued in the event he fails to appear.

22-02-03 Service of Summons

The summons, together with a copy of the complaint, shall be served by an authorized law officer, by delivering a copy to the defendant personally, or by leaving it at his dwelling place with a person of suitable age, residing there at the time of service. The Officer shall make a return of service which shall be filed with the records of the case.

AMENDMENT 9/13/99  
SUPERCEDED BY AMENDMENT 9/13/99  
SEE NEW CH-23 - AMENDED CRIM CODE

22-03-01 WARRANT FOR ARREST

22-03-02 Issuance

Where the Court, in its discretion, deems that arrest is essential, the Court shall issue a warrant for arrest upon the written complaint. The warrant shall name the defendant, or contain a description by which the defendant can be identified with a reasonable certainty, and shall state the offense charged in the complaint.

22-03-03 Execution of Warrant

The warrant shall be executed by the arrest of the defendant. The Officer should have the warrant in his possession at the time of the arrest, but upon reasonable grounds shown, can produce the warrant at a later time and show it to the defendant.

22-03-04 Limits of Jurisdiction

A warrant for arrest shall be void outside the limits of the Reservation, unless it conforms to the Extradition provisions of this Code.

22-03-05 Arrest Without a Warrant

1. **Authority to arrest Without a Warrant** - A Tribal Police Officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed:
  - a. a felony;
  - b. a misdemeanor, and the officer has reasonable cause to believe that such person.
    1. will not be apprehended unless immediately arrested; or
    2. may cause injury to himself or others or damage to property unless immediately arrested; or
  - c. a misdemeanor or petty misdemeanor in the officer's presence.
2. **Reasonable Cause** - Reasonable cause exists under this Section where there is substantial objective basis for believing that the person to be arrested has committed a crime. An arrest shall not be deemed to have been made on insufficient cause hereunder solely on the ground that the officer is unable to determine the particular crime which may have been committed.

3. **Determining Reasonable Cause** - In determining whether reasonable cause exists to justify an arrest under this Section, a Tribal Police Officer may take in to account all information that a prudent officer would judge relevant to the likelihood that a crime has been committed and that the person to be arrested has committed it, including information derived from an informant whom it is reasonable, under the circumstances to credit, whether or not at the time of making the arrest, the officer knows the informant's identity.

**22-04-01 SEARCH WARRANTS**

**22-04-02 Authority to Issue Warrant**

Warrants may be issued by any Judge of the Court for the search and seizure of any premises, property, or persons subject to the jurisdiction of the Court.

**22-04-03 Issuance and Contents**

A search warrant shall issue only on a affidavit, sworn to before the Court, by a duly authorized Tribal or Federal law officer of the Reservation, establishing the grounds for issuing the warrant. If the Court is satisfied that grounds for issuance of the warrant exist, or that there is probable cause to believe that they exist, the Court shall issue a warrant identifying the property and naming or describing the person or place, or both, to be searched. All search warrants shall be signed by the Judge issuing the warrant, and shall designate the place the return shall be made, which writ shall include a list of the property seized.

**22-04-04 Service and Return**

Warrants shall be served only by duly authorized law officers of the Reservation, and returned to the Court.

**22-04-05 Unlawful Search and Seizure**

No law officer shall search and seize any premises, property or person, without a warrant, unless he shall know, or shall have probable cause to believe, that the person in possession of such property is engaged in the commission of an offense. Unlawful search and seizure shall be deemed a trespass punishable as provided in Section 55 of the Penal Code in Chapter 26.

**22-05-01 ARRAIGNMENT**

**22-05-02 Arraignment Mandatory**

Any person arrested for an offense by the Tribal Police shall be arraigned at the next regular court session.

S. W. S. I. CODE

Amendment

New Adoption

Judicial Approved

22-04-84

Council Adopted

04-04-84

22-05-03 Procedure at Arraignment

Arraignment shall be conducted in open Court, and shall consist of:

1. Reading the complaint to the accused;
2. State to him in Dakota or English, as may be required, the substance of the charges and the language of the law establishing the offense and fixing the penalty;
3. Advising him of his rights as set forth in Section 22-05-04 hereof; and
4. Calling on him to plead to the charges.

22-05-04 Pleas

A defendant may plead "guilty" or "not guilty". Before any defendant is called upon to plead, the Judge before whom he appears shall advise the defendant:

1. That the same defendant has the right to counsel at his own expense, and to consult with counsel before making any statement or entering any plea;
2. That if the defendant waives his right to counsel at any stage of the proceedings, all proceedings shall stop until the defendant has an opportunity to locate and consult with counsel;
3. That if the defendant wishes to plead "not guilty", he may request a jury trial if the offense he is charged with is punishable by imprisonment;
4. That if the defendant pleads "not guilty", he will be tried on a date set to allow sufficient time for him to prepare his defense;
5. That the defendant does not have to testify at his own trial, and his refusal to testify cannot be used to show his guilt;
6. That if the defendant does testify at his own trial, he must answer all questions asked by the prosecutor;
7. That the defendant has a right to a speedy trial;
8. That the defendant or his counsel have the right to come face to face with all witnesses who testify against the defendant, and to question witnesses under oath;
9. That the defendant has the right to have witnesses and evidence for his side and the Court will require that they come or be brought to the Court if the defendant so requests;

10. That the defendant cannot be tried for the same crime twice; and
11. That the defendant may apply for a writ of habeas corpus if he believes he is being held in jail without legal cause. If a defendant refuses to plead, a plea of "Not Guilty" shall be entered. If a defendant pleads "Guilty" and the Court considers that the plea is not made voluntarily or with full understanding of the charge, the Court shall reject the plea of "Guilty" and shall enter a plea of "Not Guilty".

S.W. 22-06-01

Amendment

New Adoption

Judicial Approved

03-09-84

Council Adopted

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#### RELEASE PRIOR TO ARRAIGNMENT

Prior to arraignment and only when the Court is not in session, Tribal Police shall be authorized to release a defendant in the following manner:

1. **Traffic Violations** - In all traffic violations where no jail time is imposed, the defendant can waive his appearance in Court by signing a waive which will allow the Court to enter a plea of guilty on his behalf and the fine and Court costs may be paid in the following manner:
  - a. **Non-residents:** at the time of arrest, non-residents can pay their fine and court costs at the Tribal Jail by depositing the fine and courts costs in an envelope. Tribal Police shall give the defendant a receipt for their payment.
  - b. **Residents:** any resident of the Lake Traverse Reservation may pay their fine and court costs any time prior to the set court date on the traffic ticket, thereby waiving their appearance in Court.
2. **Penal Code Violations** - All defendants may be released on a cash bail bond only in accordance with the prescribed cash bail bond schedule.
3. **Cash Bail Agreement** - A cash bail agreement is an agreement whereby a defendant agrees to pay the Court a specified amount if he fails to appear at the required time for arraignment.
4. **Upon a Defendant's Release** - Tribal Police shall serve a summons upon the defendant stating the date and time that said defendant is to appear in Court.

22-06-02 Failure to pay the fine and court costs as required or to appear in Court at the prescribed time shall be grounds for the Court to issue a bench warrant or arrest for the defendant.

**22-07-01 RELEASE AFTER ARRAIGNMENT**

At arraignment, the Court, in its discretion may release a defendant under the following conditions:

1. **Personal Recognizance** - To insure the presence of the defendant in Court at the time of trial, a defendant may be released without posting any monetary amount and the following factors may be considered in order for a defendant to be released on a P.R. Bond: nature and circumstances of offense charged, weight of the evidence against the defendant, employment, ties to the reservation, financial resources, character and mental condition, record of convictions, length of residence in the community, record of appearances in court proceedings, flight to avoid prosecution, failure to appear at previous court proceedings.
2. **Cash Bail Bond** - To insure the presence of the defendant in all subsequent court proceedings, a cash monetary amount may be required of a defendant prior to his release. Bail shall be fixed in such an amount and in such form as, in the judgement of the Court will insure presence of the defendant but in no case shall bail exceed the maximum cash penalty for each offense which the defendant has been charged.
3. **Bail Pending Appeal** - Pending appeal, bail may be continued or allowed by the Court to run until the final determination of the case.
4. **Revocation of Bail** - The Court, for good cause shown, may revoke bail at any time and order the defendant committed to custody. The defendant may request a hearing on the issue of whether there was good cause for the revocation.

**22-08-01 WAIVER OF RIGHTS AGREEMENT**

As a condition of the defendant's release under a cash bail bond, personal recognizance bond or cash bail agreement, he or she shall agree to sign a waiver of rights which stipulates that the Tribal Police shall apprehend the defendant within the original boundaries of the Lake Traverse Reservation to be brought to Tribal Court.

**22-09-01 SEVERABILITY**

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered. REMOVAL OF APPEALS JUDGES

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