

PROPOSED ORDINANCE--CRIMINAL VIOLATIONS ORDINANCE  
CHAPTER A--GENERAL PROVISIONS

ARTICLE 100: ENACTMENT CLAUSE

Be it enacted by the Council of the Kickapoo of the Oklahoma the Law and Order Ordinance for all members of the Kickapoo Tribe of Oklahoma.

ARTICLE 101: JURISDICTION

The Criminal Violations Ordinance of the Kickapoo Tribe of Oklahoma shall apply to the following:

- (A) All members of the Kickapoo Tribe of Oklahoma.
- (B) To all those Indians who are members of a Federally recognized Tribe and who commit a violation of this Ordinance on the land held in trust by the United States government for the Kickapoo Tribe of Oklahoma or for members of the Kickapoo Tribe of Oklahoma.
- (C) To all other individuals, who commit a violation of this Ordinance on land held in trust by the United States government for the Kickapoo Tribe of Oklahoma and/or for members of the Kickapoo Tribe of Oklahoma to the greatest extent permitted by the laws of the United States.
- (D) To land that is owned by the Kickapoo Tribe of Oklahoma, within the original jurisdiction, and those persons which the Tribe, as noted in the above Articles, can obtain jurisdiction by their presence on such land.
- (E) Trust land, Tribal land or dependent Indian community, within the original jurisdiction of the Kickapoo Tribe of Oklahoma, as defined by 18 USC 1151.
- (F) Land, water, minerals, natural resources, and air that the Kickapoo Tribe of Oklahoma has jurisdiction over as result of Federal law.

ARTICLE 102: ENFORCEMENT OF LAW AND ORDER ORDINANCE

The Office of the Tribal Attorney General shall be responsible for the enforcement of this Ordinance. The Enforcement of this Ordinance shall be done at the discretion of the Attorney General with regard to the best interests of the Tribe and Tribal members.

#### ARTICLE 103: DUE PROCESS

All persons who are alleged to be in any violation of this Ordinance shall have the right to due process rights, such as:

- (A) A fair and impartial hearing with the right to be informed and to have a written copy of each and every charge.
- (B) The right to legal counsel and adequate time to prepare a defense.
- (C) The right to call witnesses and\or review documents.
- (D) The right to cross examine and confront the person(s) alleging a violation of this Ordinance, unless the Court determines a compelling reason otherwise.
- (E) The right not to testify or offer incriminating evidence against himself\herself. The right to testify if so desired.
- (F) The right to be informed of the specific charges that have been filed against himself\herself.
- (G) The right to a timely hearing.
- (H) The right to jury trial of one's peers.
- (I) The right to an appeal.
- (K) Not to be placed twice in double jeopardy for the same charge.
- (J) The right to a probable cause hearing to determine if an arrest was valid under Tribal law before a Judge or Justice.
- (L) The right to prevent a spouse from testifying concerning events that occurred during the marriage, except for domestic abuse. If the spouse does testify for the defendant this right shall be considered waived.

#### ARTICLE 104: PROTECTION OF RIGHTS

The Court shall adopt such rules of procedure, evidence, and appeal as shall be necessary for the protection of rights for the defendant and the orderly process of justice.

#### ARTICLE 105: BURDEN OF PROOF

The Office of the Tribal Attorney General must prove beyond a reasonable doubt that each violation of this Code was in fact done by the accused and that the accused had the mental capacity to understand that the nature of his\her conduct was in violation of Tribal law.

## ARTICLE 106: JUDGMENT

A judgment of conviction shall set forth in writing the charge, plea, verdict or findings, and the sentence to be imposed. If the defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the Judge and entered by the Clerk.

## ARTICLE 107: SENTENCE

Sentence shall be set forth as follows:

(A) Sentence shall be imposed without unreasonable delay in accordance with the provisions of the Ordinance violated. Pending sentence the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall allow defendant's attorney the opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him\her if they wish to make a statement on his\her own behalf and to present any information in mitigation of punishment.

(B) After imposing sentence, the Court shall inform the defendant of the right to appeal, and if so requested, shall direct the Clerk to file a notice of appeal on behalf of the Defendant. At any time after a notice of appeal is filed, the Court may entertain a motion to set bail pending appeal.

(C) Time served in jail prior to the judgment and sentence while awaiting or during the trial shall be allowed as a credit toward any sentence imposed.

## ARTICLE 108: GENERAL SENTENCING PROVISIONS

STATEMENT OF POLICY: The sentencing policy of the Kickapoo Tribe of Oklahoma in criminal cases is to strive toward restitution and reconciliation of the offender and the victim and the Kickapoo Tribe of Oklahoma. While one goal is sentencing is to impress upon the wrongdoer the wrong committed, the paramount goal is to restore the victim and the Kickapoo Tribe of Oklahoma to the position that existed prior to the commitment of the offense, and to restore the offender to harmony with them and the community by requiring him\her to right the wrongdoing. Therefore, with the consideration of this goals in mind, the provisions of this Chapter shall govern Kickapoo Tribe of Oklahoma sentencing for criminal offenses.

(A) Unless, the Court determines otherwise that the ends of justice will not be served, or that a civil action will more adequately adjudicate damages in the specific cases at hand, then in addition to any sentence otherwise provided by law the Court shall:

- (1) Order the offender to pay restitution to the victim in money, property, or services; and\or

- (2) Order the offender to pay restitution to the Kickapoo Tribe of Oklahoma in money, property, or services.

(B) In implementing Tribal sentencing policy if the offender realizes the wrong committed, and earnestly repents of such wrong, the Court paying particular attention to prior offenses, in its discretion may:

- (1) Allow such offender to exchange actual work performed for the Kickapoo Tribe of Oklahoma in lieu of fine or imprisonment, at the rate of eight (8) hours of work per day per twenty-five dollars (\$25.00) of fine;
- (2) Place the offender on probation under such reasonable conditions as the Court may direct for a period not exceeding three (3) times the amount of the maximum sentence allowed; or
- (3) Defer entering the judgment and imposing sentence for a period not exceeding four (4) times the maximum sentence allowed on condition that if the defendant violated no law and satisfies such other reasonable conditions such as restitution as may be imposed, the plea or verdict guilty will be withdrawn and said charges will be dismissed.
- (4) In the discretion of the Court, allow the offender to pay a fine in goods or commodities at the fair market value of goods or commodities to be surrendered, provided, that the Tribe shall not reimburse the offender for any excess value of property surrendered.

#### ARTICLE 109: NEW TRIAL

The Court, on motion of a defendant, may grant a new trial to him\her if required in the interest of justice. If trial was by the Court without a jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one (1) month after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ten (10) days after verdict or finding of guilty or within such further time as the Court may fix during the ten (10) period.

ARTICLE 110: ARREST OF JUDGMENT

The Court, on motion of the defendant, shall dismiss the action if the complaint does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within ten (10) days after verdict or finding of guilty or plea of guilty, or within such further time as the Court may fix during the ten (10) day period.

ARTICLE 111: 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 (30) days after the sentence is imposed, or within thirty (30) days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal. The Court may reduce a sentence upon revocation of probation.

ARTICLE 112: 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 orders.

ARTICLE 113: REFERENCE TO FEDERAL AUTHORITIES

At the discretion of the Office of the Attorney General, criminal violations that can be prosecuted under the Indian Major Crimes Act or any other Federal law, may be referred to the proper Federal authorities.

ARTICLE 114: AMENDMENT CLAUSE

The Council of the Kickapoo Tribe of Oklahoma reserves the power to amend, repeal, modify, or abolish any Article of this Ordinance, or the Ordinance itself, as is deemed necessary by the Council.

ARTICLE 115: SEVERANCE CLAUSE

In the event that any article, language, or portion of this Ordinance is held unconstitutional, the remaining articles, language, or portion of this Ordinance shall remain in full force and effect.