

PROPOSED AMENDMENT TO ORDINANCE NO. 26
ARTICLE III
CRIMINAL OFFENSES

CHAPTER A- GENERAL PROVISIONS

Section 302. Penalties.

a. Except for offenses under Article VI of this Code to which this sentence shall not apply, any offense under any Ordinance of the Tribal Council for which no penalty is otherwise specifically provided may be punished by imprisonment for a period not to exceed six (6) months, or a fine not to exceed Five Hundred Dollars (\$500.00), or both. Upon conviction of, or plea of guilty or no contest to, any offense specified by this Code or other Ordinance enacted by the Tribal Council for which imprisonment may be imposed, unless imprisonment is mandatory, the court in its discretion, with the concurrence of the offender, may:

a. (1) Order the offender to perform labor for the Tribes without compensation for a number of days not to exceed the maximum period of imprisonment which could be imposed; or

b. (2) Order the offender imprisoned and upon release from imprisonment to perform such labor, provided that the total number of days of imprisonment and performance of labor together shall not exceed the maximum period of imprisonment which could be imposed.

If performance of labor is ordered it shall be upon the condition that it be diligently and satisfactorily performed upon penalty for noncompliance of imposition of imprisonment. If such condition of performance of labor is not met, the time when such labor was to have been performed shall not be counted in determining the length of maximum duration of imprisonment.

b. The Tribal Prosecutor shall have the discretion to recommend the Defendant to enter into a Deferred Prosecution Program, which is a contract between the Defendant and the Tribal Prosecutor. In considering whether a given case should be given Deferred Prosecution the Prosecutor may consider the following factors as relevant:

- (1) Defendant's history of prior criminal activity; and
- (2) Extent of harm caused by the Defendant's criminal conduct;
- (3) Defendant's intent;
- (4) Whether there is a victim in the case under consideration;
- (5) If there is a victim, whether the victim induced or facilitated the commission of the crime and the extent of harm, if any to the victim;
- (6) Whether the Defendant has compensated or will compensate the victim;

- (7) Deferred Prosecution shall not be available to anyone who has been previously convicted of a felony, is accused of committing a dangerous offense, or who has previously completed a deferred prosecution program established pursuant to this article; and
- (8) Any other relevant evidentiary factor as determined by the Prosecutor.

The parties shall enter into a written Deferred Prosecution agreement that gives a specific period of time for the agreement to be completed, and specific expectations that must be completed by the Defendant in order to satisfy the agreement. If the agreement is completed, the case will be dismissed. If it not completed, then prosecution may continue as filed. The filing of an agreement will stay all hearings and any and all speedy trial time restraints currently set by the Court for the duration of the specified time of the agreement. A review hearing set for a date after the expected completion of the agreement should be set by the Prosecutor.

c. The Court shall have the discretion to give a Diversion Sentence. In the Diversion program no guilty plea will be entered by the Court. The Tribal Prosecutor will be permitted to argue for or against the Diversion program. In considering whether a given case should be given Diversion the Court may consider the following factors as relevant:

- (1) Defendant's history of prior criminal activity;
- (2) Extent of harm caused by the Defendant's criminal conduct;
- (3) Defendant's intent;
- (4) Whether there is a victim in the case under consideration;
- (5) If there is a victim, whether the victim induced or facilitated the commission of the crime and the extent of harm, if any to the victim;
- (6) Whether the Defendant has compensated or will compensate the victim;
- (7) Diversion shall not be available to anyone who has been previously convicted of a felony, is accused of committing a dangerous offense, or who has previously completed a Diversion program established pursuant to this article; and
- (8) Any other relevant evidentiary factor as determined by the Court.

A Diversion Program will have specific and outlined program that the Defendant will be required to follow and complete in order to have the case dismissed. The agreement shall give a specific period of time for the agreement to be completed. If the agreement is completed, the case will be dismissed. If it not completed, then prosecution may continue as filed. The filing of an agreement will stay all hearings and any and all speedy trial time restraints currently set by the Court for the duration of the specified time of the agreement. A review hearing set for a date after the expected completion of the agreement should be set by the Court.

d. The Court shall have the discretion to give a Deferred Sentence. Deferred Sentence allows for a guilty plea, but the acceptance of the guilty plea is

delayed until a later date to allow the Defendant to complete the necessary requirements ordered by the Court in the Deferred Sentence. The Tribal Prosecutor will be permitted to argue for or against the Deferred Sentencing. The Defense will be permitted to argue for Deferred Sentencing. In considering whether a given case should be given a Deferred Sentence the Court shall consider the following factors as relevant:

- (1) Defendant's history of prior criminal activity;
- (2) Extent of harm caused by the Defendant's criminal conduct;
- (3) Defendant's intent;
- (4) Whether there is a victim in the case under consideration;
- (5) If there is a victim, whether the victim induced or facilitated the commission of the crime and the extent of harm, if any to the victim;
- (6) Whether the Defendant has compensated or will compensate the victim;
- (7) A Deferred Sentence shall not be available to anyone who has been previously convicted of a felony, is accused of committing a dangerous offense, or who has previously completed a more than one Deferred Sentence program established pursuant to this article; and
- (8) Any other relevant evidentiary factor as determined by the Court.

A Deferred Sentence will be supervised by probation on at least an initial basis. A Deferred Sentence will have specific and outlined program that the Defendant will be required to follow and complete in order to have the case dismissed.

If a Deferred Sentence is not completed, then the Prosecutor's office shall file a Motion to Accelerate Sentence and request a hearing. At the hearing a probable cause determination is required in order to Accelerate the Deferred Sentence. The hearing may consider any new crimes committed by the Defendant or failure to complete Court ordered provision of the Deferred Sentence. If the Motion to Accelerate is denied, then the Deferred Sentence stays in effect as previously ordered by the Court. If the Motion to Accelerate is granted by the Court, then Sentencing as allowed by the Law and Order Code may be entered by the Court.