TRIBAL CODE

CHAPTER 70:

CRIMINAL PROCEDURE

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HISTORY NOTE:

Current Ordinance

Resolution 2016-283, adopted December 13, 2016 adopts Tribal Code Chapter 70: Criminal Procedure, effective immediately and rescinds all earlier Criminal Procedure Codes.

Originally enacted as Chapter 2 of the Law and Order Code, adopted by Resolution 11-28-79E, November 11, 1979, effective immediately.

Reenacted in Tribal Code format as part of the Tribal Code on July 5, 1995, Resolution No. 95-89, effective immediately.

Amendments:

Tribal Resolution 2026-311, adopted October 13, 2026, amends §70.104 by deleting subsection (2)(d).

Tribal Resolution 2026-310, adopted October 13, 2026, amends §70.106(3).

Tribal Resolution 2022-258, adopted September 27, 2022, implementing the Tribe's jurisdiction over the criminal offenses provided in the Violence Against Women Act.

Tribal Resolution 2016-47, adopted February 16, 2016, amends Chapter 70, §70.128(1) by deleting one year and replacing with two years.

Tribal Resolution 2015-190, adopted August 18, 2015, amends Chapter 70, by adding §70.134, Limiting Certain Prosecution Agreements.

Tribal Resolution 2014-221, adopted November 25, 2014, amends Chapter 70, by adding subsection (4) to §70.127. Inmates will incur costs of incarceration.

Tribal Resolution 2012-88, adopted April 24, 2012, amends Chapter 70, by adding § 70.133, Authorization of Medical Examiner.

Tribal Resolution 2012-87, adopted April 24, 2012, amends §70.115 by adding subsection (4), “no contest” plea.

Tribal Resolution 2011-138, adopted June 28, 2011, amends §70.126(6).

Tribal Resolution 2007-53, adopted March 20, 2007, amends § 70.121.

Tribal Resolution 9-21-83A, adopted September 21, 1983, added '70.131 to allow for arrest by Tribal officers on state warrants.

Tribal Resolution 2-16-87B, adopted February 16, 1987, amended '70.127(1)(a)(ii) and (1)(b)(ii) to increase the maximum penalties in accordance with amendments to the Indian Civil Rights Act.

Tribal Resolution 10-18-88, adopted October 18, 1988, amended '70.128(1) to provide for one year of probation for all offenses.

Tribal Resolution 2-18-92A, adopted February 18, 1992, added '70.104(2)(d) to provide for warrant less arrests for domestic assaults and endangerments.

Resolution 95-53, adopted April 19, 1995, added '70.132 to protect traditional Anishinabe religious and cultural activities.

TRIBAL CODE

CHAPTER 70:

CRIMINAL PROCEDURE

70.101 Purpose and Scope.

The purpose of this Chapter is to provide procedures for criminal cases in the Tribal Court. The procedures of this Chapter apply to all criminal proceedings in Tribal Court except to the extent that a specific procedure for a particular crime is provided for in another chapter of the Tribal Code.

70.102 Definitions.

As used in this Chapter:

(1) "Covered Crime" means the additional crimes defined by the Violence Against Women Act Reauthorization Act of 2022 including:

(a) Assault of Tribal justice personnel;
(b) Child violence;
(c) Dating violence;
(d) Domestic violence;
(e) Obstruction of justice;
(f) Sexual violence;
(g) Sex trafficking;
(h) Stalking; and
(i) Criminal violation of a protection order.

(2) "Crime" (or "Criminal") means (or refers to) an act or omission prohibited by Tribal law which is punishable upon conviction by imprisonment, fine not designated as civil, or other penal discipline.

(3) "Dating violence" means a crime committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship

(4) "Domestic violence" means a crime committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic violence laws of the Tribe.

(5) “Judicial officer” means the Tribal Court Chief Judge, any Associate Judge, or Magistrate as appointed by the Board of Directors.

(6) “Protection order” means:

(a) any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

(b) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(7) "Tribal Court" means the court of the Tribe established pursuant to Tribal Code Chapter 80.

(8) "Tribe" (or "Tribal") means (or refers to) the Sault Ste. Marie Tribe of Chippewa Indians.

70.103 Complaint.

(1) All criminal prosecutions shall be initiated by complaint. A complaint is a written statement sworn to by the complaining witness and charging that a named individual has committed a particular criminal offense.

(2) Complaints shall contain:

(a) the signature of the complaining witness sworn to before the Chief Tribal Judge or an individual designated by the Chief Judge; and

(b) a written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained; and

(c) the name or description of the person alleged to have committed the offense; and

(d) the section of the Tribal Code allegedly violated.

(3) All criminal complaints filed with the Tribal Court shall be signed by the Tribal attorney, who shall assist individuals in drawing up complaints and screen them for sufficiency. In the exercise of his or her discretion, the Tribal attorney may decline to sign and file a complaint.

(4) If the complaint, or the complaint together with other sworn statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the Tribal Court shall issue a warrant pursuant to '70.105 instructing the Tribal police to arrest the named accused or, in lieu thereof, the Tribal Court shall issue a summons commanding the accused to appear before the Tribal Court at a specific time and place to answer to the charge.

(5) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the Tribal Court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

70.104 Arrest.

(1) Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.

(2) No Tribal law enforcement officer shall arrest any person for a criminal offense except when:

(a) the officer shall have a warrant signed by a Tribal Judge commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(b) the offense shall occur in the presence of the arresting officer; or

(c) the officer shall have probable cause to believe that the person to be arrested has committed an offense.

70.105 Arrest Warrants.

(1) Every judicial officer of the Tribal Court shall have the authority to issue warrants to arrest, and such warrants shall be issued only upon a showing of probable cause in sworn written statements. The Tribal Judge shall deny issuance of a warrant if he finds that there is not probable cause to believe that the offense charged has been committed by the named accused.

(2) The arrest warrant shall contain the following information:

(a) Name or description and address, if known, of the person to be arrested.

(b) Date of issuance of the warrant.

(c) Description of the offense charged.

(d) Signature of the issuing judicial officer.

70.106 Notification of Miranda Rights.

Before a custodial interrogation, the suspect shall be advised of the following rights:

(1) That he or she has the right to remain silent.

(2) That any statements made by him or her may be used against him or her in court.

(3) That he or she has the right to an attorney, if they cannot afford one, one will be appointed for them.

70.107 Summons in Lieu of Warrant.

When otherwise authorized to arrest a suspect, Tribal police may, in lieu of a warrant, request a summons commanding the accused to appear before the Tribal Court at a stated time and place and answer to the charge.

(2) The Tribal Court shall issue the summons, which shall contain the same information as a warrant.

(3) If a defendant fails to appear in response to a summons, a warrant for the defendant's arrest shall be issued.

70.108 Search Warrant; - Defined.

A search warrant is a written order, signed by the Tribal judicial officer, and directed to a Tribal law enforcement officer ordering the law enforcement officer to conduct a search and seize items or property specified in the warrant. A warrant shall describe the property or place to be searched and shall describe the items to be seized.

70.109 Issuance of a Search Warrant.

(1) Every Tribal judicial officer shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the Tribal Court.

(2) No warrant of search and seizure shall be issued except upon probable cause that a search will discover:

(a) stolen, embezzled, contraband or otherwise criminally possessed property; or

(b) property which has been or is being used to commit a criminal offense; or

(c) property which constitutes evidence of the commission of a criminal offense.

(3) Such probable cause shall be supported by a written and sworn statement based upon reliable information.

70.110 Execution and Return of Search Warrant.

Warrants of search and seizure shall only be executed by Tribal law enforcement officers. The executing officer shall return the warrant to the Tribal 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.

70.111 Search Without a Warrant.

No Tribal law enforcement officer shall conduct any search without a valid warrant except:

(1) incident to making a lawful arrest; or

(2) with consent of the person being searched; or

(3) when the officer has probable cause to believe that the person searched may be armed and dangerous; or

(4) when the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen or embezzled property.

70.112 Disposition of Seized Property.

(1) The police 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 the property was taken.

(2) Unless property seized by the police is contraband, for property seized in connection with a case referred to the Tribal, State or Federal Prosecutor, upon expiration of the appeal period of the case, or upon dismissal, and upon satisfactory proof of ownership, such property shall be delivered to the owner..

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

70.113 Arraignment.

(1) Arraignment is the bringing of the accused before the Tribal Court, informing the accused of his or her rights and of the charge against him or her, receiving the accused's plea, and setting bail as appropriate in accordance with '70.116.

(2) 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 regularly scheduled session of court.

70.114 Rights of Accused at Arraignment.

Before an accused is required to plead to any criminal charge the judicial officer shall:

(1) read the accused the complaint and determine that he or she understands the complaint and the section of the Tribal Code which he or she is charged with violating, including the maximum authorized penalty; and

(2) advise the accused that he or she has the right:

(a) to remain silent; and

(b) to be tried by a jury; and

(c) to be represented by counsel at his or her own expense, or if charged with an offense carrying a penalty of incarceration, to be appointed counsel, and that the arraignment will be postponed should he or she desire to consult with counsel.

(d) if detained by order of the Tribe pursuant to 25 U.S.C. §1304, to file in a court of the United States a petition for writ of habeas corpus and a petition to stay his or her further detention.

70.115 Rights of Accused Charged under Special Tribal Criminal Jurisdiction

(1) Any Defendant charged with a crime in which the Tribe is exercising its special Tribal criminal jurisdiction pursuant to the Violence Against Women Act Reauthorization Act of 2022, shall be instructed by the judge presiding over their case, at the defendant's initial appearance before the Court, of their rights, including any rights provided under 25 U.S.C. §§ 1304(c) and 1304(e).

(2) Notwithstanding any other provision of Tribal law, the requirements and rights set forth in this Section shall be ensured in addition to—or shall supersede any inconsistent—provisions set forth in the Tribal Code in order to ensure compliance with the Violence Against Women Act Reauthorization Act.

(3) An individual charged with a Covered Crime pursuant to the Violence Against Women Act Reauthorization Act shall:

(a) Be provided the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
(b) If indigent, be provided the assistance of a licensed defense attorney at the Tribe's expense.
(c) Be provided with a licensed Judge with sufficient legal training to preside over the criminal proceeding.

(d) Have the right to an impartial jury drawn from a source that reflects a fair cross section of the community and does not systematically exclude any distinctive group in the community, including non-Indians.

(e) Receive written notice of the right to habeas corpus petitions

70.116 Receipt of Plea at Arraignment.

(1) If the accused pleads 'not guilty' to the charge, the judicial officer shall then inform the accused of a trial date and set conditions for bail prior to trial.

(2) If the accused pleads 'guilty' to the charge, the Judge shall determine that the plea was made voluntarily and that the accused understands the consequences of the plea, including the rights which the accused 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 or she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to inform the Tribal Court of facts in mitigation of the sentence.

(3) If the accused refuses to plead, the judicial officer shall enter a plea of not guilty on his or her behalf.

(4) The accused may enter a plea of "no contest". If the accused pleads "no contest" to an offense, it shall be done only with the consent of the Judge and the prosecutor. If the accused chooses to plead "no contest", the Judge shall follow the same procedure required for a guilty plea; except, the Judge shall not question the accused as to the underlying facts, but shall, by some other means, obtain support for a finding that the accused has committed the offense to which he or she is pleading. The Judge shall state why a plea of no contest is appropriate.

70.117 Bail - Release Prior to Trial.

Every person charged with a criminal offense before the Tribal Court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

(1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.

(2) Release to the custody of a designated person or organization agreeing to assure the appearance of the person charged.

(4) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.

(4) Release after deposit by the accused of a bondsman of bond in either cash or other sufficient collateral in an amount specified by the Judge or a bail schedule. The Judge, in his or her discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.

(5) Release after execution of a bail agreement by two responsible members of the community.

(6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

70.118 Release by Police Officer.

Any Tribal police officer authorized to do so by the Tribal Court may admit an arrested person to bail pursuant to the bail schedule of release upon personal recognizance. Police officers shall have available a bail schedule prepared by the Tribal Court or Tribal Board of Directors which shall be used for setting money bond where such condition of release is deemed necessary. Any police officer who refuses to release an accused on bail or who specifies a bail condition which the accused is unable to satisfy shall bring the accused before a Tribal judicial officer for review of the release conditions at the first available opportunity and without unnecessary delay.

70.119 Bail - Release Pending Appeal.

Every person who has been convicted of a Tribal offense and who has filed an appeal or a petition of a writ of habeas corpus shall be treated in accordance with the provisions of '70.116 unless the Judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a danger to the community, to the accused or to any other person. If the Judge finds such to be the case, he or she may order detention of the accused.

70.120 Withdrawal of Guilty Plea.

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

70.121 Right to Counsel.

(1) No defendant in a criminal proceeding shall be denied the right to counsel at his or her own expense.

(2) The Court shall appoint counsel to assist any person appearing as a criminal defendant for charges carrying a potential jail sentence if the defendant is determined to be financially qualified based upon standards of indigency established by the Court.

(3) Counsel representing a defendant shall be admitted to practice before the Tribal Court pursuant to Tribal Code Chapter 87.

(4) Counsel representing a defendant charged with a Covered Crime under the Violence Against Women Act Reauthorization Act shall be an attorney licensed to practice law by any jurisdiction and admitted to practice before the Tribal Court pursuant to Tribal Code Chapter 87.

70.122 Issuance of Subpoenas.

(1) Upon request of any party to a case or upon the Tribal Court's own initiative, the Tribal Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant, necessary to the determination of the case and not an undue burden on the person possessing the evidence. The Clerk of the Court may act on behalf of the Tribal Court and issue subpoenas which have been signed by a Tribal Judge and which are to be served within the confines of the Tribe's reservation.

(2) A subpoena shall bear the signature of a judicial officer of the Tribal Court or of an attorney of record in the action, 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) A subpoena issued by an attorney of record in the action has the force and effect of an order signed by the judge of that court.

70.123 Service of Subpoenas.

(1) A subpoena may be served at any place within or without the confines of the Tribe's reservation, but any subpoena to be served outside the reservation shall be issued personally by a Judge of the Tribal Court.

(2) A subpoena may be served by any Tribal police officer or other person appointed by the Tribal 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 or her place of residence with any person sixteen (16) years of age or older who also resides there.

(3) Proof of service of the subpoena shall be filed with the Clerk of 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.

70.124 Failure to Obey Subpoena.

In the absence of a justification satisfactory to the Tribal Court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his or her arrest.

70.125 Witness Fees.

(1) Each witness answering a subpoena shall be entitled to a fee of Ten Dollars ($10.00) for each day his or her services are required in court. In addition, the Tribal Court may order the payment of reasonable travel and living expenses of the witness.

(2) The fees and expenses provided for in this section shall be paid by the Tribe upon completion of the trial, but such expenses may be taxed as costs against the defendant if he or she is found guilty, provided, however, that no defendant shall be incarcerated solely because of his or her inability to pay such costs immediately.

(3) If the Tribal Court finds that a complaint was not filed in good faith but with 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 upon which execution may levy.

70.126 Trial Procedure.

(1) The time and place of court sessions, and all other details of judicial procedure not specified in this chapter or other chapters of the Tribal Code, shall be set out in rules of court adopted by the Tribal Court.

(2) The Tribal Court shall not be bound by common law rules of evidence, or the rules of evidence which pertain in state or federal courts, and may establish such rules of evidence as it deems appropriate, provided that such rules are not in conflict with any provision of the Tribal Code.

70.127 Jury Trial.

(1) Any person accused of a crime for which imprisonment is a possible penalty may request a jury trial, upon his or her request made at least 30 days in advance of trial..

(2) Except as provided in subsection 4(a) below, a jury shall consist of at least six members of the Tribe selected at random from a list of eligible jurors prepared each year by the Tribal Board of Directors or other appropriate body.

(3) In all criminal matters before the Court, except those in which the Tribe is exercising special Tribal criminal jurisdiction pursuant to 25 U.S.C. §1304 and Tribal Code §70.139 below, An eligible juror is a Tribal member residing in Chippewa County who has reached the age of eighteen (18) years, has not been convicted of a felony, and is not otherwise unqualified according to standards established by the Tribal Court under its general rule-making authority.

(4) In criminal matter before the Court in which the Tribe is exercising special Tribal criminal jurisdiction ("STCJ") pursuant to 25 U.S.C. §1304 and Tribal Code §70.139 below,

> (a) The defendant shall have a right to a trial by an impartial jury of no less than six persons, that is drawn from sources that reflect a fair cross section of the community; and do not systematically exclude any distinctive group in the community, including non-Indians.

(b) Eligible jurors in STCJ cases may be selected from a variety of sources including but not limited to enrolled members of the Tribe, residents within the jurisdiction of Tribe, full-time employees of the Tribe or its entities (educational, institutions, businesses, agencies, subdivisions, or instrumentalities) who have completed the required probationary period, and persons leasing lands from the Tribe. Further, the individuals must have reached the age of eighteen (18) years, have not been convicted of a felony, and are not otherwise unqualified according to standards established by the Tribal Court under its general rule-making authority.

(5) Each party shall have the right to challenge an unlimited number of jurors for cause on the basis of lack of qualifications, partiality or otherwise acceptable reason. Whether or not cause exists shall be determined by the Judge in all instances. In addition, each party shall have the right to a maximum of three peremptory challenges for jurors, for which no reasons need be given and which the Judge shall not refuse to grant.

(6) 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.

(7) The jury shall deliberate in secret and return a verdict of guilty or not guilty. The judge shall render judgment in accordance with the jury verdict.

(8) Each juror shall be paid out of Tribal funds a stipend for each day of service at a rate set by the Chief Judge on an annual basis, not to exceed $25.00 per day, and shall be reimbursed for mileage from the juror's residence to and from the court at the current government rate, and for ferry expenses actually incurred.

70.128 <u>Sentencing.</u>

(1) Any person who has been convicted in the Tribal Court of a criminal offense shall be sentenced to one or a combination of the following penalties:

(a) Imprisonment for a period not to exceed the lesser of either:

(i) the maximum permitted by the Tribal Code provision defining the offense, if a maximum is so specified; or

(ii) one year.

(b) A money fine in an amount not to exceed the lesser of either:

(i) the maximum permitted by the code provision defining the offense, if a maximum is so specified; or

(ii) Five Thousand Dollars ($5,000.00).

(c) Labor for the benefit of the Tribe.

(d) Rehabilitative measures.

(e) Payment of reasonable court costs.

(2) In addition to or in lieu of the penalties provided in sub. (1), the Tribal Court may require a convicted offender, who has inflicted injury upon the person or property of another, to make restitution or compensate the injured person by means of the surrender of property, payment of money damages or the performance of any other act for the benefit of the injured party.

(3) If, solely because of indigency, a convicted offender is unable to pay forthwith a money fine assessed under this section or costs assessed under this section or '70.124, the Tribal Court shall allow the offender a reasonable period of time to pay the entire sum or allow the offender to make reasonable installment payments to the Clerk of the Court at specific intervals until the entire sum is paid. If the offender defaults on such payments the Tribal Court may find him or her in contempt of court and imprison him or her accordingly.

(4) Any person convicted in the Tribal Court of a criminal offense, whether by plea or by a trial and verdict, shall be responsible for the costs incurred by the Tribe for the incarceration of that individual as provided in this subsection:

(a) In any sentence of conviction, the Tribal Court shall include a provision mandating that the convicted offender shall be required to pay the Sault Tribe for the costs incurred by the Tribe for the incarceration of the offender from the time of arrest through completion of any sentence imposed by the Tribal Court and, to facilitate collection of these costs, requiring the offender to keep the Court Administrator informed of any changes in the offender's address, income, and employment until such time as that obligation is paid in full.
(b) The Court shall retain the authority to modify or to waive this requirement, in whole or in part, as the interests of justice may require.
(c) To encourage and reward prompt payment, any charges imposed under this subsection shall be reduced by 50% if those charges are paid in full within 60 days from the date that the Tribe initially bills those charges to the offender or within 60 days from the date of the offender's release from custody, whichever occurs later.

70.129 <u>Probation.</u>

(1) Where a sentence of imprisonment has been imposed on a convicted offender the Tribal Court may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the Tribal Court, provided that the period of probation shall not exceed two years for all offenses.

(2) Any person who violates the terms of this probation may be required by the Tribal Court to serve the sentence originally imposed or such part of it as the Tribal Court may determine to be suitable, giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the Tribal Court at which the offender shall have the opportunity to explain his or her actions.

70.130 Parole.

(1) Any person sentenced by the Tribal Court to detention or labor shall be eligible for parole at such time and under such reasonable conditions as set by the Tribal Court.

(2) Any person who violated the conditions of his or her parole may be required by the Tribal Court to serve the whole of the original sentence, provided that such revocation of parole shall not be ordered without a hearing before the Tribal Court at which the offended shall have the opportunity to explain his or her actions.

70.131 Appeals.

Appeals from any sentence or other final judgment or order in a criminal case may be taken in accordance with the provisions of Tribal Code Chapter 82.

70.132 Arrest on State Warrant.

Notwithstanding any other provision of this Chapter or any other chapter of the Tribal Code, Tribal law enforcement officers may arrest, remove from Tribal jurisdiction, and surrender to state authorities any person sought on a state court arrest warrant who may be found upon Tribal lands.

70.133 Protection of Traditional Anishinabe Religious and Cultural Activities.

(1) The Tribe declares that the drum and other traditional Anishinabe religious and cultural activities are sacred and entitled to protection under tribal law. Tribal law enforcement officers are directed to refrain from interfering in such activities, and to protect such activities from interference from others, whether such interference is in the guise of enforcement of criminal or civil laws or otherwise.

(2) It shall be a defense to charge of disorderly conduct under Tribal Code '70.140, or of causing or maintaining a public nuisance under Tribal Code '70.141, that the person at the time of the alleged offense was participating in a drum or otherwise engaging in a traditional Anishinabe religious or cultural activity.

(3) If a question arises as to whether a particular activity is a traditional Anishinabe religious or cultural activity, the matter shall be referred to the Anishinabe Cultural Committee, whose decision on the matter shall be final.

70.134 Authorization of Medical Examiner.

(1) The Board of Directors of the Sault Ste. Marie Tribe of Chippewa Indians hereby authorizes the Office of the Medical Examiner, of each of the counties in which Tribal Lands are located, to act as the Sault Ste. Marie Tribal Medical Examiner, and further authorizes them, or their designee, to enter upon Tribal Lands, located within their respective counties, to enforce applicable state, tribal and federal law, and to carry out their duties and obligations as defined by state, tribal or federal law.

70.135 Limiting Certain Prosecution Agreements.

An agreement between the Tribal Prosecutor and a defendant charged with a criminal offense under tribal law, in which the Prosecutor has agreed to dismiss criminal charges in return for an agreement by the accused that he or she will not seek or be eligible for future employment with the Tribe or will adhere to other specific terms or limitations as a condition of the dismissal, shall be enforceable against the accused only for a period not to exceed two years unless the agreement has been expressly incorporated into a court order approved by the Tribal Judge. This section shall apply retroactively to any such agreements entered into prior to the date of enactment of this provision. Nothing in this section will preclude the Tribe from considering the underlying facts and circumstances of the original offense when making any future hiring decision involving the individual.

70.136 Qualification of Judges.

To be eligible to preside over all stages of a criminal case, the Judge must: (a) have sufficient legal training to preside over criminal proceedings; and (b) be licensed as an attorney in the State of Michigan or other state.

71.137 Admissibility of a Minor's Statement.

(1) A statement made by a minor who is under the age of 13 years describing any sexual offense, domestic violence, physical abuse or neglect performed with, on, or witnessed by the minor, which is not otherwise admissible, is admissible in evidence in a criminal proceeding if both the following are true:

(a) The court finds during an in camera review, that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(b) Either of the following is true:

i) The minor testifies at the proceeding; or

ii) The minor is unavailable as a witness, provided that if the minor is unavailable as a witness, the statement may be admitted only if there is corroborative evidence of the abuse.

(2) A statement shall not be admitted under this section unless the proponent of the minor's statement makes known, in writing, to the adverse party his or her intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

70.138 Evidence of Other Acts of Domestic Violence; Statement by Declarant.

(1) Evidence; Defendant's commission of other acts of domestic violence; admissibility; notice.

(a) In a criminal action in which the defendant is accused of Domestic Violence, evidence of the defendant's commission of other acts of domestic violence

is admissible for any purpose for which it is relevant if it is not otherwise excluded by FRE 403.

(b) If the prosecuting attorney intends to offer evidence under this section, the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, must be disclosed to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.

(c) This section does not limit or preclude the admission or consideration of evidence under any other statue, rule of evidence, or case law.

(2) Evidence; statement by declarant relating to infliction or threat of physical injury; admissibility; notice. Evidence of a statement by a declarant is admissible if all of the following apply:

(a) The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

(b) The action in which the evidence is offered under this section is an offense involving domestic violence.

(c) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than 5 years before the filing of the current action or proceeding is inadmissible under this section.

(d) The statement was made under circumstances that would indicate the statement's trustworthiness. Circumstances relevant to the issue of trustworthiness include, but are not limited to, all of the following:

i. Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

ii. Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.

iii. Whether the statement is corroborated by evidence other than statements that are admissible only under this section.

(e) The statement was made to a law enforcement officer or to a witness made close in time to the event or there is a reasonable explanation for the delayed disclosure.

(f) If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be

offered, to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.

70.139 <u>Special Tribal Criminal Jurisdiction</u>.

(1) The Sault Ste. Marie Tribe of Chippewa Indians hereby exercises "special Tribal criminal jurisdiction" as a "participating tribe," as defined within 25 U.S.C.§ 1304 (2022), subject to applicable exceptions defined therein, in the Sault Ste. Marie Chippewa Tribal Court.

(2) In all proceedings in which the Tribal Court is exercising special Tribal criminal jurisdiction as a participating tribe, all rights afforded by this Chapter and those enumerated in the Indian Civil Rights Act, 25 U.S.C. § 1302, shall apply to all defendants. Should there be any inconsistency between this Chapter and 25 U.S.C. § 1302, those of 25 U.S.C. § 1302 shall apply.

(3) Every defendant has the privilege of the writ of habeas corpus to test the legality of his or her detention by order of the Tribal Court and may petition the Court to stay further detention pending the habeas proceeding.

(a) If detention of any person is ordered, such person will be timely notified their rights and privileges under 25 U.S.C § 1304 and 25 U.S.C. § 1303.
(b) The Tribe shall provide written notice to the Defendant of the right to a habeas corpus petition.
(c) An application for a writ of habeas corpus on behalf of the person in custody pursuant to an order of a Tribal court shall not be granted unless:
    (i) The applicant has exhausted the remedies available in the Tribal court system;
    (ii) There is an absence of an available Tribal corrective process; or
    (iii) Circumstances exist that render the Tribal corrective process ineffective to protect the rights of the applicant.

(d) A court shall grant a stay if the court:
    (i) Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
    (ii)After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(4) The Tribes hereby declares its special tribal criminal jurisdiction over:

(a) any person alleged to have committed a Covered Crime against an Indian victim; and

(b) any person alleged to have committed the crime of Obstruction of Justice or Assault on a Tribal Justice Personnel, in which the alleged victim is an Indian or non-Indian.

70.140 Special jurisdiction – Criminal conduct applicable.

The Tribe exercises the special tribal criminal jurisdiction of a defendant for criminal conduct that falls into one or more of the following categories:

(1) Domestic Violence and Dating Violence. An act of domestic violence or dating violence that occurs within the jurisdiction of the Tribe.

(2) Violations of Protection Orders. An act that occurs within the jurisdiction of the Tribe, and violates the portion of a protection order that:

(a) Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;

(b) Was issued against the defendant;

(c) Is enforceable by the Tribe; and

(d) Is consistent with 18 U.S.C. § 2265(b).

(3) Assault of Tribal Justice Personnel. An act of assault on a Tribal Justice personnel that involves the use, attempted use, or threatened use of physical force against a Tribal justice personnel that occurs within the jurisdiction of the Tribe.

(4) Obstruction of Justice. An act of obstruction of justice that occurs within the jurisdiction of the Tribe.

(5) Sex Trafficking. An act of sex trafficking that occurs within the jurisdiction of the Tribe and is consistent within the meaning of section 1591(a) of Title 18.

(6) Sexual Violence. Any nonconsensual sexual act or contact, including any case in which the victim lacks the capacity to consent to the act.

(7) Stalking. An act of stalking that occurs within the jurisdiction of the Tribe.

(8) Child Violence. An act of use, threatened use, or attempted use of violence against a child that occurs within the jurisdiction of the Tribe.