

**TITLE 4 – CRIMINAL CODE
CHAPTER 4 – SENTENCES**

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CHAPTER 4 – SENTENCES**

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SUBCHAPTER A GENERAL PROVISIONS

Section 10 Judgment of Conviction; Time For (4 PYTC § 4-10)

Upon a plea of guilty or verdict of guilty, the Trial Court must fix a time for pronouncing judgment which must be pronounced within a reasonable time after the verdict is rendered. Prior to pronouncing judgment, the Court may make a pre-sentence investigation.

Section 20 Penalties (4 PYTC § 4-20)

Every person convicted of a violation of any provision of this code constituting an offense shall be subject to punishment by a fine of not more than \$5,000.00 or by imprisonment in jail for not more than one year or both.

Section 30 Presence of Defendant (4 PYTC § 4-30)

When judgment is pronounced, the defendant must be personally present.

Section 40 Execution of Judgment; Imprisonment; Fine; Record (4 PYTC § 4-40)

When judgment of imprisonment is entered, a signed copy thereof must be delivered to the enforcement officer as defined in 3 PYTC § 1-4-10(B), or other officer, which is sufficient warrant for its execution.

Section 50 Imprisonment of Fine (4 PYTC § 4-50)

A judgment that the defendant pays a fine and costs may also direct that he be imprisoned until the fine and costs are satisfied, specifying the extent or the imprisonment, which shall not exceed one day for every two dollars of a fine. The defendant shall not be imprisoned for failure to pay that part of the fine constituting Court costs.

Section 60 Failure to Work – Imprisonment (4 PYTC § 4-60)

When any person shall be unable or unwilling to work for the benefit of the Tribe, the Court may sentence him to imprisonment for the period of the sentence.

Section 70 Additional Penalties (4 PYTC § 4-70)

In addition to any other sentence, the Court may require an offender who has inflicted injury upon the person or property of any individual to make restitution to the party injured, through the surrender of property, the payment of money damages or the performance of any other act for the benefit of the injured party.

Section 80 Commutation of Sentence (4 PYTC § 4-80)

If the Court is satisfied that justice will best be served by reducing a sentence, the Court may, at any time after one-half of the sentence has been served, commute to a lesser period any sentence imposed upon a person, upon proof that during the period of sentence the person served without misconduct and did satisfactory work.

Section 90 Suspension of Sentence (4 PYTC § 4-90)

The Court may, on such terms and conditions as the Court may impose, suspend the sentence and release a convicted person upon that person's pledge of good conduct for the duration of the sentence.

Section 100 Sexual Offenses; Imprisonment and Fines (4 PYTC § 4-100)

- (A) A sentence of imprisonment for sexual offenses shall be a definite term and the person sentenced unless otherwise provided by law, shall be committed to the custody of the Pascua Yaqui Tribal Police Department.
- (B) The term of imprisonment as follows for the first offense:
 - (1) Class 1 major offense: A person found guilty of a class 1 major offense may be sentenced to imprisonment for a period not to exceed one year and to pay a fine not to exceed \$5,000.
 - (2) Class 2 major offense: A person found guilty of a class 2 major offense may be sentenced to imprisonment for a period not to exceed eight months and to pay a fine not to exceed \$2,000.
 - (3) Class 3 major offense: A person found guilty of a class 3 major offense may be sentenced to imprisonment for a period not to exceed four months and to pay a fine not to exceed \$1,000.
- (C) The term of imprisonment and fine for minor sexual offenses shall be determined as follows for the first offense:
 - (1) Class 1 minor offense: A person found guilty of a class 1 minor offense may be sentenced to imprisonment for a period not to exceed 60 days and pay a fine not to exceed \$200.
 - (2) Class 2 minor offense: A person found guilty of a class 2 minor offense may be sentenced to imprisonment for a period not to exceed 30 days and pay a fine not to exceed \$100.
 - (3) Class 3 minor offense: A person found guilty of a class 3 minor offense may be sentenced to imprisonment for a period not to exceed 20 days and pay a fine not to exceed \$50.

Section 110 Sexual Crimes; Sentencing (4 PYTC § 4-110)

- (A) Increase in Sentencing: Sentences provided in Section 100 for a first conviction of a major or minor sexual offense, except those offenses involving a use or exhibition of a deadly weapon or

dangerous instrument or when the intentional or knowing infliction of serious physical injury upon another has occurred, may be increased by the Court up to 25%, not to exceed one year imprisonment or \$5,000 fine. Said increase shall be based on the following circumstances:

- (1) Infliction or threatened infliction of serious physical injury.
 - (2) Use, threatened use or possession of a deadly weapon or dangerous instrument during the commission of a crime.
 - (3) If the offense involves the taking of or damage to property, the value of the property so taken or damaged.
 - (4) Presence of an accomplice.
 - (5) Especially heinous, cruel or depraved manner in which the offense was committed.
 - (6) The defendant committed the offense as consideration for the receipt or in the expectation of the receipt, of anything of pecuniary value.
 - (7) The defendant procured the commission of the offense by payment or promise of payment, of anything of pecuniary value.
 - (8) At the time of the commission of the offense, the defendant was a public servant and the offense involved conduct directly related to his office or employment.
 - (9) The physical, emotional and financial harm caused to the victim or, if the victim has died as a result of the conduct of the defendant, the emotional and financial harm caused to the victim's immediate family.
 - (10) During the course of the commission of the offense, the death of an unborn child at any stage of its development occurred.
 - (11) The defendant was previously convicted of a sexual offense within the ten years immediately preceding the date of the offense. A conviction outside the jurisdiction of the Pascua Yaqui Tribe for an offense which if committed within the Tribe's jurisdiction would be punishable as a sexual offense is a sexual offense conviction for the purposes of this paragraph.
 - (12) If the victim of the offense is 65 or more years of age or is a handicapped person.
 - (13) Any other factors which the Court may deem appropriate to the ends of justice.
- (B) Reduction in Sentencing: Sentences provided in Section 100 for a first conviction of a major or minor sexual offense, except those offenses involving a use or exhibition of a deadly weapon or dangerous instrument or when the intentional or knowing infliction of serious physical injury upon another has occurred, may be reduced by the Court up to 25% percent of the sentence and fine prescribed for said offense. Said reduction shall be based on the following circumstances:
- (1) The age of the defendant.
 - (2) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired but not so impaired as to constitute a defense to prosecution.
 - (3) The defendant was under unusual or substantial duress, although not such as to constitute a defense to prosecution.

- (4) The degree of the defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution.
 - (5) Any other factors which the Court may deem appropriate to the ends of justice.
- (C) The upper or lower term imposed pursuant to this Section may be imposed only if the alleged circumstances of the crime are found to be true by the trial judge upon any evidence or information introduced or submitted to the Court prior to sentencing or any evidence previously heard by the judge at the trial and factual findings and reasons in support of such findings are set forth on the record at the time of sentencing.
 - (D) The victim of any sexual offense or the immediate family of the victim, if the victim has died as a result of the conduct of the defendant, may appear personally or by counsel at any sentencing proceeding to present evidence and express opinions concerning the crime, the defendant or the need for restitution. The Court in imposing sentence shall consider the evidence and opinions presented by the victim or the victim's immediately family at any sentencing proceeding or in the pre-sentence report.
 - (E) Notwithstanding any other provision of this chapter, if a person is convicted of any class 3 major offense not involving the intentional or knowing infliction of serious physical injury or the use of a deadly weapon or dangerous instrument and if the Court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a class 3 major offense, the Court may enter judgment of conviction for a class 1 minor offense and make disposition accordingly or may place the defendant on probation and refrain from designating the offense as a major offense or minor offense until the probation is terminated. The offense shall be treated as a class 3 major offense for all purposes until such time as the Court may actually enter an order designating the offense as a minor offense. The provisions of this subsection shall not apply to any person who stands convicted of a major offense and who has previously been convicted of two or more minor offenses. When a crime is punishable in the discretion of the Court by a sentence as a class 3 major offense or a minor offense, the offense shall be deemed a class 1 minor offense if the prosecuting attorney files a complaint, with the consent of the defendant, amending the complaint to charge a minor offense.

Section 111 Truancy; Minimums and Maximums (4 PYTC § 4-111)

- (A) Juvenile Penalties:
 - (1) Any juvenile who has been adjudicated for Minor in Need of Control, with at least one additional adjudication for the same, and is also convicted of violating 5 PYTC § 7-750, Truancy- Truancy with a Prior shall be deemed guilty of a criminal offense.
- (B) Adult Penalties:
 - (1) Any adult who has been found responsible for violating 5 PYTC § 7-580, Adult Civil Infractions for Juvenile Truancy, with at least one additional finding for the same, shall be deemed guilty of a criminal offense.
 - (2) Any adult who has been found responsible at least twice for violating 5 PYTC § 7-580, Adult Civil Infraction for Juvenile Truancy shall be deemed guilty of a criminal offense. The court shall order the adult to participate in a Tribal program or other services in the Court's discretion.

SUBCHAPTER B PROBATION

Section 120 Probation (4 PYTC § 4-120)

The Pascua Yaqui Tribal Court may in its discretion suspend a fine or sentence of imprisonment and allow the offender his freedom on probation upon signing a pledge of good conduct during the period of the sentence upon the form provided therefore and made a part of these ordinances.

Section 130 Violation of Probation (4 PYTC § 4-130)

(A) Initiation.

(1) Motion to revoke by Probation Officer:

If he has reasonable cause to believe that a probationer has violated a written condition or regulation of probation, the officer responsible or the prosecutor may make a motion to the court to revoke probation.

(2) After the motion has been filed, the court may issue a summons directing the probationer to appear at a specified date for a revocation hearing or may issue a warrant for the probationer's arrest.

(B) Initial Appearance After Arrest.

If a probationer is arrested pursuant to subsection (A) (2) above, the probation officer shall immediately be notified, and the probationer shall be taken before the issuing judge without unreasonable delay, who shall advise him of his right to counsel at his own expense, inform him that any statement he makes prior to the hearing may be used against him, set the date for the revocation hearing and make a release determination.

(C) Revocation of Probation.

(1) Arraignment:

(a) The revocation arraignment shall be held no later than seven days after service of summons or the probationer's initial appearance before the court.

(b) The court shall inform the probationer of each alleged violation of probation and the probationer shall admit or deny each such allegation.

(c) If no admission is made or if an admission is not accepted, the court will set a revocation hearing, unless both parties agree that a revocation hearing may proceed forthwith.

(2) Revocation Hearing:

(a) A hearing to determine whether a probationer has violated a written condition or regulation of probation shall be held before the court no sooner than seven days and no more than 20 days after the arraignment, unless the court, upon the request of the probationer made in writing or in open court on the record, sets the hearing for another date.

(b) Upon a determination that a violation of a condition or regulation of probation occurred, the court may revoke, modify or continue probation. If probation is revoked, the court shall pronounce sentence. Probation shall not be revoked for

violation of a condition or regulation of which the probationer has not received a written copy.

(3) Disposition Hearing:

- (a) A disposition hearing shall be held no sooner than seven days and no more than 20 days after a determination that a probationer has violated a condition or regulation of probation.
- (b) Upon determination that a violation of a condition or regulation of probation occurred, the court may revoke, modify or continue probation. If probation is revoked, the court shall pronounce sentence. Probation shall not be revoked for violation of a condition or regulation of which the probationer has not received a written copy.

(4) Waiver of Disposition Hearing:

- (a) At the time of an admission by a probationer or a finding by the court that violation of a condition or regulation of probation has occurred, the probationer may waive a disposition hearing. If, the waiver is accepted, the court may proceed forthwith to enter disposition.

(D) Admission by probationer.

Before accepting an admission by a probationer that he has violated a condition or regulation of his probation the court shall address him personally and shall determine that he understands the following:

- (1) The nature of the violation of probation to which an admission is offered.
- (2) His right to counsel at his own expense if he is not represented by counsel.
- (3) His right to cross-examine the witnesses who testify against him.
- (4) His right to present witnesses in his behalf.
- (5) If the alleged violation involves a criminal offense for which he has not yet been tried, the probationer shall be advised, at the beginning of the revocation hearing, that regardless of the outcome of the present hearing, he may still be tried for that offense, and any statement made by him at the hearing may be used to impeach his testimony at the trial.
- (6) The court shall also determine that the defendant wishes to forego these rights, that his admission is voluntary and not the result of force, threats, or promises and that there is factual basis for the admission.

(E) Revocation in Absentia.

- (1) Time for Commencement. A proceeding to revoke probation in absentia shall be commenced only after the probationer's whereabouts are unknown to the probation officer for at least 30 days.
- (2) Petition. If he has reasonable cause to believe that a probationer has violated a written condition or regulation of probation, the probation officer responsible for the probationer's conduct or the prosecutor may petition the sentencing court to revoke probation in absentia.

- (a) The petition shall be verified and shall include:
 - (i) Each violation of the terms and regulations of probation.
 - (ii) An allegation that the whereabouts of the probationer are unknown.
 - (iii) Efforts made to locate the probationer.
 - (iv) The probationer's last known address.
- (3) Order to Show Cause. If the court finds the petition to be in proper form, it shall issue an order to show cause directing the probationer to appear at a specified date and time within no sooner than ten and not more than 60 days to show cause why probation should not be revoked.
- (4) Service of Process. Service of process shall be affected under 3 PYTC R.Civ.P. Rule 7.
- (5) Hearing.
 - (a) If the probationer appears at the time for hearing, the proceeding shall continue under subsection (C) (2) above.
 - (b) Non-appearance of the probationer. If the probationer fails to appear at the time set for the hearing and the court is satisfied that reasonable efforts have been made to give the probationer notice, it may:
 - (i) Hear evidence in support of each allegation of violation.
 - (ii) Make specific findings of each violation; and
 - (iii) Revoke Probation
- (6) Record of Proceedings. All proceedings at the revocation hearing in absentia shall be reported verbatim.

Section 140 Parole (4 PYTC § 4-140)

Any person committed to jail by the Pascua Yaqui Tribal Court, who has without misconduct served one-half of the sentences imposed upon him by such Court, shall be eligible for parole. Parole shall be granted only by a judge of the Pascua Yaqui Tribal Court upon the signing of the form provided therefore and made a part of these ordinances. Revocation of parole shall be conducted under the same procedures as revocation of probation.

Section 150 Parole Violation (4 PYTC § 4-150)

If the Court finds after a hearing in open Court that a person has violated the terms of his parole, said person may be ordered to serve part or all of the term of the original sentence.

SUBCHAPTER C CONTEMPT

Section 160 Contempt of Court (4 PYTC § 4-160)

A judge may punish for contempt, persons guilty of the following acts:

- (A) Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course.
- (B) A breach of the peace, boisterous conduct; or violent disturbance in the presence of the judge, or in the immediate vicinity of the Court held by him tending to interrupt the due course of a trial or other judicial proceeding.
- (C) Disobedience to a subpoena duly served, or refusing to be sworn or to answer as a witness.
- (D) Disobedience or resistance to the carrying out of a lawful order or process made or issued by the judge.
- (E) Rescuing or interfering with any person or property in the custody of an enforcement officer acting under an order of the Court or process of the Court.

Section 170 Contempt Committed in presence of Judge (4 PYTC § 4-170)

When contempt is committed in the immediate view and the presence of the judge, it may be punished summarily. The judge must make an order reciting the facts as they occurred, and that the person proceeded against is guilty of contempt, and that he is punished as therein prescribed.

Section 180 Contempt Committed not in the presence of Judge (4 PYTC § 4-180)

When contempt is not committed in the immediate view and the presence of the judge, a Warrant of Arrest may be issued by such judge and the person so guilty may be arrested and brought before the judge immediately. The judge must give the arrested person an opportunity to make his defense or excuse. The judge may then discharge him or may convict him of the offense.

Section 190 Punishment (4 PYTC § 4-190)

A judge may punish for contempt, by fine or imprisonment, or both; such fine not to exceed \$500 or imprisonment not to exceed 60 days plus Court costs.

SUBCHAPTER D MISCELLANEOUS

Section 200 Court Costs in Criminal Cases (4 PYTC § 4-200)

The judgment of conviction in criminal cases shall include costs of court, not to exceed the following amounts:

- (A) Ten dollars when disposed of at arraignment, upon a plea of guilty.
- (B) \$50 where a case is disposed of in pre-trial upon a plea of guilty, or
- (C) \$100 if trial is requested and heard by Trial Judge upon conviction, or
- (D) \$200 if trial by jury upon conviction.

Section 210 Contraband, Confiscated and Abandoned Property (4 PYTC § 4-210)

- (A) The disposition of all property, confiscated as contraband, seized as evidence, or otherwise taken into custody of the Court, shall be determined at a hearing before the Court.
- (B) The Court shall, upon satisfactory proof of ownership, order such property to be delivered to the rightful owner, unless such property is required as evidence. Where the property is required as

evidence, it shall not be returned until final judgment in the case is entered. In no case shall property be returned where possession of such property is unlawful. Such property may be declared property of the Pascua Yaqui Tribe and may be destroyed.

- (C) The Tribal Court shall not return any property confiscated pursuant to a conviction of:
 - (1) Carrying a concealed weapon.
 - (2) An offense involving the use of any weapon or instrument in the commission of such offense.
- (D) Any property not claimed by the owner when delivered or any property for which an owner has not been determined within six months after a court hearing. Property delivered to the custody of the Court by a private person shall become the property of such person if it is not claimed within 30 days after the hearing.
- (E) Any property declared to be the property of the United States shall be dealt with as is directed by federal law.
- (F) The Clerk of the Court shall keep written records of all transfers and dispositions of property taken into the custody of the Court.
- (G) Contraband is defined as:
 - (1) Any dangerous drug or substance, the possession, sale, transportation, or use of which has been deemed an offense under federal law and this Tribal Code.
 - (2) Any firearm seized pursuant to a conviction of this chapter.

Section 220 Stay of Execution (4 PYTC § 4-220)

- (A) In its discretion the Court may stay the execution of proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment.
- (B) If a defendant files an appeal, the Court may stay the execution of judgment. If the Court denies the motion, it shall set forth its reasons in writing.
- (C) At the time of filing the Notice of Appeal, the appellant shall also file cash or a bond in an amount set by the Trial Court sufficient to guarantee performance of the judgment, order, or commitment.

DISPOSITION TABLE

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