

## TITLE 7. PUBLIC PEACE, MORALS, AND WELFARE

### Chapter 7.31

#### DEFERRED PROSECUTION

##### Sections:

- 7.31.1 Deferred Prosecution: Certain First Offenses.
- 7.31.2 Deferred Prosecution: Offenses Caused by Alcohol or Drug Abuse.

**7.31.1. Deferred Prosecution: Certain First Offenses.** (a) The tribal prosecutor may enter a deferred prosecution agreement with a person charged for the first time with a misdemeanor, gross misdemeanor, or fishing violation where no violence occurred in connection with the offense.

(b) The agreement shall be signed by the tribal court judge and it shall set forth the following conditions:

(1) The defendant shall refrain from engaging in any unlawful activity for a specified period of time up to one (1) year;

(2) Delay in bringing the case to trial shall not be grounds for dismissal;

(3) The prosecutor shall defer prosecution of the defendant during the specified period of time if the defendant is not charged with any criminal or fisheries offenses during that time; and

(4) The Court shall dismiss with prejudice the charges against the defendant at the end of the specified period of time if the defendant has not been charged with any criminal or fisheries offense during that time.

(c) If the defendant is charged with any criminal or fisheries offense during the specified period of time, the prosecutor may terminate the deferred prosecution agreement, and the defendant shall be arraigned on the original charges. (Res. 93-025 (part), passed Mar. 8, 1993)

**7.31.2. Deferred Prosecution: Offenses Caused by Alcohol or Drug Abuse.** (a) A person charged with a misdemeanor or gross misdemeanor may request the Tribal Court to be considered for a deferred prosecution program under this subsection. The request shall be made at arraignment or before trial.

(b) The person's request must state the following:

(1) The offense charged is the result of or caused by alcohol problems or drug problems for which the person is in need of treatment;

(2) Without treatment, there is a great probability of future reoccurrence of similar misconduct; and

(3) A case history of the person's alcohol or drug problems.

(c) Upon consideration of the request, the Court may continue the arraignment and refer the person to the Tribe's alcoholism or drug abuse counselor for a diagnostic investigation and evaluation. The counselor shall conduct an investigation and examination and shall make a written report to the Court with a copy to the defendant including the following findings:

(1) Whether the person suffers from the problem alleged;

(2) Whether there is a probability that similar misconduct will reoccur in the future if the problem is not treated;

(3) Whether extensive treatment is required;

(4) Whether effective treatment for the person's problem is available; and

(5) If treatment is recommended, a treatment plan specifying the location, nature, length, treatment time schedule, and cost of the plan.

(d) If the report recommends treatment, the Court shall examine the plan. If it approves the plan and the defendant agrees to comply with the terms and conditions of the plan and agrees to pay the cost thereof or arrange for the treatment, the Court shall order that the defendant be accepted for deferred prosecution. If treatment is not recommended or not approved or the defendant declines to accept the treatment plan, the defendant shall be arraigned on the charges.

(e) Evidence pertaining to or resulting from the defendant's request and/or the investigation or report is inadmissible in any trial on the charges but may be used after conviction in determining a sentence.

(f) If a defendant in a deferred prosecution program fails or neglects to fulfill any term or condition of the treatment plan, the facility or agency administering the treatment shall immediately report the breach to the Court. Upon receiving such a report, the Court shall hold a hearing to determine whether the defendant should be removed from the deferred prosecution program. If removed from deferred prosecution, the defendant shall be arraigned on the original charge.

(g) If a defendant is convicted in any court of an offense similar to and committed after the one for which he or she is in a deferred prosecution program, the Tribal Court shall remove the defendant from deferred prosecution, and he or she shall be arraigned on the original charge.

(h) Two (2) years from the date of the Court's approval of deferred prosecution for an individual defendant, the charges against the defendant shall be dismissed with prejudice, and the records relating to the defendant shall be destroyed.

(i) Delay in bringing a case to trial caused by a defendant requesting deferred prosecution shall not be grounds for dismissal. (Res. 93-025 (part), passed Mar. 8, 1993)

Note: All subsections in this chapter have been renumbered for consistency, as follows. (Res. 2016-090, Jun. 20, 2016)

All Arabic numerals (1, 2, 3, etc.) used as subsection headings have been changed to lower case letters (a, b, c, etc.)

All lower case letters have been changed to Arabic numerals

Example: What was previously 7.31.1(2)(a) is now 7.31.1(b)(1)