

Section 17. Bail or Bond.

The following subsections are the current provisions governing Bail/Bond, and all pertinent processes, as they are implemented in the OST Tribal Justice system. These sections hereby repeal all prior code provisions related to bail/bond, and specifically Chapter 1 Court and Procedures, Section 17. All other sections or provisions of the OST Law and Order Code that are inconsistent with these provisions are superseded by the provisions set forth in this section.

17.1 Right to Bail

A person charged with any offense is bailable before conviction and shall be released from custody by the Court upon reasonable conditions that ensure the appearance of the defendant at all subsequent court proceedings and protect the safety of the community or of any person unless otherwise provided by ordinance. In no case shall bail exceed twice the maximum cash penalty for each offense which the defendant has been charged.

17.2 Forms of Bail**17.2.1 Bail Bonds through Two (2) Bondsmen**

The required bail may be tendered by Bail Bond executed by two (2) persons, or Bondsmen, as sureties subject to the jurisdiction of the Court in the form which the Court shall direct through a Bondsmen Protocol. The Bondsmen Protocol shall be established by the Court and may be reviewed and revised annually by the Court.

17.2.2 Personal Recognizance

The Judge may, at his/her discretion, release the defendant on his/her own recognizance subject to such conditions as the Court may reasonably prescribe (as set forth in 17.4.2 of this Chapter), if it appears substantially certain, considering all factors of consideration (as set forth in 17.4.1 of this Chapter), that the defendant will appear at all future court appearances.

17.2.3 Cash Bail Bond (CBB)

To ensure the presence of the defendant in all subsequent court proceedings, a cash monetary amount may be required of a defendant prior to his/her release. The CBB amount shall be determined by the Court, and within the Judge's discretion, pursuant to the established Bail Schedule (as defined in Section 17.3 of this Chapter). The Court shall take into consideration all factors of consideration and conditions of release when determining the CBB amount. In no case shall bail exceed twice the maximum cash penalty for each offense which the defendant has been charged.

17.3 Bail Schedule

17.3.1 Release Prior to Arraignment

A Pre-Arrestment Bail Schedule (cash bail bonds (CBB)) for Class 2, Class 3 and Class 4 Misdemeanors shall be adopted by the Court, with input from the Attorney General's Office and OST Department of Public Safety, whereby a defendant may obtain release from custody at any time prior to arraignment by posting the amount or amounts of CBB specified in the Pre-Arrestment Bail Schedule for the offense or offenses charged. Bail for Class 1, and a prescribed list of Misdemeanors, shall be set only by a judge upon consideration of the relevant factors at the time of arraignment.

17.3.2 Arraignment Scheduled at the Time of Pre-Arrestment Release

Provided the defendant posts the designated amount of cash bail for a pre-arrestment release, OST Department of Corrections shall provide Notice to the defendant, in writing, of the date and time he/she is to return to the Court for arraignment. Returns for arraignments shall be scheduled within five (5) days of release on Mondays, Wednesdays or Thursdays.

OST Department of Corrections shall provide a copy of the Notice to the Attorney General's Office and OST Courts.

17.3.3 No Pre-Arrestment Releases Ordered by a Judge

Under no circumstances shall a Judge order or issue a release for any defendant prior to arraignment.

17.3.4 Inapplicability of this Provision to Persons Arrested for Intoxication Only

This provision does not apply to those defendants in custody in an intoxicated condition until said defendants are able to reach a completely unintoxicated state.

17.3.5 Temporary Releases

A Temporary Release (TR) is a Court-order, signed by a Judge, authorizing the release of a defendant prior to arraignment and without the posting of bail/bond (whether CBB, Bondsmen, or Personal Recognizance).

There shall be no TRs issued on the weekends. All TRs must be submitted as a Motion and adhere to the mandated Motions process as stipulated in the OST Law and Order Code.

Factors for consideration for TRs include but are not limited to:

1. Emergency Medical Releases—emergency medical releases shall only be considered for the defendant. The defendant must be facing life/death circumstances or life threatening conditions as determined by a health care professional or as is evidenced by the defendant’s medical reports.
2. Funeral Releases—funeral releases shall only be considered for immediate family members of the defendant. Immediate family members include those relatives with one degree of separation (mother, father, siblings, aunts, uncles, grandparents). A family tree shall be submitted with any funeral release motion verifying the familial relationship.

17.3.6 Release at the Time of Arraignment

The Court, in conjunction with the Attorney General’s Office, shall establish and post a Bail Schedule, specific to Cash Bail Bonds, to be implemented by the Court, and applied within the discretion of the Judge, for the setting of bail/bond amounts for each defendant at the time of arraignment for all classes of misdemeanors (Classes 1 through 4).

The schedule shall be based on a Class Misdemeanor System (Class 1 through Class 4 Offenses). In no case shall bail exceed twice the maximum cash penalty for each offense to which the defendant has been charged. The schedule may be revised yearly at the discretion of both the Chief Judge and Attorney General.

17.3.7 Defendant’s Returning for Arraignment

When a defendant returns for a scheduled arraignment after his/her pre-arraignment release, the Judge, in his/her discretion may maintain the current CBB posted by the defendant, increase or decrease the amount of bail, or change the form of bail to Bondsmen or Personal Recognizance. The Judge, within his/her discretion, may also place any additional conditions on the defendant’s release as deemed reasonably necessary.

17.4 Conditions of Release

The factors of consideration and conditions of release of the defendant must be determined based on available information at the defendant’s appearance at arraignment.

17.4.1 Factors of Consideration

The criteria for determining the conditions of release—whether by cash bail bond, two bondsmen, or personal recognizance—include, but are not limited to the following:

- A) Defendant's threat to any alleged victims or other family or household members;
- B) Defendant's threat to public safety;
- C) Defendant's reasonable likeliness to appear in Court at all designated times;

In cases whereby the Defendant is charged with Domestic Violence, the following factors shall not be taken into consideration, for all other offenses however, the following additional factors may be taken into consideration in determining the condition of release:

- D) Defendant's employment status and work history;
- E) The nature and extent of defendant's family relationships and ties to the Reservation community;
- F) Defendant's past and present residences;
- G) Names of individuals personally agreeing to serve as Bondsmen and personally agreeing to ensure the defendant's presence at all future court appearances;
- H) The nature and circumstances of the current charge, including whether the offense involved the use of force or violence (other than Domestic Violence);
- I) The defendant's prior criminal record, if any, and whether, at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for an offense; and
- J) The defendant's record of appearance at court proceedings.

17.4.2 Conditions

The Court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including, but not limited to the following conditions:

- A) The defendant shall furnish bail;
- B) The defendant shall provide two (2) Bondsmen (per the established Bondsman Protocol established by the Court) that will ensure the defendant's presence at all future court appearances;
- C) The defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the Court, if the designated person is reasonably able to assure the Court that the defendant will appear as required and will not pose a

- danger to the safety of any person or the community;
- D) The defendant may not commit an offense against Tribal or Federal law during the period of release;
 - E) retaliate against a juror, witness, informant, or victim or violate
 - F) The defendant shall maintain employment or, if unemployed, actively seek employment;
 - G) The defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;
 - H) The defendant shall not attempt to, or in fact, contact, influence, injure, tamper with or retaliate against an alleged victim, informant, and any potential witness who may testify concerning the offense;
 - I) The defendant shall comply with a specified curfew;
 - J) The defendant may not possess a firearm, destructive device, or other dangerous weapon;
 - K) The defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;
 - L) The defendant will submit to a specified number of Preliminary Breathalyzer Tests (PBTs) for an established time period;
 - M) The defendant shall report on a regular basis to a designated agency or individual, or both; or
 - N) The defendant shall return to custody for specified hours following release for employment, schooling, or other approved purposes (i.e., work release, school release, etc.).

The Court shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the Court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

17.5 Bail Modification or Modifying Conditions of Release

Either party may submit a motion to modify bail or conditions of release. Both parties are each afforded one (1) opportunity to file a motion to modify bail or conditions of release. The motion must be filed and served in accordance with the filing and service requirements as set forth in the OST Law and Order Code. Upon proper filing and service, the Court shall set a Motion Hearing and provide Notice to all parties in accordance with the Code. At the Motion Hearing, the Court may increase or reduce the amount of bail or alter the conditions in the bail or release order.

17.6 Exoneration of Bail

When all conditions of release have been satisfactorily performed and the defendant's case has been fully adjudicated, the Court shall return any bail posted by the defendant who has satisfied all case requirements.

17.7 Bail/Bond Revocation

If a defendant violates a condition of release, including, but not limited to, failure to appear, the prosecutor may make a motion to the Court for bail/bond revocation. The Court may issue a warrant for the arrest of a defendant charged with violating a condition of release and declare the bail/bond to be revoked.

Upon arrest, the defendant must be detained until the bond revocation hearing. All bond revocation hearings must be held within five (5) days after arrest, excluding weekends, holidays, and administrative leave. On finding probable cause that the defendant violated a tribal or federal law, or on the finding of a violation of any other release condition by clear and convincing evidence, the Court may:

- 1) Reinstatement of the original release order on the same conditions and amount of bail; or
- 2) Revoke the original bail, increase the amount of the bail, and modify the conditions of release.
- 3) If the defendant was released on bond by two Bondspeople, the two signatory Bondspeople must also appear before the Court at the bond revocation hearing and provide the monetary amount to which the Court stipulated upon release of the Defendant. Should either, or both, of the two Bondspeople not be able to provide the monetary amount at the bond revocation hearing then either, or both, shall be detained into Tribal custody until such time as the stipulated monetary amount can be provided to the Court.

17.8 Forfeiture of Bail

If the defendant fails to appear for required Court appearances—including but not limited to review hearings before the Court, review hearings with the Attorney General's Office, review hearings with the Probation Department—or if the defendant fails to adhere to all stipulated release conditions or probation requirements, the Court may enter an order for forfeiture of bail or bond. If within 30 days of a forfeiture order, the defendant, requests a Court hearing and appears to present evidence justifying the defendant's failure to appear or otherwise meet the conditions found in the release order, the Court may direct the forfeiture of the bail or bond to be discharged upon such terms as are just. If the forfeiture order is not discharged by the Court, the Court shall proceed with the forfeiture of bail as follows:

17.8.1 If money has been posted as bail, the defendant shall forfeit the entire bail amount to the Oglala Sioux Tribe Justice Department (consisting of the OST Court, OST Attorney General's Office, and OST Department of Public Safety).

17.8.2 If Bondsmen provided assurances as to the defendant's appearance in Court and/or compliance with release conditions, both Bondsmen shall forfeit any monetary amount provided to the Court as ordered at the bond revocation hearing to the OST Justice Department.

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