

Chapter 4. Extradition

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Sec. 401. Definitions.

(a) Fugitive from justice. Any Indian who has fled to the Reservation and is charged by a state with a crime committed within the jurisdiction of the state but outside of Indian country, or is charged by an Indian tribe with an offense committed in Indian country.

(b) Demanding jurisdiction. The governor of the state, or tribal chairman of the Indian Reservation, from which the fugitive from justice fled, or the authorized agent of such person.

Sec. 402. Tribal Court to issue warrant.

Whenever a demanding jurisdiction requests a fugitive from justice and produces a copy of the indictment found, or complaint and warrant, or other judicial evidence, charging any Indian with having committed a crime within the jurisdiction of the demanding jurisdiction, the Tribal Court may issue a warrant for the apprehension and commitment of the Indian so charged, to the end that such Indian may be brought before the Tribal Court for hearing and determination of the issues set forth in Section 405 of this Chapter.

Sec. 403. Notice of hearing; waiver of hearing.

As soon as possible after the apprehension of the accused Indian, and in any event within twenty four (24) hours, the Tribal Court shall fix a date for the hearing on the issues defined in Section 405 of this Chapter. The hearing date shall be not more than two (2) weeks after the date of apprehension of the accused, unless the accused is in custody at the time the demand is received. At the same time, the Tribal Court shall:

(a) In open Court and on the record advise the accused Indian of his/her rights to present evidence and testimony at the hearing on the issues defined in Section 405 of this Chapter, furnish the accused Indian with a copy of this Chapter calling particular attention to Section 405 defining the issues to be heard, and advise the Indian that the Indian may voluntarily waive the hearing and agree to be delivered to the demanding jurisdiction.

(b) Immediately notify the demanding jurisdiction of the date of the hearing by telephone if necessary, furnish the demanding jurisdiction with a copy of this Chapter calling particular attention to Section 405 of this Ordinance defining the issues to be heard, and advise the demanding jurisdiction of its right to present evidence and testimony and to be represented by counsel.

(c) Immediately notify the Chairman of the Executive Board of the date of the hearing. The Executive Board may, through any representative designated by it, be present at the hearing, and present evidence and legal arguments.

Sec. 404. Accused may be admitted to bail conditions of bond.

The Tribal Court may release the accused Indian from custody pending the hearing provided for in Section 405 of this Chapter in accordance with Title 7 (Criminal Procedure), Section 402(a), provided that the Court shall impose such conditions of release as it deems proper for the appearance of the Indian before the Tribal Court at the hearing and for the surrender of the Indian to the demanding jurisdiction, if so adjudged after the hearing.

Sec. 405. Issues for determination.

At the hearing as provided in Section 403 hereof, the Tribal Court shall hear and determine the following issues:

(a) Whether the accused Indian is the person before the court and is the person charged by the demanding jurisdiction with the commission of a crime.

(b) Whether there is evidence of criminality. For purposes of this Section, criminality is established if evidence is found sufficient to justify commitment for trial if the crime had been committed on the Reservation. Evidence need not be such as is required to convict an accused at a trial. The Tribal Court shall not determine guilt or innocence.

(c) Whether the circumstances surrounding the charge by the demanding jurisdiction indicate that the accused Indian was the victim of discrimination by reason of his/her race.

(d) Whether the demanding jurisdiction can assure the accused Indian of nondiscriminatory and safe treatment in jail of the demanding jurisdiction. (e) Whether the demanding jurisdiction can assure the accused Indian of a fair trial in the area of the demanding jurisdiction where such a trial would be held.

(f) Whether the criminal charges by the demanding jurisdiction were in good faith, or for the purpose of using criminal process to compel payment of a civil debt or some other improper motive.

(g) Whether, under all the facts and circumstances, justice would best be served by delivering the Indian to the demanding jurisdiction.

Sec. 406. Entry of judgment.

If the accused Indian waives in writing the right to a hearing, or if the issues defined in Section 405 hereof are resolved against the accused Indian, the Tribal Court shall enter a judgment authorizing the demanding jurisdiction to arrest and remove the accused Indian from the Reservation.