

**KICKAPOO TRADITIONAL TRIBE OF TEXAS
TRIBAL CODES**

CHAPTER 22

**KTTT SUPERVISED COMMUNITY
SERVICES PROGRAM CODE**

I. Administration

Section 22-101. Establishment of the KTTT Supervised Community Services Program (“SCSP”)

The purposes of the Supervised Community Service Program (the “Program”) includes but is not limited to, the protection of the community within the jurisdiction of the Kickapoo Traditional Tribe of Texas (hereinafter referred to as “KTTT”) by providing for the acceptance of custody and the supervision and rehabilitation of juveniles in need of supervision and adult offenders placed on probation or released on parole by the Tribal Court.

Section 22-102. Organization of the Program

The Program is supervised by the District Tribal Court Judge, and if applicable is comprised of adult probation officers, juvenile probation officers, community service officers, support staff, and such other personnel as may be deemed necessary.

Section 22-103. Powers and duties of juvenile probation officers

The powers and duties of juvenile probation and Parole officers shall have the power and duty;

- (1) To serve as officers of the Tribal Court and investigate at the request of Tribal Court Judge, any case, matter, or questions, and to report the results of such investigation with recommendations to the Tribal Court Judge.
- (2) To take charge of and provide supervision of juveniles, attempting to assist them in establishing law-abiding lives while monitoring their behavior through school, home, work, office and other contacts to insure that they comply with court orders.
- (3) To report promptly to the Tribal Court violations of court orders and conditions. Such reports shall include recommendations as to actions which the officer believes appropriate.

- (4) Before any adjudication present juvenile to be reviewed by the Tribal Court with Presenter.
- (5) Conduct home visits of the youth being supervised;
- (6) Arrange for drug testing as deemed necessary by the Tribal Court.
- (7) Prepare Complaints, Preliminary Inquiry Reports, Pre Dispositional Reports and any other report required by this Chapter or Chapter 8 of the KTTT Tribal Code; and

Section 22-104. Definitions

As used in this Chapter, unless the context otherwise requires, the following definitions apply:

- (1) "Notice to the probationer or parolee" is the personal service of a warrant or a summons and petition for revocation of the parole or probation to a supervised offender.
- (2) "Parole" means the release to the community of an adult prisoner as provided by law prior to the expiration of the prisoner's term, subject to the conditions imposed by the Court and subject to the supervision of the Program upon direction of the Court.
- (3) "Probation" means the release by the Court without imprisonment of an adult offender found guilty of a crime upon verdict or plea, subject to conditions imposed by the Court and subject to the supervision of the Program upon direction of the Court.
- (4) "Tribal Court" means the Kickapoo Traditional Tribe of Texas Tribal Court.
- (5) "Supervised offender" is an adult offender (a) sentenced to probation, (b) whose sentence is deferred, or (c) released from incarceration subject to conditions imposed by the Court and subject to the supervision of the Program.
- (6) Other terms used herein shall comply with those terms as defined in Chapter 8 of the Kickapoo Traditional Tribe of Texas Tribal Codes.

Section 22-105. Adult Probation Duties

The duties of the Probation Officer are:

- (1) To undertake investigations and make reports, including pre-sentence investigations and reports, which may include alternative sentencing recommendations, requested by the Tribal Court;
- (2) To supervise an adult probationer or parolee when requested to do so by Tribal Court and in accord with the conditions set by the court;

(3) To assure that a copy of the conditions of probation or parole is signed by the supervised offender and given to him or her;

(4) To regularly advise and consult with the supervised offender to encourage him or her to improve his or her condition;

(5) To keep records and report on the progress of persons supervised as the Tribal Court may require;

(6) To identify and, where necessary, mobilize Tribal or community programs to which supervised offenders may be assigned for evaluation, treatment, or rehabilitation, or for the purpose of performing community services, and to monitor the execution and progress of any such Tribal Court-ordered assignment; and

(7) To cooperate with all agencies, Tribal, public and private, that are concerned with the treatment or welfare of persons on probation or parole.

Section 22-106. Powers of the Adult Probation Officer

(1) An adult probation officer, in his or her supervision of an adult offender, is vested with authority to request the Tribal Prosecutor of the Tribal Court to file a warrant for arrest of the supervised offender.

II. Probation

Section 22-201. Declaration of purpose and policy

The Tribal Council finds and declares that probation is a desirable disposition of appropriate criminal cases and youth in need of supervision, because:

(1) It provides a framework by which the Tribes can supervise positive rehabilitative measures imposed on an offender by a court;

(2) The offender remains under the purview of the Court while engaging in the educational, therapeutic and community restorative pursuits that add up to a successful rehabilitation;

(3) It maximizes the liberty of the individual while at the same time vindicating the authority of the law and effectively protecting the public from further violations of the law;

(4) It affirmatively promotes the rehabilitation of the offender by continuing normal community contacts; and

(5) It minimizes the impact of the conviction upon innocent dependents of the offender;

(6) If juvenile, supervise a youth who has been found to be in need of supervision in order to deter criminal conduct in the future.

Section 22-202. Penalty upon revocation of probation or parole

(1) An adult who is found, after a hearing, to have violated a condition of his or her probation may be required:

(a) In the case of probation during a suspended sentence, to serve in the jail up to the entire period for which execution of sentence was suspended; or

(b) In the case of deferred imposition of sentence, to serve such sentence as may be imposed by the Court after a sentencing hearing.

(2) Parole is not available to a supervised offender whose probation is revoked, but appellate review of the trial court's revocation decision may be had on the ground that the supervised offender was deprived of liberty without due process of law.

(3) In the case of a juvenile who is found after a hearing to have violated a condition of his or her probation he/she may have the conditions of his/her probation continued, modified or revoked. If probation is revoked the juvenile may be sentenced to jail until the age he/she reaches the age of twenty one (21).

Section 22-203. Arrest for violation of a condition of probation

(1) As provided in Section 22-106, the prosecuting attorney may file a motion to revoke Probation/Parole and request the Court for the arrest of a supervised offender for violation of a condition of probation. A petition for revocation of probation, shall include, but not limited to, facts showing the basis for the arrest and for revocation of probation. Any law enforcement officer may arrest the violator with a warrant issued by the Tribal Court Judge upon said application. Pending hearing upon a charge of violation the prisoner may be incarcerated in jail.

(3) An arrested probationer is entitled to determination of probable cause for the grounds for his or her arrest within fourteen (14) days, exclusive of weekend and holidays, of the time of arrest.

(4) If probable cause is found for the arrest, then the Tribal Court will immediately hold a detention hearing to determine if the arrested probationer shall be held without bail until the probation revocation hearing is held.

Section 22-204. Probation revocation hearing

(1) A probationer is entitled to a hearing before the Court prior to revocation of probation within 10 days of the date of notice of revocation or the date of arrest for violating a condition of probation, unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

(2) The subject matter of a revocation hearing is limited to alleged knowing violation(s) of probation condition(s). A violation of a condition is deemed to be a knowing violation if the probationer signed, and was given a copy of, the conditions of probation.

(3) Supervised offenders do not have a right to a jury trial at a revocation hearing.

(4) If the probationer admits to violating a condition of probation, the Court, after the probationer has had the opportunity to offer testimony or evidence regarding any circumstances tending to mitigate the violation, may revoke the probation.

(5) If the probationer does not admit to violating a condition of probation, the prosecutor has the burden of proving by a preponderance of the evidence that the probationer violated a condition of the probation.

(6) The probationer has a right to counsel and may call witnesses or introduce evidence in his or her own behalf and may cross examine any prosecution witness. The prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.

(7) The Court shall determine the appropriate disposition of a petition for revocation by balancing the probationer's interest in liberty, employment, family ties, responsibilities, health, or community ties against the Tribes' interest in rehabilitation, public safety, victim(s)' rights, and the probationer's duty to comply with each condition of probation.

(8) An order revoking probation shall be in writing and shall contain findings of fact, including, but not necessarily limited to, those required in subsection (7), and conclusions of law supporting the revocation.

III. Parole

Section 22-301. Duties of the Adult Probation and Parole Officer

(1) The adult probation and parole officer shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the Court.

(2) The adult probation and parole officer shall review and monitor a person who is eligible for parole in preparing a parole plan. The officer shall make a report of the officer's efforts and findings to the Court prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee's probation and parole officer, who shall report on the parolee's progress to the Court as may be necessary or desirable.

(4) To assist parolees the adult probation and parole officer may, in addition to other services, provide the following:

- (a) Employment counseling and job placement;
- (b) Family and individual counseling and treatment placement;
- (c) Financial counseling;
- (d) Vocational and educational counseling and placement; and
- (e) Referral services to any appropriate agency.

Section 22-302. Eligibility for parole

An offender sentenced to confinement in a correctional facility for 40 days or more on any conviction or combination of convictions, who has served at least one-half of the imposed sentence, and whose confinement is not the result of a probation or parole violation, may file a petition for parole with the Tribal Court.

Section 22-303. Parole hearing

The Court shall hold a hearing on the petition within 10 days of its filing. All persons desiring to speak at the hearing shall be heard, including, but not limited to law enforcement officers, the Tribal prosecutor, family and friends of the offender, the offender and the offender's attorney, any victim of the offense for which the offender was sentenced in incarceration, and immediate, adult, family members of such victim. Notice of hearing shall be given to all parties at least 5 days prior to the hearing.

Section 22-304. Granting parole

(1) In determining whether to grant parole, the Court shall consider all pertinent information including, but not limited to, the following:

- (a) The circumstances and nature of the offense;
- (b) The past criminal record of the petitioner;
- (c) The past employment record of the petitioner;
- (d) The conduct of the petitioner during imprisonment;
- (e) The results of any physical or psychological reports; and
- (f) The petitioner's employment status, family and community ties and responsibilities, and health, which may be balanced against the Tribes' interest in rehabilitation, public safety, and victim's rights.

(2) The order granting parole shall set forth:

- (a) The duration of parole;
- (b) The conditions of parole;
- (c) Commitment to the custody of the adult probation and parole officer; and
- (d) The consequences of violating a condition of parole.

Section 22-305. Penalty for violation of a condition of parole

Any person who violates a condition of parole may be apprehended and required to serve the remainder of the original sentence. Further parole in this instance is not allowed.

Section 22-306. Parole revocation hearing

- (1) Upon a finding of probable cause or waiver of the hearing or upon issuance of a notice of parole violation by the Adult Probation Officer, the Prosecutor shall file a petition for revocation of parole with the Court. Such petition must be filed within the parole period and served upon the parolee.
- (2) The parolee is entitled to a revocation hearing within 10 days of arrest for a parole violation or receipt of a notice of revocation unless the court finds that good cause for delay exists.
- (3) The subject matter of the hearing is limited to alleged violation(s) of condition(s) of parole.
- (4) The parolee has no right to a jury trial when a violation of a condition of parole is alleged.
- (5) Unless the parolee admits the parole violation, the Adult Probation Officer or Tribal Prosecutor must prove by a preponderance of the evidence that the parolee violated a condition of his or her parole. Evidence that the parolee violated a condition of parole is not excludable on the grounds that the parolee was not warned of his or her right not to incriminate himself or herself prior to admitting a violation.
- (6) A parolee has the right to legal counsel.
- (7) A parole revocation is appealable on the grounds that the revocation deprived the parolee of liberty without due process of the laws. The court's refusal to revoke a parole is not appealable by or on behalf of the Tribe.

READ, PASSED, APPROVED AND ENACTED at a duly called Tribal Council meeting on
this 18th day of May, 2010.



Juan Garza, Jr., Council Chairman

5/18/10
Date




Jesus Anico, Council Secretary

5/18/10
Date



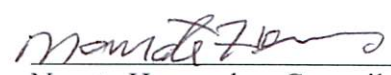
Rogelio Elizondo, Council Treasurer

5/18/10
Date



David J. Gonzalez, Council Member

5, 18, 10
Date



Nanate Hernandez, Council Member

5/18-10
Date