

**TITLE V
EXTRADITION**

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§5-1-1 Fugitives from Justice; Duty of Tribal Judge

Subject to the provisions of this act, the provisions of the Constitution of the United States and any and all acts of Congress enacted in pursuance thereof, it shall be the duty of a Tribal Court Judge to have arrested and delivered to the appropriate law enforcement authority of any requesting jurisdiction upon written demand any person charged in that jurisdiction with treason, felony or other crime, who has fled from justice or otherwise departed from the requesting jurisdiction and is found in and subject to this tribal jurisdiction.

§5-1-2 Form of Demand

No demand for the extradition of any person subject to this tribal jurisdiction charged with a felony or misdemeanor in any other local, state or tribal jurisdiction shall be recognized by the Tribal Court Judge unless such demand is made in writing. The demand must be accompanied by a copy of the affidavit or indictment substantially charging the person with a felony or misdemeanor against the demanding jurisdiction, together with a copy of the warrant which was issued thereupon; or a copy of a judgment of conviction or of a sentence imposed in execution thereof together with an authenticated statement by a judicial authority of the demanding jurisdiction that the person sought has escaped from confinement or has broken the terms of his bail, probation or parole.

§5-1-3 Tribal Judge May Investigate Case

When a demand shall be made upon the Tribal Court Judge by a judicial authority of a local, state or tribal jurisdiction for the surrender of a person charged with a felony or misdemeanor against the demanding jurisdiction, the Tribal Court Judge may call upon any prosecuting officer to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person sought and whether he should be surrendered.

§5-1-4 Extradition of Persons Not Present in Demanding Jurisdiction at Time of Commission of Crime

The Tribal Court may also surrender, on demand and in the manner provided in §5-1-2 not otherwise inconsistent, any person subject to this tribal jurisdiction who is charged with committing an act in this jurisdiction or in another local, state or tribal jurisdiction which intentionally resulted in a crime occurring in the jurisdiction whose executive authority is making the demand.

§5-1-5 Issue of Tribal Court Judge's Warrant of Arrest Recitals

If the Tribal Court Judge decides that the demand should be complied with, he shall sign a warrant of arrest directed to any law enforcement officer of the Choctaw Indian Reservation for execution. The warrant must substantially set forth the facts necessary to show the validity of its issuance and shall have the same force and effect as other warrants issued by the Tribal Courts.

§5-1-6 Rights of Accused Person; Application or Writ of Habeas Corpus

No person arrested upon such warrant shall be delivered over to any duly designated agent of the demanding executive authority unless he shall first be taken forthwith before a judge of the Tribal Court who shall inform him of the demand made for his surrender. He must also be charged, and advised of his right to demand and procure legal counsel. If the prisoner or his counsel desire to

test the legality of his arrest, the judge of such court shall fix a reasonable time for him to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer and to the said agent of the demanding local, state or tribal jurisdiction. At the hearing the judge may inquire into whether the accused can receive a fair trial in the demanding jurisdiction. If the judge determines that the accused probably cannot receive a fair trial in the demanding jurisdiction, then he shall release the accused from custody forthwith or hold a hearing to determine if a fair trial can be had.

§5-1-7 Penalty for Non-Compliance with Preceding Sections

Any officer who in willful disobedience of this act shall wrongfully deliver or cause to be wrongfully delivered any person subject to this tribal jurisdiction in his custody to a local, state or another tribal jurisdiction for prosecution or incarceration shall be guilty of an offense and, upon conviction, shall be fined not more than one hundred (\$100.00) or be imprisoned not more than thirty (30) days, or both.

§5-1-8 Arrest Prior to Requisition

Whenever any person subject to this tribal jurisdiction is, by virtue of outstanding charges in local, state or another tribal jurisdiction, subject to possible extradition proceedings under this Code and poses a threat of danger to the person or safety of another within this jurisdiction, a complaint on the affidavit of any credible person may be made before a Tribal judge of the Tribal Court stating the offense and offenses of which the accused has been formally charged, the jurisdiction within which the accused is alleged to have committed the offense or offenses, that the accused is subject to extradition proceedings not yet initiated or effected, and that the accused's continued remainder at large within this tribal jurisdiction poses a threat of danger to the person or safety of a person or persons within this jurisdiction. The Tribal Court Judge of the Tribal Court shall issue a warrant thereupon directed to any peace officer commanding him to apprehend the named person in this jurisdiction and to bring him before any Tribal Court Judge of the Tribal Court to answer the foregoing charges. A certified copy of the sworn charge or complaint and affidavit shall be attached to the warrant.

§5-1-9 Arrest Without a Warrant

The arrest of a person may be lawfully made by any peace officer without a warrant, upon reasonable information that the accused stands charged in the courts of a state or other tribe with a crime punishable by death or imprisonment for a term exceeding one (1) year. When arrested the accused must be taken before a Tribal Court Judge with all practicable speed and a complaint must be made against him under oath setting forth the grounds for the arrest as in the preceding section not otherwise inconsistent; and thereafter his answer shall be heard as if he had been arrested on a warrant.

§5-1-10 Commitment to Await Requisition; Bail

If from the examination before the Tribal Court Judge it appears that the person held is the same person who is charged with having committed the alleged felony or misdemeanor and except in cases arising under §5-1-4, that he has fled from justice or otherwise departed from the requesting jurisdiction, the Tribal Court Judge may, by a warrant reciting the accusation, commit him to the Tribal jail for a period of time not to exceed thirty (30) days in order to enable the arrest of the

accused to be made by the proper requisition procedures of the state or tribe having jurisdiction of the offense, subject to bail as provided in the next section, or until his legal discharge.

§5-1-11 Bail: In What Cases; Conditions of Bond

Unless the offense with which the prisoner is charged is punishable by death or life imprisonment under the laws of the state or tribal jurisdiction in which it was committed, a Tribal Court Judge of this Tribe may grant the person arrested bail, in such sum as he deems proper, conditioned for the prisoner's appearance at a time specified in such bond, and for his surrender, for arrest upon the warrant of a Tribal Court Judge of this Tribe. In instances where the warrant of arrest was issued pursuant to §5-1-8, the Tribal Court Judge in his discretion may further condition the arrestee's release so as to reasonably provide for the protection of persons within this tribal jurisdiction.

§5-1-12 Forfeiture of Bail

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, or otherwise fails to comply with any other condition of his release, the Tribal Court Judge by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he is within the tribal jurisdiction. Recovery may be had on such bond in the name of the Tribe as in the case of other bonds given by the accused in criminal proceedings.

§5-1-13 Persons After Criminal Prosecution in This Tribe at Time of Requisition

If a criminal prosecution has been instituted against such person under the laws of this Tribe and is still pending, the Tribal Court Judge, at his discretion, may either surrender him on demand of the judicial authority of a local, state or other Indian tribal jurisdiction, or hold him until he has been tried and discharged or convicted and punished by this Tribe.

§5-1-14 Guilt or Innocence of Accused: When Inquired Into

The Tribal Court Judge may not inquire into the guilt or innocence of the accused, in any proceeding after the demand for extradition, except to identify the accused as the person who is charged with the crime and to ascertain if reasonable cause exists for such extradition.

§5-1-15 Tribal Court Judge May Recall Warrant or Issue Alias

The Tribal Court Judge may recall his warrant of arrest or may issue another warrant whenever he deems proper.

§5-1-16 Fugitives from This Tribe

Whenever the Tribal Court Judge of this Tribe shall demand a person charged with a misdemeanor or felony or with escaping from confinement or breaking the terms of his bail, probation or parole in this Tribal jurisdiction, from the appropriate authority of any state or other tribe, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of this Tribe.

§5-1-17 Application for Issuance of Requisition; By Whom Made; Contents

When a return to this tribal jurisdiction of a person charged with a misdemeanor or felony in this jurisdiction is required, the prosecuting officer shall present to the Tribal Court Judge his written application for a requisition or the return of the person charged, in which application shall be stated the name of the person so charged, the misdemeanor or felony charged against him the approximate time, place and circumstances of its commission, the jurisdiction in which he is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the said prosecuting officer, the ends of justice require the arrest and return of the accused to this tribal jurisdiction for trial and that the proceeding is not instituted to enforce a private claim.

When the return to this Tribal jurisdiction is required of a person who has been convicted of a misdemeanor or felony in this jurisdiction and has escaped from confinement or broken the terms of this bail, probation or parole, the prosecuting officer shall present to the Tribal Court Judge a written application for a requisition for the return of such person, setting forth the name of the person, the misdemeanor or felony of which he was convicted, the circumstances of his escape from confinement or of the breach in the terms of his bail, probation or parole, the jurisdiction in which he is believed to be, including the location of the person therein at the time application is made.

The application shall be verified by affidavit, executed in duplicate and accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the Tribal Court Judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Tribal Court Judge endorsed thereon, and one of the certified copies of the indictment, complaint, information and affidavits or of the judgment of conviction or the sentence shall be filed with the Tribal Court Clerk, to remain on record in the office. The other copies of all papers shall be forwarded with the Tribal Court Judge's requisition.

§5-1-18 Costs and Expenses

Reasonable and necessary expenses shall be paid to the officers of the Tribe or state or local jurisdiction on whose executive authority the requisition is made for their fees and costs in returning such prisoner. The expenses shall be paid out of the Tribal Law Enforcement Program on the certification of the Tribal Court Judge.

§5-1-19 Written Waiver of Extradition Proceedings

Any person arrested in this Tribal jurisdiction who is charged with having committed any misdemeanor or felony in a state, local or another tribal jurisdiction or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole in such state, local or another tribal jurisdiction may waive the issuance and service of the warrant provided for in §5-1-5 and all other procedures incidental to extradition proceedings, by executing or subscribing in the presence of a Tribal Court Judge within this Tribal jurisdiction a writing which states that he consents to return to the demanding jurisdiction; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of all of his

rights including the right to the issuance or service of a warrant of extradition and his right to obtain a writ of habeas corpus as provided in §5-1-6.

If and when such consent has been duly executed it shall forthwith be forwarded to the Clerk of the Tribal Court and filed therein. The judge shall order the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state or local or tribal jurisdiction and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused to return voluntarily and without formality to the demanding jurisdiction.

Any person currently in the custody of the Mississippi Department of Corrections (MDOC), or other state corrections agency, who intends to reside on the reservation of the Mississippi Band of Choctaw Indians upon release, but is awaiting approval for probation, parole, house arrest, or other release program shall execute or subscribe an approved waiver in the presence of corrections personnel and said waiver shall be filed with the Choctaw Tribal Court in lieu of an appearance before a Choctaw Tribal Court Judge.

§5-1-20 Non-Waiver by This Tribe

Nothing in this act shall be deemed to constitute a waiver by the Tribe of its sovereignty, or rights, powers or privileges to try such demanded person for any misdemeanor or felony committed within this jurisdiction or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any misdemeanor or felony committed within this jurisdiction. Nor shall any proceedings had under this act which result in or fail to result in, extradition be deemed a waiver by this Tribe of any of its sovereignty, or rights, privileges or jurisdiction in any way whatsoever.

§5-1-21 No Right of Asylum; No Immunity for Other Criminal Prosecutions While in This Jurisdiction

After a person has been brought back to this Tribal jurisdiction, or after waiver of extradition proceedings, he may be tried in this jurisdiction for other misdemeanors or felonies which he may be charged with having committed here as well as those specified in the requisition for his extradition.

§5-1-22 Constitutionality

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

§5-1-23 Repeal

This enactment shall be regarded as an ordinance of the Tribal Council within the meaning of 25 C.F.R. §11.1(e) and shall supplant otherwise applicable provisions of the Code of Federal Regulations.