

**SAC AND FOX NATION TRIBAL CODE
TITLE 6A ARTICLE 6**

**TITLE 6A
CIVIL INFRACTIONS**

**ARTICLE 6
GENERAL PROVISIONS AND PROCEDURES**

Section 601. Definitions.

- (a) Defendant: the person against whom the action is filed under this code.
- (b) Infraction: a civil offense against the Tribe for which the remedy involved is monetary fines/damages. An infraction is not a crime and the punishment shall not affect or impair the rights or credibility of any person convicted thereof.
- (c) Public place: a location, exclusive private residence, to which the members of the tribal community have general access or a location in which three or more members of the tribal community have gathered. Public places include, but are not limited to, tribal buildings, parks, highways and roads, riverbanks, waterways, transport facilities, schools, jails and prisons, the common areas of apartment buildings; places of business or amusement; and the common areas of any neighborhood.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 601]

Section 602. Duties and Authority of Officers.

- (a) It shall be the duty of the Sac and Fox Nation law enforcement officers to enforce the provisions of this Title within the boundaries of the Sac and Fox Nation without the necessity of procuring a warrant.
- (b) A Sac and Fox Nation law enforcement officer is authorized to arrest any person who is subject to the criminal laws of the Sac and Fox Nation who resists, delays, prevents, or obstructs any such officer, in the discharge, or attempt to discharge, of any duty under this Title or gives a false report to any peace officer. Any person who is subject to the criminal jurisdiction of the Sac and Fox Nation and who is arrested under this section shall be charged pursuant to the Criminal Code of the Sac and Fox Nation in the Tribal Court. To the extent authorized by law, any person who is not subject to the criminal jurisdiction of the Sac and Fox Nation and violates any city, state, or federal law within the boundaries of the Sac and Fox Nation, while resisting, delaying, preventing, or obstructing any such officer, in the discharge, or attempt to discharge, of any duty under this Title, or gives a false report to any peace officer may be transported without unnecessary delay to the nearest authority for the jurisdiction for which the act was committed.

[History: 2020, June 16; R-37-20:
PUBLIC LAW #T 6 § 602]

Section 603. Notice of Infraction Form.

Infraction cases shall be filed on a form entitled “Notice of Infraction” prescribed by the Clerk of the Court. Notice of Infraction forms are presumed valid and shall not be deemed insufficient by reason of defects or imperfections which do not prejudice substantial rights of the defendant.

[History: 2020, June 16; R-37-20:
PUBLIC LAW #T 6 § 603]

Section 604. Initiation of Infraction Cases.

(a) An infraction case is initiated by the issuance, service, and filing of a notice of infraction in accordance with this rule. An infraction is issued on the date the infraction is signed by the citing officer or Tribal Prosecutor.

(b) A notice of infraction may be issued, upon certification that the issuer has probable cause to believe, and does believe, that a person has committed an infraction contrary to law:

(1) By a citing officer. The infraction does not need to have been committed in the officer’s presence, except as provided by statute.

(2) By the Tribal Prosecutor.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 604]

Section 605. Contents.

The Notice of Infraction shall contain the following information on the copy given to the defendant, except the information required by subsections (2) is not required on a notice of infraction alleging the commission of a parking, standing, or stopping infraction.

(a) A statement that the notice represents a determination that civil infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;

(b) A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;

(c) The name, address, and phone number of the court where the notice of infraction is to be filed.

(d) The name, address, date of birth, sex, physical characteristics, and for a notice of traffic infraction, the operator’s license number of the defendant.

(e) For a notice of traffic infraction, the vehicle make, year, model, style, license number, and state in which it is licensed.

(f) The infraction which the defendant is alleged to have committed and the accompanying statutory citation or ordinance number, the date, time, and place the infraction

occurred, the date the notice of infraction was issued, and the name and, if applicable, the number of the citing officer.

(g) A statement that the defendant must respond to the notice of infraction within 15 days of the date the notice is personally served, or if the notice is served by mail, within 18 days of the date the notice is mailed.

(h) A statement that, at any hearing to contest the determination that a civil infraction has been committed, the Tribe has the burden of proving, by a preponderance of the evidence, that the civil infraction was committed and that the person may subpoena witnesses including the enforcement officer who issued the Notice of Civil Infraction;

(i) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the civil infraction, the person will be deemed to have committed the civil infraction and may not subpoena witnesses;

(j) A statement that failure to respond to the notice or failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in a default judgment against the person in the amount of the penalty and assessment of additional costs.

(k) A space for entry of the monetary forfeiture which respondent may pay in lieu of appearing in court.

(l) A statement that a mailed response must be postmarked not later than three days before the response is due.

(m) the statements required by any applicable statute.

(n) Any additional information determined necessary by the Clerk of the Court.

[History: 2020, June 16; R-37-20:
PUBLIC LAW #T 6 § 605]

Section 606. Summons.

The Notice of infraction shall serve as a summons.

[History: 2020, June 16; R-37-20:
PUBLIC LAW #T 6 § 606]

Section 607. Service of Notice.

A notice of infraction may be served either by:

(a) The citing officer serving the notice of infraction on the person named in the notice of infraction at the time of issuance by obtaining the signature of the person indicating a refusal to sign by the person.

(b) The citing officer affixing to a vehicle in a conspicuous place the notice of traffic infraction if it alleges the violation of a parking, standing, or stopping statute, and indicating upon the notice of such service.

(c) The citing officer of the tribal prosecutor filing the notice of infraction with the court, in which case the court shall have the notice served either personally or when the whereabouts of a defendant outside the Sac and Fox Nation are known by certified mail,

postage prepaid, restricted delivery, return receipt requested on the person named in the notice of infraction at his or her address. If a notice of infraction is returned to the court as undeliverable, the Court, upon motion by the Tribal Prosecutor, may grant leave for notice by publication so long as such notice conforms to the Rules of Civil Procedure of the Sac and Fox Nation Tribal Court.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 601]

Section 608. Filing of Notice.

When a notice of infraction has been issued, the notice shall be filed with the Court. The Notice must be filed within (five) 5 days of issuance of the notice, excluding Saturdays, Sundays, and holidays. In the absence of good cause show, a notice of infraction not filed within the time limits of this section, shall, upon motion, be dismissed with prejudice.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 608]

Section 609. Person Receiving Notice—Identification and Detention.

(a) A person who is to receive a Notice of Civil Infraction under tribal code or law is required to identify him/herself to the enforcement officer by giving his/her name, address, and date of birth. Upon the request of the officer, the person shall produce reasonable identification, including a driver's license, tribal enrollment card, or other legitimate government issued ID.

(b) A person who is unable or unwilling to reasonably identify himself or herself to an enforcement officer may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 609]

Section 610. Return of Service.

(a) If service of notice is made under Section 607(a) and (b), notice shall be completed at the time of the filing of notice so long as it conforms to Section 608.

(b) If service of notice is made under Section 607(c), notice shall be complete upon filing of a return in conformity of the Rules of Civil Procedure of the Sac and Fox Nation within 30 days from the issuance of the notice. Upon motion by the Prosecutor, the time to return service of notice may be extended no more than an additional 30 days from the original return date by leave of the court by showing good cause for such extension.

(c) In the absence of good cause show, service of a notice of infraction not returned within the time limits of this section shall, upon motion, be dismissed with prejudice.

Section 611. Response to Notice.

(a) A person who has been served with a notice of infraction must respond to the notice within 15 days of the date the notice is personally served, or if the notice is served by mail, within 18 days of the date the notice is mailed.

(b) A person may respond to a notice of infraction by:

(1) Paying the amount of the fine to the Court, upon which the Court shall enter a judgment that the defendant has committed the infraction.

(2) Contesting the determination that an infraction occurred by requesting a hearing in writing to the Court.

For a contested hearing, the statement shall be executed in substantially the following form:

I hereby state as follows:

I promise that if it is determined that I committed the infraction for which I was cited, I will pay the monetary penalty authorized by law and assessed by the Court.

I certify under penalty of perjury under the laws of the Sac and Fox Nation that the foregoing is true and correct.

Date and Place, Signature

(3) Request a hearing to explain mitigating circumstances surrounding the commission of the infraction.

For mitigation hearings, the statement shall be executed in substantially the following form:

I hereby state as follows:

I promise to pay the monetary penalty authorized by law, or at the discretion of the Court, any reduced fees that may be set.

I certify under penalty of perjury under the laws of the Sac and Fox Nation that the foregoing is true and correct.

Date and Place, Signature

(c) Method of Response. A person shall respond to the notice of infraction in writing and delivered to the Court or delivered personally to the Clerk of the Court. If

mailed, the response must be postmarked no later than midnight of the day the response is due.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 611]

Section 612. Failure to Respond; Default Judgment.

(a) If a person who has received a Notice of Infraction does not respond within the timeframe set forth in Section 611, a default judgment will be issued, which shall be sent for collection.

(b) If the respondent does not appear at the hearing, a default judgment will issue against the respondent, which will be sent for collection. A copy of the judgment shall be sent by the Clerk of the Court to the respondent by mail.

(c) There shall be no right to appeal a default judgment.

(d) Setting aside Judgment Upon Failure to Appear. For good cause shown and upon terms the Court deems just, the Court may set aside a judgment entered upon a failure to appear.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 612]

Section 613. Schedule of Contested Hearings.

(a) Upon receipt of a response requesting a hearing, the Court shall schedule a hearing to determine whether the defendant committed the infraction. The hearing shall be scheduled for not less than 14 days from the date the written notice of hearing is sent by the Court, nor more than 90 days from the date of the notice of infraction or the date a default judgment is set aside.

(1) A defendant who requests a contested hearing may first be scheduled for a prehearing conference, which shall be scheduled for not less than 14 days from the date the written notice of the hearing is sent by the Court nor more than 60 days from the date the notice of infraction or the date a default judgment is set aside, unless otherwise agreed by the defendant in writing.

(2) The prehearing conference may be waived by the defendant in writing if the waiver is received by the Court before the time set for the prehearing conference. If the prehearing conference is waived, the case will be set for a contested hearing. The contested hearing shall be scheduled for not more than 90 days from the date of the prehearing conference, or if the prehearing conference is waived, from the date the waiver of the prehearing conference is received by the Court.

(b) The Court shall send the defendant written notice of the time, place, and date of the hearing within 14 days of the receipt of the request for a hearing. The notice of the hearing shall also include statements advising the defendant of his/her rights at the hearing, how the defendant may request that witnesses be subpoenaed, and that failure to appear may be a crime for which the defendant may be arrested, and in a traffic infraction case, the

defendant's privilege to operate a motor vehicle may be suspended. The court shall advise the defendant in the notice of the defendant's right to waive the prehearing conference.

(c) The Court may schedule the hearing on a contested infraction for the same time as the hearing on another infraction alleged to have been committed by the defendant. The Court may schedule the hearing on a contested infraction for the same time as a trial on a misdemeanor arising out of the same occurrence as the infraction.

(d) The infraction may be dismissed upon a showing of prejudice if the Court does not send a defendant written notice of a hearing within 14 days of receipt of the request for a hearing.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 613]

Section 614. Right to Counsel.

(a) Any person who has received a Notice of Infraction may be represented by counsel at an infraction hearing. There is no right to counsel; accordingly, counsel must be retained at the respondent's own expense.

(b) The Tribe may be represented by the Tribal Prosecutor or other tribal presenting officer.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 614]

Section 615. Contested Hearings—Preliminary Proceedings.

(a) Subpoena. The defendant and the prosecuting attorney may subpoena witnesses necessary for the presentation of their respective cases. Witnesses should be served at least 7 days before the hearing. The Subpoena may be issued by a judge, Clerk of the Court, or by a party's lawyer. If a party's lawyer issues a subpoena, a copy shall be filed with the Court and with the Tribal Prosecutor. A request that an officer appear at a contested hearing shall be filed on a separate pleading. A subpoena may be directed for service to the Sac and Fox Nation Law Enforcement Officer.

(b) Discovery.

(1) Upon written demand of the defendant at least 14 days before a contested hearing filed with the Court and served on the Tribal Prosecutor, the Tribal Prosecutor shall at least 7 days before the hearing, provide the defendant or the defendant's attorney with the following:

- (A) a copy of the citing officer's sworn statement;
- (B) a copy of the video or photographic evidence the Prosecutor proposes to introduce at trial, unless in reply to the discovery request, the Prosecutor provides the address to a website where such evidence is accessible to the defendant; and
- (C) the names of any witnesses not identified in the citing officer's sworn statement.

(2) No other discovery shall be required. If the Prosecuting attorney provides any portion of the discovery less than 7 days before the hearing, such untimely

discovery shall be suppressed only upon a showing of prejudice in the presentation of the defendant's case. If the Tribal Prosecutor, without reasonable excuse or justification, fails to provide any portion of the discovery prior to the day of the hearing, the portion of discovery not provided shall be suppressed. Neither party is precluded from investigating the case, and neither party shall impede another party's investigation. A request for discovery pursuant to this section shall be filed on a separate pleading.

(3) **Amendment of Notice.** The Court may permit a notice of infraction to be amended at any time before judgment if no additional or different infraction is charged, and if substantial rights of the defendant are not thereby prejudiced. A continuance shall be granted if the defendant satisfies the Court that the additional time is needed to defend against the amended notice of infraction.

(4) **Sufficiency.** No notice of infraction shall be deemed insufficient for failure to contain a definite statement of the essential facts constituting the specific infraction that the defendant is alleged to have committed, nor by reason of defects, imperfections or omissions which do not tend to prejudice substantial rights of the defendant.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 615]

Section 616. Contested Hearing.

(a) A contested hearing shall be before a judge; a jury trial is not permitted.

(b) The burden of proof is upon the Tribe to establish the commission of the infraction by a preponderance of the evidence.

(c) The Court may consider the notice of civil infraction and any other written report made under oath submitted by the enforcement officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing.

(d) Either party may, prior to a contested hearing date, request that the Court subpoena witnesses for the contested hearing, including the enforcement officer who issued the notice. Both parties have the right to present evidence and examine witnesses present at the contested hearing.

(e) After consideration of the evidence and argument, the Court shall determine whether the civil infraction was committed. Where it has not been established that the civil infraction was committed, an order dismissing the notice shall be entered in the Court's records. Where it has been established that the civil infraction was committed, an appropriate order shall be entered in the Court's records. The Court shall include in its order the amount of civil penalty requested and may order additional payments made to the Tribe if the Tribe is able to show additional costs necessary to remedy the events causing the infraction.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 616]

Section 617. Mitigation Hearing.

A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances. After the Court has heard the explanation of the circumstances surrounding the commission of the infraction, the Court shall enter an appropriate order. The Court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the infraction if it finds that mitigating circumstances exist.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 617]

Section 618. Suspension of Monetary Penalty.

(a) The Court may waive or suspend a portion of the monetary penalty, or provide for payments over time not to exceed 6 months, or in lieu of monetary payment, provide for the performance of community service as provided by law.

(b) The Court has continuing jurisdiction and authority to supervise disposition for not more than 1 year.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 618]

Section 619. Failure to Pay or Complete Community Service.

(a) Payment of monetary penalty or completion of community services is due within 30 days from judgment, unless the judge orders a payment over time, not to exceed 6 months, at which time payment is due in accordance to the schedule established by the Court.

(b) Failure to pay or complete community service:

(1) Indian Defendants: If an Indian defendant fails to satisfy judgment by the date ordered by the Court, he/she shall be determined to be in contempt of court for failure to pay and be subject to punishment in accordance with the Sac and Fox Nation Criminal Code. Upon motion, a warrant shall be issued for his/her arrest.

(2) Non-Indian Defendants: If a non-Indian defendant fails to satisfy judgment by the date ordered by the Court, the Court shall enter a judgment in naming the defendant as a debtor and the Sac and Fox Nation as the creditor in the amount of the maximum fees allowed in accordance to the infraction found in this Title.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 619]

Section 620. Appeals.

Appeals from a judgment in a civil infraction case will be to the Sac and Fox Nation Appellate Court.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 620]

Section 621. Cost and Attorney Fees.

Each party to a civil infraction case is responsible for costs incurred by that party, but the Court may assess witness fees against a non-prevailing respondent. Attorney fees may not be awarded to either party in a civil infraction case.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 621]

Section 622. Court Costs

All persons found to have committed an infraction shall be assessed court costs in the amount of \$60 for each notice of infraction, in addition to the fine. Court costs are due to the court at the same time the fine assessed is due.

[History: 2020, June 16; R-37-20:
PUBLIC LAW # T 6 § 622]