

TITLE 7 - CRIMES

CHAPTER 2 - EXTRADITION

Legislative History: The "Tohono O'odham Nation Extradition Ordinance," Ordinance No. 03-02, was enacted by Resolution No. 03-205 on May 8, 2003.

TOHONO O'ODHAM NATION EXTRADITION ORDINANCE¹

Ordinance No. 03-02

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¹ Enacted by Resolution No. 03-205.

ARTICLE I. GENERAL PROVISIONS

§ 1.1 Definitions.

As used in this Ordinance:

- (1) "Demanded person" means a person whose return to a demanding jurisdiction is sought from another tribe or a state by extradition.
- (2) "Demanding jurisdiction" means a tribe or state that is seeking the return of a person from another tribe or a state through the process of extradition.
- (3) "Executive authority" means the chief executive of a state or a tribe other than the Nation, any person performing the functions of the chief executive, a representative designated by the chief executive, or an person lawfully delegated authority to demand extradition.
- (4) "Issuing authority" means any person who may issue or authorize the issuance of an arrest warrant.
- (5) "Judicial Court" means the Tohono O'odham Judicial Court, including the Children's Court and other Judicial Court divisions as context requires.
- (6) "Prosecutor" means a prosecutor of the Tohono O'odham Nation Office of the Prosecutor.
- (7) "Nation" means the Tohono O'odham Nation.
- (8) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
- (9) "Tribe" means any federally-recognized Indian tribe.
- (10) "Warrant" or "Arrest Warrant," shall include warrants to apprehend for protective custody as context requires.

§ 1.2 Non-Waiver by the Nation.

This Ordinance and proceedings under it are not exclusive and do not affect the authority of the Nation to:

- (1) prosecute a demanded person for a crime or juvenile offense committed within the Nation's jurisdiction;
- (2) take custody of a person by extradition proceedings for the purpose of trial, sentence, or punishment for a crime, or the adjudication and disposition of a juvenile offense committed

within the Nation's jurisdiction; or

(3) take custody of a person by writ of habeas corpus or under other provisions of law, including intergovernmental agreements.

§ 1.3 Scope.

(A) The provisions of this Ordinance shall apply to the extradition of and federal writs of habeas corpus for prosecution of all persons who are subject to the Nation's criminal jurisdiction and all persons under the age of eighteen (18) who are subject to extradition pursuant to § 5.1(A) of this Ordinance.

(B) The Tohono O'odham Police Department may transfer a person not identified in § 1.3(A) to the custody of a state or federal law enforcement official upon probable cause to believe that a criminal arrest warrant has been issued for that person.

§ 1.4 Applicability of Other Law.

(A) A person returned to the Nation is subject to the laws of the Nation as well as the provisions of law that constituted the basis for the return.

(B) This Ordinance does not limit the powers, rights, or duties of the officials of a demanding tribe or state or of the Nation.

ARTICLE II. PROCEDURES PRIOR TO EXTRADITION

§ 2.1 Issuance of Arrest Warrant Prior to Receipt of Demand.

Upon the Prosecutor's motion, a Judicial Court judge shall authorize the issuance of an arrest warrant to obtain the appearance of a person, if a copy of the demanding jurisdiction's arrest warrant is presented and there is probable cause to believe:

(A) the person is within the exterior boundaries of the Nation or is subject to the Nation's jurisdiction; and

(B) the person is the subject of an arrest warrant issued by another tribe or a state for (i) commission of a crime, (ii) escape from confinement, or (iii) violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding.

§ 2.2 Demand for Extradition.

(A) The Prosecutor may recognize a written demand by an executive authority for the extradition of a person, alleging that the person:

(1) is charged with a crime in the demanding jurisdiction; or

(2) having been charged with or convicted of a crime in the demanding jurisdiction, has (i) escaped from confinement or (ii) violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding jurisdiction.

(B) The Prosecutor may demand the extradition of a person from another tribe or a state and may comply with the requirements of the other tribe or state for recognition of a demand.

§ 2.3 Supporting Documentation.

The demand for extradition shall be accompanied by a certified copy of an arrest warrant and one of the following:

(A) a statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that a crime has been committed and the demanded person committed the crime, together with a copy of the provision of law defining the crime;

(B) a certified copy of the charging instrument upon which the arrest warrant is based;

(C) a statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the demanded person has violated any term of bail, probation, or an order arising out of a criminal proceeding; or

(D) a certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the demanded person has escaped from confinement or violated any term of parole.

§ 2.4 Extradition of Persons In Custody or Awaiting Trial.

(A) If a demanded person is being prosecuted, is in custody, is on parole or probation, or is subject to an order arising out of a criminal or Children's Court proceeding on the Nation, the Prosecutor may:

(1) process the extradition upon conditions, which shall include a provision that the demanded person shall be returned to the Nation immediately upon completion of the demanding jurisdiction's prosecution;

(2) delay action; or

(3) process the extradition, but waive the demanded person's immediate return to the Nation as mandated by § 2.4(A)(1) and file the waiver with the Court before an order to transfer custody is issued.

(B) The Prosecutor may agree with an executive authority of another tribe or a state for the extradition of a person who is being prosecuted, is imprisoned, is on parole or probation, or is subject

to an order arising out of a criminal proceeding in that tribe or state upon conditions prescribed by the agreement.

§ 2.5 Nation's Warrant.

If the Prosecutor decides to process the demand for extradition, he shall issue a warrant for the arrest and extradition of the demanded person. The Nation's warrant must recite the name of the tribe or state demanding extradition and the crime charged or other basis for the demand. Such a warrant shall become valid only upon receiving the signature of a judge of the Judicial Court.

ARTICLE III. EXTRADITION PROCEEDINGS

§ 3.1 Rights of Demanded Person; Initial Appearance.

(A) A person arrested pursuant to § 2.1 or § 2.5 shall, within thirty-six (36) hours, be brought before a judge of the Judicial Court who shall receive the warrant and inform the person of:

- (1) the name of the tribe or state demanding extradition;
- (2) the crime charged or other basis for the demand;
- (3) the right to assistance of counsel at the person's expense;
- (4) the right to require an extradition hearing under § 3.2 before transfer of custody to the other tribe or to a state; and
- (5) the opportunity to voluntarily waive the right to an extradition hearing and consent to extradition.

(B) After being informed by the judge of the effect of a waiver, the demanded person may waive the right to an extradition hearing and consent to return to the demanding jurisdiction by executing a written waiver in the presence of the judge. If the waiver is executed, or has previously been executed as a condition of probation, parole, or otherwise, the judge shall issue an order to transfer custody pursuant to § 4.1 or, with the consent of the executive authority of the demanding jurisdiction, authorize the voluntary return of the person. The Judicial Court shall not honor a previously executed waiver of extradition unless a copy of the waiver which contains the demanded person's signature is presented.

(C) If an extradition hearing is not waived, the judge shall hold it within ten (10) days after the initial appearance. The demanded person and counsel, if any, and the Office of the Prosecutor shall be noticed of the time and the place of the hearing.

- (1) When the arrest was made pursuant to § 2.1 and the demand and supporting documents required pursuant to § 2.3 are not presented to the court, the judge may (a) release the person upon conditions that will reasonably assure availability of the person for the extradition hearing, or (b) order the person held in custody pending the extradition hearing. If ordered,

any conditions of release shall, in addition, require the posting of a bond not less than the amount of any bond set in the demanding jurisdiction. An order setting release conditions pursuant to this section shall not affect any custody or conditions of release ordered in a criminal action brought by the Nation.

(2) When the demand and supporting documents required pursuant to § 2.3 are presented to the court, the demanded person shall be held in custody pending the extradition hearing.

§ 3.2 Extradition Hearing.

(A) If the judge after hearing finds that a warrant supported by the documentation required by § 2.3 has been presented, the judge shall issue an order to transfer custody pursuant to § 4.1 unless the arrested person establishes by clear and convincing evidence that he is not the demanded person. The judge shall not inquire into the guilt or innocence of the accused except as may be necessary in identifying the person held as the person demanded.

(B) If the judge does not order transfer of custody, the judge shall order the arrested person to be released.

(C) Neither an order to transfer custody nor an order to deny transfer is appealable.

ARTICLE IV. TRANSFER OF CUSTODY

§ 4.1 Order to Transfer Custody.

(A) Except as provided in subsection (B) of this section, a judicial order to transfer custody issued pursuant to § 3.1 or § 3.2 must direct a law enforcement officer to take or retain custody of the person until an agent of a state or other tribe is available to take custody. If the agent of the state or other tribe has not taken custody within five (5) days, the judge may extend the original order for an additional ten (10) days only upon good cause shown for the failure of an agent of the state or other tribe to take custody. An order to transfer custody of a demanded person who is subject to immediate return pursuant to § 2.4(A) shall require the person's return to the Nation immediately upon completion of the demanding jurisdiction's prosecution unless the Nation files a written waiver pursuant to § 2.4(A)(3).

(B) If the agent of the state or other tribe has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant to obtain the appearance of that person is issued as a result of a new demand for extradition.

(C) An order releasing the demanded person from custody pursuant to this section shall not affect any custody or conditions of release ordered in a separate criminal action brought by the Tohono O'odham Nation.

(D) The judge in the order may authorize the voluntary return of the person to the demanding jurisdiction with the consent of the executive authority.

(E) When an order to transfer custody is issued, any criminal proceeding or action pending in the Judicial Court against the demanded person shall be stayed pending a hearing in the Judicial Court after the person's return.

§ 4.2 Cost of Return.

Unless the Nation and the demanding jurisdiction otherwise agree, the tribe or state to which the person is being returned shall pay the cost of returning the person to the demanding jurisdiction.

§ 4.3. Payment of Transportation and Subsistence Costs.

If a person returned to the Nation is found not to have violated the law that constituted the basis for the return, upon the person's written petition and after notice to the Nation, the opportunity to respond, and a hearing on the merits, the judge may order the Nation to pay the person the cost of transportation and subsistence to the place of the person's initial arrest or the person's residence.

ARTICLE V. EXTRADITION OF JUVENILES; TRANSFER TO UNITED STATES

§ 5.1 Extradition of Juveniles.

(A) A person under the age of eighteen (18) years shall be subject to extradition pursuant to this Ordinance only if the extradition is based upon the grounds set forth in § 2.2(A)(1) or (A)(2). No person under the age of eighteen (18) years shall be subject to extradition pursuant to this Ordinance based upon proceedings in the demanding jurisdiction for juvenile delinquency, truancy, dependency, or any other action or order that is not criminal in nature.

(B) The Children's Court shall have jurisdiction over the extradition of a person under the age of eighteen (18) who is not currently under the jurisdiction of the Criminal Division of the Judicial Court.

(C) The Criminal Division of the Judicial Court shall have jurisdiction over the extradition of a person under the age of eighteen (18) who is currently under the jurisdiction of the Criminal Division of the Judicial Court.

(D) Except as otherwise provided in this Ordinance, the Tohono O'odham Nation Children's Code shall not apply to the extradition of juveniles.

(E) A person under the age of eighteen (18) who is subject to extradition in the Children's Court shall be entitled to the rights provided in Section 12 of the Nation's Children's Code.

(F) In addition to the provisions of § 3.1(C)(1) of this Ordinance, the Children's Court shall apply the criteria in Section 5 of the Children's Code in determining whether a juvenile shall be held in custody pending the extradition hearing. A separate detention hearing pursuant to Section 6 of the Children's Code shall not be required.

§ 5.2 In Custody Transfers to the United States.

(A) Upon receipt of (1) a writ of habeas corpus and a certified arrest warrant issued by the United States of America, and (2) a motion to grant comity filed by a Nation's Prosecutor, the Judicial Court may grant comity to such a writ and order the person held in custody until transferred to an agent of the United States within five days. If the agent of the United States has not taken custody within five (5) days, the judge may extend the original order for an additional ten (10) days only upon good cause shown for the failure of an agent of the United States to take custody.

(B) The court shall not grant comity as provided in this section when criminal proceedings are pending against the person held in the Nation's custody unless (1) the federal writ requires the person to be returned to the Nation's custody immediately upon the completion of the federal prosecution or (2) the Prosecutor waives the person's immediate return and files the waiver with the Judicial Court. If the court grants comity to the federal writ, the Nation's proceedings shall be stayed pending a hearing in the Judicial Court after the person's return.

(C) If an agent of the United States has not taken custody within five (5) days after the transfer order is served upon the Nation and the Chief of Police or his designee, the person who is the subject of the writ shall not be transferred. Thereafter, an order to transfer custody pursuant to this section may be entered only if a new arrest warrant is issued as a result of a new writ of habeas corpus.

ARTICLE VI. SEVERABILITY

§ 6.1 Severability.

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Enacting Tohono O'odham Nation Extradition Ordinance)

RESOLUTION NO. 03-205

1 **WHEREAS, the Constitution of the Tohono O'odham Nation vests the Legislative Council with the**
2 **power to "exercise the inherent powers of the Tohono O'odham Nation by providing**
3 **laws, ordinances or resolutions . . . to govern the conduct of members of the Tohono**
4 **O'odham Nation and other persons within its jurisdiction" and "to provide for the**
5 **maintenance of law and order and the administration of justice; . . . to enact criminal**
6 **and civil laws governing the conduct of any person within the Tohono O'odham**
7 **Nation consistent with federal law" (Constitution, Article VI, Section 1(c)(1) and (6));**
8 **and**

9 **WHEREAS, it is the Nation's interests to protect the safety of the Nation's communities by**
10 **continuing the practice of extraditing persons who are charged with criminal acts,**
11 **have escaped, or have violated any term of bail, probation, parole, or an order arising**
12 **out of a criminal proceeding to a demanding state or another tribal jurisdiction; and**

13 **WHEREAS, in the absence of a tribal law governing extraditions, Arizona courts have ruled that**
14 **Arizona law enforcement personnel may, in some cases, enter reservation lands and**
15 **remove a tribal member without coordinating with tribal law enforcement or**
16 **processing the extradition through the tribal court; and**

17 **WHEREAS, in order to protect the Nation's sovereignty and ensure that Arizona law enforcement**
18 **personnel abide by tribal law on the Tohono O'odham Nation, it is in the Nation's best**
19 **interests to formalize and make uniform the extradition process and; and**

20 **WHEREAS, the Judiciary Committee has developed the attached Tohono O'odham Nation**
21 **Extradition Ordinance after presenting a draft of the Ordinance at public hearings**
22 **across the Nation, and soliciting comments from the Districts, Nation's members,**
23 **Police Department, Advocate Program, Prosecutor's Office, Judicial Court, Office of**
24 **the Attorney General and other entities within the Nation's government; and**

25 **WHEREAS, the Extradition Ordinance was previously forwarded to the Council for its review; and**

26 **WHEREAS, it is in the Nation's best interests to enact the Tohono O'odham Nation Extradition**
27 **Ordinance.**

28 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Nation Extradition Ordinance,**
29 **in the form attached hereto, is hereby enacted as an ordinance of the Tohono**
30 **O'odham Nation and shall be designated Ordinance No. 03-02.**

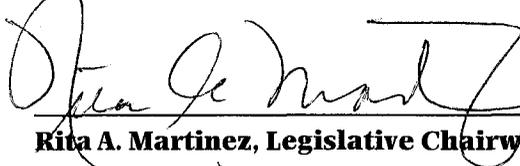
RESOLUTION NO. 03-205

(Enacting Tohono O'odham Nation Extradition Ordinance)

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The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 06TH. Day of MAY, 2003 at a meeting at which a quorum was present with a vote of 2,229.2 FOR; -0- AGAINST; 188.3 NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by Section 1 (c)(1) & (6) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Rita A. Martinez, Legislative Chairwoman

7th day of May, 20 03

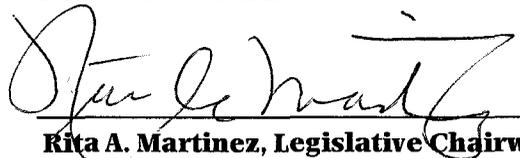
ATTEST:


Julianna Saraficio, Acting Legislative Secretary

06 day of May, 20 03.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 7th day of May, 20 03 at 4:13 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL


Rita A. Martinez, Legislative Chairwoman

[] APPROVED

on the 8th day of May, 20 03

[] DISAPPROVED

at 3:58 o'clock, P.M.



EDWARD D. MANUEL, Chairman
TOHONO O'ODHAM NATION

RESOLUTION NO. 03-205

(Enacting Tohono O'odham Nation Extradition Ordinance)

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Returned to the Legislative Secretary on the 12th day of

May, 20 03, at 11:59 o'clock, A.M.



Julianna Saraficio, Acting Legislative Secretary