

RULES OF CRIMINAL PROCEDURE

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CHAPTER 1 GENERAL PROVISIONS

Section 101 Scope

The provisions of this Title shall govern procedure in all criminal proceedings in the Tribal Court.

Section 102 Purpose and Construction

The provisions of this Title are intended to provide for the just, speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare.

The determination of criminal matters shall be governed in all respects by the provisions of the Tribal Code unless otherwise expressly provided in this Title.

Section 103 Computation of Time

- (A) Whenever a tribal law, or an order of the court requires that an action be taken within a certain number of days, the day of the event from which the time limit runs shall not be counted; but the last day shall be counted unless it is a Saturday, Sunday, or tribal holiday. When the last day is a Saturday, Sunday, or tribal holiday, the deadline shall be the first work day following the day that is not counted. Where the time limit is less than seven days, Saturdays, Sundays, and tribal holidays shall not be counted at all.
- (B) When a time limit is counted from or to the time that notice is delivered to a person and the notice is delivered by mail rather than personal service, it shall be presumed that delivery takes place three days after the notice is placed in a United States Postal Service mailbox.

CHAPTER 2 SEARCH AND SEIZURE

Section 201 Search Warrants

A search warrant is a written order, signed by a Tribal Court judge, and directed to a tribal law enforcement officer ordering him or her to conduct a search and to seize items of property specified in the warrant, or to search for a person for whom an arrest warrant is outstanding.

- (A) A search warrant shall be issued only upon the judge's finding of probable cause and every search warrant shall:
 - (1) Identify and describe the particular property or place to be searched;
 - (2) Identify and describe the items to be searched for and seized, and/or the person to be searched for;
 - (3) Specify a time limit after which the warrant is void, in no case longer than ten days from the date of its issuance.

- (B) The search warrant shall specify that probable cause exists to believe the search will discover:
 - (1) Stolen, embezzled, contraband, or otherwise unlawfully possessed property;
 - (2) Property which has been or is being used to commit a criminal offense;
 - (3) Property which constitutes evidence of the commission of a criminal offense; or
 - (4) A person for whom an arrest warrant is outstanding

Section 202 Examination of Oath; Affidavits; Issuance of Search Warrants

- (A) Before issuing a warrant, the Tribal Court judge:
 - (1) May examine, on oath, the person or persons seeking the warrant, and any witnesses produced, and must take his affidavit, or their affidavits, in writing and cause the affidavit to be subscribed by the party or parties making the affidavit. The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing the grounds exist;
 - (2) may also examine any other sworn affidavit submitted to him which sets forth facts tending to establish probable cause for the issuance of the warrant;
 - (3) May take an oral statement under oath which shall be recorded on tape, wire or other comparable method in lieu of, or in addition to, a written affidavit, or affidavits, as provided in subsection (1). This statement may be given in person to the Tribal Court judge or by telephone, radio or other means of electronic communication. This statement is deemed to be an affidavit for the purposes of issuance of a search warrant. The recorded statement shall be transcribed at the request of the court or either party, certified by the Tribal Court judge, and filed with the court.

Section 203 Issuance: Form of Search Warrants; Duplicate Original Warrant

- (A) Every Tribal Court judge shall have the power to issue warrants for the search and seizure of the property and premises of any person under the jurisdiction of the court.

- (B) If the Tribal Court judge is satisfied that probable cause for the issuance of the warrant exists, the Tribal Court judge shall issue a search warrant commanding a search by any tribal law enforcement officer of the person or place specified, for the items described.

(C) On a reasonable showing that an announced entry to execute the warrant would endanger the safety of any person or would result in the destruction of any of the items described in the warrant, the Tribal Court judge shall authorize an unannounced entry.

(D) The warrant shall be in substantially the following form:

“To any Tribal law enforcement officer:

Proof by affidavit having been this day made before me by (naming every person whose affidavit has been taken) there is probable cause for believing that (stating the grounds of the application), You are therefore commanded to make a search of (naming persons, buildings, premises or vehicles, describing each with reasonable particularity) for the following property, persons or things: (describing such with reasonable particularity), and if you find such or any part thereof, to retain such in your custody.

Given under my hand or direction and dated _____ (Tribal court Judge.)”

(E) The Tribal Court judge may orally authorize a law enforcement officer to sign the Tribal Court judge's name on a search warrant if the law enforcement officer applying for the warrant is not in the actual physical presence of the Tribal Court judge. This warrant shall be called a duplicate original search warrant and shall be deemed a search warrant for the purposes of this chapter. In such cases, the Tribal Court judge shall cause to be made an original warrant and shall enter the exact time of issuance of the duplicate original warrant on the face of the original warrant. Upon the return of the duplicate original warrant, the Tribal Court judge shall file the original warrant and the duplicate original warrant.

(F) A Tribal Court judge may affix the Tribal Court judge's signature on a facsimile of an original warrant. The facsimile of the original warrant is deemed to be a search warrant for the purposes of this chapter. On return of the facsimile of the original warrant, the Tribal Court judge shall file the original warrant and the facsimile of the original warrant.

Section 204 Execution and Return of Search Warrant

(A) Search warrants shall only be executed under the supervision of tribal law enforcement officers.

(B) The executing officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limit shall be void.

- (C) The warrant shall be served between 7:00 a.m. and 9:00 p.m., unless the judge, upon a showing of good cause therefore, inserts a direction that it be served at some other time.

Section 205 Search without a Warrant

- (A) No tribal law enforcement officer shall conduct any search without a valid warrant except:
- (1) Incident to making a lawful arrest, in which case the search shall be limited to the individual arrested and the immediate surroundings within his or her reach; or
 - (2) With the voluntary consent of the person being searched, or of the owner or occupant of the place to be searched; or
 - (3) When the search is incident to an arrest and seizure of contraband, and such search is for the purpose of taking an inventory of the item(s) in order to protect the property of the person or owner, and to account for all item(s) which have been seized; or
 - (4) Any other search which does not violate the constitutional rights of an individual, and has been found to be reasonable under the particular facts and circumstances of the situation by the Tribal Court and the Supreme Court of the United States.

Section 206 Investigative Stop and frisk

- (A) In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense. If the stop is for a traffic violation, the officer shall promptly inform the person of the reason for the stop.
- (B) A police officer who has lawfully stopped a person or a vehicle under this section may:
- (1) Request the person's name and present address and an explanation of the person's actions and, if the person is the driver of a vehicle, demand the person's driver's license and the vehicle's registration and proof of insurance; and
 - (2) Frisk the person and take other reasonably necessary steps for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present. The officer may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe that the object is a deadly weapon or an illegal substance until the completion of the stop, at which time the officer shall either immediately return the object, if legally possessed, or arrest the person.

Section 207 Disposition of Seized Property

- (A) Any tribal law enforcement officer who seizes property by warrant or otherwise, shall make an inventory of all property seized, and a copy of such inventory shall be given to the person from whom the property was taken;
- (B) After the entry of a judgment finally disposing of a case, a hearing shall be held by the Tribal Court to determine the disposition of all property seized by any tribal law enforcement agency in connection with that case. Upon satisfactory proof of ownership, the property shall be delivered to the owner unless such property is contraband or is to be used as evidence in a pending case;
- (C) Property taken as evidence, other than contraband, shall be returned to the owner after final judgment. Property confiscated as contraband shall become the property of the tribe and may be either destroyed, sold at public auction, retained for the benefit of the tribe, or otherwise lawfully disposed of as ordered by the court.

Section 208 Exclusion of Unlawfully Obtained Evidence

The Court shall prohibit the introduction or use at trial of any evidence seized in a search conducted in violation of this Chapter.

CHAPTER 3 PRELIMINARY PROCEEDINGS

Section 301 Complaint

- (A) All criminal prosecutions for violation of the Tribal Criminal Code shall be initiated by the filing of a complaint in the Tribal Court. A complaint is a written statement of the essential facts constituting an offense, signed by a law enforcement officer or a prosecutor, or made upon oath before a judge, and charging that a named individual has committed a particular criminal offense.
- (B) Complaints shall contain:
 - (1) A written statement, describing in ordinary language the offense committed, including the time and place as nearly as may be determined, and the name or description of the person alleged to have committed the offense; and
 - (2) The section of the Tribal Code allegedly violated.
- (C) The chief prosecutor, deputy prosecutor, or lay advocates under the supervision of the Chief Prosecutor or Deputy Prosecutor shall file all criminal complaints with the Tribal Court based upon information received from the investigating law enforcement officer or a complaining witness. The filer may have the officer or witness verify the written

complaint by signing an affidavit or other signed statement to be attached to the complaint.

- (D) If the complaint, or the complaint together with other signed statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the court shall issue a summons commanding the accused to appear before the court at a specified time and place to answer to the charge.
- (E) If a defendant who has been duly summoned fails to appear, or there is reasonable cause to believe he or she will fail to appear upon being summoned, or if the summons cannot readily be served or delivered, an arrest warrant shall issue to affect the defendant's appearance to answer to the charge.
- (F) When an accused has been arrested without a warrant, a complaint or a complaint together with other sworn statements, shall be filed with the court for review as to whether probable cause exists to hold the accused, and in all cases, a complaint shall be filed no later than at the time of arraignment, otherwise the defendant shall be released without prejudice to the subsequent filing of a criminal complaint.

Section 302 Arrest

- (A) Arrest is the taking of a person into custody in order that he or she may be held to answer for a criminal offense.
- (B) No tribal law enforcement officer shall arrest any person for a criminal offense set out in the Tribal Code except when:
 - (1) The officer has a warrant signed by a tribal judge commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or
 - (2) The offense occurred in the presence of the arresting officer; or
 - (3) The officer has probable cause to believe that the person to be arrested has committed an offense.
- (C) Any enforcement officer having authority to make an arrest may, and in the case where a reasonable person has reason to believe that life or limb is in danger, break open an outer or inner door or window of a dwelling house or other structure for the purpose of making the arrest if, after a notice of his intention, he is not allowed admittance within a reasonable time.

Section 303 Arrest Warrants

- (A) Judges shall have the authority to issue warrants of arrest if they find there is probable cause to believe an offense against tribal law has been committed by the named accused, based on sworn written or sworn oral testimony;

- (B) Every arrest warrant shall command that the defendant be arrested and brought before the issuing judge, or, if he or she is unavailable, another tribal judge, and shall contain the following information:
- (1) The name of the defendant, or if his or her name is unknown, any name or description by which he or she can be identified with reasonable certainty; and if known, the defendant's address; and
 - (2) The date of issuance of the warrant; and
 - (3) A statement of the offense with which the defendant is charged and a description of the acts which the accused committed which constitute the offense; and
 - (4) The signature of the issuing judge.
- (C) A list of warrants shall be updated frequently and any served or quashed warrants shall be struck from the warrant list immediately.

Section 304 Execution and Return of Warrant

- (A) The warrant shall be directed to, and may be executed by, any tribal law enforcement officer.
- (B) A warrant shall be executed by arrest of the defendant. The officer need not have the warrant in his or her possession at the time of the arrest, but upon request shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his or her possession at the time of the arrest, he or she shall inform the defendant of the offense charged and of the fact that a warrant has been issued. The Officer shall, as soon as possible, show it to the defendant.
- (C) A warrant may not be executed by a tribal officer outside the boundaries of the Reservation.

Section 305 Defective Warrant

- (A) A warrant of arrest shall not be invalidated, nor shall any person in custody thereon be discharged, because of a defect in form.
- (B) The warrant may be amended by any tribal judge to remedy such defect.

Section 306 Notification of Rights after Arrest

- (A) A suspect who is under arrest shall be advised of the following rights prior to being questioned:
- (1) That he or she has the right to remain silent; and
 - (2) That any statements made by the suspect may be used against him or her in court; and

- (3) That the suspect has the right to obtain counsel at his/her own expense. A non-Indian suspect arrested pursuant to the Violence Against Women Act (VAWA) or an Indian suspect who is facing charges with a potential sentence of more than one (1) year imprisonment pursuant to the Tribal Law and Order Act (TLOA) has the right to counsel, and to have counsel present during all questioning, and legal counsel will be provided at no cost if the court finds that he or she does not have the financial ability to pay for counsel.

Section 307 Summons in lieu of Arrest Warrant

- (A) A law enforcement officer or a judge may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court at a stated time and place and answer to the charge.
- (B) The summons shall contain the same information as a warrant, except that it may be signed by a police officer or clerk of court.
- (C) The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his/her arrest shall be issued.
- (D) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his/her usual residence or place of business with a person of suitable age and discretion who also resides or works there. Service shall be made by an authorized law enforcement officer or process server, who shall make a return of service which shall be filed with the records of the case.

Section 308 Procedure upon Arrest

- (A) A person arrested, with or without a warrant, shall be taken before a tribal judge without unnecessary delay for an initial appearance. A person arrested shall be taken for an initial appearance before the tribal judge who issued the arrest warrant, if the arrest was with a warrant, or, if the issuing judge is unavailable, or if the arrest was without a warrant, before the first available tribal judge.
- (B) Upon defendant's appearance before the judge, a complaint, if one has not already been filed, shall promptly be prepared and filed. If a complaint is not filed by the time of the initial appearance before the judge, or by the time of the arraignment, whichever is later, the defendant shall be released from jail without prejudice to the subsequent filing of a criminal complaint.

Section 309 Initial Appearance

- (A) At the initial appearance of any person who was arrested without a warrant and against whom no verified complaints have been filed, the court shall, after informing the accused of his or her rights, as outlined below, first determine whether or not probable cause exists to continue to detain and prosecute the accused, and if not, shall order the accused released from custody immediately.
- (B) At defendant's initial appearance pursuant to an arrest warrant and/or against whom complaints have been filed, the judge shall:
- (1) Inform the defendant of his or her rights;
 - (2) Determine the defendant's true name and address and, if necessary, amend the formal charges, if filed, to reflect it, instructing the defendant to notify the court promptly of any change of address;
 - (3) Inform the defendant of the charges against him or her; and
 - (4) Provide timely notice to any person detained by order of the Tribe pursuant to 25 U.S.C. 1304 of his or her right to file in a court of the United States a petition for writ of habeas corpus and a petition to stay his or her further detention.

Section 310 Video and Audio Proceedings

- (A) Defendant in the Courtroom or at a Separate Location. Notwithstanding the requirements in other provisions in this Chapter, the courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a defendant located at a prison, jail, or other location:
- (1) Initial hearings on the warrant or complaint;
 - (2) Arraignments, pretrial conferences, pleas, show cause hearings, waivers and adjournments of extradition;
 - (3) Referrals for forensic determination of competency; or
 - (4) Waivers and adjournments of preliminary examinations.
- (B) As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, the courts may use telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness or, upon a showing of good cause, any person at another location in a preliminary examination.
- (C) As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, courts may use two-way interactive video technology to take testimony from a person at another location in the following proceedings:
- (1) Evidentiary hearings, competency hearings, sentencings, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt;

- (2) With the consent of the parties, trials. A party who does not consent to the use of two way interactive video technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.
- (D) The use of telephonic, voice, video conferencing, or two-way interactive video technology in any proceeding in which it is used must be recorded by the court.

Section 311 Bail and Conditions of Release Prior to Trial

- (A) Every defendant shall be released pending and during trial on his or her own recognizance, unless the court determines, based upon findings of fact made at the initial appearance, or a later hearing to modify the conditions of release, that:
- (1) Such release will not reasonably assure his or her appearance for all future hearings; or
 - (2) there is a grave risk that the defendant, while released, will commit a crime; or
 - (3) Such release will endanger the community.
- (B) Every person entitled to release under the terms of this section shall be entitled to release from custody pending and during trial under whichever one or more of the following conditions is deemed by the judge to be the least restrictive alternative which will reasonably assure the appearance of the person at any lawfully required hearing:
- (1) Release on personal recognizance upon signing by the accused of a written promise to appear at trial and all other lawfully required times;
 - (2) Release to the custody of the designated person or organization agreeing to assure the accused's appearance;
 - (3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.
 - (4) Release after deposit by the accused or a bondsman of bond in either cash or other sufficient collateral in an amount specified by the judge. The judge, in his or her discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.; or
 - (5) Release upon any other condition deemed by the judge to be reasonably necessary to assure the appearance of the accused as required.
- (C) At the initial appearance before a judge, a determination of the conditions of release shall be made. The defendant shall have the opportunity to be heard by the court with respect to the conditions of release. The court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for his or her arrest may be issued immediately upon report of a violation.
- (D) Every order of release on bond or defendant's own recognizance shall require that the defendant:

- (1) Appear to answer and submit to the orders and process of the court;
- (2) Refrain from committing any criminal offense; and
- (3) Not depart from the reservation without permission of the court.

Section 312 Modification and Revocation of Release

- (A) Any person remaining in custody may move for reexamination of the conditions of release based upon the existence of material facts not previously presented to the court.
- (B) The court may, on its own initiative, at any time modify the conditions of release, after giving the parties an opportunity to respond to the proposed modification.
- (C) Upon verified petition by the prosecutor stating facts or circumstances constituting a breach of the conditions of release, the court may issue a warrant or summons to secure the defendant's presence in court. A copy of the petition shall be served with the warrant or summons. If after a hearing on the matters set forth in the petition, the court finds that the person released has not complied with the conditions of release, the court may modify the conditions or revoke release.

Section 313 Disposition of Bond

- (A) Forfeiture: If at any time it appears to the court that a condition of an appearance bond has been violated, it shall require the parties and any surety to show cause why the bond should not be forfeited, setting a hearing thereon within ten days. If at the hearing the violation is not explained or excused in a legally sufficient manner, the court may enter an appropriate order of judgment forfeiting all or part of the amount of the bond.
- (B) Exoneration: At any time that the court finds that there is no further need for an appearance bond, it shall exonerate the appearance bond and order the return of any security deposited.
- (C) A surety bond must be exonerate upon proof of the defendant's death or incarceration or subjection to court-ordered treatment in a foreign jurisdiction.
- (D) If the defendant appears and the defendant posted the bond, the Court may order that the bond be converted to pay fines, fees, surcharges, or restitution on the case at hand and/or other cases involving the defendant. The Court does not need the defendant's consent to order the conversion.
- (E) If the defendant appears, the Court may order the bond be converted to fines, fees, surcharges, or restitution on the case at hand and/or other cases the defendant may have if the person who posted the bond, not the defendant, agrees to the bond conversion.

Section 314 Arraignment

- (A) Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and the charges against him/her, receiving his/her plea, and setting conditions of pre-trial release as appropriate in accordance with this code.
- (B) Arraignment shall be held in open court with the defendant present, and, unless time is waived by the defendant with the concurrence of the court, shall take place within ten days after the initial appearance.
- (C) At the arraignment the court shall:
- (1) Determine the defendant's plea of not guilty, guilty, or no contest. Unless the defendant pleads guilty or no contest, the court shall enter a plea of not guilty on the defendant's behalf;
 - (2) Hear and decide motions concerning the conditions of release;
 - (3) Set the date of trial; and
 - (4) Advise the parties in writing of the dates set for further proceedings and other important deadlines.

Section 315 Rights of Accused at Arraignment

- (A) Before an accused is required to plead to any criminal charge, the judge shall:
- (1) Advise the accused that he or she has the right to remain silent; to be tried by a jury if accused of a crime which is punishable by imprisonment; and to be represented by counsel at his or her own expense; and that the arraignment will be postponed if the accused desires to consult with counsel and waives arraignment time requirements; and
 - (2) If the accused is arraigned pursuant to the special domestic violence criminal jurisdiction over non-Indians, the accused has the right to obtain counsel and the right to a reasonable continuance to obtain counsel. If the defendant cannot afford counsel, one will be appointed for him/her at the expense of the Tribes. The right to appointed counsel continues through the appeals process.
 - (3) Read to the accused, and determine that he or she understands the complaint, the section of the Tribal Code which he or she is charged with violating, including the maximum authorized penalty.

Section 316 Not Guilty Plea

If the accused pleads "not guilty" to the charge, the judge shall then inform him or her of the trial date and any other hearing deadlines and/or dates and set conditions for release prior to trial.

Section 317 Plea of Guilty or No Contest

- (A) A Judge may only accept a plea of guilty or no contest on the following conditions:
- (1) When made by the defendant personally in open court;
 - (2) Voluntarily and intelligently made and not the result of force, threats or promises (other than a plea agreement). Before accepting a plea of guilty or no contest, the court shall address the defendant personally in open court, informing the defendant of, and determining that he or she understands:
 - (a) The nature of the charge to which the plea is offered; and
 - (b) The nature and range of possible sentences for the offense to which the plea is offered.
 - (c) The rights the defendant gives up by pleading guilty or no contest, including: right to counsel; right to a trial; right to plead not guilty; right to a jury if accused of a crime punishable by any term of imprisonment; right to confront and cross-examine his or her accusers; and right to subpoena witnesses.
 - (3) The judge determines that there is a factual basis for the plea.
 - (4) A plea of no contest may be accepted only after due considerations of the views of the parties and the interest of the public in the effective administration of justice.

Section 318 Withdrawal of Guilty Plea

The Court may, in its discretion, allow a defendant to withdraw a plea of guilty if it finds that the interests of justice and fairness would be served by doing so. Upon withdrawal, the charges against the defendant as they existed before any amendment, reduction or dismissal made as part of a plea agreement shall be reinstated automatically.

Section 319 Plea Negotiations

- (A) The prosecutor and the defendant may negotiate concerning, and reach an agreement on, any aspect of the disposition of the case.
- (B) The terms of a plea agreement shall be in writing and shall be signed by the defendant, his or her counsel, if any, and the prosecutor. An agreement may be revoked by any party before it is accepted by the court.
- (C) The parties shall file the agreement with the court, which shall address the defendant personally and determine that he or she understands and agrees to its terms, that the written document contains all the terms of the agreement, and that the plea is entered into knowingly and voluntarily, with proper legal advice, and full understanding of the consequences.
- (D) After making such determinations, the court shall either accept or reject the tendered negotiated plea. The court shall not be bound by any provision of the plea agreement regarding the sentence or the term and conditions of probation to be imposed, if, after

accepting the agreement and reviewing a pre-sentence report, it rejects the provision as inappropriate.

(1) If an agreement or any provision thereof is rejected by the court, it shall give the defendant an opportunity to withdraw the plea, advising the defendant that if he or she allows the plea to stand, the disposition of the case may be less favorable than contemplated by the agreement.

(E) When a plea agreement or any term thereof is accepted, the agreement or such term shall become part of the record. However, if no agreement is reached, or if the agreement is revoked, rejected by the court, or withdrawn or if the judgment is later vacated or reversed, neither the plea discussion nor any resulting agreement, plea, or judgment, nor statements made at a hearing on the plea, shall be admissible against the defendant in any criminal or civil action or administrative proceeding.

(F) If a plea is withdrawn after submission of the pre-sentence report, the judge, upon request of the defendant, shall disqualify himself or herself.

Section 320 Pretrial Conference

At any time after arraignment, the court, at the request of any party or upon its own motion, may order one or more conferences to consider such matters as will promote a fair and expeditious trial. Such a conference shall be held only if the defendant is represented by counsel, or knowingly and voluntarily waives the right to counsel at the conference. At the conclusion of the conference the court shall prepare and file a memorandum of the matters agreed upon and any orders that the court deems appropriate to the case.

Section 321 Motions

(A) At any time after the arraignment, either party may, by filing a written motion, or by making an oral motion in open court in the presence of all other parties, request that the court issue a particular order.

(B) A motion to dismiss for lack of jurisdiction may be made at any time while the case is pending.

(C) Motion raising several defenses, objections, and requests must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits. Such motions may include, but are not limited to:

- (1) Motions to set aside the complaint;
- (2) Motions to Continue;
- (3) Motions to dismiss with or without prejudice;
- (4) Motions to suppress evidence which was illegally seized, or which was the product of the fruits of an illegal search or seizure;

- (5) Motions to prevent the introduction of evidence due to its unfairly prejudicial, inflammatory, or irrelevant nature;
 - (6) Motions to exclude witnesses from the courtroom until they are called by the judge, and to instruct them not to discuss the case; and
 - (7) Motions asserting a violation of the constitutional right to a speedy trial.
- (D) The complaint must be set aside by the Trial Court upon the defendant's motion to set aside the complaint in the following cases:
- (1) Where it is found not to comply with the requirements of § 301;
 - (2) That the defendant has been charged without reasonable or probable cause;
 - (3) Upon a determination that the Court has no jurisdiction over the person or the offense.
- (E) An order to set aside the complaint, as provided for in this Rule, is no bar to further prosecution for the same offense, except in the case wherein the Trial Court has no jurisdiction.
- (F) Form and Content.
- (1) A Motion must:
 - (a) Be in writing unless the Court permits an oral motion during a trial or hearing;
 - (b) State the grounds on which it is based; and
 - (c) State the relief or order sought.
 - (2) The moving party must serve any supporting memoranda and affidavits with the motion. A responding party must serve any opposing memoranda or affidavits at least one day before the hearing, unless the Court permits later service.
- (G) Timing. A moving party must serve a written motion on the responding party and provide proof to the Court. The responding party shall have 5 work days to respond to the motion and provide service, unless the Court sets a different deadline in the interest of justice. After the initial motion is filed, the Court shall set a hearing within 10 days.
- (H) Setting Deadlines. The Court may, at the time of arraignment or soon afterward, set a deadline for the parties to make pretrial motions. If the Court does not set such a deadline, it is the start of trial.
- (I) If a party does not meet the deadline for a pretrial hearing pursuant to § 321(H), the motion shall be deemed untimely. However, the Court may consider the motion if the party shows good cause.

CHAPTER 4 RIGHTS OF THE DEFENDANTS

Section 401 Defendant's Rights in a Criminal Proceeding

- (A) Unless otherwise set forth in this Chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.
- (B) In all criminal proceedings, the defendant shall have the following rights:
- (1) To be free from excessive bail and cruel or unusual punishment;
 - (2) To a defense in person or by counsel;
 - (3) To be informed of the nature of the charges against him or her and to have a written copy of those charges;
 - (4) To confront and cross-examine all prosecution or hostile witnesses;
 - (5) To compel by subpoena;
 - (6) The attendance of any witnesses necessary to defend against the charges; and
 - (7) The production of any books, records, documents, or other things necessary to defend against the charges;
 - (8) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
 - (9) Not to twice be put in jeopardy for the same offense;
 - (10) The right trial by an impartial jury of his/her peers if the offense, or combination of offenses, charged is punishable by imprisonment;
 - (11) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and
 - (12) To petition for a writ of habeas corpus.

Section 402 Right to Counsel

- (A) At the initial appearance the defendant shall be informed of his right to be represented by counsel in any criminal proceeding at his own expense, except in those petty offenses such as traffic violations where there is no prospect of imprisonment or confinement after a judgment of guilty. The right to be represented shall include the right to consult with counsel as soon as feasible after a defendant is taken into custody, at reasonable times thereafter and sufficiently in advance of a proceeding to allow adequate preparation therefore.
- (B) An indigent defendant shall be entitled to have a licensed attorney appointed to represent him or her at the Tribe's expense in any criminal proceeding in which the Tribe is seeking punishment by loss of liberty and:
- (1) The Defendant is a non-Indian being prosecuted under the Tribe's Special Domestic Violence Criminal Jurisdiction pursuant to 25 U.S.C. §1304; or

- (2) The Tribe is seeking to impose a total term of imprisonment of more than one year on a defendant.
- (C) The Tribe shall notify the Court not later than thirty days before trial if the defendant has a right to appointed counsel at the Tribe's expense, and counsel shall be appointed by the Court. The Court will appoint an attorney licensed to practice law in both the Tribal Court and in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys at the Tribe's expense.
- (D) A defendant may waive his or her rights to counsel in writing, after the court has determined that he or she knowingly, intelligently and voluntarily desires to forego them. A defendant may withdraw a waiver of the right to counsel at any time, but will not be allowed to repeat any proceeding already held solely on the grounds of the waiver and consequent lack of counsel.

Section 403 Determination of Indigence

- (A) The term "indigent" as used in this Chapter means a person who is not financially able to employ counsel.
- (B) A defendant desiring to proceed as an indigent shall complete under oath a questionnaire concerning that defendant's financial resources, on a form approved by the Chief Judge. The defendant shall be examined under oath regarding defendant's financial resources by the judge presiding at the defendant's initial hearing.
- (C) After a determination of indigence or non-indigence has been made by the court, if there has been a material change in circumstances, either the defendant, the appointed attorney, or the prosecutor may move for reconsideration of that determination.

Section 404 Manner of Appointment

- (A) Whenever counsel is appointed, the court shall enter an order to that effect, a copy of which shall be given or sent to the defendant, the attorney appointed, and the prosecutor.
- (B) The public defender shall represent all persons entitled to appointed counsel whenever he or she is authorized by law, and able in fact to do so.
- (C) If the public defender is not appointed, an attorney under contract with the Tribe to provide conflict criminal defense services shall be appointed to the case.

- (D) On appeal of a matter requiring appointment of counsel, the trial or Appellate Court shall appoint new counsel for a defendant legally entitled to such representation when prior counsel has been permitted to withdraw.

Section 405 Judges

In a criminal proceeding in which a defendant faces charges which could result in loss of liberty of one year or more or a fine greater than \$5,000 or in which the defendant faces any length of imprisonment and is charged under the Special Domestic Violence Criminal Jurisdiction defined at 25 U.S.C. §1304, the criminal proceeding shall be presided over by a judge who has sufficient legal training to preside over criminal proceeding and is licensed to practice law by any jurisdiction in the United States.

Section 406 Speedy Trial

- (A) The trial of criminal cases shall have priority over the trial of civil cases.
- (B) The trial of defendants in custody and defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.
- (C) The prosecutor shall advise the court of facts relevant to determining the order of cases on the calendar.
- (D) The defendant's counsel shall advise the court of the impending expiration of time limits in the defendant's case. Failure to do so may result in sanctions and should be considered by the court in determining whether to dismiss an action with prejudice.

Section 407 Speedy Trial; Time Limits

- (A) Every person against whom a complaint has been filed shall be tried within 90 days of the arrest or service of summons or notice to appear.
- (B) Every person held in custody on a criminal charge shall be tried within 90 days from the date of initial appearance or within 60 days from the date of arraignment, whichever is the lesser.
- (C) Every person released pending trial shall be tried within 120 days from the date of initial appearance or within 90 days from the date of arraignment, whichever is the greater.
- (D) A trial ordered after a mistrial, upon a motion for a new trial, or upon the reversal of a judgment by the court of appeals shall begin within 60 days of the entry of the order of the court of appeals.

- (E) The calculation of the time limits prescribed by this section shall not include any delays caused by or on behalf of the defendant, including, but not limited to, delay caused by an examination and hearing to determine competency, the defendant's absence or incompetence, or his or her inability to be arrested or taken into custody on the reservation. The Court may grant a continuance where good cause has been established by either party.

Section 408 Denial of Speedy Trial; Dismissal

If the court determines that a speedy trial time limit established by this Chapter has been violated, it shall, on motion of defendant or on its own initiative, dismiss the prosecution, with or without prejudice, as justice requires.

Section 409 Issuance of Subpoenas

- (A) Upon the request of any party to a case or upon the Tribal Court's own initiative, the court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant, necessary to the determination of the case and not an undue burden on the person possessing the evidence.
- (B) A subpoena shall bear the signature of a tribal judge, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

Section 410 Service of Subpoenas

- (A) A subpoena may be served at any place within or without the confines of the reservation, but any subpoena served outside the reservation shall be served by a person authorized to serve subpoenas according to the law of the jurisdiction in which the subpoena is served.
- (B) Except as provided in Subsection (A) above for the service of subpoenas outside of the reservation, a subpoena may be served by any tribal law enforcement officer or other person appointed by the court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence with any competent person 16 years of age or older who also resides there.
- (C) Proof of service of the subpoena shall be filed with the clerk of the court by noting on a copy of the subpoena the date, time, and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

Section 411 Failure to Obey Subpoena

- (A) Upon determining that any person has failed to obey a subpoena without a justification satisfactory to the court, the court may issue an order to show cause why that person should not be held in contempt of court, and a bench warrant for his or her arrest, and direct that the order and warrant be served upon the person. Willful evasion of service of a subpoena shall be considered failure to obey a subpoena.
- (B) Upon the arrest of the person made the subject of the order to show cause, that person shall be given the opportunity to justify to the court his or her failure to obey the subpoena. In the event that the court determines that the failure to obey the subpoena was unjustified, the court may find the person in contempt of court and sentence him or her pursuant to the Tribal Code.

CHAPTER 5 DISCOVERY

Section 501 Disclosure by Tribe

- (A) No later than ten days after the arraignment, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within the prosecutor's possession or control:
- (1) The names and address of all persons whom the prosecutor will call as witnesses in the case-in-chief together with their relevant written or recorded statements;
 - (2) All statements of the defendant and of any person who will be tried with the defendant;
 - (3) The names and addresses of experts who have personally examined a defendant or any evidence in that particular case, together with the results of physical examinations and of scientific tests, experiments or comparisons, including all written reports or statements made by them in connection with the particular case;
 - (4) A list of all papers, documents, photographs or tangible objects which the prosecutor will use at trial or which were obtained from or purportedly belong to the defendant;
 - (5) A list of all prior convictions of the defendant which the prosecutor will use to prove motive, intent, or knowledge or otherwise use at trial;
 - (6) All material or information which tends to mitigate or negate the defendant's guilt as to the offense charged or which would tend to reduce his or her punishment therefore, including all prior felony convictions of witnesses whom the prosecutor expects to call at trial.

(B) At the same time the prosecutor shall inform the defendant and make available to the defendant for examination and reproduction any written or recorded material or information within his possession or control regarding:

- (1) Whether there has been any electronic surveillance of any conversations to which the accused was a party or of his or her business or residence;
- (2) Whether a search warrant has been executed in connection with the case;
- (3) Whether or not the case has involved an informant, and if so, his or her identity; provided, however, that disclosure of the existence or identity of an informant who will not be called to testify shall not be required where disclosure or identification would result in substantial risk to the informant or to his or her operational effectiveness, unless the failure to disclose will infringe upon the rights of the accused under the Indian Civil Rights Act;
- (4) Additional disclosure upon request and specification. The prosecutor, upon written request, shall disclose to the defendant a list of the prior felony convictions of a specified defense witness which the prosecutor will use to impeach the witness at trial, and make available to the defendant for examination, testing, and reproduction any specified items contained in the list submitted under § 501(A)(4). The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section.

(C) Extent of prosecutor's duty to obtain information. The prosecutor's obligation under this Section extends to material and information in the possession or control of members of his or her staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor's control.

(D) Disclosure by Order of the court. Upon motion of the defendant showing substantial need in the preparation of his or her case for additional material or information not otherwise covered by Section § 501, and that defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order any person to make it available to him. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

Section 502 Disclosure by Defendant

(A) Physical evidence. At any time after the filing of the complaint, upon written request of the prosecutor, the defendant, in connection with the particular crime with which he or she is charged, shall:

- (1) Appear for a line-up;
- (2) Speak for identification by witnesses;
- (3) Be fingerprinted, palm-printed, foot printed or voice printed;
- (4) Pose for photographs not involving reenactment of an event;
- (5) Try on clothing;

- (6) Permit the taking of samples of his or her hair, blood, saliva, urine or other specified materials which involve no unreasonable intrusions of his or her body;
 - (7) Provide specimens of his or her handwriting; or
 - (8) Submit to a reasonable physical or medical inspection of his or her body, provided such inspection does not include psychiatric or psychological examination.
- (E) Defendant shall be entitled to the presence of counsel at the taking of such evidence. This Subsection shall supplement, and not limit, any other procedures established by law.
- (F) Notice of defenses. Within 20 days after the arraignment, or within ten days after the prosecutor had made the disclosures required by this Chapter, whichever is the longer time, the defendant shall provide the prosecutor with a written notice specifying all defenses as to which he or she will introduce evidence at trial, including, but not limited to, alibi, insanity, self-defense, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character. The notice shall specify for each defense the persons, including the defendant, whom the defendant will call as witnesses at trial in support thereof. It may be signed by either the defendant or defense counsel, and shall be filed with the court.
- (G) Disclosures by defendant. Simultaneously with the notice of defenses, the defendant shall make available to the prosecutor for examination and reproduction:
- (1) The names and addresses of all persons other than the defendant, whom the defense will call as witnesses at trial, together with all statements made by them in connection with the particular case;
 - (2) The names and addresses of experts to be called by the defendant at trial, together with the results of physical examinations and of scientific tests, experiments or comparisons, including all written reports and statements, made by them in connection with the particular case; and
 - (3) A list of all papers, documents, photographs and other tangible objects which the defense will use at trial.
- (H) Additional disclosure upon request and specification. The defendant, upon written request, shall make available to the prosecutor for examination, testing, and reproduction any specified items contained in the list submitted under § 502(G)(3).
- (I) Extent of defendant's duty to obtain information. The defendant's obligation under this Section extends to material and information within the possession or control of the defendant, and his or her defense counsel and agents.
- (J) Disclosure by order of the Court. Upon motion of the prosecutor showing that he or she has substantial need in the preparation of the case for additional material or information, that he or she is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the defendant's rights under the Indian Civil Rights Act, the court in its discretion may order any person

to make such material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

- (K) Disclosure of rebuttal evidence. Upon receipt of the notice of defenses required from the defendant the prosecutor shall disclose the names and addresses of all persons whom the prosecutor will call as rebuttal witnesses together with their relevant written or recorded statements.

Section 503 Excision and Protective Orders

- (A) Discretion of Court to Deny, Defer, or Regulate Discovery. Upon motion of any party showing good cause, the court may at any time order that disclosure of the identity of any witness be deferred for any reasonable period of time not to extend beyond five days prior to the date set for trial, or that any other disclosures required by this Chapter be denied, deferred or regulated when it finds:

- (1) That the disclosure would result in a risk of harm outweighing any usefulness of the disclosure to any party; and
- (2) That the risk of harm cannot be eliminated by a less substantial restriction of discovery rights.

- (B) Discretion of the court to authorize excision. Whenever the court finds, on motion of any party, that only a portion of a document or other material is discoverable under this Chapter, it may authorize the party disclosing it to excise that portion of the material which is non-discoverable and disclose the remainder.

- (C) Protective and excision order proceedings. On motion of the party seeking a protective or excision order, or submitting for the court's determination the discoverability of any material or information, the court may permit the party to present the material or information for the inspection of the judge outside of the presence of the jury. Counsel for all other parties shall be entitled to respond when such presentation is made.

- (D) Preservation of Record. If the court enters an order that any material, or any portion thereof, is not discoverable under this Chapter, the entire text of the material shall be sealed and preserved in the record to be made available to the court of appeals in the event of an appeal.

Section 504 Continuing Duty to Disclose

If at any time after a disclosure has been made any party discovers additional information or material which would be subject to disclosure had it then been known, such party shall promptly notify all other parties of the existence of such additional material, and make an appropriate disclosure.

Section 505 Sanctions

- (A) If at any time during the course of the proceeding, it is brought to the attention of the court that a party has failed to comply with any provisions of the discovery provisions of this Chapter or any order issued pursuant thereto, the court may impose any sanction which it finds just under the circumstances, including, but not limited to:
- (1) Ordering disclosure of the information not previously disclosed;
 - (2) Granting a continuance;
 - (3) Holding a witness, party, or counsel in contempt of court;
 - (4) Precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; and
 - (5) Declaring a mistrial when necessary to prevent a miscarriage of justice.

CHAPTER 6 TRIAL

Section 601 Trial Procedure; Evidence

- (A) The time and place of court sessions, and all other details of judicial procedure not determined by the provisions of this Chapter shall be set out in rules of court; provided, however, that no rule of court shall abridge any right granted or protected by this Chapter.
- (B) Whenever due process or the court requires, the Federal Rules of Evidence shall be adopted where the Tribal Rules of Evidence are silent on a particular issue in any trial proceeding or evidentiary hearing, unless otherwise found by the court to have been voluntarily and intelligently waived by the defendant.
- (C) In a felony case, the defendant shall be present in court at every stage of the trial, including impaneling the jury, return of the verdict, and imposition of sentence.
- (D) Trial by Judge. The date having been set for the hearing, the defendant shall be brought before the Court, with witnesses subpoenaed, and the defendant may, at their own expense, in a criminal proceeding, have assistance of counsel either professional or otherwise, for their defense. Counsel may be provided at no cost to the defendant if the court determines that he or she is indigent. The complaint shall be read to the defendant and the defendant may change their plea or stand trial. If the defendant changes their plea from "not guilty" to "guilty", sentence may be entered.

- (E) When two or more defendants are jointly charged with an offense, they shall be prosecuted jointly, provided that the Court may, in its discretion, on application duly made prior to trial, direct that separate trials be had.
- (F) A defendant in a criminal action need not testify. He is presumed to be innocent until the contrary is proven. The effect of this presumption is only to place upon the Tribe the burden of proving him guilty beyond a reasonable doubt. Under no circumstance may the Court compel any defendant in any criminal case to be a witness against himself. The defendant's failure to testify on his own behalf shall in no way be construed against him nor commented upon by the Tribe.
- (G) If defendant chooses to stand trial, the judge shall require the witnesses to be sworn and proceed to hear evidence. Evidence to support the complaint shall be heard first and followed by evidence on behalf of defendant. If rebuttal is required, the prosecution shall proceed first, followed by the defendant. The defendant shall have the right to argue their case and cross-examine the witnesses. At the conclusion of the evidence, the prosecution and defendant shall each in turn have an opportunity to summarize the proof and make a final closing argument, with the prosecution having the right of final rebuttal.
- (H) After evidence has been submitted, the Judge shall render his decision. If found "not guilty" the defendant shall be released forthwith. If defendant is found "guilty" the Judge shall then ascertain if the defendant has any reason why sentence should not there and then be imposed. If the defendant advances such reason the Judge shall give due consideration. If the judge grants defendant's request to delay sentencing, a sentencing hearing shall be set for a later date. The judge may determine whether the defendant is remanded to custody pending the hearing, or given a bond and appropriate release conditions to assure his future appearance and protect the safety of the community.

Section 602 Jury Trial

- (A) Any person accused of a crime for which imprisonment is specified in the Tribal Code as a possible penalty shall be granted a jury trial, upon his or her written request made at least 30 days before the date set for trial. Individuals who do not make their written request at least 30 days before the date set for trial will be deemed to have waived their right to a jury trial under this Code and under the Indian Civil Rights Act.
- (B) When a defendant is charged with a crime that is punishable by imprisonment, the Prosecutor may assert and the Judge may find, at the time of arraignment, that under the particular facts of the case, as charged in the complaint, under no circumstance will the defendant be sentenced to imprisonment. In such cases, the judge may announce such finding and try the defendant without a jury.

- (C) Juries for criminal trial shall consist of six jurors and one alternate from the Reservation community selected at random from a list of eligible jurors prepared each year by the Court. The verdict must be unanimous.
- (D) An eligible juror is a tribal member who has reached the age of 18 years, is of sound mind and discretion, has never been convicted of a felony, is not a member of the Tribal Executive Board, or a judge or justice, officer or employee of the Court or an employee of the Reservation police force or Reservation jail, and is not otherwise disqualified according to standards established by the Court.
- (E) Where the Tribes are exercising Special Criminal Domestic Violence Jurisdiction under the Violence Against Women Reauthorization Act of 2013, an eligible juror is any resident within the boundaries of the Reservation of the age of 18 or over, regardless of race or tribal citizenship, is of sound mind and discretion, has never been convicted of a felony, is not a judge or justice, officer or employee of the Court or an employee of the Reservation police force or Reservation jail, and is not otherwise disqualified according to standards established by the Court.
- (F) A list of 21 resident enrollees of the Tribe, and in the case of the Tribe exercising Special Criminal Domestic Violence Jurisdiction, a list of at least 21 non-member residents of the Reservation, who are eligible for jury duty shall be prepared and maintained by the Clerk.
- (G) Under the supervision of the presiding judge, a panel of jurors shall be drawn by lot from the jury list. A trial jury shall consist of 6 qualified jurors selected from a panel of 24 eligible persons taken from the jury list, none of whom has an interest in the case, or is related as spouse, parent, brother or sister to any of the parties or their attorneys. If the jury panel is exhausted before a sufficient number of jurors are selected for the trial, additional jurors shall be drawn by lot from the jury list for the panel until a jury is selected.
- (H) The judges of the Court shall have the power to issue subpoenas to compel the attendance of members of the jury panel and of trial jurors. Subpoenas shall be signed by the judge issuing them.
- (I) The judge assigned to the case shall have the power to excuse persons from jury duty on account of sickness, disability, or other good cause.
- (J) Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury.
- (K) In criminal cases, in addition to disqualifying jurors for cause as determined by the judge, the prosecution and defendant shall each be entitled to 3 peremptory challenges without assigning cause. Where there is more than one defendant, they must join in a

challenge before it can be made unless the Court, for due cause shown, shall permit otherwise, or shall permit each defendant to exercise 2 peremptory challenges.

(L) Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to compensation and mileage at a rate set by the Court. All payments of per diem and mileage shall be supported by vouchers signed by the presiding judge. Such vouchers shall be paid in order of presentation, from available funds on deposit for the purpose.

(M) When a jury has been selected, the judge shall administer to the jurors the following oath:

"You and each of you do solemnly swear or affirm that you will well and truly try the issues relative to the cause now on trial according to the law and the evidence under the pains and penalty of perjury."

(N) If a case be continued, the jury shall then be notified of the new date for trial and no further notice to them of such date is required. The penalty for failure to appear at the time to which the trial is continued is Contempt of Court.

(O) Questions of law are to be decided by the Judge; questions of fact by the jury.

(P) Order of Trial Procedure. The jury having been empanelled and sworn, the trial must proceed in the following order:

- (1) The Clerk of the Trial Court must read the complaint and state the plea of the defendant to the jury.
- (2) Opening statements shall be given by the Tribe followed by the defendant and his counsel.
- (3) The Tribe must open the case and offer evidence in support of the charge. The defendant or his counsel shall have the right to cross-examine any witness called by the Tribe.
- (4) The defendant or his counsel may open the defense and offer evidence in support thereof. The Tribe shall have the right to cross-examine any witness called to the stand by the defendant or his counsel.
- (5) The parties may then respectively offer rebutting testimony only, unless the Court, in furtherance of justice, permits them to offer evidence upon their original case.
- (6) When the evidence is concluded, the Tribe and the defendant or his counsel may argue the case to Court and jury, the Tribe opening the argument and having the right to close same.
- (7) At the close of evidence or at such time during the trial as the judge directs, counsel for each party may file with the Trial Court Judge written instruction on the law which the party requests the judge to deliver to the jury. At the same time, copies of such requests shall be furnished to opposing counsel. The judge shall inform counsel of his proposed action upon each request prior to delivery to the jury after arguments are completed. No party may assign as error any

portion of the judge's charge or omission there from unless he makes his objection before the jury retires to consider its verdict. Objections must be given out of the hearing of the jury.

- (8) After hearing the case, the jury shall retire for deliberation. The jury may take with it all instructions, exhibits, and papers which have been received into evidence or any notes of the testimony taken in the trial by jurors. After the jury has retired for deliberation, if there be any disagreement as to be informed on any part of the testimony or if it desires to be informed on any point of law arising in the case, the jury may reconvene in Court and the information required may be given at the discretion of the Court. In the event the jury is unable to agree upon a verdict, the Judge shall dismiss the jury and order a new trial.
- (9) Right to Appeal. Following the imposition of judgment of guilty, except upon a plea of guilty, the Court shall inform the defendant that he/she has a right to appeal. If the defendant requests, the clerk of court shall prepare and file a Notice of Appeal on behalf of the defendant. The defendant, or the person filing on his/her behalf, must file the notice of Appeal within 15 working days of the judgment.

Section 603 Expert Witnesses

- (A) Expert Witnesses, including medical professionals and lab technicians from state and federal crime labs, may testify telephonically in trial as to their personal findings relevant to the case at hand.
 - (1) The following work product records shall be acceptable for experts to rely on while testifying, according to the Rules of Evidence and proper disclosure to the opposing party:
 - a. Records of autopsies from fatalities in the case at hand, performed by or for any government law enforcement personnel;
 - b. Records form the examination, description, or testing of any physical evidence in the case at hand;
 - c. Records about fingerprint or DNA found at the crime scene for the case at hand; and
 - d. Any other work product records the Court deems relevant and admissible.
 - (2) Records shall be admissible pursuant to the relevant Rules of Procedure governing their authenticity and inherent guarantee of trustworthiness.
 - (3) The party offering such evidence at trial, should notify the opposing party in writing of its intention to offer such testimony and records in sufficient time for the party to obtain and inspect the records. The notice shall:
 - a. Include disclosure of what the record to be relied on is and the purpose of its intended use in trial;
 - b. State who wrote it and the address and credentials of its author/declarant;

- (4) Admissibility. The opposing party may object to any record or portion of a particular record pursuant to the Rules of Evidence. The Court shall determine what content is admissible and delete any portion of the record not to be admitted at trial.

Section 604 Absence of Defendant from Trial

- (A) In a Class B Misdemeanor case, if the defendant fails to appear in person, either at the time set for the trial or at any time during the course of the trial or at any time during the course of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the Court shall proceed with the trial unless good cause for continuance exists.
- (B) If the defendant's counsel is not authorized to act on behalf of the defendant as provided in Subsection (A), or if the defendant is not represented by counsel, the Court in its discretion may do one or more of the following:
- (1) Order a continuance;
 - (2) Order bail forfeited;
 - (3) Issue an arrest warrant; or
 - (4) Proceed with the trial after finding that the defendant had knowledge of the trial date and is voluntarily absent.
- (C) Felony trial. After the trial of a felony offense has commenced in the defendant's presence, the absence of the defendant during the trial may not prevent the trial from continuing up to and including the return of a verdict if the defendant has been removed from the courtroom for disruptive behavior after receiving a warning that removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on with the defendant in the courtroom.

CHAPTER 7 POST-VERDICT PROCEEDINGS

Section 701 Sentencing

- (A) Any person who has been convicted of a criminal offense in the Tribal Court may be sentenced to one or a combination of the following penalties:
- (1) Imprisonment for a period permitted by the Tribal Code provision specifying the punishment for the offense;
 - (2) A money fine in an amount permitted by the Tribal Code provision specifying the punishment for the offense;
 - (3) Community Service;
 - (4) Rehabilitative measures.

- (B) On any sentence of imprisonment, the defendant shall be given credit for all time spent in custody in an institution as a result of the charge for which the sentence was imposed.
- (C) In its discretion, the Court may commute or suspend some or all of the defendant's sentence of imprisonment, on the condition he/she successfully complete a term of probation, or satisfy some other condition ordered by the Court.
- (D) When the Tribal Court sentences a defendant to attend an institution or program for care, treatment, evaluation, or rehabilitation that is located off the reservation, the Tribe shall retain jurisdiction. No placement off the Reservation shall be valid unless first approved in writing by an order of the Court. Any order of such placement shall specify that the Tribes and the Court retain jurisdiction over any persons placed.
- (E) Civil Restitution. In addition to or instead of the penalties provided in subsection (A) above, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money, or the performance of any other act for the benefit of the injured party which is reasonably related to the offense committed. Testimony of the victim shall be considered in the determination of the appropriate disposition under this section.
- (F) Forfeiture of Weapons. Any person owning and using a firearm, or any sharp or dangerous weapon, in the commission of an offense shall forfeit such weapon to the Tribes as part of the sentence. Upon order of the Court such weapon shall be destroyed, or sold at a public sale after appropriate public notice, pursuant to the direction of the Court.
- (G) In determining the character and duration of the sentence to be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, whether the defendant has attempted to make amends, and shall give due consideration to the extent of the defendant's financial resources.
- (H) Pre-Sentence Reports. In determining the appropriate sentence, the judge may consider presentence reports prepared by the parties, testimony of the victim, and any other factors which the judge deems relevant.
- (I) Indigency. If, solely because of indigency, a convicted offender is unable to pay a money fine assessed under this section, the court shall allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the court at specified intervals until the entire sum is paid. If the defendant shows he is unable to pay his court fees or fines, the Court, in its discretion, may convert the fees and fines to community service. If the offender willfully defaults on such payments, the court may find the offender in contempt of court and imprison him or

her accordingly, but no person shall be held in contempt of court where nonpayment is because of indigency.

Section 702 Enhanced Punishment

- (A) If the Tribal Prosecutor intends to seek an enhanced punishment greater than 1 year, the Tribal Prosecutor shall file notice of this intention not less than 30 days before the pretrial conference. If the notice is untimely, the trial judge shall grant the defendant, on motion, reasonable continuance of the trial. The notice shall specify that the Tribe intends to seek the enhanced sentence and shall specify the aggravating circumstances the Tribe intends to rely at the sentencing hearing. The Tribes may specify by referring to the statutory citation of the aggravating circumstance.
- (B) If the Tribal Prosecutor files notice that the Tribal Prosecutor intends to seek an enhanced punishment greater than 1 year, the Tribal Court shall notify the defendant that the defendant is entitled to have counsel appointed for him/her at the expense of the Tribal Court. The attorney must be licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
- (C) A judge presiding over a case which the Tribes are seeking an enhanced sentence shall also be licensed to practice law and have sufficient legal training.
- (D) The Tribal Court shall not impose for the conviction of any one offense any penalty or punishment greater than a term of imprisonment for 3 years and a fine of \$15,000 or both. The shall not impose a total penalty or punishment greater than a term of 9 years imprisonment for multiple offenses in a criminal proceeding.

Section 703 Probation

- (A) Where a sentence of imprisonment or a fine has been imposed on a convicted offender, the Tribal Court may, in its discretion, suspend the service of such sentence or payment of such fine and release the person on probation under any reasonable conditions deemed appropriate by the court.
- (B) Powers of the Probation Department. An probation officer, in his or her supervision of an offender, is vested with:
 - (1) The authority to request a judge of the Tribal Court to issue a warrant for arrest of the supervised offender; and
 - (2) The authority to conduct a search without a warrant upon reasonable cause or upon the terms agreed upon in the signed conditions of probation; and

(3) The authority to test a defendant, by breathalyzer, urinalysis, or other means, for consumption of alcohol and/or drugs.

(C) Revocation. Any person who violates the terms and conditions of his or her probation may be required by the court to serve the sentence or pay the fine originally imposed or such part of it as the court may determine to be suitable giving consideration to all the circumstances; provided, that such revocation of probation shall not be ordered without a hearing before the court at which the offender shall be entitled to the assistance of counsel for their defense. If the defendant is facing an enhanced punishment or being prosecuted under the special domestic violence jurisdiction, counsel will be provided at no cost to the defendant if the court determines that he or she is indigent. The offender shall have the opportunity to explain his or her actions.

(D) Probation Revocation Hearing. A probationer is entitled to a hearing before the Court prior to revocation of probation within 10 days of the date of notice that a petition for revocation has been filed, unless good cause for delay exists. The burden is on the party to asking for the delay to show what good cause exists.

(1) The subject matter of the revocation hearing is limited to alleged knowing violations of probation conditions. 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.

(2) The revocation hearing is held before a tribal judge. The probationer does not have the right to a jury trial.

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

(4) 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. Prosecution evidence may not be suppressed on the ground that, if an admission of a violation, no warning was given of a right not to incriminate oneself.

(5) The probationer has the right to counsel at his or her own expense and may call witnesses or introduce evidence in his or her own behalf and may cross examine any prosecution witness. Hearsay evidence is admissible, although a decision to revoke probation may not be based solely on hearsay evidence. The prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.

(6) The Court may determine the appropriate disposition of the petition for revocation by balancing the probationer's interests 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.

(7) An order revoking probation shall be in writing and shall contain findings of fact and conclusions of law supporting the revocation. When revoking probation, the

judge may impose the original sentence or a portion thereof in combination with an extension of probation.

Section 704 Appeal Bond

- (A) At the time of sentencing, the trial court may fix the amount of bond to be posted in the event an appeal is filed, or may specify that the appeal may be taken on the defendant's own recognizance, or may deny bail. In a case in which the defendant has been sentenced to jail time, determinations of the amount of bond, conditions of release, or denial of release shall be based upon a new evaluation of the case. After conviction, the burden of establishing that the defendant will not flee or pose a danger to the community rests with the defendant.
- (B) Execution of the sentence shall be stayed pending appeal when the defendant posts an appeal bond in accordance with the order of the trial court, or when the appeal is taken on the defendant's own recognizance.
- (C) If the trial court does not allow the appeal to be taken while the defendant is on his own recognizance, or determines that the defendant be held without bond, the defendant may petition the court of appeals, at any time after the entry of the order of the trial court setting a bond, or denying a release, to stay the execution of sentence and to allow the defendant to be released upon his or her own recognizance or to set a bond, or to otherwise modify conditions of release. If the court of appeals denies the requested relief, the appeal may be taken, but the execution of sentence shall not be stayed.
- (D) Any defendant in custody during the appeal shall receive the same benefits and credits in the computation of the sentence as if no appeal had been taken.
- (E) Failure of the defendant to prosecute the appeal shall result in revocation of release and execution of the sentence.

CHAPTER 8 EXTRADITION

Section 801 Purpose

Subject to the provisions of this chapter, the Tribal Constitution, and the Constitution of the United States controlling; it is the duty and intent of the Tribal Chairman/woman to have arrested and delivered to the authority of any state or other Indian Tribe any person charged in that jurisdiction with a felony, who has fled from justice and is found on the Reservation.

Section 802 Who May Be Extradited

Any person residing, located, or present within the exterior boundaries of the Reservation for whose arrest a warrant has been issued by any court of any state, federal court, or by the duly constituted tribal court of any tribe or reservation, for the alleged commission of an offense beyond the jurisdiction of the Tribal Court, may be extradited to another jurisdiction as provided herein.

Section 803 Form of Demand

(A) A demand for extradition of a person charged with a crime in the State or on another Reservation shall be in writing. The request shall state the accused was present in the State or reservation at the time of commission of the alleged crime and fled to avoid prosecution. A copy of said demand shall be delivered or served upon the Tribal Prosecutor's Office.

(B) The Demand must allege:

- (1) The person is charged with a crime in the demanding state; or
- (2) Having been charged with or convicted of a crime in the demanding state, the person has:
 - (a) Escaped from confinement; or
 - (b) Violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding state.

(C) Supporting Documentation: A demand must be accompanied by a certified copy of an arrest warrant and one of the following:

- (1) A certified copy of the indictment upon which the arrest is based; or
- (2) 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; or
- (3) A statement by the issuing authority that the arrest 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 provisions of law defining the crime and fixing the penalty therefore; or
- (4) 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.

(D) The Tribe may issue its own demand for the extradition of a person from another state or tribe in accordance with the Constitution of the United States, any applicable tribal constitutions, and compliance with the requirements of the other state or tribe for recognition of a demand.

Section 804 Investigation

When a demand is made upon the Tribe for the surrender of a person so charged with a crime, the Tribal Prosecutor, on behalf of the Tribal Chairman/woman and Tribal Court, may investigate the demand and report to the Court the situation and circumstances of the person so demanded and whether said person ought to be surrendered.

Section 805 Warrant

- (A) If the Tribal Prosecutor believes the extradition should be complied with, the Prosecutor shall file a request for a warrant of arrest from the Tribal Court.
- (B) The Tribal Court shall review the request and may issue a warrant for the arrest and extradition of the demanded person. The warrant must:
 - (1) Recite the name of the state demanding extradition and the crime charged or other basis for the demand; and
 - (2) Be directed to a law enforcement officer for the arrest of the named person.

Section 806 Arrest without a Warrant

- (A) A law enforcement officer may arrest a person without a tribal arrest warrant upon probable cause to believe that the person is the subject of another state's arrest warrant issued for:
 - (1) Commission of a crime punishable by death or imprisonment for a term exceeding one year; or
 - (2) Escape from confinement; or
 - (3) Violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding in another jurisdiction.
- (B) Within seventy-two (72) hours of arrest, the Tribe must provide the demanded person and the Tribal Court with a warrant from the demanding jurisdiction and:
 - (1) A certified copy of the indictment upon which the arrest is based; or
 - (2) 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; or
 - (3) A statement by the issuing authority that the arrest 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 provisions of law defining the crime and fixing the penalty therefore; or
 - (4) 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.

(C) The arrested person must be brought before the nearest available magistrate.

Section 807 Rights of Demanded Person

(A) A person arrested for the purposes of extradition shall receive a copy of the warrant and all supporting documentation and the Judge shall inform the person of:

1. The name of the State demanding extradition;
2. The crime charged or other basis for demand;
3. The right to assistance of counsel at his/her own expense unless provided by the Tribe;
4. The right to a judicial hearing;
5. The right and effect of waiving a judicial hearing.

Section 808 Waiver

(A) After being informed of the effect of a waiver, the demanded person may waive the right to a judicial hearing and consent to return to the demanding state by executing a written waiver in the presence of the Judge.

(B) If the waiver is executed, the Judge shall, with the consent of the Tribal Chairman/woman or other authorized executive authority of the Tribe, issue an order to transfer custody and directing removal of the alleged offender by the appropriate officials of the jurisdiction seeking extradition.

Section 809 Proceedings

(A) No persons arrested upon a warrant or probable cause shall be delivered over to the demanding authority until such person appears before a Judge, who shall inform such person of the demand for surrender, the charge(s), and the right to legal counsel at his/her own expense.

(B) If the accused shall challenge the legality of the extradition, the Tribal Court shall hold an extradition hearing within five (5) business days.

(C) Prior to the hearing, the Judge shall set bond in an appropriate amount with necessary release conditions, or detain the fugitive until the hearing.

(D) At the extradition hearing, the Tribe has the burden of proving/introducing:

- (1) An arrest warrant issued by the demanding state or tribe; and

- (2) A certified charging document alleging a criminal offense or 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; and
- (3) The sworn documents provide sufficient information identifying the arrested person as the actual fugitive.

(E) Upon finding the warrant from the jurisdiction is valid, the person in custody is the person charged in the warrant, and after considering all other relevant matters, the Tribal Court Judge may execute an order authorizing and directing removal of the alleged offender by the appropriate officials of the jurisdiction seeking extradition. The order to transfer custody shall be approved by the Tribal Chairman/woman or other authorized executive authority of the Tribe, prior to execution.

(F) If the Court finds the warrant from the demanding jurisdiction is invalid, or that the person charged in the warrant is not the person in tribal custody, the Tribal Court Judge may deny the request to extradite and release the individual from custody. That person shall not be arrested again for the same charge except upon issuance of a new warrant by the jurisdiction seeking extradition.

Section 810 Execution of Order to Extradite

(A) If the Tribal Court issues an Order to Extradite, the Clerk of Court shall notify the jurisdiction seeking extradition that the alleged offender is in tribal custody and must be removed within five (5) days.

(B) If the appropriate official of the jurisdiction seeking removal does not appear within the allotted time, the person taken into custody shall be released and shall not be taken into custody again for the same charge except upon issuance of a new warrant by the jurisdiction seeking extradition.

Section 811 Guilt or Innocence

The guilt or innocence of the accused as to the crime with which the person is charged may not be inquired into by the Tribal Court after a demand for extradition has been presented, except as it may be involved with identifying the person held as the person charged with the crime.

Section 812 Extradition of Persons Imprisoned or Awaiting Trial

(A) When it is desired to have a person returned to the state or another reservation and such person is imprisoned or is held under criminal proceedings pending against him/her in the Tribal Court, the Tribe may:

- (1) Grant extradition of such person before the conclusion of such proceedings or term of sentence, upon condition that such person be returned to the Tribe after the prosecution in the state or other reservation is terminated, unless the Tribal Prosecutor determines that further prosecution is not necessary; or
- (2) Delay action until the sentence is completed, the person is no longer imprisoned, is no longer on parole or probation, or is no longer subject to an order arising out of a criminal proceeding of the Tribe.

Section 813 Delivery

After the Court issues an Order for Extradition, the Tribe shall obtain written consent from the Tribal Chairman/woman or authorized executive authority, to approve the extradition and deliver the accused to the demanding authority. If written consent from the Tribal Chairman/woman is not granted to extradite within 10 days of the Court's Order for Extradition, the accused shall be released.

Section 814 Release or Dismissal

If the Judge does not issue an Order of Extradition or the Tribal Chairman/woman does not approve such Order, the accused shall be released. Once released, the individual may not be arrested upon the same demand for extradition unless a new arrest warrant is issued as a result of a new demand for extradition.

Section 815 Reciprocity

In no case shall a warrant for arrest from a court of another jurisdiction be honored if that jurisdiction, by its laws, rules, or practices prohibits or refuses to provide reciprocal extradition of person(s) who may be subject to a warrant for arrest issued by the Tribe.

Section 816 Appeals

An Order to Extradite is not appealable. An Order denying Transfer is appealable.