Washoe Tribe of Nevada and California

Law & Order Code

TITLE 4 – CRIMINAL PROCEDURE

[Last Amended: 5/14/04. Issue Date:6/14/06.]

4-10 GENERAL PROVISIONS

4-10-010 Definitions

1. Arrest – The taking into custody of a person for whom probable cause exists to believe to have committed an offense.

2. Defendant – A person arrested for, or charged with the commission of an offense.

3. Evidence – Anything tending to show that an offense was or was not committed, or tending to prove or disprove some fact relevant to the commission of an offense.

4. Felony – Any crime punishable by imprisonment for more than one year.

5. Fruit of an offense – Anything the possession of which relates to an offense, such as stolen goods, money or proceeds from the sale of stolen goods, or items purchased with stolen money.

6. Instrumentality – Anything used to commit or aid in the commission of an offense.

7. Motion – An oral or written request of the Court for an order, stating the grounds upon which it is made, setting forth the relief or order sought, and if necessary, supported by sworn written statements.

8. Offense – Any act or failure to act which is prohibited by this Code and which is made punishable by fine, imprisonment, or both.

9. Party – The defendant or defendants, or the prosecutor; if in the plural, the defendant or defendants and the prosecutor.

10. Probable cause – Reasonably reliable prior knowledge of facts and circumstances which would justify a careful and cautious person in his beliefs or acts.

11. Prosecutor – Any person who presents the case against the defendant. The prosecutor may be any person designated by the Council or the tribal judge, including a complaining witness or a tribal police officer who is a complaining witness. The prosecutor shall be considered to be acting on behalf of the Tribe in prosecuting the case against the defendant. No tribal judge shall. act as prosecutor.

12. Representative – Any person with authority to speak or act on behalf of another pursuant to Section 1-80-010 of this Code.

13. Tribal police officer – Any person commissioned by the captain of the tribal police to enforce all of the tribal laws. This does not include persons holding limited commissions from the captain of the tribal police to enforce only portions of the Tribe's laws; such persons shall have all the powers of a tribal police officer only when enforcing laws within the scope of their commission.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-10-020 Time Limit for Commencing Criminal Prosecution

No prosecution for an offense under this Code shall be maintained unless the arraignment of the defendant occurs within five (5) years after the commission of the offense, except murder shall have no time limit. Time during which the defendant is outside the jurisdiction of the Court, for whatever reason, shall not be included in this five (5) year time limit.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-10-030 Rights of a Defendant

1. In addition to rights set forth elsewhere in this Code, every defendant in a criminal proceeding shall have the following rights:
   (a) To receive, at or prior to arraignment; written notice of the offense charged, including the Section number and heading of the Code provision allegedly violated, a brief summary of the facts constituting the alleged offense, and a statement of the place and time the offense is alleged to have occurred;
   (b) To receive written notice of the place of trial and the time when his case will be heard;
   (c) To appear and present a defense, in person or by a representative. If the Court finds that the defendant is indigent and unable to hire a representative the Court shall appoint a representative, at the expense of the Tribe, to represent the defendant until such time as the defendant is found guilty or not guilty of the charges filed

against him. The Court may appoint a representative, at the expense of the Tribe, to represent an indigent person convicted in tribal court on post-conviction matters, including appeal;

(d) To testify in his own behalf, or to refuse to testify regarding the charge against him. Once a defendant testifies on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to refuse to testify on all matters relevant to the immediate charges against him at trial and at later proceedings in that case. Testimony by a defendant on a Motion to Suppress Evidence or other pretrial matters does not affect his right to refuse to testify at trial;

(e) To present evidence on his own behalf, in accord with the rules of evidence contained in Title 6;

(f) To use subpoenas to compel the attendance of witnesses on his own behalf, where such witnesses are within the jurisdiction of the court;

(g) To confront and cross examine all witnesses against him;

(h) To have a speedy public trial within sixty (60) days of arraignment on the complaint by an impartial judge or jury;

(i) To appeal the decision of the trial court and to have such an appeal heard within ninety (90) days of the date of appeal; and

(j) Not to be twice put in jeopardy for the same offense. Jeopardy, or the danger of conviction, arises at the earliest occurrence of any of the following events:

1. The swearing of the jury;
2. The first word of the prosecutor's opening statement; or
3. Hearing of the first word of evidence at trial.

2. If any of the rights of a defendant are denied or violated, the case against the defendant shall be dismissed unless the defendant has knowingly and voluntarily waived any of the enumerated rights. A defendant may assert a violation of these rights in any or all of the following procedures:

(a) A motion to dismiss;

(b) A writ of habeas corpus; or

(c) An appeal.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-10-040 Habeas Corpus

1. A petition for a writ of habeas corpus may be filed on behalf of any person wrongfully imprisoned, held, or in any way restrained of liberty by the tribal court, a tribal police officer, or any other person, in violation of this Code or in violation of the rights of the person under any applicable law. A petition may be filed by a person on his own behalf or on behalf of another person believed to be wrongfully restrained of liberty.

2. Any person wishing to exercise the right to a writ of habeas corpus shall file with the Court a simple pleading stating:
   (a) The name of the person held or restrained of liberty;
   (b) The name of the individual or institution holding or restraining the liberty of the person held;
   (c) The reasons the holding or restraint of liberty is felt to be unlawful, including, if possible, references to Sections of this code alleged to be violated; and
   (d) The name and signature of the person filing the petition.

3. If a petition for a writ of habeas corpus fulfills the requirements of this Section, the tribal judge shall issue a writ of habeas corpus. The writ shall direct the individual or institution restraining the liberty of the person held to appear at a hearing before the Court, with the person held.

4. At the hearing on the writ of habeas corpus the judge shall consider evidence on the lawfulness of the restraint of the person held. The petitioner shall first present his evidence on behalf of the person held, and shall have the burden of proving by a preponderance of the evidence that the restraint is unlawful.

5. If the judge determines that the restraint of liberty is unlawful, the judge shall issue an Order of Freedom, ordering the release of the person held.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-10-050 Multiple Offenses and Defendants

1. Two or more offenses may be charged in the same complaint, if the Code provision Section number and heading for each offense is separately listed, and if all such offenses are based on the same acts or transactions or constitute parts of a common scheme or plan.

2. Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same acts or transactions constituting an offense or offenses. Such defendants may be charged with one or more offenses together or separately, but all of the defendants need not be charged with each offense.

3. Defendants or offenses may be joined where one defendant is charged with an offense against another.

4. The Court may order two or more defendants tried together if they could have been joined in a single complaint, or may order a single defendant tried on more than one complaint at a single trial.

5. If it would be unfair to any party for any reason to join offenses or defendants, the judge shall order separate complaints and may order separate trials or provide such other relief as justice requires. The judge may take such actions on his own motion or upon the motion of a party.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-10-060 Peace Officers

1. Powers of a Peace Officer
   (a) Category I Peace Officers, appointed or commissioned pursuant to Section 4-10-070, shall have the powers and duties:
      i. to enforce all of the laws of the Washoe Tribe of Nevada and California, and court orders of the Washoe Tribal Court.
      ii. to enforce the criminal laws of the State of Nevada against non-Indian persons for conduct within Washoe Indian Country located in the State of Nevada.
      iii. Category I Peace Officers with a Federal Commission shall have the power and duty to enforce federal law within all Washoe Indian Country.
      iv. the power of Category I Peace Officers to enforce the laws of the Washoe Tribe, the laws of the State of Nevada, and, if federally commissioned, the laws of the United States, shall include but not be limited to the power of arrest.

   (b) Category II Peace Officers
      i. Juvenile Probation Officers shall have- the duty to enforce tribal court orders on juvenile offenders and make arrests.
      ii. Probation/Parole Officers shall have the duty to enforce tribal court orders, including power of arrest, as specified in Section 4-10-080 of this title.
      iii. Bailiff, shall have the duty to provide court security while the court is in session.

2. Peace Officer Certification

   Individuals upon whom some or all of the powers of a Peace Officer are conferred pursuant to 4-10-070, 4-10-080, and 10-30-040, who have not been certified by a qualified federal or state peace officer standards and training commission within the past 5 years, must obtain certification from either a federal or state peace officers' standards and training commission prior to assuming the powers and duties of a peace officer, unless their supervisor, the Police Captain or Chief Judge as applicable, grants a

waiver, for good cause shown, allowing the officer up to 1 year, after the date on which the person commences employment as a peace officer, by which time the person must become certified. A person who fails to become certified within the required time shall not exercise any of the powers of a peace officer after the time for becoming certified has expired. At a minimum, Peace Officers shall meet the training requirements set forth in 25 CFR part 12. Provided those basic standards are satisfied, Peace Officers may be certified through either a federal or state Peace Officer Standards and Training Commission, which may include Category II Peace Officer Certification.

[Enacted 7/25/96, Resolution No. 96-WTC-54; Amended 9/17/02, Resolution No. 92-WTC-2002; Amended 05/14/04, Resolution No. 46-WTC-2004.]

4-10-070 Police Officers

1. Police Captain
   Category I Peace Officer, appointed by Washoe Tribal Council, powers and duties set forth in Section 4-10-060, and as director of the Washoe Tribe Police Department shall supervise all department personnel and commissioning police officers.

   In the supervision of the Environmental Protection Ranger II, the Police Captain shall coordinate with the Director of the Washoe Environmental Protection Department to establish the day-to-day patrol and enforcement priorities for such officers, and facilitate a working relationship between the Environmental Protection Ranger II and federal law enforcement agencies.

[Enacted 10/22/04, Resolution No. 87-WTC-2004.]

2. Police Officers
   Category I Peace Officer, commissioned and supervised by the Police Captain with the powers and duties set forth in Section 4-10-060.

3. Environmental Protection Ranger II is a Category I Peace Officer, commissioned and supervised by the Police Captain with the powers and duties set forth in Section 4-10-060.
   (a) Environmental Protection Ranger II shall patrol all Washoe Indian Country, including but not limited to the Pine Nut Allotments, Upper and Lower Clear Creek Parcels, Stewart and Washoe Ranches, Wade and Frank Parcels, and Tribal Communities/Colonies for the primary purpose of protecting the natural, cultural and other environmental resources of the Washoe Tribe and individual allotment owners through enforcement of civil and criminal provisions of the Tribal Law and Order Code,

including but not limited to Titles 5 (particularly those offenses related to real or personal property, and natural, environmental and cultural resources), 15, 16, 17, 19, and the Hunting and Fishing Ordinance.

(b) An Environmental Protection Ranger II who possesses a Federal Commission shall enforce all applicable federal law in all Washoe Indian Country.

(c) The Environmental Protection Ranger II shall maintain an incident and monitoring log to track enforcement of laws to protect the natural, cultural, and other environmental resources of the Washoe Tribe and individual allotment owners and shall provide the log to the Police Captain and the Director of the Washoe Environmental Protection Department as requested by either.

[Enacted 10/22/04, by Resolution No. 87-WTC-2004.]

4-10-080 Parole/Probation Officers

Appointed and supervised by Chief Judge of Washoe Tribal Court with following duties:

Parole/Probation Officer shall investigate cases referred to them for investigation, supervise persons released on probation by the court, furnish each person under their supervision a written statement of the conditions of parole or probation and instruct the person regarding those conditions, keep informed concerning the conduct and condition of all persons under their supervision and use all suitable methods to aid and encourage them and to bring about improvement in their conduct and conditions, keep detailed records of their work keep accurate and complete accounts of all money received and disbursed, make such reports in writing as the court may require, coordinate their work with that of social services enforce tribal court orders on juvenile offenders and make arrests.

[Enacted 10/22/04, by Resolution No. 87-WTC-2004.]

4-10-90 Court Security Officer/Bailiff

A Category I or II Peace Officer, appointed and supervised by the Chief Judge of the Tribal Court, to provide court security. The Chief Judge is authorized to enter into a memorandum of understanding with the Tribe Police Captain for the provision of personnel to serve as the Bailiff.

[Enacted 10/22/04, by Resolution No. 87-WTC-2004.]

4-20 COMPLAINTS AND INITIATION OF PROSECUTION

4-20-010 Complaint Required

All criminal prosecutions and violations of this Code shall be initiated by a complaint.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-20-020 Complaint Defined

A complaint is a written statement, sworn to by the complaining witness, charging a named or described person or persons as having committed a particular offense.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-20-030 Contents of Complaint

A complaint shall contain:

1. The name or description of the person or persons alleged to have committed the offense;

2. A written statement describing in ordinary language the facts constituting the offense, including the time and place as nearly as is known;

3. The Section number and heading of the Code provision allegedly violated; and

4. The oath and signature of the complaining witness sworn before a tribal judge, the court clerk, a tribal police officer, tribal prosecutor, or a person designated by the tribal judge. The complaining witness may be a tribal police officer or any other person. The oath shall state that, under penalties of perjury, the complaining witness knows or believes the truth of the complaint.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-20-040 Filing Complaint

Complaints shall be filed and submitted without unnecessary delay to a tribal judge to determine whether a warrant or summons should be issued.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-20-050 Probable Cause to Arrest upon Complaint, Warrant or Summons

If the complaint, or the complaint together with other sworn statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the tribal judge shall either:

1. Issue an arrest warrant instructing the tribal police to arrest the named defendant; or

2. Issue, for service upon the defendant, a summons commanding the defendant to appear before the court at a specified time and place to answer to the charge.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-20-060 Filing Complaint after Arrest

When a defendant has been arrested without a warrant, a complaint shall be filed with the Court immediately for review as to whether there is probable cause to hold the defendant. Failure to file a complaint at or prior to arraignment shall require an immediate dismissal of the case at arraignment. A case so dismissed may be renewed by filing a complaint in the manner set forth in this chapter.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-30 ARRESTS, SUMMONS, AND CITATIONS

4-30-010 Arrest by Tribal Police Officer

A tribal police officer may arrest any person for an offense when:

1. The officer has a warrant signed by a tribal judge commanding the arrest of the person, or the officer knows for a certainty that a warrant has been issued and is outstanding; or

2. The offense is committed in the presence of the arresting officer; or

3. The officer knows that an offense has been committed and has probable cause to believe the person to be arrested has committed the offense, and obtaining a warrant would involve a dangerous delay, considering the likelihood of a breach of the peace, injury to persons or property, or escape of the defendant.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-30-020 Arrest by Private Citizen

A private citizen may arrest any person when he has probable cause to believe that an offense is being committed or attempted in his presence by the person to be arrested, or when a felony in another jurisdiction has in fact been committed and he has probable cause to believe that the person to be arrested has committed it.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-30-030 Fresh Pursuit

1. "Fresh pursuit" means the effort made to capture a person suspected of committing an offense immediately, or without unreasonable delay, after the commission of the offense.

2. A tribal police officer may leave the Tribe's jurisdiction in fresh pursuit of a person suspected of committing an offense.

3. Any officer of a state, county, municipal, federal, or tribal law enforcement organization who enters the Tribe's jurisdiction in fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed a felony in another jurisdiction, shall have the same authority to arrest and hold such person in custody as the officer had in his own jurisdiction. The suspect need not be held within the reservation boundaries but the arresting officer immediately shall advise a tribal police officer of the arrest.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-30-040 Arrest Warrants

1. Every judge of the tribal court has authority to issue warrants to arrest. An arrest warrant shall be issued only upon a showing of probable cause in a complaint meeting the requirements of this chapter.

2. The arrest warrant shall contain the following information:
   (a) The name, if known, or description of the person to be arrested, and his address, if known;
   (b) The date of issuance of the warrant;
   (c) The Section number and heading of the Code provision allegedly violated;
   (d) The place and time the offense is alleged to have occurred; and;
   (e) The signature of the issuing judge.

3. An arrest warrant is valid and outstanding for five (5) years from the date of the alleged offense unless a tribal judge specifically shortens this time.

4. An arrest warrant may only be served between the hours of 7 a.m. and 9 p.m., unless the defendant is apprehended in a public place or unless the tribal judge specifies other hours during which the warrant may be executed.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-30-045 Warrant of Arrest by Telephone

1. A tribal judge may issue a Warrant Of Arrest based upon the sworn oral testimony of a person who is not in the physical presence of the tribal judge, when it is not practical for the person presenting the testimony to personally appear before the tribal judge and when the immediate testimony is necessary in order to permit an immediate arrest. The person giving the oral testimony must first be sworn and the information must be transmitted to the tribal judge by telephone or other electronic means of communications. The testimony must be recorded by a certified shorthand reporter or by electronic means, transcribed, certified by the reporter if he recorded it, and certified by the tribal judge. The statement must be filed with the clerk of the court.

2. After the tribal judge has issued an arrest warrant, whether it is based on an affidavit or an oral statement given under oath, he may orally authorize a tribal police officer or the court clerk to sign the tribal judge's name on a duplicate original arrest warrant. A duplicate original arrest warrant shall be deemed to be a warrant of arrest. It must be returned to the tribal judge who authorized the signing of his name on it. The tribal judge shall endorse his name and enter the date on the warrant when it is returned to him. Any failure of the tribal judge to make such an endorsement and entry does not in itself invalidate the warrant.

3. The arrest warrant shall be directed to a tribal police officer. It must state the grounds of probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to arrest forthwith the person named.

4. The warrant must state the Section number and heading of the code provision allegedly violated, if applicable.

5. The warrant must direct that it be served between the hours of 7 a.m. and 9 p.m., unless the tribal judge, upon a showing of good cause therefore, inserts a direction that it be served at any time.

[Enacted 7/25/96, Resolution No. 96-WTC-54.]

4-30-050 Return of Warrant

The officer who has executed the warrant shall sign the warrant stating the time and place of arrest and return the warrant to the court clerk for filing.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-30-060 Rights at Time of Arrest

Upon arrest, the defendant shall be advised of the following:

1. That he has the right to remain silent and make no statements whatsoever;

2. That, should he make any statement, he retains the right to stop talking at any time;

3. That any statements made by him may be used against him in court;

4. That he has the right to obtain a representative at his own expense and that if he can not afford a representative one will be appointed to represent him; and,

5. That he has the right to consult in private with his representative before making any statements or answering any questions.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-30-070 Telephone Calls

1. Any person arrested has the right to make at least one (1) completed telephone call to a friend and at least one (1) completed call to a representative.

2. The defendant shall be allowed to make telephone calls under this Section immediately after being registered and identified at the jail, or sooner if there is a delay in taking the defendant to jail or in processing at the jail. In no event shall the delay from time of arrest to the making of telephone calls be longer than three (3) hours unless it is impossible for the defendant to reach a telephone within three hours.

3. A denial of the right to call a friend or a representative under this Section may be, in the discretion of the tribal judge, grounds for dismissal of the case against the defendant.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-30-080 Summons Instead of Arrest Warrant

1. Whenever authorized to issue a warrant for the arrest of a defendant who has been identified, a tribal judge instead may issue a summons commanding the defendant to appear before the tribal court at a stated time and place to answer the charge. In determining whether to issue a summons, the judge may consider the following factors concerning the defendant:
   (a) Whether detention appears reasonably necessary to prevent injury to property, a breach of the peace, or imminent bodily harm to the defendant or to another;
   (b) His employment, residence, family ties and other relationships to the community;
   (c) The nature of the crime charged and his prior criminal record, including the record of prior release on recognizance or bail; and
   (d) Any other factor bearing on the risk of willful failure to appear.

2. A summons shall contain the same information as a warrant.

3. If a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.

4. The tribal judge may prepare a list of offenses for which a summons will routinely be issued instead of an arrest warrant.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-30-090 Citations

1. Any tribal police officer who apprehends a resident of the reservation for an offense for which a citation may be issued may issue a citation to the person and release the person. The officer shall file the citation instead of a complaint.

2. Any non-resident of the Reservation apprehended for an offense for which a citation may be issued shall be released after he has posted bail with the court clerk or other authorized official. The amount of bail posted shall be determined by the bail schedule established pursuant to this Title.

3. The citation shall contain the same information as an arrest warrant, the signature of the issuing officer, and such further information as may be required by other Titles of this Code, and shall command the person to either appear before the tribal court at a stated time and place to answer to the charge or to post and forfeit bail as provided in this Title.

4. All criminal offenses for which citations may be issued shall be listed on the bail schedule established pursuant to this Title. Persons issued citations shall be allowed to pay and answer to the charge as directed by the citation.

5. If bail has been posted and the defendant does not appear, the judge shall enter a judgment of conviction, impose a fine equal to the bail and treat the bail as payment of the fine.

6. If a person to whom a citation was issued fails to appear as required by the citation, and no bail is forfeited, a warrant shall be issued for his arrest.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31 EXTRADITION

4-31-010 Short Title

This chapter of Title 4 may be cited as the Tribal Uniform Criminal Extradition Act.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-020 Reciprocity

This chapter of Title 4 shall only apply to states and tribes which grant to the Washoe Tribe the right to request and obtain extradition of persons charged with violating tribal laws and ordinances.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-100 Definitions

1. The term "Indian tribal government" means any existing American Indian Tribe recognized as a self-governing unit for the purpose of any federal governmental agency and which has a duly organized tribal court, Court of Indian offenses, or traditional court.

2. The term "tribal court" refers to any duly organized Indian court enforcing the laws of any American Indian tribe pursuant to a constitution or code of law and order, or any tribal court operating under the Code of Indian Offenses or the custom and tradition of that tribe.

3. The term "chief executive officer" includes the governor, president, Tribal Council, or other chief administrative official who has been lawfully designated by the appropriate governmental body.

4. The term "executive authority" includes persons who are the governor of a state or any person duly performing the functions of state governor and the chief executive officer of any Indian tribe.

5. The term "tribe" is used in this act synonymously with "Indian Tribal Government".

6. The term "state" includes any state or territory, organized or unorganized, of the United States of America, including the District of Columbia.

7. The term "prosecuting officer" includes any person duly designated by legal authority to attend to the prosecution of criminal offenses on behalf of the government including attorney generals, prosecutors, special prosecutors, district attorneys or social appointees.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-101 Fugitives from Justice; Duty of Chief Executive

Subject to the provisions of this Act, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the chief executive officer of this tribe to have arrested and delivered to the executive authority of any state or other Indian tribe any person charged in that jurisdiction with treason, felony, or gross misdemeanor, who has fled from justice and is found in this tribal jurisdiction.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-102 Form of Demand

1. No demand for the extradition of a person charged with a crime or crimes in a state or another tribal jurisdiction shall be recognized by the chief executive officer unless in writing alleging, except in cases arising under Section 4-31-105, that:
   (a) The defendant was present in the demanding jurisdiction at the time of the commission of the alleged crime; and
   (b) Thereafter he fled from that jurisdiction.

2. The demand for extradition must be accompanied by a copy of an affidavit made before a tribal court judge or magistrate there, together with a copy of any warrant which was issued thereupon, or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a

statement by the executive authority of the demanding state or tribe that the person sought has escaped from confinement or has broken the terms of his bail, probation or parole.

3. The indictment, information, or affidavit made before the tribal court judge or magistrate must substantially charge that the person has committed a crime under the law of that state or tribe.

4. The copy of the affidavit, judgment of conviction or sentencing order must be authenticated by the executive authority making the demand.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-103 Chief Executive Officer may Investigate Case

When a demand is made upon the chief executive officer of this tribe by the executive authority of a state or another Indian tribe for the surrender of a person charged with a crime, the chief executive officer may call upon any prosecuting officer to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person sought and whether he should be surrendered.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-104 Extradition of Persons Imprisoned or Awaiting Trial in a State or Another Indian Tribe or Who Have Left the Demanding Jurisdiction Under Compulsion

1. When it is desired to have returned to this tribe a person who is charged in this jurisdiction with a crime, and that person is imprisoned or is held under criminal proceedings then pending against him in a state or by another tribe, the chief executive officer may agree with the executive authority of such state or tribe for the extradition of that person before the conclusion of those proceedings or his terms of sentence in the other state or tribe, upon the condition that the person will be returned to the other state or tribe at the expense of this tribe as soon as the prosecution is terminated in this jurisdiction.

2. The chief executive officer may also surrender, on the demand of the executive authority of any state or other tribe, any person in this jurisdiction who is charged in the manner provided in Section 4-31-123 with having violated the laws of the state or tribe whose executive authority is making the demand, even though such person left the demanding jurisdiction involuntarily.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-105 Extradition of Persons Not Present in Demanding Jurisdiction at Time of Commission of Crime

The chief executive officer may surrender, on demand of the executive authority of any state or other tribe, any person in this jurisdiction who is charged in such other state or tribe with committing an act in this jurisdiction or elsewhere which intentionally resulted in a crime occurring in the other jurisdiction whose executive authority is making the demand. The provisions of this chapter of Title 4 not otherwise inconsistent shall apply to such cases even though the defendant was not in the other jurisdiction at the time of the commission of the crime and did not flee therefrom.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-106 Issue of Chief Executive Officer's Warrant of Arrest; Recitals

If the chief executive officer decides that the demand should be complied with, he shall sign a warrant of arrest which shall be directed to any peace officer or other person whom he may deem fit to entrust with the execution thereof. The warrant must substantially set forth the facts necessary to the validity of its issuance.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-107 Manner and Place of Execution

A warrant issued pursuant to this chapter of Title 4 shall authorize the peace officer to whom it is directed to arrest the defendant at any time and place where he may be found within the jurisdiction of this tribe and to command the aid of all peace officers or other persons in the execution of the warrant and to deliver the defendant, subject to the provisions of this chapter, to the duly authorized agent of the demanding state or tribe.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-108 Authority of Arresting Officer

Every officer or other person, empowered to make an arrest pursuant to this chapter shall have the same authority to arrest the defendant and to command assistance therein as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse a lawful command for assistance.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-109 Rights of Accused Person; Application for Writ of Habeas Corpus

1. Before any person arrested upon a warrant issued pursuant to this chapter is delivered over to any agent of the demanding executive authority, he must first be taken forthwith before a tribal court judge in this jurisdiction who shall inform him of the demand made, for his surrender.

2. The defendant must be advised by the tribal court judge of the crime of which he is charged and his right to demand and procure legal counsel at his own expense. If the prisoner or his counsel desire, to test the legality of his arrest, the tribal court judge shall fix a reasonable time by which the defendant can apply for a writ of habeas corpus.

3. If the defendant or his representative petitions the court for a writ of habeas corpus, the court shall set a time and place for the hearing thereon and such notice shall be given to the prosecuting officer of this tribe and to the appropriate agent of the demanding state or tribe. At the hearing the judge may inquire into whether the defendant can receive a fair trial in the demanding jurisdiction. If the judge determines that the defendant cannot receive a fair trial in the demanding jurisdiction then he shall release the defendant from custody.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-110 Confinement in Jail when Necessary

1. Any person arrested pursuant to this chapter of Title 4 may be confined in the tribal jailor any other existing facility for detention of tribal prisoners and the keeper of such jail must receive and safely keep the prisoner as he would any prisoner of the Washoe Tribe. The Washoe Tribe may charge the state or tribe seeking extradition of the defendant all expenses reasonably necessary for his confinement.

2. An officer or agent who is merely passing through this jurisdiction with a prisoner for the purpose of immediately returning him to the demanding jurisdiction, may, when necessary, confine the prisoner in the tribal jail or other facility. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having care of him proceeds on his route. The officer or agent is responsible for the expense of keeping his prisoner; provided, however, that such officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he is actually transporting the prisoner to the demanding jurisdiction with legal authority. Such prisoner shall not be entitled to demand a new requisition while in this tribal jurisdiction.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-112 Arrest Without a Warrant

The arrest of a person pursuant to this chapter may be lawfully made by any tribal peace officer without a warrant upon reasonable information that the defendant stands charged in the courts of a state or another tribe with a crime punishable by death or imprisonment for a term exceeding one (1) year. Immediately upon arrest, the defendant must be taken before a tribal judge with all practical speed and a complaint must be made against him under oath setting forth the grounds for the arrest and thereafter his answer shall be heard as if he had been arrested on a warrant.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-113 Commitment to Await Requisition; Bail

If from the examination before the tribal judge it appears that the person held is the same person who is charged with having committed the alleged crime and, except in cases arising under Section 4-31-105, that he has fled from justice, the tribal judge must issue a warrant reciting the accusation and commit him to the tribal jail for a period of time not to exceed thirty (30) days in order to enable the arrest of the defendant to be made by proper requisition procedures of the state or tribe having jurisdiction of the offense, subject to bail as provided in the next Section, or until his legal discharge.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-114 Bail; In What Cases; Conditions of Bond

Unless the offense with which the prisoner is charged is punishable by death or life imprisonment under the laws of the state or tribe in which it was committed, a Washoe tribal court judge may grant the person arrested bail, in such sum as he deems proper, conditioned upon the. prisoner's appearance at a time specified in the order granting release of the prisoner, and for his surrender or arrest upon the warrant of the chief executive officer of this tribe.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-115 Extension of Time of Commitment; Adjournment

If the defendant has not been arrested under a warrant of the chief executive officer by the expiration date as specified by the tribal judge in accordance with this chapter, such tribal judge may discharge the prisoner, recommit him for a period not to exceed sixty (60) days, or grant bail for this recommitment period as provided in this chapter.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-116 Forfeiture of Bail

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the tribal judge by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he is within the tribal jurisdiction. Recovery may be had on such bond in the name of the Tribe as in the case of other bonds given by the defendant in criminal proceedings.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-117 Request for Extradition after Criminal Prosecution in Tribal Court Has Been Instituted

If a criminal prosecution is pending in Washoe Tribal Court against a person subject to extradition pursuant to this chapter, the chief executive officer, at his discretion, may either surrender the defendant on demand of the executive authority of a state or other Indian tribe, or hold him until he has been tried and discharged or convicted and punished by this tribe.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-118 Guilt or Innocence of Defendant; Inquiry Into

Neither the chief executive officer nor the tribal court may inquire into the guilt or innocence of the defendant in any proceeding after the demand for extradition, except to identify the defendant as the person who is charged with the crime and to ascertain if reason exists for extradition.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-119 Chief Executive Officer May Recall Warrant

The chief executive officer may recall his warrant of arrest or may issue another warrant whenever he deems proper.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-120 Fugitives from This Tribe; Duty of Chief Executive Officer

Whenever the chief executive officer of this tribe shall demand a person charged with a crime or with escaping from confinement or breaking the terms of bail, probation or parole in this tribe, from the executive authority of any state or other tribe, or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant to some agent commanding him to receive the person so charged and

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-121 Application for Issuance of Requisition; by Whom Made; Contents

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

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

3. An application made pursuant to this Section shall be verified by affidavit, executed in duplicate and accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the tribal court judge, stating the offense with which the defendant is charged, or of the judgment of conviction or of the sentencing order. The prosecuting officer may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application with the action of the chief

executive officer endorsed thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentencing order shall be filed in the office of the tribal secretary to remain on record in that office. The other copies of all papers shall be forwarded with the chief executive officer's requisition.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-122 Immunity from Service of Process in Certain Civil Actions

A person returned to this tribe by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings for which he has been returned, until he has been convicted in the criminal proceedings for which he has been returned, or, if acquitted, until he has had reasonable opportunity to return to the state or tribe from which he was extradited.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-123 Written Waiver of Extradition Proceedings

1. Any person arrested in this tribe who is charged with having committed any crime or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in this Title, and all other procedures incidental to extradition proceedings, by executing or subscribing in the presence of a tribal court judge of this tribe a writing which states that he consents to return to the demanding jurisdiction.

2. Before any consent to return to the demanding jurisdiction can be deemed valid and effective by the tribal judge, it shall be the duty of such judge to inform the arrested person of all of his rights, including the right to the issuance or service of a warrant of extradition and his right to obtain a writ of habeas corpus as provided in Section 4-31-109.

3. When written consent to return to the demanding jurisdiction has been duly executed, it shall forthwith be forwarded to the office of the chief executive officer of this tribe and filed therein. The judge shall direct the officer having the arrested person in custody to deliver that person forthwith to the agent of the demanding state or tribe and shall cause to be delivered to such agent all papers and pleadings in the court file arising from the extradition proceedings.

4. Nothing contained in this Section shall be deemed to limit the rights of the defendant to return voluntarily and without formality to the demanding jurisdiction, nor shall this waiver procedure be deemed to be an exclusive

procedure or to limit the powers, rights, or duties of the officers of the demanding jurisdiction or of this tribe.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-124 Non-Waiver by This Tribe

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

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-31-125 No Right of Asylum; No Immunity for Other Criminal Prosecutions While in this Jurisdiction

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

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-40 SEARCHES AND SEIZURES

4-40-015 Definition of Property

As used in this chapter of Title 4, the term “property” includes documents, books, papers and any other tangible objects.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

40-40-025 Authority to Issue a Warrant

A search warrant authorized by this chapter may be issued by every tribal judge for the search and seizure of any property, premises or persons within the jurisdiction of the tribal court.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-40-035 Grounds for Issuing a Search Warrant

A search warrant may be issued pursuant to this chapter to search for and seize any property:

1. Stolen or embezzled in violation of the laws of the Washoe Tribe, or in violation of the laws of the State of Nevada or of the State of California, or of any other state or of the United States; or

2. Designed or intended for use, or which is or has been used, as the means of committing a criminal offense; or

3. When the property or things to be seized consist of any item or constitute any evidence which tends to show that a criminal offense has been committed, or tends to show that a particular person has committed a criminal offense.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-40-045 Issuance and Contents of Search Warrant

1. A search warrant may be issued only on affidavit or affidavits sworn to before the tribal judge and establishing the grounds for issuing the warrant or as provided in Subsections 2 or 3. If the tribal judge is satisfied that grounds for the application exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched.

2. In lieu of the affidavit required by Subsection 1, the tribal judge may take an oral statement given under oath, which must be recorded in the presence of the tribal judge in his immediate vicinity by a certified shorthand reporter or by electronic means, transcribed, certified by the reporter if he recorded it, and certified by the tribal judge. The statement must be filed with the clerk of the court.

3. A tribal judge may issue a search warrant based upon the sworn oral testimony of a person who is not in the physical presence of the tribal judge when it is not practical for the person presenting the testimony to personally appear before the tribal judge and the immediate issuance of a search warrant based upon such oral testimony is necessary in order to permit an immediate search and there is a significant danger that failure to grant a search warrant will result in the concealment or destruction of the object sought. The person giving the oral testimony must first be sworn and the information must be transmitted to the tribal judge by telephone or other electronic means of communications. The testimony must be recorded by a certified shorthand reporter or by electronic means,

transcribed, certified by the reporter if he recorded it, and certified by the tribal judge. The statement must be filed with the clerk of the court.

4. After the tribal judge has issued a search warrant, whether it is based on an affidavit or an oral statement given under oath, he may orally authorize a tribal police officer or the court clerk to sign the tribal judge's name on a duplicate original warrant. A duplicate original search warrant shall be deemed to be a search warrant. It must be returned to the tribal judge who authorized the signing of his name on it. The tribal judge shall endorse his name and enter the date on the warrant when it is returned to him. Any failure of the tribal judge to make such an endorsement and entry does not in itself invalidate the warrant

5. The warrant shall be directed to a tribal police officer. It must state the grounds of probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified.

6. The warrant must state the Section number and heading of the Code provision allegedly violated, if applicable.

7. The warrant must direct that it be served between the hours 7 a.m. and 9 p.m., unless the tribal judge, upon a showing of good cause therefore, inserts a direction that it be served at any time.

8. The warrant must designate the magistrate to whom it is returned.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-40-055 Use of Reasonable and Necessary Force.

All reasonable and necessary force may be used to affect an entry into any building or property or part thereof to execute a search warrant. In the execution of the warrant, the person executing it may reasonably detain and search any person in the place at the time in order to protect himself from attack or to prevent destruction, disposal or concealment of any instruments, articles or things particularly described in the warrant.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-40-075 Execution and Return of Warrant with Inventory

1. A search warrant may be executed and returned only within ten (10) days after its date.

2. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken.

3. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer.

4. The tribal judge shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

5. In the execution of any search warrant, no person or places other than those specifically described in the warrant shall be searched, and no property other than that specified in the warrant shall be seized, however the executing officer may seize any property listed in this Chapter if such property is in plain view or otherwise plainly noticeable to the physical senses of the officer.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-40-085 Motion for Return of Property and to Suppress Evidence

1. A person aggrieved by an unlawful search and seizure may move the tribal court to suppress for use as evidence anything so obtained on the ground that:
   (a) The property was illegally seized without warrant;
   (b) The warrant is insufficient on its face;
   (c) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or
   (d) The warrant was illegally executed.

2. The judge shall receive evidence on any issue of fact necessary to the decision of the motion.

3. If the motion to suppress is granted, the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible evidence at any hearing or trial.

4. The motion to suppress evidence may also be made in the court where the trial is to be held. The motion shall be made before trial unless

opportunity thereof did not exist or the defendant was not aware of the grounds for the motion, but the Court in its discretion may entertain the motion at the trial.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-40-095 Return of Papers to Clerk

The tribal judge who has issued a search warrant shall attach to the warrant the duplicate original warrant, if any, and a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the court.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-40-105 Retention of Property and Return of Property; Technical Irregularities not to Invalidate Warrant

All property and things taken on a warrant must be retained by an officer in his custody, subject to the order of the tribal court. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the tribal judge shall cause the property to be restored to the person from whom it was taken. However, no search warrant shall be quashed by any tribal judge nor shall any evidence based upon a search warrant be suppressed in any criminal action or proceeding because of mere technical irregularities which do not affect the substantial rights of the defendant.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-40-115 Searches without a Warrant

1. It is the policy of the Tribe that a search warrant must be obtained pursuant to this chapter prior to the search of the property or person of anyone within the jurisdiction of the Tribe, except as provided for in this Section.

2. A tribal police officer may conduct a search and seize property without a valid warrant when:
   (a) Incidental to making a lawful arrest and the search is limited to a search of the person himself and the immediate surrounding area within which the person arrested might find a weapon before the officer could protect himself, or might destroy evidence before the officer could prevent it;
   (b) The search is with the consent of the person to be searched or a person with authority over the place to be searched, after that

person has been informed of his right to require the officer to obtain a search warrant;

(c) In the absence of arrest, the officer has reason to believe that the person to be searched may be armed and dangerous, but any such search shall be limited to a pat down and frisk of the subject solely to determine the existence of weapons; and

(d) The search is of a vehicle capable of moving on its own power or from which items would probably be taken before a warrant could be obtained, and the officer has probable cause to believe the vehicle contains property which could be seized with a search warrant under this chapter of Title 4.

3. If, in the course of a pat down and frisk under Subsection 2, the officer gains sufficient probable cause to arrest the person being searched, he may arrest that person.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-40-120 Search Warrants for Other Jurisdictions

1. Except as otherwise provided by Federal law or this Code, no search or seizure of any person or property within the jurisdiction of the Tribe shall take place except pursuant to a valid search warrant issued by the tribal court even though the offense involved may have occurred in another jurisdiction.

2. An application by law enforcement officers of another jurisdiction for a search warrant within the tribal jurisdiction may be made in a form substantially complying with Section 4-40-045.

3. If the application and accompanying documents give the tribal judge probable cause to believe that a felony has occurred, over which the government requesting the search has jurisdiction, and that the search will discover property which will substantially aid the requesting government and which is stolen, or illegal to possess or is the instrumentality, evidence, or fruit of a crime, then the judge shall issue a tribal search warrant to be executed and returned as are other tribal search warrants.

4. Notwithstanding the provisions of Subsection 3, applications for search warrants by other tribal jurisdictions may be made under this Section for any crime that would be an offense under this Code.

5. Items seized under Subsection 3 or 4 above may be relinquished by the judge to the custody of the other jurisdiction upon the condition that the other jurisdiction agrees that the items shall be returned to the Tribe when

no longer needed for the criminal prosecution. When returned, the items shall be disposed of in accordance with this Code.

6. None of the provisions of this Section shall be applied for the benefit of any jurisdiction which does not consent in writing to apply its search warrant procedures for the benefit of the Washoe Tribe, if the need arises.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50 PROCEDURE BEFORE TRIAL

4-50-010 Confessions

All evidence obtained from a defendant by means of fraud, force, threats or a denial of the rights listed in this Code shall be excluded as evidence at the trial of the defendant.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50-020 Presence of the Defendant Required

1. A defendant is entitled to be present at all stages of the proceedings against him, including any bail hearing, arraignment, all stages of the trial, return of the verdict and imposition of sentence.

2. A defendant may be removed from the court for continued misconduct at any stage of the proceedings against him upon order of the presiding judge and the proceedings may continue without the defendant present.

3. A defendant may, by choice, be absent from any portion of the proceedings against him, other than arraignment and sentencing, so long as a representative of the defendant appears and the defendant's absence does not delay or interfere with the orderly progress of the case.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50-030 Bail Release by Tribal Police Officer

1. The tribal judge may prepare a bail schedule establishing specific bail amounts for specific offenses to allow for any defendant in custody awaiting trial to post an appropriate bail amount and be released without appearing before the judge to have bail set.

2. The tribal judge may establish for each class of offenses provided for in this Code a minimum bail to be paid for any offense of that class where no specific bail has been set.

3. Any person accused of an offense listed on the bail schedule shall be entitled to release upon payment of bail to the clerk of the court or other designated person, unless the court specifically orders that bail will be set at the arraignment

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50-035 Determination of Probable Cause and Bail – Initial Hearing

1. Where a person is arrested without a warrant and held in custody for proceedings in tribal court, within forty-eight (48) hours from the time of arrest the judge must make a determination as to whether probable cause exists to believe the person arrested committed an offense.

2. Upon a determination by the judge that probable cause exists to believe the person arrested committed an offense, the judge may set bail or other conditions for release of the arrested person.

3. The determination of probable cause may be based upon an affidavit of the arresting officer or upon examination by the judge of the arresting officer appearing before the judge or by telephonic conference which must originate in the tribal court or chambers and must be completely recorded as part of the record in the case.

4. Failure to present the judge with an affidavit supporting the probable cause for arrest, or to appear before the court for the initial hearing on probable cause and bail, within the time limits contained in this Section shall result in the immediate release of the defendant on his own recognizance as to all future proceedings on the charges for which the defendant was originally arrested.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50-040 Setting Bail and Conditions of Release by Tribal Judge

1. Every defendant who is arrested and held in custody for proceedings in tribal court may be eligible for release from custody on his own personal recognizance, that is, upon his written promise to appear for trial, unless the judge determines that such a release would not reasonably assure the appearance of the person at the required time.

2. A defendant released on bail under Section 4-50-030 above may apply to the court for a hearing to consider a reduction of bail at any time.

3. There shall be no bail in cases where the defendant is accused of murder. In all other cases, bail shall not exceed $25,000.

4. In determining the risk of non-appearance and in setting bail, the judge shall take into account the following factors concerning the defendant:
   (a) Whether detention appears reasonably necessary to prevent injury to property, a breach of the peace, or bodily harm to the defendant or to another;
   (b) His employment, residence, family ties, and other relationships to the community; and
   (c) The nature of the offense charged and his prior criminal record, including the record of prior release on recognizance or bail.

5. In addition to or instead of a release on personal recognizance or on money bail, the tribal judge may release the defendant under any one or more of the following conditions, as necessary to assure the appearance of the defendant at the required times:
   (a) Release to the custody of a designated person or organization agreeing to assure the defendant's appearance;
   (b) Release with reasonable restrictions on the travel, association, or place of residence of the defendant during the period of release;
   (c) Release after deposit by the defendant of a bond, that is, a partial or zero payment of bail plus a promise to pay the full bail if the defendant fails to appear as ordered;
   (d) Release after execution of an agreement by two (2) responsible members of the community to pay and forfeit the defendant’s bail if he shall fail to appear; or
   (e) Release upon any other condition deemed reasonably necessary to assure the appearance of the defendant as required.

6. If the judge has substantial reason to believe that no condition of release will reasonably assure the appearance of the defendant, or if the judge finds that the defendant is likely to pose a danger to the community, to himself, or to any other person, the judge may order that the defendant be held in custody until final disposition of the charges against the defendant.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50-050 Arraignment

1. Arraignment is the bringing of a defendant before the court, informing him of his rights as a criminal defendant and informing him of charges against him and receiving his plea to the charges

2. Arraignment shall be held in open court within the following time limits:
   (a) If the defendant is in custody solely on the charges for which arraignment is sought, arraignment shall be held without unnecessary delay but in no event later than the next regularly scheduled court date;
   (b) If the defendant was arrested but is then released from custody, the arraignment must be held within fourteen (14) working days from the time of arrest; or
   (c) If the defendant was not arrested but is named in a criminal complaint, the arraignment may take place at any time within the limits set in Section 4-10-020.

3. Before a defendant is required to plead to any criminal charge, the judge shall:
   (a) Read the complaint and the Section of the Tribal Code the defendant is charged with violating, including the maximum authorized penalty.
   (b) Determine that the defendant understands the charge against him and the penalty which may be imposed;
   (c) Provide the defendant with a copy of the complaint;
   (d) Advise the defendant that he has the right to remain silent, the right to a jury trial, the right to a representative at his own expense, and that if he can not afford a representative one will be appointed to represent him at the expense of the Tribe, and the right to have the arraignment postponed should he desire to consult with a representative; and
   (e) If the case is one where a jury trial is permitted under this Title, specifically ask the defendant if he wishes a jury trial and record his answer for the record.

4. After the advisement of his rights, the defendant shall enter a plea as follows:
   (a) A defendant may plead either “guilty”, “not guilty” or “no contest”. If the defendant refuses to plead or if the Court refuses to accept a plea of “guilty”, the Court shall enter a plea of “not guilty”.
   (b) If the defendant pleads “not guilty”, the judge shall set a trial date and shall establish conditions of bail prior to trial and inform the defendant in writing of those conditions.

5. If the defendant pleads "guilty" either at arraignment or at a later hearing, the following procedures shall be followed:
   (a) The judge shall determine whether the plea of "guilty" is made voluntarily and because the defendant is actually guilty or desires not to contest the charges. The judge shall personally address the defendant to assure that no person threatened the defendant, made improper promises, misled him as to the consequence of his plea, or otherwise improperly induced him to plead "guilty", or "no contest". If coercion or other improprieties exist, the judge shall reject a plea of "guilty", or "no contest", and enter a plea of not guilty.
   (b) The judge shall determine that the defendant understands the consequences of the plea, including the maximum penalties to which he may be subjected and the waiver of his rights to trial by jury, if any, to confront and cross-examine his accusers, and to avoid self-incrimination.
   (c) The judge may impose sentence immediately after a "guilty" or "no contest" plea or may defer sentencing for a reasonable time in order to obtain any information he deems necessary for the imposition of a just sentence.
   (d) Before a sentence is imposed, the defendant shall be allowed to address the Court and to present facts relevant to sentencing.

6. Before sentence is imposed, the judge may allow the defendant, upon oral motion, to withdraw a plea of "guilty" or "no contest" at any time. After sentence is imposed, the judge may allow the defendant, upon written motion, to withdraw his plea of "guilty" or "no contest" and may set aside the conviction when it appears that the interest of justice and fairness would be served by doing so.

7. A plea of "no contest" to allegations contained in a criminal complaint shall not be deemed an admission as to those allegations in any civil action based upon those same allegations.

8. Each defendant is entitled to a trial within sixty (60) days of arraignment unless the case is continued at the request of the defendant or for other very good cause. It is not sufficient for a continuance that the Court or the prosecution finds a delay convenient. Denial of the right to a speedy trial under this Subsection shall require dismissal of the case. An order for the dismissal of the action under this Subsection is a bar to another prosecution for the same offense based on the same set of facts.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50-060 Pre-Trial Motions – Procedure

1. A defendant may make a motion to suppress evidence, a motion to dismiss the case, or any other motion appropriate to meet the ends of justice.

2. A pretrial motion shall be in writing, unless allowed to be made orally by the Court or by a specific provision of this Code.

3. Motions made prior to trial shall be made no less than five (5) days prior to the date set for trial, except that motions asserting lack of tribal court jurisdiction may be made at any time. The judge may permit an untimely motion to be made when good cause for the delay is shown.

4. All pretrial motions shall be heard and ruled upon as soon as possible unless for good cause the judge postpones the hearing and ruling until trial or another time.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50-061 Motion to Dismiss the Complaint

1. A motion to dismiss a complaint may be made upon the following grounds:
   (a) Failure to arraign within five (5) years except for murder;
   (b) Denial of a defendant's rights;
   (c) A defective complaint;
   (d) Failure to file a complaint before or at the time of arraignment,
   (e) A finding that the defendant has been charged or arrested without probable cause;
   (f) Violation of the fresh pursuit rules;
   (g) A defect in the warrant or its service, or the summons, or the citation;
   (h) A denial of the defendant's rights at the time of arrest;
   (i) A defect in the extradition procedure;
   (j) A violation of the bail procedures; or
   (k) A violation of any other provision of this Title 4.

2. The decision to grant the motion to dismiss shall be discretionary with the judge, based on the harm the violation has done to the defendant or to his ability to present his case, unless some other provision of this Title 4 absolutely requires the granting of the motion to dismiss.

3. In addition to absolute requirements of dismissal stated elsewhere in this Title 4, the complaint must be dismissed in the following situations:
   (a) Upon a finding that the defendant has been charged or arrested without probable cause, or

(b) Upon a finding that the Court has no jurisdiction over the person or the offense.

4. An order dismissing a complaint is not a bar to subsequent prosecution for the same offense unless:
   (a) The dismissal is for a violation occurring after jeopardy has attached under Section 4-10-030;
   (b) This Title 4 specifically provides that dismissal for the particular reason involved shall be a bar;
   (c) The grounds for the dismissal were lack of tribal court jurisdiction over the person or the offense, except that prosecution may be renewed if jurisdiction is later acquired.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50-062 Motion to Disqualify Judge

1. A judge shall not hear any portion of a case, when the judge has a blood or marriage relationship as described in Section 1-40-100 to either the defendant, the prosecutor, or a complaining witness. Refusal of the judge to disqualify himself as required shall require reversal on appeal.

2. The defendant may move to disqualify the judge at any stage of the proceeding prior to sentencing if in his opinion he cannot receive a fair and impartial hearing by reason of the bias or prejudice of that judge.

3. Upon a motion under this Section, the judge shall consider whether granting the motion would be in the best interests of justice. If the motion is granted, the judge shall cease to participate in the case and shall call another judge to hear the matter. An abuse of discretion in the denial of a motion shall require reversal on appeal.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50-070 Subpoenas; Requests for Evidence Outside the Jurisdiction

1. Upon request of any party or upon the tribal court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, the presence of jurors or the production of books, records, documents or any other physical evidence which is relevant to the determination of the case and is not an undue burden on the person possessing the evidence. If empowered by the tribal judge, the clerk of the court may issue subpoenas.

2. A subpoena shall bear the name of the person or description of the physical evidence being subpoenaed, the name of the person who has custody of the evidence and the obligation to deliver the physical

evidence, the title of the proceeding and the time and place where the person is to appear or the evidence is to be produced.

3. A subpoena may be served at any place within the tribal jurisdiction.

4. A subpoena may be served by any tribal police 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 place of residence with any person sixteen (16) years of age or older who appears to reside there or to be a responsible recipient.

5. Proof of service of the subpoena shall be filed with the clerk of the court by noting on the back of 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.

6. In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena served within the tribal jurisdiction, the service of which has been proved, may be deemed to be in contempt of court and a bench warrant may be issued for his arrest.

7. When a subpoena would be proper under this Section, except that the persons or items desired are outside the jurisdiction of the court, then upon the request of any party or upon the tribal court's own initiative, the judge may issue a signed Request for Evidence.

8. A Request for Evidence shall be in substantially the same form as a subpoena and shall be served and returned in the same manner, except that a Request for Evidence shall state on its face that it is a request only and that there are no sanctions for failure to comply with the request.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-50-080 Discovery and Inspections

1. Upon motion of a defendant the Court may order the tribal prosecutor to permit the defendant to inspect and copy or photograph any relevant:
   (a) Written or recorded statements or confessions made by the defendant, or copies thereof, within the possession, custody or control of the Tribe, the existence of which is known, or why the exercise of due diligence may become known, to the tribal prosecutor; and
   (b) Results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof within the possession, custody or

control of the Tribe, the existence of which is known or by the exercise of due diligence may become known, to the tribal prosecutor.

2. Upon motion of a defendant the Court may order the tribal prosecutor to permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Tribe upon a showing of materiality to the preparation of his defense and that the request is reasonable.

3. If the Court grants relief sought by the defendant it may, upon motion of the Tribe, condition its order by requiring that the defendant permit the Tribe to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within his possession, custody or control, upon a showing of materiality to the preparation of the Tribe's case and that the request is reasonable.

4. An order of the Court granting relief under this Section, shall specify the time, place, and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

5. Upon a sufficient showing, the Court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the Tribe, the Court may permit the Tribe to make such showing, in whole or in part, in the form of a written statement to be inspected by the Court in chambers. If the Court enters an order granting relief following a showing in chambers, the entire text of the Tribe's statement shall be sealed and preserved in the records of the Court to be made available to the appellate court in the event of an appeal by the defendant.

6. A motion under this Section may be made only within ten (10) days after arraignment or at such reasonable later time as the Court may permit. The motion shall include all relief sought under such Sections. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.

7. If, subsequent to compliance with an order issued pursuant to this Section, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under such Sections, he shall promptly notify the other party or his attorney or the Court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the Court that a party has failed to comply with such Sections or with an order issued

pursuant to such Sections, the Court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

8. If requested in writing by any other party, each party shall provide in writing to all other parties, at least five (5) working days before the trial, the names of any witnesses upon whom the party intends to rely to provide an alibi or other evidence. Failure to provide a list of witnesses will prevent the use of such witnesses unless it can be shown that no unfairness in the case has resulted, or that other good cause exists. The judge may order the trial delayed or make such other orders as will assure a just determination of the case.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-60 TRIALS

4-60-010 Witnesses

1. Any person who understands his responsibility to tell the truth may be a witness.

2. At any time in the criminal process, if scientific, technical or other specialized knowledge will assist the jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by special knowledge, experience, or training may testify to matters within the scope of that knowledge, experience, or training.

3. At any time in the criminal process, the judge may appoint an interpreter of his own selection and each party may provide its own interpreter at its own expense. An interpreter through whom testimony is communicated shall be put under oath to faithfully and accurately translate and communicate as required by the presiding judge. With the consent of all parties the trial judge or clerk may act as interpreter.

4. In any trial, the judge, on motion of any party or on his own initiative, may order that any witness be released from all liability to prosecution or punishment on account of any testimony or other evidence he may be required to produce.

5. Such an order of immunity shall forever prohibit prosecution of the witness for any offense shown in whole or in part by such testimony or other evidence, except for perjury committed in giving such testimony.

6. The judge shall deny a motion made pursuant to this Section, if it reasonably appears to the judge that such testimony or evidence would subject the witness to prosecution under the laws of another jurisdiction.

7. Any witness who, having been granted immunity, refuses to testify or produce other evidence is in contempt of court. Any witness who is jailed for such contempt may challenge the lawfulness of his imprisonment by habeas corpus.

8. Each witness answering a subpoena shall be entitled to a fee not less than the federal hourly minimum wage plus actual cost of travel. Each witness testifying at a hearing shall receive pay for time actually spent in complying with said subpoena, plus travel allowance.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-60-020 Jury Trial

1. A defendant has a right to a jury trial in all cases where the offense charged is a Class A, B, C, or D offense, unless the judge states before trial that the punishment, if any, shall not include jail time.

2. Unless a defendant claims his right to a jury by oral or written request at arraignment or by written request at least fifteen (15) days before the date set for trial, the case shall be tried by a tribal judge without a jury. If a person cancels a jury trial less than fifteen (15) days prior to trial, he shall be responsible for jury fees and costs.

3. A jury shall consist of six (6) persons selected at random from a list of eligible jurors prepared each year by the Council or other body, as the Council shall direct. When a trial is expected to take more than four (4) days, an alternate juror or jurors may be selected, who shall replace any juror who is unable to perform his duties.

4. Chapters 2-80, dealing with jury trials in civil cases, shall govern the eligibility of jurors in criminal cases unless otherwise in conflict with the provisions of this Title 4.

5. Prospective jurors shall be questioned for impartiality and other qualifications, either by the judge, or if the judge allows, by each party.

6. Prospective jurors may be challenged as follows:
   (a) During questioning of the jury, each party shall have the right to challenge an unlimited number of prospective jurors for cause on the basis of lack of eligibility, prejudice, or the demonstration of a

likelihood that the prospective jurors would not be able to make an impartial decision. Either party may challenge any prospective juror for cause at any time during the examination of prospective jurors. The judge shall decide if a prospective juror is ineligible for cause.

(b) After examination and challenges for cause, when six (6) prospective jurors and the alternates, if any, have been selected, each party shall have the right to a maximum of two (2) peremptory challenges of jurors. Peremptory challenges are requests to remove a prospective juror for which no reason need be given and which the judge must grant. If alternate jurors are chosen, each party shall have the right to one peremptory challenge of a prospective alternate juror. Neither of the two (2) regular peremptory challenges may be used against a prospective alternate juror.

(c) Peremptory challenges, if used, shall be exercised one at a time, alternating between the prosecution and the defense, the prosecution going first. When all peremptory challenges desired to be used against the first group of prospective jurors have been exercised, replacements for those peremptorily challenged shall be called, who shall be examined for bias and who may be challenged for cause under this Section.

(d) Any remaining peremptory challenges may be exercised against the new prospective jurors chosen until a jury and alternates, if any, are chosen.

7. After examination of prospective jurors, challenges for cause, and the exercise of peremptory challenges, the judge shall have the six (6) jurors and the alternates, if any, swear to fully consider all evidence and to render an impartial verdict, and shall declare them a jury.

8. During the course of jury trial and at the end of trial, the judge shall instruct the jury about the applicable law. The jury shall decide all questions of fact on the basis of that law.

9. The jury shall deliberate in secret and shall return a verdict of “guilty” or “not guilty”. All verdicts shall be by majority vote. The judge shall render judgment in accordance with the jury verdict.

10. If the jury is unable to reach a majority verdict, the judge shall declare a mistrial and dismiss the jury and the case shall proceed as follows:

(a) The case may be reset for trial upon an immediate oral motion by the prosecution or upon a written motion made within fifteen (15) days, regardless of the provisions against double jeopardy under Section 4-10030; or

(b) If a motion to reset for trial is not made immediately, the defendant shall be released from custody and from all conditions of bail except personal recognizance. At the end of fifteen (15) days, if the motion to rest has not been filed, the judge shall dismiss the case, and the prosecution may not be renewed.

11. Each juror who serves upon a jury shall be entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a) (1), and any of its subsequent revisions. Each juror shall receive pay for any portion of a day served, plus travel allowance. Total pay shall not exceed eight (8) hours per day.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-60-030 Misconduct by the Prosecutor

If the prosecutor purposely does or causes to be done any act of misconduct intended to prejudice the case against the defendant, the court may dismiss the case upon its own or the defendant's motion.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-60-040 Fees and Expenses

1. Fees and expenses established in this Title 4 and designated as payable by the Tribe shall be paid by the Tribe and may be charged to the defendant as costs, if he is adjudged guilty, and if the judge finds that the imposition of costs are proper.

2. Costs shall be enforced against a defendant in the same manner as a fine imposed upon conviction. No defendant shall be jailed because of his inability to pay costs immediately. Defendants shall be given a reasonable time to pay costs or shall be allowed to make installment payments.

3. If the Court, upon its own or the defendant's motion, finds that a complaint was not filed in good faith but was filed with a frivolous or malicious intent, it may order the complainant to pay the costs of the action, or to give security to pay costs within thirty (30) days.

4. If the complainant does not comply with such an order of the Court, judgment may be entered against him for the amount of costs. Such judgments may be enforced and appealed from in the same manner as those rendered in civil actions.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-60-050 Order of Trial

1. When the jury has been sworn, or if there is no jury, when the judge is ready, the complaint shall be read, the defendant shall be advised of his right to change his not guilty plea at any time, and the defendant shall state his plea.

2. The prosecution shall present an opening statement. The defendant or his representative may then make an opening statement or may reserve the statement to be made immediately prior to the presentation of evidence on behalf of the defendant.

3. The prosecution shall first present its evidence in support of the charge and when finished shall rest its case. The defendant then may offer evidence in his defense.

4. Following presentation of evidence in a jury trial, the judge shall instruct the jury.

5. When all evidence has been presented, the prosecution may make the first closing argument. The defense may then make a closing argument.

6. At the end of closing arguments the judge shall consider any motions and announce his findings and declare his final decision. The judge may take the matter under submission and file in the court record written findings of facts and conclusions of law at a later date. In a jury trial, after closing arguments and consideration of motions the jury shall deliberate in secret, and shall report its decision to the judge.

7. Upon receiving the decision of the jury judge shall enter judgment upon the verdict, if any, or shall proceed as provided in Section 4-60-020 if the jury is unable to agree.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-60-060 Burden of Proof

1. A defendant in a criminal proceeding is presumed to be innocent, and each element of the charges against him must be proven beyond a reasonable doubt to find him guilty.

2. A “reasonable doubt” is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more serious affairs of life. After considering all of the evidence, if the jurors have a sincere and lasting belief in the truth of the charge, there is not a reasonable doubt.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-60-070 Rules of Evidence

The rules of evidence as set forth in Title 6 shall apply to any trial pursuant to this Title 4.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-60-080 Regulation of Conduct in Courtroom

1. Any person, including a defendant, who repeatedly interferes with the orderly course of a proceeding by disorderly or disruptive conduct, may be ordered removed from the courtroom, or cited for contempt, or both.

2. No such order or citation shall be issued until after the person has been fully and fairly informed that his conduct is unacceptable and has been warned of the consequences of continued misconduct.

3. A person who has been removed from the courtroom may return upon his promise of good conduct. If his misconduct continues after his return, the court may have the person removed from the courtroom.

4. The taking of photographs in the courtroom during judicial proceedings, or the radio or television broadcasting of judicial proceedings from the courtroom, shall not be permitted, unless there are special circumstances, all of the parties consent, and the judge feels that the purposes of justice will not be thwarted.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-60-090 Disability of a Judge

1. If the judge presiding at the trial of a criminal action determines on his own motion that he is unable to proceed, or if the Council determines that a judge is unable to proceed with a trial by reason of death, sickness, or other disability, any other tribal judge may proceed with the trial, upon certifying in writing as part of the record that he has familiarized himself with the record of the trial.

2. If a substitute judge feels that he cannot fairly proceed with the trial, a new trial may be ordered, notwithstanding the provisions of this Title 4 regarding double jeopardy.

3. If the only responsibility of the substitute judge is the sentencing of the defendant, a new trial shall not be ordered, but the judge may hold a sentencing hearing at which time he will receive and consider evidence relating to sentencing. Any sentencing hearing shall comply with all procedural requirements of this Title 4.

4. If the disability of the judge and finding a replacement causes a delay in the trial of more than ten (10) days for a defendant in custody or of more than thirty (30) days for a defendant not in custody, the case may be dismissed, upon a finding that substantial rights of the defendant have been prejudiced by the delay.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-70 PROCEDURE AFTER A VERDICT OR AFTER TRIAL

4-70-010 Judgment and Sentence

1. In every case, upon a conviction, a verdict of "not guilty", a failure to reach a verdict or any other disposition of the case, the judge shall sign a judgment which the clerk shall file as part of the record. The clerk shall give a copy of the judgment to the defendant.

2. The judgment shall set forth at least:
   (a) The names of the parties and the case number;
   (b) the offenses charged;
   (c) the plea;
   (d) the disposition
   (e) the verdict returned by the jury or Court;
   (f) terms of the sentence or discharge; and
   (g) the signature of the judge.

3. Sentence shall be imposed as soon as possible, but in no case more than thirty (30) days after the date of conviction. Before sentencing, the judge may commit the defendant to jailor or may continue or alter the bail in accord with the procedures of this Title. Before imposing sentence, the judge shall address the defendant personally and ask him if he or his representative wishes to make a statement or to present any information relevant to sentencing.

4. At the time of sentencing in a case which has gone to trial on a plea of "not guilty", the court shall orally advise the defendant of his right to appeal.

5. The determination and imposition of sentence shall be in accord with the provisions on sentencing set forth in this Section.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-70-020 Appeal

1. Subject to the provisions of Title 1, an appeal may be taken by any person convicted upon a plea of "not guilty", who files a written notice of appeal with the clerk of the court within thirty (30) days after judgment is filed. The time for appeal shall not begin to run against a defendant convicted upon a plea of "not guilty" until a reasonable effort has been made to serve the defendant with a copy of the judgment.

2. Any person convicted of an offense under this Code, who has filed timely appeal, shall be considered for release pending hearing of the appeal in accord with the procedures of this Title.

3. The prosecution has no right to appeal a 'judgment of acquittal. The prosecution may appeal decisions upon pretrial motions and all other orders of the court that allegedly deny the prosecution its rights under this Title 4 and may continue or renew a prosecution when doing so does not place the defendant in double jeopardy and is not otherwise prohibited by this Title 4.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-70-030 Granting of New Trial

1. The judge may grant a convicted defendant a new trial if justified on the grounds of newly discovered evidence, jury misconduct, or for other good reasons when a new trial will serve the purpose of justice.

2. If the trial was by the judge without a jury, the judge may vacate any judgment filed, take additional testimony and make a new disposition and a new judgment. If the trial was by a jury, a new trial may be held either by judge or jury as requested by the defendant.

3. A motion for a new trial based on the grounds of newly discovered evidence may be made before final judgment is filed or within three (3) months after filing of judgment. If an appeal is pending, the trial court may not consider a motion for new trial until the case has been returned to it by the appeals court. The three (3) months time for filing a motion for a new trial shall not run while the case is being appealed.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-70-040 Illegal Sentences and Clerical Mistakes

1. The Court may correct a sentence that is in violation of this Code at any time, on its own motion or on the motion of any party.

2. Clerical mistakes in judgments, orders or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the Court at any time and after such notice, if any, as the judge orders.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-70-050 Effect of irregularities

1. Neither a failure to follow the rules of this Title 4 as to form or content of any pleading or proceeding, nor an error or mistake in the form or content, shall render a pleading or proceeding invalid, unless the defendant has been prejudiced or unless this Title 4 requires otherwise.

2. Whenever the Court or any person denies a defendant any right which is absolute under this Title 4, or commits any error, makes any mistake, or denies any right in such a way that is prejudicial to the defendant, the defendant shall have an immediate right of appeal. This right of appeal is in addition to any other remedy for the denial or error provided elsewhere in this Title 4.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-70-060 Sentencing in General

1. A person found guilty of an offense under this Code shall be sentenced accordingly.

2. Laws relating to offenses enacted or adopted after the effective date of this Code shall be classified for sentencing purposes in accord with the provisions of this Title.

3. Offenses shall be designated as Class A, Class B, Class C, Class D, or Class E Offenses.

4. Any offense for which no penalty or sentence is specified or which is not specifically designated as a certain class of offense shall be treated for purposes of sentencing and punishment as a Class D offense.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-70-070 Maximum Fine and Sentences of Imprisonment

1. A person convicted of an offense may be sentenced as specified for the specific offense and as follows:
   (a) If the offense is a Class A offense, to a term of imprisonment not to exceed one (1) year or to a fine not to exceed $5,000 or both;
   (b) If the offense is a Class B offense, to a term of imprisonment not to exceed six (6) months or to a fine not to exceed $2,500 or both;
   (c) If the offense is a Class C offense, to a term of imprisonment not to exceed three (3) months or a fine not to exceed $1,500 or both;
   (d) If the offense is a Class D offense, to a term of imprisonment not to exceed sixty (60) days or a fine not to exceed $750 or both; or
   (e) If the offense is a Class E offense, to a fine not to exceed $500 without imprisonment.

2. The limits on .terms of imprisonment listed in this Section apply to imprisonment in the tribal or any other jailor penitentiary, and also to full or part-time residence or confinement in a medical or rehabilitative facility required as a condition of probation or parole or otherwise ordered by the Court.

3. In addition to the fines listed in this Section, the Court may assess costs as provided in Section 4-60-040. The Court also may order the defendant to make restitution to the victim to compensate the victim for damages resulting from the commission of the offense.

4. The tribal judge, instead of or in addition to any other sentence which might be imposed, may sentence a defendant to work for the benefit of the Tribe for credit against a fine or imposition of costs. Credit shall be granted at the rate of fifty dollars ($50.00) per 8 hour day worked. Such a sentence shall be imposed only if appropriate for the work.

5. Any credit granted against a fine or imposition of costs shall also be granted for any work a defendant performs, other than work done for himself, done during and because of his status as a defendant, whether performed while imprisoned or not, whether part of a sentence or not, and whether performed before or after a finding of "guilty".

6. A person convicted of an offense against a person 55 years of age or older shall be sentenced to a term of imprisonment as required by Subsection (1) above and may be ordered to pay a fine and make restitution but shall not be considered as a candidate for probation.

[Enacted 6/28/96, Resolution No. 96-WTC-39; Amended 3/14/97, Resolution No. 97-WTC-04; Amended 10/11/02, Resolution No. 112-WTC-2002.]

4-70-080 Payment of Fines and other Monies

1. Fines shall be paid in cash unless, upon request of the defendant, the judge allows payment by goods of like value, or by other means.

2. The judge may, upon request of a defendant or upon his own motion, allow any fines or other required payments to be paid in installments or on conditions tailored to the means of the defendant.

3. If the defendant willfully fails to pay the fine or installment of a fine the judge may find him in contempt of court.

4. When justice requires, the judge may modify the terms and conditions of any required payment.

5. Fines and other monies collected as a result of the commission of criminal offenses under this Code shall go into the general uncommitted funds of the Tribe and shall not be specifically designated for the expenses of law enforcement. This Subsection shall not apply to restitution ordered paid to the victims of an offense. Restitution shall be paid as ordered by the Court, and shall be the property of the recipient.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-70-090 Sentencing Factors to be Considered

The sentence imposed in each case should impose the minimum penalty consistent with the protection of the public, the seriousness of the offense, and the rehabilitative needs of the defendant. In determining the-nature and duration of the penalty 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 offender has attempted to make amends, and the state of the offender's mental health at the time of the offense and sentencing. The Court further shall give due consideration to the extent of the defendant's resources and the needs of his dependents.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-70-100 Credit for Time Served

1. A defendant held in jail pending trial or the imposition of sentence shall earn credit toward the sentence imposed for the specific charges which resulted in his confinement at the rate of one (1) day for every one (1) day served.

2. For each day that the defendant performs work while in custody he shall be entitled to two (2) days credit against any sentence imposed.

3. Credit as provided in this Section should be computed and considered by the Court at the time of sentencing and at other times as appropriate.

[Enacted 6/28/96, Resolution No. 96-WTC-39.]

4-70-110 Probation

1. After a sentence of imprisonment has been imposed, the tribal court may, in its discretion, suspend the serving of such sentence and release the defendant on probation on that person's signed pledge of good conduct for the duration of the probation.

2. The Court may attach further and reasonable conditions of probation, including but not limited to a requirement that the defendant do one or more of the following:
   (a) Serve a lesser period of imprisonment;
   (b) Undergo available medical, psychiatric, or other rehabilitative treatment, and enter and remain in a specified institution when required for that purpose, for a period not to exceed the maximum possible imprisonment provided for in this Title;
   (c) Refrain from all use of intoxicants, narcotics, or drugs unless taken under a doctor's orders;
   (d) Report as directed to a probation officer and permit the officer to visit his home;
   (e) Remain within the jurisdiction of the Court, and to notify the probation officer of any change of address or employment;
   (f) Not to have in his possession any firearm or other dangerous weapon unless granted permission by his probation officer; and
   (g) Satisfy any other conditions reasonably related to the rehabilitation of the defendant and not incompatible with his freedom of conscience or unduly restrictive of his liberty.

3. The defendant shall be given a written statement of the requirements of his probation, stated with sufficient specificity to enable him to act accordingly.

4. The length of the period of probation shall not exceed one (1) year.

5. A person convicted of an offense against a person 55 years of age or older shall not be considered by the court as a candidate for probation.

[Enacted 6/28/96, Resolution No. 96-WTC-39; Amended 3/14/97, Resolution No. 97-WTC-04.]

4-70-120 Revocation of Probation

1. Any person who violates the terms of his probation shall be required by the judge to serve the sentence originally imposed.

2. A defendant may be taken into custody for a violation of probation as follows:
   (a) Upon a showing of probable cause that a violation has occurred, the judge may summon the defendant to appear before him or may issue a warrant for his arrest; or
   (b) A probation or law enforcement officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of probation, or that the defendant has committed another offense, may arrest him without a warrant.

3. Probation shall not be revoked except after a hearing held following written notice to the defendant of the grounds on which the revocation is proposed. At the hearing the defendant shall have the right to confront and cross examine the witnesses against him, to offer evidence in his defense, and to have a representative pursuant to this Title.

4. Whenever a defendant is taken into and held in custody for violation of probation conditions, he is entitled to a hearing on the revocation of his probation within ten (10) working days of arrest, unless he requests further time to prepare his defense, or unless he is being held for commission of another and separate offense.

[Enacted 6/28/96, Resolution No. 96-WTC-39]