

UNITED KEETOOWAH BAND OF  
CHEROKEE INDIANS  
IN OKLAHOMA

CRIMINAL PROCEDURE  
ACT of 2022

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## CRIMINAL PROCEDURE

### GENERAL PROVISIONS

#### Section 1. Scope, Purpose, and Construction

(a) This Title governs the procedure in all criminal proceedings in the United Keetoowah Band of Cherokee Indians (UKB) Tribal District Court and all preliminary or supplementary procedures as specified herein.

(b) Every proceeding in which a person is charged with a criminal offense of any degree under the UKB Crime and Punishments Code and brought to trial and punished is a criminal proceeding.

(c) This Title is intended to provide for the just determination of every criminal proceeding. It shall be construed to secure simplicity in procedure, fairness in administration of justice, and the elimination of unjustifiable expense and delay.

(d) When no particular procedure is provided, the Court may implement procedure from the Civil Procedure Act or other applicable Tribal law subject always to the rights of the defendant. If no procedure is provided in either this Title, the Civil Procedure Act, or other Tribal law, the Court may proceed in any lawful fashion while protecting the rights of the defendant.

(e) As used in this Act, "Cherokee Reservation" shall mean all land within the exterior boundaries of an area that was set aside by treaties with the federal government for the Cherokee people, including the predecessors of those Cherokees who Congress would later recognize as a separate tribe called the "Keetoowah Indians of the Cherokee Nation of Oklahoma," and which would organize as the United Keetoowah Band of Cherokee Indians in Oklahoma, which includes all, or a portion, of fourteen counties in today's eastern Oklahoma but excluding all lands held by the United States in trust for the Cherokee Nation of Oklahoma, or owned in fee by the Cherokee Nation of Oklahoma.

## CHAPTER ONE

### PRELIMINARY PROVISIONS

#### Section 101. Prosecution of Offenses

(a) No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt or nolo contendere in open court, by a court of competent jurisdiction. No incarceration or other disposition of one accused of an offense prior to trial in accordance with this Title shall be considered punishment.

(b) All criminal proceedings shall be prosecuted in the name of the Tribe Plaintiff, against the person charged with an offense, referred to as the defendant.

(c) The case number prefix assigned to criminal actions shall be sufficiently different and unique from the prefix assigned to other types of cases to clearly distinguish them.

#### Section 102. Rights of Defendant

In all criminal proceedings, the defendant shall have the following rights:

(a) To appear and defend in person or by counsel except:

- (1) Trial of traffic or hunting and fishing offenses not resulting in injury to any person, nor committed while using alcohol or illegal drugs may be prosecuted without the presence of the defendant upon a showing that the defendant received actual notice of five (5) days prior to the proceeding, if no imprisonment is ordered, and any fine imposed does not exceed fifty dollars (\$50.00).
- (2) The defendant may represent themselves or be represented by an adult enrolled Tribal member with leave of the Court, provided such representation is without charge to the defendant, or by any attorney or advocate admitted to practice before the Tribal Court, but no defendant shall have the right to appointed professional counsel provided at the Tribe's expense. However, subject to the availability of funds allocated by the Tribal Council, an indigent defendant may be appointed competent legal counsel in any case where banishment is a potential punishment.

(b) To be informed of the nature of the charges against them and to have a writtencopy of the charges.

(c) To testify on their own behalf, or to refuse to testify regarding the charge against them, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against them, they shall be deemed to have waived all right to remain silent in that immediate criminal proceeding. They shall not, however, be, deemed to have waived their right to remain silent in other distinct phases of the criminal trial process. No inference of guilt may be drawn if the defendant chooses to remain silent.

(d) To confront and cross examine all witnesses against them, subject to the Evidence Act or, in absence of such code, the Federal Rules of Evidence.

(e) To compel by subpoena the attendance of witnesses to provide testimony or produce documents necessary for their own defense.

(f) To have a speedy public trial by an impartial judge or jury as provided in this Title.

(g) To appeal as provided for by law.

(h) To prevent their present or former spouse from testifying against them, concerning any matter which occurred during such marriage, except:

- (1) In any case in which the offense charged is alleged to have been committed against the spouse or the immediate family, or the children of either the spouse or the defendant, or against the marital relationship;
- (2) Any testimony by the spouse on the defendant's behalf will be deemed a waiver of this privilege.

(i) Not to be twice put in jeopardy by the Tribe for the same offense.

#### Section 103. Limitation of Prosecution

(a) Every criminal proceeding except an offense for which banishment is a possible punishment shall be commenced within five (5) years of the date of commission and diligent discovery of the offense, or prosecution for that offense shall be forever barred. Every criminal offense for which banishment is a possible punishment shall be commenced within ten (10) years of the date of commission and diligent discovery of the offense, or prosecution for that offense shall be forever barred. However, the statute of limitations for any crime involving sexual contact, abuse, or exploitation of a minor shall not commence until the victim reaches the age of eighteen (18).

(b) If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be complete occurred.

(c) The date of "diligent discovery" is the date at which, in the exercise of reasonable diligence, some person other than the defendant and their co-conspirator(s) know or should have known that an offense had been committed.

(d) Time spent outside the jurisdiction of the Tribe for the purpose of avoiding prosecution shall not be counted toward the limitation period to begin prosecution.

#### Section 104. No Common Law Offenses

No act or failure to act shall be subject to criminal prosecution unless made an offense by some statute of the Tribe.

## CHAPTER TWO

### PROCEEDINGS BEFORE TRIAL

#### Section 201. The Complaint

(a) Complaint. Every criminal proceeding shall be commenced by filing a criminal complaint. The complaint is a sworn written statement of the essential facts charging that a named individual(s) has committed a particular offense.

(b) Contents of Complaint. The complaints shall contain:

- (1) The name of the court,
- (2) The name of the defendant, if known, or some other name if not known plus whatever description of the defendant is known,
- (3) The signature of the Prosecuting Attorney; and their typewritten name,
- (4) A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated,
- (5) The person against whom or against whose property the offense was committed and the names of the witnesses of the Tribe if known, otherwise no statement need be made,
- (6) The general name, code title, and section number of the alleged offense, and
- (7) If the offense(s) is punishable by banishment, the Prosecuting Attorney must state in the complaint or an amendment of the complaint whether banishment will be recommended as a punishment if the defendant is convicted. If such statement in the complaint or amended complaint is not made banishment may not be imposed.

(c) Error. No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the Defendant can be shown to result from the error.

(d) Time of filing complaint. A complaint may be filed at any time within the period prescribed by Section 103 of this Title, provided, that if an accused has been arrested without a warrant the complaint shall be filed promptly and in no case later than the time of arraignment.

(e) Venue. Every criminal action shall be commenced in the Tribal District Court.

Section 202. Arrest Warrant or Summons to Appear

(a) Issuance of Arrest warrant. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Tribe supported by the recorded *ex parte* testimony or affidavit of some person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

(b) Issuance of Summons. If it appears from the complaint that an offense has been charged against the defendant, a judge of the Tribal Court shall issue a summons to the defendant to bring them before the court. Unless the Tribal Judge has reasonable grounds to believe that the person will not appear on a summons, or unless the complaint charges an offense that is punishable by banishment, a summons shall be issued instead of an arrest warrant.

(c) Contents of Arrest Warrants. Warrants for arrest shall be signed by the Judge issuing it and shall contain the name and address of the court, the name of the defendant, or if the correct name is unknown, any name by which the defendant is known, and the defendant's description, and a description of the offense charged with a reference to the section of the Tribal Code alleged to have been violated. It shall order and command the defendant be arrested and brought before a Judge of the Tribal court to enter a plea. When two or more charges are made against the same person only one warrant shall be necessary to commit them to trial.

(d) Contents of Summons. A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before a Tribal Judge on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall issue.

(e) Service of Arrest Warrants and Summons.

- (1) Warrants for arrest and criminal summons may be served by any Tribal or Federal law enforcement officer or any adult person authorized in writing by the Tribal Judge. Service may be made at any place within the jurisdiction of the Tribe.
- (2) When a warrants for arrest and summons are to be served at a person's home, they may only be served between the hours of 7:00 am and 9:00 pm, unless an authorization to serve such process at night is placed on the face of the warrant by a Tribal Judge.
- (3) The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the court. A copy, so signed, shall be given to the person served or arrested at the time of arrest if reasonably possible, or as soon as is reasonably possible.

- (4) An officer need not have the warrant in their possession at the time of arrest, but if not, they shall inform the defendant of the charge, that a warrant for arrest has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment.

### Section 203. Criminal Citations

(a) Whenever a law enforcement officer would be empowered to make an arrest without a warrant for an offense not punishable by banishment, and has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, they may, in their discretion, issue the defendant a citation instead of taking said person into custody. Such citation, signed by the law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, unless the Court orders that a formal complaint be filed.

(b) Contents of Citation.

- (1) The citation shall contain the name and address of the court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.
- (2) The citation shall contain an agreement by the defendant to appear before a Tribal Judge on a certain day to answer to the charge, and the signature of the defendant.
- (3) The citation shall contain a notice that upon the defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court.
- (4) One (1) copy of the citation shall be given to the defendant and two (2) copies shall be delivered to the Prosecuting Attorney.

### Section 204. Arraignment

(a) Arraignment Defined. Arraignment is the bringing of an accused person before the Court, informing them of the charge against them and of their rights, receiving their plea, and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a criminal summons or citation or, if the accused was arrested and confined, within seventy two (72) hours of the arrest, Saturdays, Sundays, and legal holidays excepted.

(b) Procedure at Arraignment. Arraignments shall be conducted in the following order:

- (1) The Prosecuting Attorney shall provide a copy of the complaint to the defendant if they have not already received on.
- (2) The Judge shall read the entire complaint, state the charges against the defendant, and state the minimum and maximum authorized penalties.
- (3) The Judge should determine that the accused understand the charges against

them and explain to the defendant that they have the following rights:

- (i) to remain silent.
  - (ii) to be tried by a jury upon request.
  - (iii) to consult with an attorney at their own expense, or if the defendant is indigent and is being charged with a Felony, an attorney may be appointed, and that if they desire to consult with an attorney the arraignment will be postponed.
- (4) The Judge shall ask the defendant if they wish to obtain counsel and, if the defendant so desires, they will be given a reasonable time to obtain counsel. If the defendant shows their indigence, and is charged with a Felony, and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, the Judge shall enter a “not guilty” plea on the defendant’s behalf.
- (5) The Judge should then ask the defendant whether they wish to plead “guilty,” “nolo contendere,” or “not guilty.”

(c) Receipt of Plea at Arraignment. The defendant shall plead “guilty,” “nolocontendere,” or “not guilty” to the offense charged.

- (1) If the defendant refuses to plead, the Judge shall enter a plea of “not guilty” for them.
- (2) If the defendant pleads “not guilty,” the Judge shall set a trial date and conditions for bail prior to trial.
- (3) If the defendant pleads “nolo contendere” or “guilty” the Judge shall question the defendant personally to determine that they understand the nature of their action, the rights that they are waiving, and that their action is voluntary. The Judge may refuse to accept a guilty plea and enter a plea of “not guilty” for them. If the guilty plea is accepted, the Judge may immediately sentence the defendant or order a sentencing hearing.

Section 205. Preliminary Hearings

(a) The Defendant shall have the right to a preliminary hearing when charged with a felony offense, unless the Defendant waives their right to a preliminary hearing or the Defendant is indicted.

(b) The Court shall schedule the preliminary hearing within a reasonable time. The Court may extend the time to hold a preliminary hearing one or more times with the consent of the Defendant, or under extraordinary circumstances and/or justice requires the delay.

(c) At the preliminary hearing, the Defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired.

(d) Information, evidence and/or testimony considered, provided, or offered in a preliminary hearing need not conform to the rules pertaining to the admissibility of evidence. A plea of guilty, which has not been withdrawn, and/or statements made in connection with the case and/or such plea of guilty shall be admissible if relevant in any preliminary hearing.

(e) If the judge at the preliminary hearing finds probable cause to believe an offense has been committed and the Defendant committed it, the judge shall set the Defendant for formal arraignment on the offenses and promptly require the Defendant to appear for further proceedings. If the judge at the preliminary hearing finds probable cause to believe one or more additional offense(s) have been committed and the Defendant committed such offense(s), the judge may direct the prosecutor to amend the Complaint to add these additional offense(s), which shall be included in the Complaint at formal arraignment.

(f) If the judge at the preliminary hearing finds no probable cause to believe an offense has been committed or the Defendant committed the offense, the judge shall dismiss the complaint and discharge the Defendant. A dismissal and/or discharge at the preliminary hearing does not preclude the Nation from later prosecuting the Defendant for the same offense.

(g) The preliminary hearing shall be recorded by a court reporter or by a suitable recording device. A recording of the proceeding may be made available to any party upon written request to the Court Clerk. A copy of the recording and/or a transcript of the preliminary hearing may be provided to any party upon a written request and upon the payment of the cost to produce said transcript/recording or as set by court rule.

#### Section 206 Commitments

No person shall be detained or jailed for a period longer than seventy two (72) hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of a Judge of the Tribal Court has been issued.

(a) A temporary commitment shall be issued pending investigation of charges or trial.

(b) A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the Tribal Court.

#### Section 207. Joinder

(a) Joinder of Offenses. Two or more offenses may be charged in one complaint so long as they are set out in separate counts and:

- (1) They are part of a common scheme or plan, or
- (2) They arose out of the same transaction.

(b) Joinder of Defendants. Two or more defendants may be joined in one complaint if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each defendant need not be charged in each count.

#### Section 208. Pleas

(a) A defendant may plead guilty, nolo contendere, or not guilty. The Court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the defendant refuses to plead or if the Court refuses to accept a plea of guilty, or nolo contendere, the Court shall enter a plea of not guilty. The Court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea.

(b) The defendant, with the consent of the Court and of the prosecuting attorney, may plead guilty to any lesser offense than that charged.

#### Section 209. Withdrawing a Guilty Plea

A motion to withdraw a plea of guilty may be made only before a sentence is imposed, deferred, or suspended, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice.

#### Section 210. Plea Bargaining

Whenever the defendant pleads guilty as a result of a plea arrangement with the Prosecuting Attorney, the full terms of such agreement shall be disclosed to the Judge. The Judge, in their discretion, is not required to honor such agreement. In the event that the Judge decides not to honor such agreement, they should offer the defendant an opportunity to withdraw their plea and proceed to trial.

#### Section 211. Pleading and Motions Before Trial: Defenses and Objections

(a) Pleading in criminal proceedings shall consist of the complaint or citation and the plea of either guilty, nolo contendere, or not guilty. All other pleas and motions shall be made in accordance with this Title.

(b) Motions raising defenses and objections may be made as follows:

- (1) Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.
- (2) Defenses and objections based on defects in the institution of the prosecution of the complaint, other than that it fails to show jurisdiction in the court or fails to charge an offense, may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as a defense or noticed by the Court on its own motion at any stage of the proceeding.

- (3) Such motions shall be made in writing and filed with the court. The court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions provided that any deadline is at least five (5) business days before the day set for trial. If any party does not meet the deadline, the motion is untimely, but a court may consider the defense, objection, or request if the party shows good cause. Such motions will be argued before the Court on the date of trial unless the Court directs otherwise. Decisions on such motions shall be made by the Judge and not by the jury.
- (4) If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the judge shall alter the proceedings, allow an interlocutory appeal to be taken as provided in the Appellate Rules, or enter judgment as is appropriate in light of the decision.

#### Section 212. Concurrent Trial of Defendant or Charges

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

(b) If it appears that a defendant or the Tribe is prejudiced by a joinder of offenses or other defendants for trial, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Tribe to deliver to the Court for inspection in chambers any statements made by a defendant which the Tribe intends to introduce in evidence at the trial.

#### Section 213. Discovery and Inspection

(a) Disclosure by the Prosecution. Unless a different period of time is ordered by the trial court, within thirty (30) days after request from the defendant, the prosecution shall disclose and provide to/make available to the defendant for inspection, copying, and photographing any records, papers, documents, statements, notes, and recordings made by or of witnesses or other tangible evidence in the prosecution's possession, custody, and control that are material to the preparation of the defense or are intended for use by the prosecution at the trial or were obtained from or belong to the defendant. Such disclosure shall include a written list of the names and addresses of all witnesses whom the prosecution intends to call at the trial, together with any record of any prior convictions of any such witness that is within the knowledge of the prosecution. In cases involving charges of domestic violence, the prosecution may use the prosecuting attorney's office as the address for the alleged victim.

(b) Disclosure by defendant. Unless a different period of time is ordered by the trial court, within forty-five (45) days after request from the prosecution, the defendant shall disclose and make available to the prosecution for inspection, copying, and photographing any records, papers, documents, statements, notes, and recordings made by or of witnesses or other tangible evidence in the possession, custody, and control of the defendant that are intended for use by the defendant at trial. Such disclosure shall include a written list of the names and addresses of all witnesses whom the defendant intends to call at the trial, together with any record of any prior convictions of any such witness that is within the knowledge of the defendant.

(c) Pre-trial interviews and depositions.

(1) Pretrial interviews. If requested by either party, any person, other than the defendant, with information that is subject to discovery, shall give an interview. A party may obtain the interview by conferring in good faith with opposing counsel and the person to be examined regarding scheduling of the interview. If good faith efforts to schedule and conduct an interview are unsuccessful, the party may request a subpoena to secure the presence of the person to be examined. Either party may record the interview.

(2) Depositions. A deposition may be taken under this rule upon:

(i) agreement of the parties; or

(ii) order of the court, upon a showing that the deposition is necessary to avoid injustice.

(d) Scope of discovery. Unless otherwise limited by order of the court, the parties may obtain discovery regarding any matter, not privileged, that is relevant to the offense charged or the defense of the accused person, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. If the parties disagree about whether a party is required to provide information requested pursuant to this rule, the Court shall decide. The Court may impose reasonable conditions on the release of information requested under this rule.

(e) Time and place of interview or deposition. Unless agreed to by the parties, any interview or deposition allowed under this rule shall be conducted at such time and place as ordered by the court.

(f) Deadline for interview or deposition. Absent the prior approval of the assigned trial judge, an interview or deposition may not be scheduled more than one hundred (100) days after arraignment or the filing of a waiver of arraignment. If a party needs an extension of time, the party must obtain court approval prior to the expiration of the one hundred (100) day period. Failure to comply with this rule may be deemed a waiver of the right to conduct an interview or deposition.

(g) Continuing duty to disclose. If a party discovers additional material or witnesses that the party previously would have been under a duty to disclose and make available at the time of such previous compliance if it were then known to the party, the party shall promptly give notice to the other party of the existence of the additional material or witnesses.

(h) Failure to comply. 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 this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials, grant a continuance, or prohibit the party from calling a witness, or prohibit the party from introducing in evidence the material, or it may enter such other order as it deems appropriate under the circumstances, including but not limited to holding an attorney, party, or witness in contempt of court.

(i) Nothing in this Section shall require a party to provide the other with reports, memoranda, or other internal communications which were made by the party or by their or her representatives solely in preparation for trial, except items specifically listed in this Section.

Section 214. Subpoena

(a) The defendant and the Prosecuting Attorney shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued to them by the Clerk of the Court in blank. Subpoenas in criminal cases shall be issued, served, and returned as in civil cases.

(b) A subpoena may be served any place within the territorial jurisdiction of the Tribe, and shall be served as provided for service in civil cases.

(c) Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of court, and prosecution may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service, and the person performing such service.

## CHAPTER THREE

### TRIAL

#### Section 301. Trial By Jury or By the Court

(a) All trials of offenses shall be by the Court without a jury unless the defendant files a request for a jury trial and a jury fee not less than ten (10) business days prior to the day set for trial. A judge may waive the jury fee if the defendant shows that they are without sufficient funds to pay the jury fee.

(b) Juries shall be composed of six (6) members with one alternate if an alternate juror is deemed advisable by the Court.

(c) In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be embodied in a written decision.

#### Section 302. Trial Jurors

(a) Jurors shall be drawn from the list of eligible jurors, prepared as provided in the Civil Procedure Act.

(b) The Court shall permit the defendant or their counsel and the Prosecuting Attorney to examine the jurors and the Court itself may make such an examination.

(c) Challenges regarding jury members may be taken as follows:

- (1) Each side shall be entitled to three (3) peremptory challenges.
- (2) Either side may challenge any juror for cause;
- (3) An alternate juror shall be treated as a regular juror for purpose of challenges.

(d) A party may object to the use of a peremptory challenge to raise the issue of improper bias. The Court may also raise this objection on its own. The objection shall be made by simple citation to this Section, and any further discussion shall be conducted outside the presence of the jury panel. The objection must be made before the potential juror is excused, unless new information is discovered. If the Court determines that an objective observer could view sex, religion, race, or ethnicity as a factor in the use of the peremptory challenge, then the peremptory challenge shall be denied for improper bias. The Court need not find purposeful discrimination to deny the peremptory challenge. The Court should explain its ruling on the record.

- (1) Outside the presence of the jury panel the objecting party shall explain the basis of their objection. If the explanation does not provide sufficient detail to determine that an objective observer could view sex, religion, race, or ethnicity as a factor in the peremptory challenge, the Court should deny the objection. If the objection does provide sufficient detail to determine that an

objective observer could view sex, religion, race, or ethnicity as a factor in the peremptory challenge, then the opposing party may tell the Court their neutral reasons for challenging each of the potential jurors, not based on sex, religion, race, or ethnicity. The objecting party is then given the opportunity to present that the facially neutral reason is merely pretextual to improper bias.

- (2) The Court should evaluate the totality of circumstances to determine whether a peremptory challenge was used as improper bias.
- (3) If the Court determines that a peremptory challenge was used as improper bias, the potential juror shall no longer be subject to the peremptory challenge.

(e) The alternate juror shall be dismissed prior to the jury's retiring to deliberation if they have not first been called to replace an original juror who has become, for any reason, unable or disqualified to serve.

(f) Jurors shall otherwise be subject to all rules applicable to juries in civil cases.

### Section 303. Order of Trial

The trial of all criminal offenses shall be conducted in the following manner:

(a) The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its discretion.

(b) If the parties are ready to proceed, and if the case is to be tried by the jury, the Court should require all prospective jurors to swear to decide the case in a fair and impartial manner if selected for jury duty.

(c) If the case is to be heard by a jury, the Court shall select a potential jury panel as selected under the Civil Procedure Act by random, and question them to determine if they have any interest in the case.

(d) When the court is satisfied that no juror should be dismissed for statutory cause, the prosecution and then the defendant shall be allowed to question the prospective jurors. The Court may delay any examination it wishes to make until after the parties have examined the jury panel.

(e) If it appears that a prospective juror is related to a party in the case or is biased for or against a party, or if the outcome would significantly affect the property, family, or other important interest of the prospective juror, the Court shall dismiss them for cause and select another person from the jury panel.

(f) Both the Prosecuting Attorney and the defendant may alternatively request the Court to dismiss any juror by peremptory challenge. Each party shall have three (3) peremptory challenges and the Court may not refuse to grant them unless a peremptory challenge raises improper bias. No

reasons need be given for the challenges and alternate jurors shall be examined and selected as the original panel was selected. The final jury panel should then be sworn.

(g) The Judge shall inform the jury of the charges against the defendant. The Judge should also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

(h) The Prosecuting Attorney shall then briefly present the facts which they intend to prove to show the offense. No argument of the fact or law shall be allowed. In reading the complaint, no reference to any recommendation for banishment may be made prior to the verdict of guilty or not guilty.

(i) The defense may then make an opening statement or may reserve their opening statement until the beginning of the presentation of the defense evidence.

(j) The Prosecuting Attorney shall then present their evidence followed by the defendant's presentation of their evidence. After the defendant has presented their evidence, the Prosecuting Attorney may present evidence in rebuttal.

(k) The Prosecuting Attorney shall then present their closing argument, the defendant their closing argument, and the Prosecuting Attorney shall be allowed to present a rebuttal.

(l) If trial is to be heard by a jury, the Judge should give them their instructions and they shall retire to decide their verdict. If trial is to be heard by the Judge, they shall then make their decision or announce the time at which they will present their decision.

(m) If the verdict is "not guilty," the defendant should be immediately discharged and bail exonerated.

(n) If the verdict is "guilty," the Judge may impose sentence immediately or may hold a hearing at a later time or date to decide on an appropriate sentence. In a case tried before a jury, the Court, after receiving a verdict of "guilty," shall inform the jury if banishment has been recommended as a punishment of the offense. The prosecution and the defense shall then be given an opportunity to present any additional evidence they may wish to present on the issue of whether banishment should be imposed, and the prosecution shall be given the final opportunity to rebut any defense evidence. The jury should then be requested to retire and consider whether banishment should be imposed and the maximum term that should be imposed. No banishment shall be imposed in excess of the term recommended by a unanimous vote of the jury, although a recommendation that banishment be imposed is not binding on the Judge.

(o) After sentencing, the Judge may hold a hearing to determine an appeal bond if an appeal is filed.

#### Section 304. Judge Disability

(a) If by reason of death, sickness, or other disability, the Judge before whom a jury trial has commenced is unable to proceed with the trial, any other Tribal Judge may, upon certifying that they have familiarized themselves with the record of the trial, proceed with the trial.

(b) If by reason of death, sickness, or other disability, the Judge before whom the defendant has been tried is unable to perform the required duties of a Judge after the verdict or finding of guilt, any other Tribal Judge may perform those duties unless such Judge feels they cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

#### Section 305. Evidence

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the most recent version of the Federal Rules of Evidence, except as otherwise provided in this code.

#### Section 306. Expert Witnesses and Interpreters

(a) Either party may call expert witnesses of their selection and each bear the cost of such.

(b) The Court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

(c) The Judge or Clerk may act as interpreter only with the consent of all parties.

#### Section 307. Motion for Judgment of Acquittal

(a) The Court on motion from the defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect their right to present evidence.

(b) If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

#### Section 308. Instructions

At the close of evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless they object to it before the jury retires to consider its verdict, stating distinctly the matter to which they object and the grounds of the objection. Opportunity to object shall be given out of the hearing and out of the presence of the jury.

#### Section 309. Verdict

(a) The verdict of a jury shall be unanimous. It shall be returned by the jury to the Judge in open court. If the jury is unable to agree, the jury may be discharged and the defendant tried against before a new jury.

(b) If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendant or charge to which it has agreed and continue to deliberate on the others.

(c) If the evidence is found to support such verdict, the defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or a lesser included offense without having been formally charged with the lesser included offense or attempt.

(d) Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

(e) After return of the verdict, the jury may, in the Judge's discretion, request to recommend the punishment to be imposed after a hearing at which both parties have the opportunity to present evidence in mitigation or aggravation of the sentence. The jury's recommendation in such cases shall not be binding on the Judge at sentencing except as otherwise provided in the case of sentences of banishment.

## CHAPTER FOUR

### JUDGMENT AND SENTENCE

#### Section 401. Judgment

A judgment of conviction shall set forth in writing the charge, plea, verdict or findings, and the sentence imposed. If the defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the Judge and entered by the Clerk.

#### Section 402. Sentence

Sentence shall be set forth as follows:

(a) Sentence shall be imposed without unreasonable delay in accordance with the provisions of the criminal statute or ordinance violated and this Title. Pending sentence, the Court may commit the defendant to jail or continue or alter the bail. Before imposing a sentence, the Court shall allow counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask them if they wishes to make a statement on their own behalf and to present any information in mitigation of punishment.

(b) After imposing sentence, the Court shall inform the defendant of their right to appeal, and if so requested, shall direct the Clerk to file a notice of appeal on behalf of the defendant. At any time after a notice of appeal is filed, the Court may entertain a motion to set bail pending appeal.

(c) Time served in jail prior to the judgment and sentence while awaiting or during trial shall be allowed as a credit toward any sentence of imprisonment or banishment imposed.

#### Section 403. General Sentencing Provisions

(a) Statement of Policy. The sentencing policy of the Tribe in criminal cases is to strive toward restitution and reconciliation of the offender and the victim and Tribe. While one goal of sentencing is to impress upon the wrongdoer the wrong they have committed, the paramount goal is to restore the victim and Tribe to the position that existed prior to commitment of the offense, and to restore the offender to harmony with them and the community by requiring them to right their wrongdoing. Therefore, with consideration of these goals in mind, the provisions of this Chapter shall govern Tribal sentencing for criminal offenses.

(b) Restitution. Unless the Court determines that the ends of justice will not be served by the following provisions, or that a civil action will more adequately adjudicate damages in the specific case at hand, then in addition to any sentence otherwise provided by law, the Court shall:

- (1) Order the offender to pay restitution to the victim in money, property, or services, and/or
- (2) Order the offender to pay restitution to the Tribe in money, property, or services.

(c) Repentance. In effectuating Tribal sentencing policy, if the offender recognizes the wrong they have committed, and earnestly repents of such wrong, the Court, paying particular attention to prior offenses, in its discretion may:

- (1) Allow such offender to exchange community service as approved by the Court in lieu of a fine or imprisonment, at a rate set by the Court.
- (2) Place the offender on probation under such reasonable conditions as the Court may direct for a period not exceeding three (3) times the amount of the maximum sentence allowed; or
- (3) Defer entering the judgment and imposing sentence for a period not exceeding four (4) times the maximum sentence allowed on condition that if the defendant violated no law and satisfies such other reasonable conditions, such as restitution, as may be imposed, the plea or guilty verdict will be withdrawn and said charges will be dismissed.
- (4) In the discretion of the Court, allow the offender to pay a fine in goods or commodities at the fair market value of the goods or commodities to be surrendered, provided, that the Tribe shall not reimburse the offender for any excess value of the property surrendered.

#### Section 404. Sentence of Banishment

(a) Banishment Defined. Banishment is the traditional and customary sentence imposed by the Tribe for offenders who have been convicted of offenses which violate the basic rights to life, liberty, and property of the community and whose violation is a gross violation of the peace and safety of the Tribe requiring the person to be totally expelled for the protection of the community. During the term of banishment, a person who is banished from the territory and association of the Tribe shall:

- (1) Be considered legally dead and a nonentity with no civil rights to engage in contracts or come before the courts of the Tribe for any reason not related to the original conviction, provided, that the banished person retains all rights guaranteed by the Indian Civil Rights Act and all rights of a criminal defendant during any prosecution for an offense during the term of banishment, and while attending or going directly to or from any Court, or a proceeding involving a criminal action to which they are a party, including the appeal of their case.
- (2) Be expelled from the jurisdiction of the Tribe and not be allowed to return for any reason during the period of banishment except when required to attend court.
- (3) Forfeit all positions or offices of honor or profit with the Tribe.
- (4) Be absolutely ineligible for any service, monies, or benefits provided by the Tribe as a result of citizenship in the Tribe.

- (5) Be absolutely ineligible to vote in any election conducted by the Tribe or hold any office in the Tribe.
- (6) Be grounds for any debtor of the banished person to apply for an order attaching the banished person's personal property within this jurisdiction and bringing execution to satisfy the debt.

(b) Violation of Banishment.

- (1) If the person banished is found within the jurisdiction of the Tribe not going directly to, attending, or returning from a Court hearing required in their case, such act shall be considered criminal contempt in violation of a lawful order of the Court and may be punished pursuant to Section 423 of the Crimes and Punishment Act.
- (2) A person under a decree or judgment of banishment found unlawfully within the jurisdiction of the Tribe shall, upon conviction, and in addition to any other punishment imposed for disobedience of a lawful order of the Court, forfeit to the Tribe all personal property brought by them into the jurisdiction of the Tribe or in their immediate control, whether ownership of said property is held in the name of the banished person or another, as civil damages for breach of the peace and safety of the Tribe.

(c) Expiration of Banishment Term. Upon expiration of the term of banishment and satisfaction of any other terms imposed by the sentence, the banished person shall be prospectively restored to all rights forfeited during the banishment and shall thereafter be treated as if banishment had never been imposed, except that the banished person shall not be entitled to recoup any services, benefits, or monies withheld during the period of banishment.

Section 405. New Trial

The Court, on motion of a defendant, may grant a new trial if required in the interest of justice. If the original trial was by the Court without a jury, the Court, on motion by the defendant for a new trial, may vacate the judgment, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one year after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven (7) days after verdict or finding guilty or within such further time as the Court may fix during the seven-day period.

Section 406. Arrest of Judgment

The Court, on motion of the defendant, shall dismiss the action if the complaint does not charge an offense or if the Court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within seven (7) days after verdict, finding of guilty, plea of guilty, or within such further time as the Court may set during the seven-day period.

Section 407. Correction or Reduction of Sentence

The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within thirty (30) days after the sentence is imposed, or within thirty days after the Court receives a mandate issued upon affirmance of the judgment or dismissal of the appeal. The Court may also reduce a sentence upon revocation of probation.

Section 408. Clerical Mistakes

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 Court orders.

## CHAPTER FIVE

### APPEAL

#### Section 501. Right of Appeal; How Taken

(a) The defendant has the right to appeal from the following:

- (1) A final judgment of conviction; and the sentence imposed; or
- (2) From an order made, after judgment and sentences, affecting their substantial rights.

(b) The Tribe has the right to appeal from the following:

- (1) A judgment of dismissal, upon a motion to dismiss based on any procedural irregularity occurring before trial, or an order excluding evidence in favor of the defendant prior to trial,
- (2) An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered,
- (3) An order of the Court directing the jury to find for the defendant, or
- (4) An order made after judgment and sentence affecting the substantial rights of the Tribe.

(c) A notice of appeal must be filed within ten (10) days of the entry of the final judgment and sentence or other appealable order and such must be served on all parties except the party filing the appeal.

(d) Such appeals shall be had in accordance with the Appellate Procedure Act.

#### Section 502. Stay of Judgment and Relief Pending Review

(a) A sentence of imprisonment or banishment may be stayed if an appeal is taken and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards their sentence in the matter under appeal.

(b) A sentence to pay a fine, or a fine and costs, may be stayed pending appeal upon motion of the defendant, but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirement for paying such.

(c) An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

## CHAPTER SIX

### OTHER PROVISIONS

#### Section 601. Search and Seizure

(a) Search warrants. A search warrant is an order directed to any Tribal or Federal law enforcement officer directing them to search a particular place for a described person or property and, if found, to seize them.

(b) Issuance. A warrant shall issue only on an affidavit or affidavits sworn to before a Tribal Judge and establishing grounds for issuing the warrant. If the Judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, they shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request for a warrant, the Judge may require the affiant to appear personally and be examined under oath.

(c) Contents of Search Warrants. Every search warrant shall contain the name and address of the court and the signature of the Judge issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The warrant shall be directed to any Tribal or Federal police or law enforcement officer or official and shall command such person or persons to search, within a specified period of time not to exceed ten (10) days, the person or place named for the property or persons specified, and contain the date on which it was issued.

(d) Service of Search warrants. Search warrants shall be served by any Tribal or Federal law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m. unless otherwise directed on the warrant by the Judge who issued it. A copy of the search warrant shall be left with an occupant or owner over sixteen (16) years of age if present during the search or left in a conspicuous place if an occupant is not present during the search. The officer may break open any outer or inner door or window of a place to be searched, or any part of any place to be searched or anything attached to the place, to execute a search warrant, provided that:

- (1) The officer provides notice of their authority and purpose to the occupants of the place to be searched, or
- (2) When the premises to be searched are unoccupied at the time of the search.

(e) Inventory. The officer serving a search warrant shall make a signed inventory of all property seized and attach such inventory to the warrant. A copy of the inventory shall be left with an occupant or owner over sixteen (16) years of age if present during the search or left in a conspicuous place with the search warrant if an occupant is not present during the search.

(f) Return of Search Warrants.

- (1) The officer shall endorse on the warrant the date, time, and place of service and the signature of the officer serving it.

- (2) The warrant shall be returned to the Court with an inventory of property seized within twenty four (24) hours of service, Saturdays, Sundays, and legal holidays excluded.
- (3) If a warrant has not been served within ten (10) days from the date of issuance, the warrant shall be void and returned within said ten-day period, unless return be due on a Saturday, Sunday, or legal holiday, in which case, the return shall be made on the next business day.

(g) Property Subject to seizure. Property which is subject to seizure is property in which there is probable cause to believe such property is:

- (1) Stolen, embezzled, contraband, or otherwise criminally possessed,
- (2) Which is or has been used to commit a criminal offense, or
- (3) Property which constitutes evidence of the commission of a criminal offense.

(h) Warrantless searches. A law enforcement officer may conduct a search without a warrant only:

- (1) Incident to a lawful arrest,
- (2) With the consent of the person to be searched,
- (3) With the consent of the person having actual possession and control of the property to be searched,
- (4) When they have reasonable grounds to believe that the person searched may be armed and dangerous,
- (5) When the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains property subject to seizure, or upon inventory of such vehicle after impoundment and seizure, or
- (6) In any other circumstances in which Federal law has held that a search without obtaining a warrant prior to the search in those circumstances would not be unreasonable.

(i) A person aggrieved by an unlawful search and seizure may move the Tribal Court for the return of any property not contraband on the ground that they are entitled to lawful possession of the property illegally seized. The judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned, if not contraband, and shall not be admissible at any hearing or trial.

(j) A law enforcement officer may stop any person in a public place whom they have reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of them their name, address, an explanation of their

actions and may, if they have reasonable grounds to believe their own safety or the safety of others nearby is endangered, conduct a frisk type search of such person for weapons.

(k) The term “property” is used in this Section to include documents, books, papers, and any other tangible objects.

#### Section 602. Arrest

(a) An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by either a police or other law enforcement officer or by a private person.

(b) A police or law enforcement officer may make an arrest pursuant to an arrest warrant, or they may, without a warrant, arrest a person:

- (1) When they have probable cause to believe that an offense has been committed in their presence.
- (2) When they have probable cause for believing the person has committed an offense, although not in their presence, and there is reasonable cause for believing that such person may, before a warrant can be obtained:
  - (i) flee the jurisdiction or conceal themselves to avoid arrest,
  - (ii) destroy or conceal evidence of the commission of an offense, or
  - (iii) injure or annoy another person or damage property belonging to another person.
- (3) In any other circumstances where Federal law has held that an officer may arrest without obtaining an arrest warrant prior to the arrest.

(c) A private person may arrest another, for prompt delivery to a law enforcement officer.

- (1) When an offense is committed or attempted in their presence, or
- (2) When an arrest warrant for that person is in fact outstanding.

(d) Any person making an arrest may orally summon as many persons as they deem necessary to help them.

(e) If the offense charged is an offense punishable by banishment or in violation of the federal Major Crimes Act, the arrest may be made at their residence at any time of the day or night, otherwise the arrest pursuant to a warrant can be made at a person’s residence only between the hours of 7:00 a.m. and 9:00 p.m. unless arrest at night at the residence is specifically authorized by the issuing Judge. Arrest at any place other than at the residence may be made at any time.

(f) Any person, upon making an arrest:

- (1) Must inform the person to be arrested of their intention to arrest them, of the cause or reasons for the arrest, and their authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit, an offense, or is pursued immediately after its commission, or if such announcement is not reasonably possible under the circumstances,
- (2) Must show the warrant of arrest as soon as is practicable, if such exists and is demanded,
- (3) If the arresting person is a law enforcement officer, may use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest, except that deadly force may be used only as otherwise provided by law,
- (4) If the arresting person is a law enforcement officer, may break open a door or window of a building in which the person to be arrested is, or is reasonably believed to be, after demanding admittance and explaining the purpose for which admittance is desired,
- (5) May search the person arrested and take from them and put into evidence all weapons and other objects they may have about their person, and
- (6) If not a law enforcement officer, shall as soon as is reasonably possible, deliver the person arrested to a law enforcement officer or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

#### Section 603. Limitation on Arrests in the Home

A person may be arrested in their own home only:

- (a) By a law enforcement officer pursuant to an arrest warrant.
- (b) By a law enforcement officer for an offense committed in the home in the presence of the officer.
- (c) By a law enforcement officer in continuous pursuit of a person who flees to their home to avoid arrest.

#### Section 604. Notification of Rights

(a) Upon arrest, the defendant shall be notified that they have the following rights:

- (1) The right to remain silent and that any statements made by them may be used against them in Court,

- (2) That they have the right to obtain an attorney at their own expense and to have an attorney present at any questioning,
- (3) That if they wish to answer the questions of the police they may stop or request time to speak with their attorney at any point in the questioning.

(b) Prior to conducting a consensual warrantless search pursuant to Section 601(h) (2) or (3) of this Chapter, the officer shall specifically inform the person to be searched or the person in charge of the property to be searched that:

- (1) The search will be conducted only with the person's consent.
- (2) That the person is under no obligation or requirement to consent to the search and may refuse to consent to the search if they choose to do so, or request the advice of an attorney at their own expense prior to responding to the requested consent to the search.
- (3) That if the person refuses to consent to the search, the officer will not search the person or property without first obtaining a warrant from the Court.

(c) Whenever possible, the officer should obtain a written statement that the person knew these rights, understood, and waives them prior to taking a voluntary statement from a defendant or conducting a warrantless consensual search, provided that the absence of such a written statement does not preclude the admission of the statement or other evidence if the Court determines that the statement or consent to search were voluntary.

#### Section 605. Executive Order for Relief from Judgment

(a) The Chief of the Tribe shall have authority to pardon, or commute any judgment and sentence imposed for any criminal offense upon a determination that a pardon or commutation of sentence promotes the ends of justice.

(b) Such pardon or commutation will be entered by filing a copy of the proposed action with the Court Clerk for a period of sixty (60) days after a copy of the proposed executive action has been submitted for approval to each Justice of the Supreme Court and to each member of the Council. If, within sixty (60) days after the filing thereof, with proof of service, any such Justice or Councilmember shall disapprove the proposed pardon or commutation with written reasons, in a writing delivered to the Chief and filed with the Court Clerk, such proposed pardon or commutation shall not be approved. Otherwise, upon expiration of the sixty (60) day period, the pardon or commutation may be issued by the Chief of the Tribe.

(c) Upon the filing of written reasons for disapproval of such proposed pardon or commutation by any Justice or Councilmember referred to in (b), the Chief may order the proposed pardon or commutation to be placed on the ballot for the next regularly scheduled election to determine, by referendum vote of the Tribe, whether such pardon or commutation shall be granted. The vote of the people of the Tribe shall be conclusive.

## CHAPTER SEVEN

### BAIL

#### Section 701. Release in Nonbanishment Cases Prior to Trial

(a) Any person charged with an offense, other than an offense punishable by banishment, may, at their appearance before a Judge of the Court, be ordered released pending trial on their personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the judicial officer subject to the condition that such person shall not attempt to influence, injure, tamper with or retaliate against an officer, juror, witness, informant, or victim or violate any other law, unless the judicial officer determines, that such a release will not reasonably assure the appearance of the person as required.

(b) When such determination is made, the judicial officer shall, either in lieu of or in addition to release on personal recognizance or execution of an unsecured appearance bond, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise them,
- (2) Place restrictions on the travel, association, or residence of the person during the period of release,
- (3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed ten percent (10%) of the amount of the bond, such deposit to be returned upon the performance of the conditions of release,
- (4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash, or
- (5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after a specified hour.

(c) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of their residence in the community, their record of convictions, and their record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(d) A judicial officer authorizing the release of a person under this Section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of their release and shall advise them that warrant for their arrest will be issued immediately upon such violation.

(e) A person for whom conditions of release are imposed and who after seventy two (72) hours from the time of the release hearing continues to be detained as a result of their inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that they return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer of the Court may review such conditions.

(f) A judicial officer ordering the release of a person on any condition specified in this Section may at any time amend their order to impose additional or different conditions of release; provided that, if the imposition of such additional or different conditions results in the detention of the person as a result of their inability to meet such conditions or in the release of the person on a condition requiring them to return to custody after specified hours, the provisions of Subsection (d) shall apply.

(g) Information stated in, or offered in connection with, any order entered pursuant to this Section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(h) Nothing contained in this Section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court, nor to prevent the Court by rule from authorizing and establishing a policeman's Bail Schedule for certain offenses or classes of offenses through which a person arrested may post bail with the Chief of the Tribal Police for transmittal to the Court Clerk and obtain their release prior to their appearance before a Judicial Officer.

#### Section 702. Appeal From Conditions of Release

(a) A person who is detained, or whose release on a condition requiring them to return to custody after specified hours is continued, after review of their application pursuant to Section 701(d) or Section 701(e) by a Judge of the Court, may move the Court to amend the order and have such motion determined by a Judge of the Court. Said motion will be determined promptly.

(b) In any case in which a person is detained after (1) a Judge of the Tribal Court denies a motion, under Subsection (a) above, to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a Judge of the Tribal District Court, an appeal may be taken to the Supreme Court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is not so supported, the Supreme Court may remand the case for further hearing, or may, with or without additional evidence, order the person released pursuant to Section 701 upon such conditions as the Supreme Court determines to be proper. This appeal shall be determined promptly.

#### Section 703. Release in Banishment Cases or After Conviction

A person (1) who is charged with an offense punishable by banishment or (2) who has been convicted of an offense and is either awaiting sentencing or has filed an appeal, shall be treated in

accordance with the provisions of Section 701 unless the Court has reason to believe that no condition or conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of Section 702 shall not apply to any person described in this Section.

#### Section 704. Penalties for Failure to Appear

Whoever, having been released pursuant to this Chapter willfully fails to appear before the Court or a judicial officer as required, shall incur a forfeiture of any security which was given or pledged for their release, and in addition, shall: (1) if they were released in connection with a charge having banishment as a possible punishment, or while awaiting sentence or pending appeal after conviction of any offense having had banishment imposed as a part of the sentence, be subject to a fine of five hundred dollars (\$500.00) and imprisonment for a term of six months, and if banishment is imposed one year shall be added to the term of banishment otherwise imposed, or (2) if they were released in connection with a charge other than as described, in (1) above, they shall be fined not more than the maximum provided for the offense charged or imprisoned for not more than six (6) months or both, or (3) if they were released for appearance as a material witness, shall be fined not more than two hundred fifty dollars (\$250.00) or imprisoned for not more than three (3) months or both.

#### Section 705. Person or Classes Prohibited as Bondsmen

The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond: jailers, police officers, judges, court clerks and any person having the power to arrest or having anything to do with the control of Tribal prisoners.

#### Section 706. Authority to Act as Bail Bondsmen

Any person authorized to act as bail bondsmen or runners in the Federal or State courts shall be qualified to act as bondsmen and runners in the Tribal court and be liable to the same obligations as in their licensing jurisdiction and comply with all orders and rules of the Supreme Court and District Court.