

## **TITLE III - CRIMINAL PROCEDURE**

### **CHAPTER 1. COMPLAINT**

#### **SEC. 101. COMPLAINT.**

- (a) A COMPLAINT IS THE WRITTEN STATEMENT ISSUED BY THE TRIBAL PROSECUTOR OF THE ESSENTIAL FACTS CHARGING THAT A NAMED INDIVIDUAL HAS COMMITTED A PARTICULAR CRIMINAL OFFENSE. ALL CRIMINAL PROSECUTIONS SHALL BE INITIATED BY A COMPLAINT FILED WITH THE TRIBAL COURT AND SWORN TO BY A PERSON HAVING PERSONAL KNOWLEDGE OF THE OFFENSE.
- (b) COMPLAINTS SHALL CONTAIN:
- (1) THE SIGNATURE OF THE TRIBAL PROSECUTOR AND THE COMPLAINING WITNESS OR WITNESSES, SWORN TO BEFORE A TRIBAL COURT JUDGE, A CLERK OF THE TRIBAL COURT OR ANY LAW ENFORCEMENT OFFICER.
  - (2) A WRITTEN STATEMENT BY THE COMPLAINING WITNESS OR WITNESSES HAVING PERSONAL KNOWLEDGE OF THE VIOLATION DESCRIBING IN ORDINARY LANGUAGE THE NATURE OF THE OFFENSE COMMITTED INCLUDING THE TIME AND PLACE AS NEARLY AS MAY BE ASCERTAINED.
  - (3) THE NAME OR DESCRIPTION OF THE PERSON ALLEGED TO HAVE COMMITTED THE OFFENSE.
  - (4) A DESCRIPTION OF THE OFFENSE CHARGED, INCLUDING THE SECTION OF THE TRIBAL CRIMINAL CODE ALLEGEDLY VIOLATED.
- (c) UNLESS THE COMPLAINT IS SIGNED BY A TRIBAL POLICE OFFICER OR OTHER PUBLIC SAFETY OFFICER DEPUTIZED BY THE TRIBE TO ENFORCE TRIBAL CRIMINAL LAW, HAVING PERSONAL KNOWLEDGE OF THE VIOLATION, NO ARREST WARRANT OR SUMMONS SHALL ISSUE TO THE DEFENDANT UNLESS THE COMPLAINT IS APPROVED BY A TRIBAL COURT JUDGE.
- (d) THE TRIBAL PROSECUTOR SHALL DRAW UP COMPLAINTS AND SCREEN THEM FOR SUFFICIENCY. SUCH COMPLAINTS SHALL THEN BE SUBMITTED WITHOUT UNNECESSARY DELAY TO A TRIBAL COURT JUDGE TO DETERMINE WHETHER AN ARREST WARRANT OR SUMMONS SHOULD BE ISSUED.
- (e) THE TRIBAL PROSECUTOR MAY DECLINE TO SIGN AND FILE A COMPLAINT IN THE EXERCISE OF HIS OR HER DISCRETION.

**SEC. 102. TIME LIMIT FOR COMMENCING CRIMINAL PROSECUTION.**

NO PROSECUTION FOR AN OFFENSE UNDER THIS CODE SHALL BE MAINTAINED UNLESS THE COMPLAINT IS FILED WITHIN TWO YEARS AFTER THE COMMISSION OF THE OFFENSE.

**CHAPTER 2. ARRESTS**

**SEC. 201. ARREST.**

(a) ARREST IS THE TAKING OF A PERSON INTO POLICE CUSTODY IN ORDER THAT HE MAY BE HELD TO ANSWER FOR A CRIMINAL OFFENSE.

(b) NO MEMBER OF THE TRIBAL POLICE DEPARTMENT, OR OTHER PUBLIC SAFETY OFFICER DEPUTIZED BY THE TRIBE TO ENFORCE TRIBAL CRIMINAL LAW SHALL ARREST OR APPREHEND ANY PERSON FOR ALLEGED CRIMINAL OFFENSE EXCEPT UNDER THE FOLLOWING CIRCUMSTANCES:

(1) WHEN SUCH OFFENSE SHALL OCCUR IN THE PRESENCE OF AN ARRESTING OFFICER; OR

(2) WHEN AN ALLEGED OFFENSE IS AN OFFENSE UNDER PART 3 (OFFENSES AGAINST THE PERSON); PART 10 (OFFENSES AGAINST THE FAMILY); OR PART 12 (SEX CRIMES) OF THIS CODE;

(3) WHEN THE ARRESTING OFFICER ACTS PURSUANT TO WARRANT ISSUED BY THE TRIBAL COURT COMMANDING HIM OR HER TO ARREST SUCH PERSON.

(c) WHEN ARRESTING A PERSON WITHOUT A WARRANT, THE OFFICER MAKING THE ARREST SHALL INFORM THE PERSON ARRESTED OF HIS AUTHORITY AND THE CHARGE OF THE ARREST, EXCEPT WHEN THE PERSON ARRESTED IS ENGAGED IN THE COMMISSION OF A CRIMINAL OFFENSE UNDER THIS CODE, OR IF THE PERSON FLEES, OR FORCIBLY RESISTS ARREST BEFORE THE OFFICER HAS TIME TO INFORM HIM OR HER OF THE OFFICER'S AUTHORITY. THE RETURN REPORT OF THE OFFICER MAKING THE ARREST, ENDORSED UPON THE WARRANT UPON WHICH THE ACCUSED PERSON SHALL BE SUBSEQUENTLY HELD, AFFIRMING COMPLIANCE WITH THE PROVISIONS HEREIN BY THE ARRESTING OFFICER, SHALL BE PRIMA FACIE EVIDENCE OF THE FACT IN THE TRIAL OF ANY CRIMINAL CAUSE.

**SEC. 202. WARRANTS FOR ARREST.**

(a) (1) THE TRIBAL COURT SHALL HAVE THE AUTHORITY TO ISSUE WARRANTS FOR ARREST ONLY UPON SATISFACTION OF THE ISSUING TRIBAL COURT JUDGE THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT AN OFFENSE AGAINST TRIBAL LAW HAS BEEN COMMITTED BY THE NAMED ACCUSED, BASED ON SWORN WRITTEN STATEMENTS OR SWORN ORAL TESTIMONY.

(2) A COMPLAINT FOR AN ARREST WARRANT MAY BE MADE BY ANY ELECTRONIC OR ELECTROMAGNETIC MEANS OF COMMUNICATION, IF THE FOLLOWING OCCUR:

(i) THE PROSECUTING ATTORNEY AUTHORIZES THE ISSUANCE OF THE WARRANT. AUTHORIZATION MAY CONSIST OF AN ELECTRONICALLY OR ELECTROMAGNETICALLY TRANSMITTED FACSIMILE OF THE SIGNED AUTHORIZATION.

(ii) THE TRIBAL COURT JUDGE ORALLY ADMINISTERS THE OATH OR AFFIRMATION TO AN APPLICANT FOR AN ARREST WARRANT WHO SUBMITS A COMPLAINT UNDER THIS SUBSECTION.

(iii) THE APPLICANT SIGNS THE COMPLAINT. PROOF THAT THE APPLICANT HAS SIGNED THE COMPLAINT MAY CONSIST OF AN ELECTRONICALLY OR ELECTROMAGNETICALLY TRANSMITTED FACSIMILE OF THE SIGNED COMPLAINT.

(iv) THE PERSON OR DEPARTMENT RECEIVING AN ELECTRONICALLY OR ELECTROMAGNETICALLY ISSUED ARREST WARRANT SHALL RECEIVE PROOF THAT THE ISSUING TRIBAL COURT JUDGE HAS SIGNED THE WARRANT BEFORE THE WARRANT IS EXECUTED. PROOF THAT THE ISSUING TRIBAL COURT JUDGE HAS SIGNED THE WARRANT MAY CONSIST OF AN ELECTRONICALLY OR ELECTROMAGNETICALLY TRANSMITTED FACSIMILE OF THE SIGNED WARRANT.

(b) THE ARREST WARRANT SHALL CONTAIN THE FOLLOWING INFORMATION:

(1) NAME OR DESCRIPTION AND ADDRESS, IF KNOWN, OF THE PERSON TO BE ARRESTED.

(2) DATE OF ISSUANCE OF THE WARRANT.

(3) DESCRIPTION OF THE OFFENSE CHARGED, INCLUDING THE SECTION OF THE TRIBAL CODE ALLEGEDLY VIOLATED.

(4) SIGNATURE OF THE ISSUING TRIBAL COURT JUDGE.

(c) THE WARRANT SHALL BE EXECUTED BY THE ARREST OF THE DEFENDANT. THE OFFICER NEED NOT HAVE THE WARRANT IN HIS POSSESSION AT THE TIME OF ARREST, BUT UPON REQUEST SHALL, AS SOON AS POSSIBLE, SHOW IT TO THE DEFENDANT.

(d) THE WARRANT SHALL BE EXECUTED WITHIN ONE YEAR OF ITS ISSUANCE BY THE TRIBAL COURT.

**SEC. 203. NOTIFICATION OF RIGHTS AT TIME OF ARREST.**

UPON ARREST, THE SUSPECT SHALL BE ADVISED IMMEDIATELY OF THE FOLLOWING RIGHTS:

(a) THAT HE HAS THE RIGHT TO REMAIN SILENT.

(b) THAT ANY STATEMENTS MADE BY HIM MAY BE USED AGAINST HIM IN TRIBAL COURT.

(c) THAT HE HAS THE RIGHT TO OBTAIN COUNSEL AT HIS OWN EXPENSE.

(d) THAT HE HAS THE RIGHT TO MAKE AT LEAST ONE COMPLETED TELEPHONE CALL TO A FRIEND AND AT LEAST ONE COMPLETED CALL TO A LAY COUNSELOR OR ATTORNEY IMMEDIATELY AFTER BEING REGISTERED AND IDENTIFIED AT THE JAIL, OR SOONER IF THERE IS AN UNREASONABLE DELAY IN TAKING THE ACCUSED TO JAIL OR IN REGISTERING THE ACCUSED AT THE JAIL.

**SEC. 204. SUMMONS IN LIEU OF ARREST WARRANT.**

(a) A TRIBAL LAW ENFORCEMENT OFFICER, OR OTHER PROPERLY DEPUTIZED LAW ENFORCEMENT OFFICER, AUTHORIZED TO ENFORCE TRIBAL LAWS, A TRIBAL PROSECUTOR, OR A TRIBAL COURT JUDGE MAY, IN LIEU OF AN ARREST WARRANT, ISSUE A SUMMONS COMMANDING THE ACCUSED TO APPEAR BEFORE THE TRIBAL COURT AT A STATED TIME AND PLACE AND ANSWER TO THE CHARGE.

(b) THE SUMMONS SHALL CONTAIN THE SAME INFORMATION AS AN ARREST WARRANT, EXCEPT THAT IT MAY BE SIGNED BY A TRIBAL POLICE OFFICER, POLICE OFFICER DEPUTIZED BY THE TRIBE TO ENFORCE TRIBAL LAW, OR TRIBAL PROSECUTOR.

(c) THE SUMMONS SHALL STATE THAT IF A DEFENDANT FAILS TO APPEAR IN RESPONSE TO THE SUMMONS, A WARRANT FOR HIS OR HER ARREST SHALL BE ISSUED.

(d) THE SUMMONS, TOGETHER WITH A COPY OF THE COMPLAINT, SHALL BE SERVED UPON THE DEFENDANT BY DELIVERING A COPY TO THE DEFENDANT PERSONALLY OR BY LEAVING A COPY AT HIS USUAL RESIDENCE OR PLACE OF BUSINESS WITH A PERSON OF SUITABLE AGE AND DISCRETION WHO ALSO RESIDES OR WORKS THERE. SERVICE SHALL BE MADE BY AN AUTHORIZED LAW ENFORCEMENT OFFICER, WHO SHALL MAKE A RETURN OF SERVICE WHICH SHALL BE FILED WITH THE RECORDS OF THE CASE.

(e) FOR CLASS B AND CLASS C MISDEMEANORS DEFINED IN THE CODE OF CRIMINAL OFFENSES, A MISDEMEANOR TICKET SIGNED BY A TRIBAL LAW ENFORCEMENT OFFICER OR OTHER PROPERLY DEPUTIZED LAW ENFORCEMENT OFFICER, AUTHORIZED TO ENFORCE TRIBAL LAWS CAN BE SERVED IN LIEU OF A SUMMONS.

### **CHAPTER 3. SEARCHES**

#### **SEC. 301. SEARCH WARRANT.**

(a)(1) A SEARCH WARRANT IS A WRITTEN ORDER, SIGNED BY A TRIBAL COURT JUDGE, DIRECTING A LAW ENFORCEMENT OFFICER TO CONDUCT A SEARCH AND SEIZE PROPERTY SPECIFIED IN THE WARRANT. A SEARCH WARRANT SHALL DESCRIBE THE PERSON, PROPERTY OR PLACE TO BE SEARCHED AND SHALL DESCRIBE THE PROPERTY TO BE SEIZED.

(2) AN AFFIDAVIT FOR A SEARCH WARRANT MAY BE MADE BY ANY ELECTRONIC OR ELECTROMAGNETIC MEANS OF COMMUNICATION, INCLUDING BY FACSIMILE OR OVER A COMPUTER NETWORK, IF BOTH OF THE FOLLOWING OCCUR:

(ii) THE TRIBAL COURT JUDGE ORALLY ADMINISTERS THE OATH OR AFFIRMATION TO AN APPLICANT FOR A SEARCH WARRANT WHO SUBMITS AN AFFIDAVIT UNDER THIS SECTION.

(iii) THE AFFIANT SIGNS THE AFFIDAVIT. PROOF THAT THE AFFIANT HAS SIGNED THE AFFIDAVIT MAY CONSIST OF AN ELECTRONICALLY OR ELECTROMAGNETICALLY TRANSMITTED FACSIMILE OF THE SIGNED AFFIDAVIT OR AN ELECTRONIC SIGNATURE ON AN AFFIDAVIT TRANSMITTED OVER A COMPUTER NETWORK.

(3) A TRIBAL COURT JUDGE MAY ISSUE A WRITTEN SEARCH WARRANT IN PERSON OR BY ANY ELECTRONIC OR ELECTROMAGNETIC MEANS OF COMMUNICATION, INCLUDING BY FACSIMILE OR OVER A COMPUTER NETWORK.

(4) THE OFFICER OR DEPARTMENT RECEIVING AN ELECTRONICALLY OR ELECTROMAGNETICALLY ISSUED SEARCH WARRANT SHALL RECEIVE PROOF THAT THE ISSUING TRIBAL COURT JUDGE HAS SIGNED THE WARRANT BEFORE THE WARRANT IS

EXECUTED. PROOF THAT THE ISSUING TRIBAL COURT JUDGE HAS SIGNED THE WARRANT MAY CONSIST OF AN ELECTRONICALLY OR ELECTROMAGNETICALLY TRANSMITTED FACSIMILE OF THE SIGNED WARRANT OR AN ELECTRONIC SIGNATURE ON A WARRANT TRANSMITTED OVER A COMPUTER NETWORK.

(5) IF AN OATH OR AFFIRMATION IS ORALLY ADMINISTERED BY ELECTRONIC OR ELECTROMAGNETIC MEANS OF COMMUNICATION UNDER THIS SECTION, THE OATH OR AFFIRMATION IS CONSIDERED TO BE ADMINISTERED BEFORE THE TRIBAL COURT JUDGE.

(6) IF AN AFFIDAVIT FOR A SEARCH WARRANT IS SUBMITTED BY ELECTRONIC OR ELECTROMAGNETIC MEANS OF COMMUNICATION, OR A SEARCH WARRANT IS ISSUED BY ELECTRONIC OR ELECTROMAGNETIC MEANS OF COMMUNICATION, THE TRANSMITTED COPIES OF THE AFFIDAVIT OR SEARCH WARRANT ARE DUPLICATE ORIGINALS OF THE AFFIDAVIT OR SEARCH WARRANT AND ARE NOT REQUIRED TO CONTAIN AN IMPRESSION MADE BY AN IMPRESSION SEAL.

(b) A SEARCH WARRANT SHALL BE ISSUED ONLY BY A TRIBAL COURT JUDGE AND ONLY UPON PROBABLE CAUSE THAT A SEARCH WILL DISCOVER: (1) STOLEN, EMBEZZLED, CONTRABAND OR OTHERWISE UNLAWFULLY POSSESSED PROPERTY; (2) PROPERTY WHICH HAS BEEN OR IS BEING USED TO COMMIT A CRIMINAL OFFENSE; OR (3) PROPERTY WHICH CONSTITUTES EVIDENCE OF THE COMMISSION OF A CRIMINAL OFFENSE. SUCH PROBABLE CAUSE SHALL BE SUPPORTED BY A SWORN WRITTEN STATEMENT OR SWORN ORAL TESTIMONY.

### **SEC. 302. EXECUTION AND RETURN OF SEARCH WARRANT.**

WARRANTS SHALL BE SERVED ONLY BY AUTHORIZED LAW ENFORCEMENT OFFICERS. THE EXECUTING OFFICER SHALL RETURN THE WARRANT TO THE TRIBAL COURT WITHIN THE TIME LIMIT SHOWN ON THE FACE OF THE WARRANT, WHICH IN NO CASE SHALL BE LONGER THAN 10 DAYS FROM THE DATE OF ISSUANCE. WARRANTS NOT RETURNED WITHIN SUCH TIME LIMITS SHALL BE VOID.

### **SEC. 303. SEARCH WITHOUT A WARRANT.**

NO LAW ENFORCEMENT OFFICER SHALL CONDUCT ANY SEARCH WITHOUT A VALID WARRANT EXCEPT:

(a) WHEN HE IS MAKING A LAWFUL ARREST; OR

(b) WITH THE VOLUNTARY CONSENT OF THE PERSON BEING SEARCHED OR THE PERSON ENTITLED TO POSSESSION OF PROPERTY BEING SEARCHED; OR

(c) WHEN THE SEARCH IS OF A MOVING VEHICLE AND THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT IT CONTAINS CONTRABAND, STOLEN PROPERTY, OR

PROPERTY OTHERWISE UNLAWFULLY POSSESSED; OR

(d) WHEN THE SEARCH IS OF A PERSON AND THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THE PERSON TO BE SEARCHED IS ARMED AND DANGEROUS; OR

(e) WHEN THE SEARCH INVOLVES EVIDENCE WHICH IS OBJECTIVELY INCRIMINATING IN CHARACTER AND IS IN PLAIN VIEW OF A LAW ENFORCEMENT OFFICER FROM A LOCATION WHERE THE OFFICER HAS A LEGAL RIGHT TO BE AT THAT SPECIFIC TIME; OR

(f) WHEN THE SEARCH INVOLVES ENTRY INTO A RESIDENCE, OR OTHER LOCATION NORMALLY NOT OPEN TO THE PUBLIC, WHEN ONE (1) OR MORE OF THE FOLLOWING CIRCUMSTANCES ARE PRESENT:

(1) THE OFFICER ENTERS THE PREMISES WHILE CONTINUING THE HOT PURSUIT OF A SUSPECT THE OFFICER HAS REASON TO BELIEVE COMMITTED A FELONY OR WHO HAS ESCAPED FROM THE CUSTODY OF LAW ENFORCEMENT OFFICERS; AND/OR

(2) THE OFFICER ENTERS THE PREMISES BASED UPON A REASONABLE BELIEF THAT ENTRY IS NECESSARY TO RESCUE A PERSON IN IMMINENT THREAT OF DEATH OR SERIOUS INJURY.

#### **SEC. 304. DISPOSITION OF SEIZED PROPERTY.**

(a) THE OFFICER SERVING AND EXECUTING A WARRANT SHALL MAKE AN INVENTORY OF ALL PROPERTY SEIZED AND A COPY OF THIS INVENTORY SHALL BE LEFT WITH EVERY PERSON FROM WHOM PROPERTY IS SEIZED.

(b) A HEARING SHALL BE HELD BY THE TRIBAL COURT TO DETERMINE THE DISPOSITION OF ALL PROPERTY SEIZED BY THE POLICE. UPON SATISFACTORY PROOF OF OWNERSHIP, THE PROPERTY SHALL BE DELIVERED IMMEDIATELY TO THE OWNER UNLESS THE PROPERTY IS CONTRABAND OR IS TO BE USED AS EVIDENCE IN A PENDING CASE. PROPERTY SEIZED AS EVIDENCE SHALL BE RETURNED TO THE OWNER AFTER FINAL JUDGMENT. PROPERTY CONFISCATED AS CONTRABAND SHALL BE DESTROYED OR OTHERWISE LAWFULLY DISPOSED OF AS ORDERED BY THE TRIBAL COURT.

#### **SEC. 305. EXCLUSION OF UNLAWFULLY OBTAINED EVIDENCE.**

THE TRIBAL COURT MAY PROHIBIT THE INTRODUCTION OR USE AT TRIAL OF ANY EVIDENCE SEIZED IN A SEARCH CONDUCTED IN VIOLATION OF SECTION 303.

### **CHAPTER 4. ARRAIGNMENT AND RELEASE**

#### **SEC. 401. ARRAIGNMENT.**

(a) ARRAIGNMENT IS THE BRINGING OF AN ACCUSED BEFORE THE TRIBAL

COURT TO INFORM HIM OF HIS RIGHTS AND OF THE CHARGE AGAINST HIM, TO RECEIVE HIS PLEA, AND TO SET CONDITIONS OF PRE-TRIAL RELEASE AS APPROPRIATE IN ACCORDANCE WITH THIS CODE.

(b) ARRAIGNMENT SHALL BE HELD IN OPEN TRIBAL COURT WITHOUT UNNECESSARY DELAY AFTER THE ACCUSED IS TAKEN INTO CUSTODY AND IN NO INSTANCE SHALL ARRAIGNMENT BE LATER THAN 72 HOURS AFTER ARREST.

(c) BEFORE AN ACCUSED IS REQUIRED TO PLEAD TO ANY CRIMINAL CHARGES THE TRIBAL COURT JUDGE SHALL:

(1) READ TO THE ACCUSED, AND PROVIDE THE ACCUSED WITH A COPY OF, THE COMPLAINT AND DETERMINE THAT THE ACCUSED UNDERSTANDS THE COMPLAINT AND THE SECTION OF THE CODE WHICH HE IS CHARGED WITH VIOLATING, INCLUDING THE MAXIMUM AUTHORIZED PENALTY; AND;

(2) ADVISE THE ACCUSED THAT HE HAS THE RIGHT TO REMAIN SILENT, TO HAVE A SPEEDY AND PUBLIC TRIAL WHERE HE WILL BE CONFRONTED WITH WITNESSES AGAINST HIM AFTER HE HAS HAD SUFFICIENT TIME TO PREPARE HIS DEFENSE IF HE PLEADS "NOT GUILTY," TO BE TRIED BY A JURY IF THE OFFENSE CHARGED IS PUNISHABLE BY IMPRISONMENT, AND TO BE REPRESENTED BY COUNSEL, AT HIS OWN EXPENSE, BEFORE HE PLEADS TO THE CHARGE.

(d) IF THE ARREST WAS WITHOUT A WARRANT, IN ORDER FOR THE ACCUSED IS TO BE CONTINUED IN CUSTODY THE TRIBAL COURT JUDGE SHALL DETERMINE DURING ARRAIGNMENT WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT AN OFFENSE AGAINST TRIBAL LAW HAS BEEN COMMITTED BY THE ACCUSED.

(e) AT ARRAIGNMENT, THE TRIBAL COURT JUDGE SHALL CALL UPON THE ACCUSED TO PLEAD TO THE CHARGE AND PROCEED AS FOLLOWS:

(1) IF THE ACCUSED PLEADS "NOT GUILTY" TO THE CHARGE, THE TRIBAL COURT JUDGE SHALL SET A TRIAL DATE AND CONSIDER CONDITIONS FOR RELEASE PRIOR TO TRIAL AS PROVIDED IN SECTION 402.

(2) IF THE ACCUSED PLEADS "GUILTY" OR "NO CONTEST" TO THE CHARGE, THE TRIBAL COURT JUDGE SHALL ACCEPT THE PLEA ONLY IF THE TRIBAL COURT JUDGE IS SATISFIED THAT THE PLEA IS MADE VOLUNTARILY AND THE ACCUSED UNDERSTANDS THE CONSEQUENCES OF THE PLEA, INCLUDING THE RIGHTS HE IS WAIVING BY THE PLEA. THE TRIBAL COURT JUDGE MAY THEN IMPOSE SENTENCE OR DEFER SENTENCING FOR A REASONABLE TIME NOT TO EXCEED THIRTY DAYS IN ORDER TO OBTAIN ANY INFORMATION THE TRIBAL COURT JUDGE DEEMS NECESSARY FOR THE IMPOSITION OF A JUST SENTENCE. THE ACCUSED SHALL BE AFFORDED AN OPPORTUNITY TO BE HEARD BY THE TRIBAL COURT PRIOR TO SENTENCING.

(3) IF THE ACCUSED REFUSES TO PLEAD, THE TRIBAL COURT JUDGE SHALL

ENTER A PLEA OF "NOT GUILTY" ON HIS BEHALF.

**SEC. 402. RELEASE BEFORE FINAL JUDGMENT OF CONVICTION.**

(a) AT ARRAIGNMENT, THE TRIBAL COURT JUDGE SHALL DECIDE WHETHER TO RELEASE THE DEFENDANT FROM CUSTODY PENDING SENTENCING OR TRIAL AS CONDITIONS OF RELEASE, THE TRIBAL COURT JUDGE MAY, TO ASSURE THE ACCUSED'S APPEARANCE AT ALL TIMES LAWFULLY REQUIRED, ORDER ANY OR ALL OF THE FOLLOWING:

(1) THAT THE ACCUSED DEPOSIT CASH OR OTHER SUFFICIENT COLLATERAL, IN AN AMOUNT SPECIFIED BY THE TRIBAL COURT JUDGE;

(2) THAT THE ACCUSED, AND/OR ANY OTHER DESIGNATED PERSON OR ORGANIZATION SATISFACTORY TO THE TRIBAL COURT JUDGE, EXECUTE A WRITTEN PROMISE TO APPEAR OR TO DELIVER THE ACCUSED AT ALL REQUIRED TIMES;

(3) REASONABLE RESTRICTIONS ON THE TRAVEL, ASSOCIATION OR PLACE OF RESIDENCE OF THE ACCUSED;

(4) ANY OTHER CONDITION REASONABLY NECESSARY TO ASSURE THE APPEARANCE OF THE ACCUSED AS REQUIRED.

(b) ANY POLICE OFFICER AUTHORIZED TO DO SO BY THE TRIBAL COURT MAY ADMIT AN ARRESTED PERSON TO BAIL PENDING TRIAL PURSUANT TO A BAIL SCHEDULE AND CONDITIONS PREPARED AND APPROVED BY THE TRIBAL COURT.

(c) THE TRIBAL COURT MAY REVOKE RELEASE OF ANY DEFENDANT AND ORDER THE DEFENDANT COMMITTED AT ANY TIME IF IT DETERMINES THAT THE CONDITIONS OF RELEASE WILL NOT REASONABLY ASSURE THE APPEARANCE OF THE DEFENDANT OR IF ANY CONDITIONS OF RELEASE HAVE BEEN VIOLATED.

**SEC. 403. WITHDRAWAL OF GUILTY PLEA.**

THE TRIBAL COURT MAY, IN ITS DISCRETION, ALLOW A DEFENDANT TO WITHDRAW A PLEA OF GUILTY OR A PLEA OF NO CONTEST IF IT APPEARS THAT THE INTEREST OF JUSTICE AND FAIRNESS WOULD BE SERVED BY DOING SO.

**CHAPTER 5. TRIAL PROCEEDINGS.**

**SEC. 501. RIGHTS OF DEFENDANT IN CRIMINAL CASES.**

NO PERSON SHALL TWICE BE PUT IN JEOPARDY FOR THE SAME OFFENSE UNDER THIS

CODE, NOR SHALL HE BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF. THE ACCUSED SHALL HAVE THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, THE RIGHT TO BE CONFRONTED WITH WITNESSES AGAINST HIM, THE RIGHT TO ASSISTANCE OF COUNSEL AT HIS OWN EXPENSE AND THE RIGHT TO DEMAND TRIAL BY AN IMPARTIAL JURY IF THE OFFENSE, OR COMBINATION OF OFFENSES, CHARGED IS PUNISHABLE BY IMPRISONMENT; PROVIDED, HOWEVER, THAT IN THE EVENT THAT THE TRIBAL PROSECUTOR INFORMS THE TRIBAL COURT BEFORE THE CASE COMES TO TRIAL THAT A PERIOD OF IMPRISONMENT WILL NOT BE SOUGHT, A DEFENDANT SHALL HAVE NO RIGHT TO A JURY TRIAL. IF THE DEFENDANT IS SUBSEQUENTLY CONVICTED OF THE OFFENSE FOLLOWING A BENCH TRIAL OR PLEA, THE TRIBAL COURT SHALL NOT IMPOSE A PERIOD OF IMPRISONMENT FOR THE CONVICTED OFFENSE.

**SEC. 502. ISSUANCE OF SUBPOENAS.**

(a) UPON REQUEST OF THE DEFENDANT OR TRIBAL PROSECUTOR, OR UPON THE TRIBAL COURT'S OWN INITIATIVE, THE TRIBAL COURT SHALL ISSUE SUBPOENAS TO COMPEL THE TESTIMONY OF WITNESSES OR THE PRODUCTION OF BOOKS, RECORDS, DOCUMENTS OR OTHER PHYSICAL EVIDENCE RELEVANT TO THE DETERMINATION OF THE CASE THAT DOES NOT IMPOSE AN UNDUE BURDEN ON THE PERSON POSSESSING THE EVIDENCE. AN EMPLOYEE OF THE TRIBAL COURT MAY ACT ON BEHALF OF THE TRIBAL COURT AND ISSUE SUBPOENAS WHICH HAVE BEEN SIGNED BY THE TRIBAL COURT CHIEF JUDGE.

(b) A SUBPOENA SHALL BEAR THE SIGNATURE OF THE TRIBAL COURT CHIEF JUDGE AND SHALL STATE THE NAME OF THE TRIBAL COURT, THE NAME OF THE PERSON OR DESCRIPTION OF THE PHYSICAL EVIDENCE TO BE SUBPOENAED, THE TITLE OF THE PROCEEDING, AND THE DATE, TIME AND PLACE WHERE THE WITNESS IS TO APPEAR OR THE EVIDENCE IS TO BE PRODUCED.

**SEC. 503. SERVICE OF SUBPOENAS.**

(a) A SUBPOENA MAY BE SERVED AT ANY PLACE WITHIN OR WITHOUT THE CONFINES OF THE RESERVATION.

(b) A SUBPOENA MAY BE SERVED BY ANY LAW ENFORCEMENT OFFICER OR OTHER PERSON APPOINTED BY THE TRIBAL 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 USUAL PLACE OF RESIDENCE OR BUSINESS WITH ANY PERSON OF SUITABLE AGE AND DISCRETION WHO ALSO RESIDES OR WORKS THERE.

(c) PROOF OF SERVICE OF THE SUBPOENA SHALL BE FILED WITH THE TRIBAL 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.

**SEC. 504. FAILURE TO OBEY SUBPOENA.**

IN THE ABSENCE OF A JUSTIFICATION SATISFACTORY TO THE TRIBAL COURT, A PERSON WHO FAILS TO OBEY A SUBPOENA MAY BE DEEMED TO BE IN CONTEMPT OF TRIBAL COURT.

**SEC. 505. WITNESS EXPENSES.**

(a) EACH WITNESS ANSWERING A SUBPOENA SHALL BE ENTITLED TO A FEE OF \$25 PER DAY FOR EACH DAY THE WITNESS' SERVICES ARE REQUIRED IN TRIBAL COURT, PLUS THIRTY CENTS PER MILE FOR TRAVEL TO AND FROM THE TRIBAL COURT.

(b) THE EXPENSES PROVIDED FOR IN THIS SECTION SHALL BE PAID BY THE TRIBE UPON COMPLETION OF THE TRIAL, BUT SUCH EXPENSES ASSOCIATED WITH WITNESSES CALLED BY THE DEFENDANT MAY BE TAXED AS COSTS AGAINST THE DEFENDANT IF HE IS FOUND GUILTY AND IN SUCH CASE A JUDGMENT FOR THE COSTS OF WITNESSES SHALL BE ENTERED AGAINST THE DEFENDANT, PROVIDED HOWEVER THAT NO DEFENDANT SHALL BE IMPRISONED SOLELY BECAUSE OF HIS INABILITY TO PAY SUCH COSTS.

(c) IF THE TRIBAL COURT FINDS THAT A COMPLAINT WAS NOT FILED IN GOOD FAITH, BUT WITH A FRIVOLOUS OR MALICIOUS INTENT, IT MAY ORDER THE EXPENDITURES INCURRED UNDER THIS SECTION, AND SUCH ORDER SHALL CONSTITUTE A JUDGMENT AGAINST THE COMPLAINANT.

**SEC. 506. TRIAL PROCEDURE.**

(a) THE PROSECUTION SHALL PRESENT ITS CASE FIRST, FOLLOWED BY THE DEFENDANT. IF REBUTTAL IS REQUIRED, THE PROSECUTION SHALL PROCEED FIRST, FOLLOWED BY THE DEFENDANT. THE TRIBE SHALL PROSECUTE THE CHARGE BY PRESENTING THE TESTIMONY OF THE LAW ENFORCEMENT OFFICER AND ANY OTHER WITNESSES WHO HAVE INFORMATION THAT SUPPORT THE CHARGE. IN PRESENTING SUCH EVIDENCE, THE TRIBE MAY EMPLOY A TRIBAL OFFICIAL, PROFESSIONAL ATTORNEY, OR OTHER APPROVED SPOKESPERSON.

(b) ALL TESTIMONY OF WITNESSES SHALL BE GIVEN ORALLY UNDER OATH IN OPEN TRIBAL COURT AND SUBJECT TO THE RIGHT OF CROSS-EXAMINATION. DOCUMENTARY AND TANGIBLE EVIDENCE SHALL ALSO BE RECEIVED IN OPEN TRIBAL COURT AND AVAILABLE TO THE DEFENDANT. THE TRIBAL COURT SHALL NOT BE BOUND BY FORMAL RULES OF EVIDENCE, BUT SHALL USE ITS OWN DISCRETION AS TO WHAT EVIDENCE IT DEEMS NECESSARY AND RELEVANT TO THE CASE.

(c) THE DEFENDANT MAY BE FOUND GUILTY OF A LESSER OFFENSE NOT NECESSARILY INCLUDED IN THE OFFENSE CHARGED, WITHOUT THE NECESSITY OF HAVING BEEN FORMALLY CHARGED WITH THE LESSER OFFENSE.

(d) EXCEPT UPON THE DIRECTION OF THE TRIBAL COURT JUDGE WHEN REQUIRED TO MAINTAIN DECORUM IN TRIBAL COURT PROCEEDINGS, THE DEFENDANT SHALL BE PRESENT IN TRIBAL COURT AT EVERY STAGE OF THE TRIAL, INCLUDING SELECTION OF THE JURY, RETURN OF THE VERDICT, AND IMPOSITION OF THE SENTENCE.

(e) THE DEFENDANT IS PRESUMED TO BE INNOCENT.

(f) AT THE CONCLUSION OF THE EVIDENCE, THE PROSECUTION AND DEFENDANT EACH IN TURN SHALL SUMMARIZE THE PROOF AND MAKE FINAL ARGUMENT, WITH THE PROSECUTION HAVING THE RIGHT TO SPEAK LAST.

(g) ALL RECORDS RELATING TO STATEMENTS OR CONFESSIONS OF THE DEFENDANT OR REPORTS OF PHYSICAL, MENTAL, OR OTHER SCIENTIFIC TESTS OR EXAMINATIONS RELATING TO OR PERFORMED ON THE DEFENDANT, WHEN IN THE POSSESSION OR CONTROL OF THE TRIBE, SHALL BE OPEN TO INSPECTION AND COPYING BY THE DEFENDANT.

#### **SEC. 507. RIGHT TO JURY TRIAL.**

(a) SUBJECT TO THE REQUIREMENTS CONTAINED IN SECTION 501 OF THIS TITLE, ANY PERSON ACCUSED OF A CRIME PUNISHABLE BY IMPRISONMENT SHALL BE GRANTED A JURY TRIAL, UPON HIS OR HER REQUEST MADE AT TIME OF ARRAIGNMENT OR BY A WRITTEN REQUEST FILED WITH CLERK OF THE TRIBAL COURT AT LEAST 15 DAYS BEFORE THE DATE SET FOR TRIAL. A JURY SHALL CONSIST OF AT LEAST SIX MEMBERS OF THE TRIBE SELECTED AT RANDOM FROM A LIST OF ELIGIBLE JURORS PREPARED EACH YEAR BY THE TRIBAL COURT.

(b) AN ELIGIBLE JUROR IS A TRIBAL MEMBER WHO HAS REACHED THE AGE OF 18 YEARS OF AGE IS OF SOUND MIND AND DISCRETION, HAS NEVER BEEN CONVICTED OF A FELONY, IS NOT A MEMBER OF THE TRIBAL COUNCIL, OR A TRIBAL COURT JUDGE, OFFICER OR EMPLOYEE OF THE TRIBAL COURT OR AN EMPLOYEE OF THE TRIBAL POLICE DEPARTMENT, INCLUDING ANY DETENTION CENTER PERSONNEL.

(c) A CURRENT ROSTER OF AT LEAST 25 TRIBAL MEMBERS WHO ARE ELIGIBLE FOR JURY DUTY SHALL BE PREPARED AND MAINTAINED BY THE TRIBAL COURT CLERK.

(d) UNDER THE SUPERVISION OF THE TRIBAL COURT CLERK, WITNESSED BY AT LEAST TWO OTHER ADULT PERSONS, A PANEL OF JURORS SHALL BE DRAWN BY LOT FROM THE JURY ROSTER. AT TRIAL JURY SHALL CONSIST OF SIX (6) QUALIFIED JURORS SELECTED IN A RANDOM FASHION FROM A PANEL OF TWELVE (12) ELIGIBLE PERSONS TAKE FROM THE JURY ROSTER, NONE OF WHOM HAS AN INTEREST IN THE CASE, OR IS RELATED

AS SPOUSE, PARENT, BROTHER OR SISTER TO ANY OF THE PARTIES OR THEIR ATTORNEYS. IF THE JURY PANEL IS EXHAUSTED BEFORE A SUFFICIENT NUMBER OF JURORS ARE SELECTED FOR THE TRIAL JURY, ADDITIONAL JURORS SHALL BE DRAWN BY LOT FROM THE JURY ROSTER FROM THE PANEL UNTIL A TRIAL JURY IS SELECTED.

(E) UPON A SHOWING OF SUFFICIENT HARDSHIP, SATISFACTORY TO THE TRIBAL COURT CLERK, THE FOLLOWING PERSONS, UPON THEIR REQUEST, MAY BE EXCLUDED FROM THE JURY ROSTER AND JURY PANELS:

- (1) PERSONS WHO RESIDE OUTSIDE OF PINE CREEK AND MORE THAN ONE-HUNDRED FIFTY (150) MILES FROM THE TRIBE'S ADMINISTRATIVE OFFICES.
- (2) PERSONS OF SUCH ADVANCED AGE, INFIRMITY OR ILLNESS.
- (3) PERSONS BURDENED BY SUCH OTHER CIRCUMSTANCES OR SUBJECT TO SUCH OTHER DEMANDS THAT JURY SERVICE WOULD CAUSE EXTRAORDINARY HARDSHIP FOR THEM. SUCH HARDSHIP SHALL BE SUBSTANTIALLY GREATER THAN WOULD BE EXPERIENCED ORDINARILY BY OTHER PERSONS SERVING AS JURORS.

(F) EACH MEMBER OF A DESIGNATED JURY PANEL SHALL BE SERVED WITH A SUMMONS, SIGNED BY THE TRIBAL COURT JUDGE, INDICATING THE PLACE AND TIME THAT HE OR SHE IS FIRST TO APPEAR FOR JURY SERVICE. THE NOTICE SHALL BE SERVED BY THE CLERK OF TRIBAL COURT, A MEMBER OF THE TRIBAL POLICE DEPARTMENT, OR ANY OTHER PERSON WHO MAY BE DESIGNATED IN WRITING BY THE TRIBAL COURT. THE NOTICE SHALL BE SERVED NOT LESS THAN SEVENTY-TWO (72) HOURS PRIOR TO THE DESIGNATED TIME FOR INITIAL APPEARANCE. AFTER SUCH INITIAL APPEARANCE, THE TIMES AND PLACES FOR ATTENDANCE BY THOSE PERSONS INCLUDED ON THE DESIGNATED JURY PANEL SHALL BE PRESCRIBED BY THE TRIBAL COURT.

(g) A PERSON SUMMONED TO SERVE AS A JUROR WHO HAS NOT BEEN EXCUSED PURSUANT TO ANY PROVISIONS OF THIS CODE, OR BY ORDER OF TRIBAL COURT, WHO FAILS TO APPEAR WHERE AND WHEN SUMMONED, OR WHO HAVING SO APPEARED ABSENTS HIMSELF OR HERSELF THEREFROM WITHOUT THE PERMISSION OF THE TRIBAL COURT, OR WHO RENDERS HIMSELF OR HERSELF UNFIT TO COMMENCE OR CONTINUE THE DUTIES OF A JUROR, MAY BE HELD IN CONTEMPT OF TRIBAL COURT. IN ADDITION TO THE PENALTIES FOR CONTEMPT OF TRIBAL COURT PRESCRIBED BY THIS CODE, HE OR SHE MAY BE CHARGED BY THE TRIBAL COURT WITH ANY COSTS INCURRED BY THE TRIBAL COURT OR BY ANY OTHER PERSONS WHICH RESULTED FROM SUCH FAILURE TO BE PRESENT OR FROM SUCH MISCONDUCT.

(h) EACH PARTY MAY QUESTION MEMBERS OF THE PANEL OF PROSPECTIVE JURORS FOR THE PURPOSE OF SELECTING A TRIAL JURY. IN CRIMINAL CASES, IN ADDITION TO DISQUALIFYING JURORS FOR CAUSE AS DETERMINED BY THE TRIBAL COURT JUDGE,

THE PROSECUTION AND THE DEFENDANT, EACH SIDE SHALL BE ENTITLED TO THREE PEREMPTORY CHALLENGES WITHOUT ASSIGNING ANY CAUSE. WHERE THERE IS MORE THAN ONE DEFENDANT, THEY MUST JOIN IN A CHALLENGE BEFORE IT CAN BE MADE UNLESS THE TRIBAL COURT, FOR DUE CAUSE SHOW, SHALL PERMIT OTHERWISE, OR SHALL PERMIT EACH DEFENDANT TO EXERCISE TWO PEREMPTORY CHALLENGES.

(i) EACH MEMBER OF THE JURY PANEL CALLED TO SERVICE AND EACH JUROR WHO SERVES UPON A JURY SHALL BE ENTITLED TO COMPENSATION AT A RATE DETERMINED BY THE TRIBAL COURT. ALL PAYMENT OF COMPENSATION SHALL BE SUPPORTED BY VOUCHERS SIGNED BY THE PRESIDING TRIBAL COURT JUDGE. SUCH VOUCHERS SHALL BE PAID IN ORDER OF PRESENTATION, FROM AVAILABLE FUNDS ON DEPOSIT FOR THE PURPOSE.

(j) THE TRIBAL COURT JUDGE SHALL INSTRUCT THE JURY WITH REGARD TO THE APPLICABLE LAW AND THE JURY SHALL DECIDE ALL QUESTIONS OF FACT ON THE BASIS OF THAT LAW. AT THE CLOSE OF EVIDENCE OR AT SUCH EARLIER TIME DURING THE TRIAL AS THE TRIBAL COURT JUDGE DIRECTS, ANY PARTY MAY FILE WITH THE TRIBAL COURT JUDGE WRITTEN INSTRUCTIONS ON THE LAW WHICH THE PARTY REQUESTS THE TRIBAL COURT JUDGE TO DELIVER ORALLY TO THE JURY. AT THE SAME TIME COPIES OF SUCH REQUESTS SHALL BE FURNISHED TO THE OPPOSING PARTY. THE TRIBAL COURT JUDGE SHALL INFORM EACH PARTY OF HIS PROPOSED ACTION UPON EACH REQUEST PRIOR TO THE ARGUMENTS TO THE JURY, BUT THE TRIBAL COURT JUDGE SHALL DELIVER HIS INSTRUCTIONS TO THE JURY AFTER ARGUMENTS ARE COMPLETED. NO PARTY MAY ASSIGN AS ERROR ANY PORTION OF THE TRIBAL COURT JUDGE'S CHARGE OR ANY OMISSION UNLESS SHE MAKES HIS OBJECTION AND REASONS FOR IT BEFORE THE JURY RETIRES TO CONSIDER ITS VERDICT. OPPORTUNITY SHALL BE GIVEN TO MAKE THE OBJECTION OUT OF THE HEARING OF THE JURY.

(k) AFTER DELIBERATION IN PRIVATE, THE JURY IN CRIMINAL CASES SHALL RETURN TO THE TRIBAL COURT JUDGE IN OPEN COURT A VERDICT OF "GUILTY" OR "NOT GUILTY" WITH RESPECT TO EACH DEFENDANT. A VERDICT OF CONVICTION IN CRIMINAL CASES SHALL REQUIRE AN UNANIMOUS VOTE OF THE JURY.

## **CHAPTER 6. SENTENCING**

### **SEC. 601. SENTENCES.**

ANY PERSON WHO HAS BEEN CONVICTED OF AN OFFENSE ENUMERATED IN THIS CODE MAY BE SENTENCED BY THE TRIBAL COURT TO ONE OR A COMBINATION OF THE FOLLOWING PENALTIES:

(a) IMPRISONMENT FOR A PERIOD NOT TO EXCEED THE MAXIMUM PERMITTED BY THE CODE PROVISION DEFINING THE OFFENSE. IMPRISONMENT MAY BE CONTINUOUS

OR INTERMITTENT. ON ANY SENTENCE OF IMPRISONMENT, CREDIT SHALL BE GIVEN FOR ALL TIME SPENT IN CUSTODY IN AN INSTITUTION AS A RESULT OF THE CHARGE FOR WHICH THE SENTENCE WAS IMPOSED. IMPRISONMENT MAY INCLUDE COMMITMENT TO AN APPROPRIATE INSTITUTION OR PROGRAM, EITHER ON OR OFF THE RESERVATION, FOR CARE, TREATMENT, EVALUATION, OR REHABILITATION OF THE OFFENDER. ANYONE RECEIVING PHYSICAL CUSTODY OF A PERSON SENTENCED BY THE TRIBAL COURT SHALL BE ACTING SOLELY AS AN AGENT OF THE TRIBE AND TRIBAL COURT. JURISDICTION OVER A PERSON SENTENCED TO A PROGRAM OR INSTITUTION OFF THE TRIBE'S TRUST LANDS SHALL BE RETAINED BY THE TRIBE AND THE TRIBAL COURT EXCLUSIVELY. NO PLACEMENT OFF THE TRIBE'S TRUST LANDS SHALL BE VALID UNLESS FIRST APPROVED IN WRITING BY THE CHIEF JUDGE OF THE TRIBAL COURT, AND ANY ORDER OF SUCH PLACEMENT SHALL SPECIFY THAT THE TRIBES AND THE TRIBAL COURT RETAIN JURISDICTION OVER ANY PERSON SO PLACED.

(b) A MONEY FINE IN AN AMOUNT NOT TO EXCEED THE MAXIMUM PERMITTED BY THE CODE PROVISION DEFINING THE OFFENSE, EXCLUSIVE OF TRIBAL COURT COSTS OR THE REQUIREMENTS OF SECTION 601(C) HEREIN. IF THE TRIBAL COURT DETERMINES THAT A CONVICTED OFFENDER IS UNABLE TO PAY FORTHWITH A MONEY FINE ASSESSED UNDER THIS SECTION OR ANY COSTS ASSESSED UNDER SECTION 505(B) OF THIS TITLE, THE TRIBAL COURT SHALL ALLOW THE OFFENDER A REASONABLE PERIOD OF TIME TO PAY THE ENTIRE SUM OR ALLOW THE OFFENDER TO MAKE INSTALLMENT PAYMENTS TO THE CLERK OF THE TRIBAL COURT AT SPECIFIED INTERVALS UNTIL THE ENTIRE SUM IS PAID. IF THE OFFENDER DEFAULTS ON SUCH PAYMENTS THE TRIBAL COURT MAY FIND THE OFFENDER IN CONTEMPT OF TRIBAL COURT AND PUNISH THE OFFENDER ACCORDINGLY, BUT NO PERSON SHALL BE HELD IN CONTEMPT OF TRIBAL COURT WHERE NONPAYMENT IS BECAUSE OF INDIGENCY.

(c) IN ADDITION TO OR IN LIEU OF THE PENALTIES PROVIDED ABOVE, THE TRIBAL COURT MAY REQUIRE A CONVICTED OFFENDER WHO HAS INFLECTED INJURY UPON THE PERSON OR PROPERTY OF ANOTHER TO MAKE RESTITUTION OR COMPENSATION TO THE INJURED PERSON BY MEANS OF THE SURRENDER OF PROPERTY, PAYMENT OF MONEY DAMAGES, OR THE PERFORMANCE OF ANY OTHER ACT, INCLUDING APPROPRIATE WORK DETAIL, FOR THE BENEFIT OF THE INJURED PARTY.

(d) IN ITS DISCRETION, THE TRIBAL COURT MAY COMMUTE OR SUSPEND SOME OR ALL OF THE SENTENCE IMPOSING A FINE OR IMPRISONMENT, ORDER A CONVICTED PERSON TO PARTICIPATE IN A REHABILITATION PROGRAM, OR GRANT PROBATION, ON CONDITION THAT THE CONVICTED PERSON DOES WORK FOR THE BENEFIT OF THE TRIBE. A PERSON UNABLE OR UNWILLING TO WORK MAY BE CONFINED IN JAIL OR FINED AS PROVIDED ABOVE.

(e) IN DETERMINING THE CHARACTER AND DURATION OF THE SENTENCE TO BE IMPOSED, THE TRIBAL COURT SHALL TAKE INTO CONSIDERATION THE PREVIOUS CONDUCT, BACKGROUND AND CHARACTERISTICS OF THE DEFENDANT, THE

CIRCUMSTANCES UNDER WHICH THE OFFENSE WAS COMMITTED, WHETHER THE OFFENSE WAS MALICIOUS OR WILLFUL, WHETHER THE DEFENDANT HAS ATTEMPTED TO MAKE AMENDS, THE DEFENDANT'S FINANCIAL RESOURCES, AND THE NEEDS OF THE OFFENDER'S DEPENDENTS. PRIOR TO IMPOSING SENTENCE, THE TRIBAL COURT SHALL AFFORD A REASONABLE OPPORTUNITY TO THE CONVICTED OFFENDER TO PRESENT INFORMATION TO IT. THE TRIBAL COURT MAY ALSO REQUEST AND RECEIVE PERTINENT REPORTS, ADVICE, AND RECOMMENDATIONS FROM ANY OTHER PERSON OR AGENCY WHICH MAY ASSIST THE TRIBAL COURT IN IMPOSING AN APPROPRIATE SENTENCE, PROVIDED, HOWEVER, THAT PRIOR TO SENTENCING THE CONVICTED PERSON SHALL BE ADVISED OF THE CONTENT, IDENTITY, AND SOURCE OF ANY SUCH REPORT, ADVICE OR RECOMMENDATION AND SHALL BE AFFORDED A REASONABLE OPPORTUNITY TO COMMENT UPON OR REBUT IT. THE TRIBAL COURT MAY REQUIRE, AS A CONDITION OF ITS SENTENCE, THAT THE CONVICTED OFFENDER UNDERGO AVAILABLE MEDICAL, PSYCHIATRIC OR SUBSTANCE ABUSE TREATMENT, NOT OPERATE A MOTOR VEHICLE, OR REMAIN WITHIN GEOGRAPHIC AREAS DESIGNATED BY THE TRIBAL COURT.

**SEC. 602. DELAYED SENTENCING.**

(a) THE TRIBAL COURT MAY, IN THE SPECIFIC CIRCUMSTANCES DESCRIBED IN PARAGRAPHS (1)-(3) OF THIS SUBSECTION, WITHOUT ENTERING A JUDGMENT OF GUILT AND WITH THE CONSENT OF THE TRIBAL PROSECUTOR AND THE ACCUSED, DEFER FURTHER PROCEEDINGS AND PLACE THE INDIVIDUAL ON PROBATION UPON TERMS AND CONDITIONS PRESCRIBED BY THE TRIBAL COURT TAKING INTO ACCOUNT THE INFORMATION AND CRITERIA DESCRIBED IN SEC. 601(E):

(1) THE INDIVIDUAL HAS PLEAD GUILTY OR NO CONTEST TO A CLASS B MISDEMEANOR UNDER SECTION 1001 OF TITLE II – CRIMINAL OFFENSE OF THIS CODE, AND HE/SHE HAS NOT PREVIOUSLY BEEN CONVICTED OF A CONTROLLED SUBSTANCES OFFENSE UNDER TITLE II OF THIS CODE OR UNDER ANY STATUTE OF THE UNITED STATES OR OF ANY STATE;

(2) THE INDIVIDUAL HAS PLEAD GUILTY OR NO CONTEST TO A CLASS A OR CLASS B MISDEMEANOR UNDER SEC. 601 OF TITLE II OF THIS CODE AND HE/SHE HAS NOT PREVIOUSLY BEEN CONVICTED OF ANOTHER OFFENSE UNDER SEC. 601 OF TITLE II OF THIS CODE OR A COMPARABLE OFFENSE UNDER ANY STATUTE OF THE UNITED STATES OR OF ANY STATE; OR

(3) AN INDIVIDUAL UNDER THE AGE OF 21 YEARS OF AGE HAS PLEAD GUILTY OR NO CONTEST TO A CLASS B OR CLASS C MISDEMEANOR UNDER TITLE II OF THIS CODE AND HE/SHE HAS NOT PREVIOUSLY BEEN CONVICTED OF ANY OTHER CRIMINAL OFFENSE UNDER THIS CODE OR A COMPARABLE CRIME UNDER THE CRIMINAL LAWS OF THE UNITED STATES OR OF ANY STATE.

(a) UPON VIOLATION OF A TERM OR CONDITION OF PROBATION ORDERED BY THE TRIBAL COURT UNDER THIS SECTION WITHOUT ENTRY OF A JUDGMENT OF GUILT, THE TRIBAL COURT MAY ENTER AN ADJUDICATION OF GUILT AND PROCEED AS OTHERWISE PROVIDED IN SEC. 601 OF TITLE III OF THIS CODE.

(b) UPON FULFILLMENT OF THE TERMS AND CONDITIONS OF PROBATION ORDERED BY THE TRIBAL COURT UNDER THIS SECTION WITHOUT ENTRY OF A JUDGMENT OF GUILT, THE TRIBAL COURT SHALL DISCHARGE THE INDIVIDUAL AND DISMISS THE PROCEEDINGS. DISCHARGE AND DISMISSAL UNDER THIS SECTION SHALL BE WITHOUT ADJUDICATION OF GUILT AND, EXCEPT AS PROVIDED IN SUBSECTION (B), IS NOT A CONVICTION FOR PURPOSES OF THIS SECTION OR FOR PURPOSES OF DISQUALIFICATIONS OR DISABILITIES IMPOSED BY LAW UPON CONVICTION OF A CRIME, INCLUDING THE ADDITIONAL PENALTIES IMPOSED FOR SECOND OR SUBSEQUENT CONVICTIONS TITLE II OF THIS CODE. THERE MAY BE ONLY ONE DISCHARGE AND DISMISSAL UNDER THIS SECTION AS TO ANY INDIVIDUAL.

(c) UPON THE DEFENDANT SATISFYING THE TERMS AND CONDITIONS OF HIS OR TERM PROBATION ORDERED BY THE TRIBAL COURT UNDER THIS SECTION, THE TRIBAL COURT SHALL DIRECT ALL POLICE DEPARTMENTS MAINTAINING RECORDS RELATING TO THE DEFENDANT'S ARREST TO EXPUNGE ALL SUCH RECORDS.

(d) THE TRIBAL COURT SHALL RETAIN A NONPUBLIC RECORD OF AN ARREST AND DISCHARGE OR DISMISSAL UNDER THIS SECTION. THIS RECORD SHALL BE FURNISHED TO ANY OR ALL OF THE FOLLOWING:

(1) TO A COURT, POLICE AGENCY, OR OFFICE OF A PROSECUTING ATTORNEY UPON REQUEST FOR THE PURPOSE OF SHOWING THAT A DEFENDANT IN A CRIMINAL ACTION HAS ALREADY RECEIVED THE BENEFIT OF THE DELAYED SENTENCING PROCEDURE DESCRIBED IN THIS SECTION;  
OR

(2) TO THE TRIBE'S GAMING COMMISSION FOR THE SOLE PURPOSE OF PERMITTING THE GAMING COMMISSION TO MAKE A DETERMINATION AS TO WHETHER THE INDIVIDUAL QUALIFIES FOR A GAMING LICENSE ISSUED BY THE GAMING COMMISSION.

(e) WHEN EXERCISING ITS DISCRETION UNDER THIS SECTION TO PLACE AN INDIVIDUAL ON PROBATION WITHOUT ENTRY OF A JUDGMENT OF GUILT, THE TRIBAL COURT MAY ORDER THE INDIVIDUAL TO PAY SOME OR ALL OF THE COST ASSOCIATED WITH A COURSE OF INSTRUCTION OR REHABILITATION PROGRAM INCLUDED IN THE TRIBAL COURT'S PROBATION ORDER. THE FAILURE OF THE INDIVIDUAL TO COMPLETE THE INSTRUCTION OR PROGRAM ORDERED BY THE TRIBAL COURT, OR TO PAY THE COSTS ORDERED BY THE TRIBAL COURT, SHALL BE CONSIDERED A VIOLATION OF THE TERMS OF PROBATION.

**SEC. 603. PROBATION.**

(a) GRANTING PROBATION. AFTER CONVICTION FOR AN OFFENSE, THE OFFENDER MAY BE PLACED ON PROBATION UNDER SUCH TERMS AND CONDITIONS AS THE TRIBAL COURT DEEMS JUST, INCLUDING A SIGNED PLEDGE BY THE OFFENDER OF GOOD CONDUCT FOR THE DURATION OF THE SENTENCE. THE TRIBAL COURT SHALL TAKE INTO CONSIDERATION ANY PRIOR CRIMINAL RECORD OF THE OFFENDER, THE OFFENDER'S BACKGROUND, CHARACTERISTICS, FINANCIAL CONDITION AND ANY OTHER CIRCUMSTANCES HELPFUL IN DETERMINING THE ADVISABILITY OF PROBATION.

(b) VIOLATION OF CONDITIONS OF PROBATION. IF ANY CONVICTED OFFENDER VIOLATES THE TERMS AND CONDITIONS OF PROBATION, THE TRIBAL COURT MAY, AFTER GIVING SUCH PERSON NOTICE AND THE OPPORTUNITY FOR A HEARING IN OPEN TRIBAL COURT, REVOKE OR ALTER THE TERMS OF PROBATION, AND MAY, AS A PENALTY FOR VIOLATION OF THE PROBATION, IMPOSE AN ADDITIONAL FINE OR IMPRISONMENT.

**SEC. 604. FORFEITURE OF WEAPONS.**

ANY CONVICTED OFFENDER OWNING AND USING A FIREARM, OR ANY SHARP OR DANGEROUS WEAPON, IN THE COMMISSION OF AN OFFENSE SHALL FORFEIT SUCH WEAPON TO THE TRIBE AS PART OF THE SENTENCE. UPON ORDER OF THE TRIBAL COURT, SUCH WEAPON SHALL BE DESTROYED, RETAINED BY THE TRIBAL POLICE DEPARTMENT, OR SOLD AT PUBLIC SALE AFTER APPROPRIATE PUBLIC NOTICE, PURSUANT TO THE DIRECTION OF THE TRIBAL COURT.

