TITLE II

CHAPTER 2

CRIMINAL PROCEDURE

Part 1

General Preliminary Provisions

2–2–101. Purpose and construction. The provisions of this chapter shall be construed in accordance with Tribal custom as well as to achieve the following general goals:

(1) to provide for the just determination of every criminal proceeding;

(2) to protect the rights of individuals; and

(3) to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

2–2–102. General definitions. Unless otherwise specified in a particular section, the following definitions shall apply to this chapter:

(1) "Arraignment" means the formal act of calling a defendant into open court in order that the defendant may enter a plea on the charge(s) against her or him.

(2) "Arrest" means formally taking a person into custody in accordance with the manner authorized by law.

(3) "Bail" means the security given, in the form of cash, stocks, bonds, real property, or any other form of approved collateral, for the primary purpose of insuring the presence of the defendant in a pending criminal proceeding.

(4) "Charge" means a written statement presented to the Court accusing a person of commission of an offense, and includes a complaint or information.

(5) "Citation" means a written direction that is issued by a law enforcement officer and that requests a person to appear before the court at a stated time and place to answer a charge for the alleged commission of an offense.

(6) "Conditional release" means releasing a defendant from lawful custody, pending a criminal proceeding, after placing specific restrictions or regulations on the activities and associations of the defendant.

(7) "Contents", when used with respect to oral, wire, radio, television, satellite, or computer communications, means not only the actual words or substances of the communication, but any information concerning the implied or intended meaning of the communication, the existence of the communication, and the identities of the parties to the communication as well.

(8) "Contraband" means any property which is unlawful in itself, used for any unlawful purpose, or used in connection with or derived from any unlawful property or transaction.

(9) "Conviction" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.

(10) "Coroner" means a law enforcement officer, or other person designated by the Tribal Council, to inquire into the causes and circumstances of any death occurring due to violence or unexplainable causes.

(11) "Counsel" means an attorney or a Tribal Advocate.

(12) "Defendant" means a person who has been charged by the Tribes of allegedly violating a Tribal law and is appearing before the Tribal Court as a result of the charge or charges.

(13) "Elder" or "older person" means a Tribal member or other individual residing on the Reservation who is

(a) 60 years of age or older;

(b) determined by the Court to be an elder, or

(c) at least 45 years of age and unable to protect himself or herself from abuse, neglect, or exploitation because of a mental disorder or physical impairment or because of frailties or dependencies brought about by age or disease or alcoholism.

(14) "Family member" or "household member" means a spouse, former spouse, person related by blood or marriage, person residing with the offender due to adoption or foster placement, any person currently cohabiting with the offender at any time during the year immediately preceding the commission of any alleged abuse.

(15) "Frisk" means an external patting of a person's outer clothing.

(16) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or Tribal interest or a lesser kind of culpability suffices to establish its commission.

(17) "Indian" means a person who is enrolled in a federally recognized Indian tribe or who is recognized as a Canadian Indian.

(18) "Judgment" means an adjudication by the Tribal Court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, the judgment includes the sentence pronounced by the Court.

(19) "Law enforcement officer" means any person who by virtue of his or her office or employment by the Tribes or by another government is vested by law with a duty to

(a) enforce Tribal or federal civil regulatory laws,

(b) maintain public order, or

(c) make arrests for offenses while acting within the scope of his or her authority.

(20) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

(21) "Notice to appear" means a written document, issued by a clerk of the Tribal Court or a law enforcement officer, requesting the named person to appear before a judge at the stated time and date in Tribal Court to answer a charge for the alleged commission of an offense.

(22) "Offender" means a person who has been convicted of an offense enumerated in Chapter 1 of this Title.

(23) "Offense" means a violation of a penal statute contained in the Code of Criminal Offenses, Chapter 1, Title II, of the CSKT Laws, Codified.

(24) "Parole" means the release from jail of a prisoner by the Court prior to the expiration of the prisoner's term, subject to any conditions imposed by the Court and the supervision of the Tribal Probation Officer.

(25) "Personal recognizance" means the release from lawful custody of a defendant upon his or her promise to appear in court at all appropriate times.

(26) "Probation" means the release by the Tribal Court without imprisonment, of an offender a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the Tribal Court, and subject to supervision by the Tribal Probation Officer or his or her designee upon direction of the Court.

(27) "Sentence" means the punishment imposed on an offender by the court and may include incarceration, labor on Tribally–owned property while incarcerated, restitution, or any combination thereof, together with participation in any rehabilitative programs ordered by the court.

(28) "Statement" means

(a) a writing signed or otherwise adopted or approved by a person;

(b) a mechanical, electronic, or other recording of a person's oral communications or a transcript thereof; or

(c) a writing containing a verbatim record as a summary of a person's oral communication(s).

(29) "Subpoena" means a court order commanding a person to:

(a) appear at a certain time and place to give testimony upon a certain matter; or

(b) produce specific books, records, papers, documents, or other objects as may be necessary and proper; or

(c) do both (a) and (b).

(30) "Summons" means a written order issued by the court that commands a person to appear before the court at a stated time and place to answer a charge for the offense set forth in the order.

(31) "Temporary roadblock" means any structure, device, or other method used by law enforcement officers to control the flow of traffic through a point on a highway or road whereby all vehicles may be slowed or stopped.

(32) "Witness" means a person whose testimony is desired in a criminal action, prosecution or proceeding.

2–2–103. Criminal jurisdiction. (1) An Indian defendant is subject to prosecution in Tribal Court for any offense enumerated in Chapter 1 of this Title or another Tribal statute committed totally or partially within the exterior boundaries of the Flathead Reservation.

(2) An offense is committed partially within the Flathead Reservation if either the conduct which is an element of the offense or the result which is an element occurs within the exterior boundaries of the Flathead Reservation.

(3) An offense based on an omission to perform a duty imposed by Tribal law is committed within the exterior boundaries of the Flathead Reservation, regardless of the location of the defendant at the time of the omission.

2–2–104. Rights of defendant. (1) In all criminal proceedings, the defendant shall have the following rights:

(a) to be released from custody pending trial upon payment of reasonable bail;

(b) to appear and defend in person, by Tribal Defender, by tribal member, or by private counsel obtained at defendant's own expense, as provided in Section 2–2–504.

(c) to be informed of the nature of the charges pending against her or him and to have a copy of those charges;

(d) to confront and cross examine all prosecution or hostile witnesses;

(e) to compel by subpoena:

(i) the attendance of any witnesses necessary to defend against the charges; and

(ii) the production of any books, records, documents, or other things necessary to defend against the charges;

(f) to have a speedy public trial by judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant, as provided in Section 2–2–1001;

(g) to appeal any final decision of the Tribal Court to the Tribal Court of Appeals;

(h) not to be twice put in jeopardy by the Tribal Court for the same offense; and

(i) not to be required to testify.

(2) No inference may be drawn from a defendant's exercise of the right not to testify.

2–2–105. Subsequent prosecutions. (1) A subsequent prosecution will not constitute double jeopardy when the previous prosecution was properly terminated under any of the following circumstances:

(a) the defendant consents to the termination or waives, by motion an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;

(b) the Tribal Court finds that a termination, other than by acquittal, is necessary because:

(i) it is impossible to proceed with the trial in conformity with the law;

(ii) there is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;

(iv) the jury cannot agree upon a verdict; or

(v) a false statement of a juror on voir dire prevents a fair trial;

(c) the former prosecution occurred in a court which lacked jurisdiction over the defendant or the offense;

(d) the subsequent prosecution was for an offense which was not completed when the former prosecution began; or

(e) there was a transfer of jurisdiction to another authority.

(2) The following actions will not constitute an acquittal of the same offense if the complaint was:

(a) dismissed for insufficiency in form or substance;

(b) dismissed without prejudice upon a pretrial motion; or

(c) discharged for want of prosecution without a judgment of acquittal.

Part 2

Investigative Procedures

2–2–201. Investigative subpoenas. (1) Whenever the Tribal Prosecutor has a duty to investigate alleged unlawful activity, a judge may cause a subpoena to be issued commanding a specified person to appear before the Tribal Prosecutor or a designated agent of the Prosecutor and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation.

(2) No person subpoenaed under this provision is required to give testimony or produce any evidence which may incriminate her or him, unless granted immunity.

(3) An investigative subpoena may only be issued by a judge when supported by an affidavit of the Prosecutor sufficient to show that the administration of justice requires the testimony or information being sought.

2–2–202. Relief from improper subpoena. A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

2–2–203. Conduct of investigative hearing. (1) Before a judge, the prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness is indigent as defined in Section 1–2–402, the witness entitled to representation by the Tribal Defenders Office. Failure to obey, without just cause, a subpoena served under this part is punishable for contempt of court.

(2) Proceedings conducted under this part are secret except to the extent that they supply probable cause for arresting or charging a defendant in a subsequent criminal action or are admissible in a later criminal trial. A person who divulges the contents of the Prosecutor's affidavit or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

2–2–204. Self-incrimination -- immunity. (1) No person subpoenaed to give testimony pursuant to this part may be required to make a statement or to produce evidence that may be personally incriminating.

(2) The prosecutor may, with the approval of the judge who authorized the issuance of the subpoena, grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution.

(3) Nothing in this part prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in the prosecutor's sole discretion, that the best interest of justice would be served by granting immunity.

(4) After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(5) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

2–2–205. Authorization for search and seizure. A search of a person, object, or place may be made and evidence, contraband, and persons may be seized when a search is made:

(1) by the authority of a search warrant; or

(2) in accordance with federally judicially recognized exceptions to the warrant requirement.

2–2–206. Scope of search after arrest. When a lawful arrest is effected, a law enforcement officer may make a reasonable search of the person arrested and the area within such person's immediate presence, without a search warrant, for the purpose of:

(1) protecting the officer from attack;

(2) discovering and seizing the fruits of the crime;

(3) discovering and seizing instruments, articles, or other property which may have been used in the commission of the offense, or which may constitute evidence of the offense, in order to prevent its destruction; or

(4) preventing the person from escaping.

2–2–207. Execution of a search warrant. (1) A "search warrant" is a court order:

(a) in writing;

(b) in the name of the Tribes;

(c) signed by a judge;

(d) particularly describing the premises, property, place, or person to be searched and the instruments, articles, or items to be seized; and

(e) directed to a specific law enforcement officer commanding the officer to search for and seize the person or property designated in the warrant and bring the person or property before a judge.

(2) Every judge has the authority to issue warrants for the search of persons, premises, and property and the seizure of goods, instruments, articles, or items.

(3) Search warrants shall only be executed by law enforcement officers between the hours of 6:00 a.m. and 10:00 p.m., unless the issuing judge otherwise authorizes the warrant to be served anytime day or night.

(4) Before entering the premises named in a search warrant, the law enforcement officer shall give appropriate notice of her or his identity, authority and purpose to the person to be searched, or to the person in apparent control of the premises to be searched.

(5) Before undertaking any search or seizure pursuant to the warrant, the executing law enforcement officer shall read and give a copy of the original or duplicate original warrant to the person to be searched, or to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the warrant suitably affixed to the premises.

(6) If the warrant is executed, a duplicate copy and a receipt for all articles taken shall be left with any person at the place from which any items were seized. The inventory of the items shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the applicant for the warrant.

(7) Failure to give or leave a receipt of all items seized shall not render the seized property inadmissible at any subsequent trial.

(8) Only reasonable and necessary force may be used to execute a search warrant.

(9) The executing officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant. A warrant is only effective within 10 days of the date of issuance. Warrants not executed within such time limits are void.

(10) A warrant issued under this section shall not be held invalid due to minor irregularities in the warrant which do not substantially affect any rights of a person named in the warrant.

2–2–208. Grounds for a search warrant. (1) No search warrant shall issue except upon a written or oral sworn statement of a law enforcement officer or Tribal prosecutor, based upon reliable information and stating facts sufficient to support probable cause to believe that an offense has been committed, particularly describing the place, object or persons to be searched and who or what is to be seized, which sufficiently shows probable cause exists to indicate a search will discover:

(a) stolen property, embezzled property, contraband or otherwise criminally possessed property;

(b) property which has been or is being used to commit a criminal offense; or

(c) property which constitutes evidence of the commission of a criminal offense.

(2) When a warrant is requested based on oral testimony, communicated by telephone or otherwise, a judge shall:

(a) immediately place the requesting person(s) under oath;

(b) record by voice recording device if available, or otherwise make a verbatim record, of the requesting person's statement and certify the accuracy of this record;

(c) enter on an original warrant the grounds indicating probable cause exists to issue a warrant and the scope of the search warrant as requested or as modified;

(d) sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued; and

(e) direct the requesting party to:

(i) prepare a document identical to the original warrant to be known as a duplicate original warrant;

(ii) sign the duplicate original warrant on behalf of the judge; and

(iii) enter the exact time of execution on the face of the duplicate original warrant.

(3) A judge may require the applicant to furnish further testimony or documentary evidence in support of the application for the warrant.

2–2–209. Scope of search. (1) The scope of any search shall only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the persons or property specified in the warrant.

(2) Upon discovery of the person or property named in the warrant, the law enforcement officer shall take possession or custody of the person or property and search no further under the authority of the warrant.

(3) If, in the course of an authorized search, the law enforcement officer discovers property not specified in the warrant and the officer has probable cause to believe the discovered property constitutes evidence of the commission of a criminal offense, the officer may also take possession of that property.

2–2–210. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence;

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained.

2–2–211. Seizures related to controlled substances. (1) As used in this statute "controlled substance" means any substance designated as a dangerous drug pursuant to Section 2–1–1401.

(2) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of 2–1–1401;

(b) all money, raw materials, products and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of 2–1–1401 except items used or intended for use in connection with quantities of marijuana in amounts of less than 60 grams;

(c) all property that is used or intended for use as a container for anything enumerated in subsection (a) or (b) of this section;

(d) all books, records, research products and materials, including formulas, microfilm, tapes and data, that are used or intended for use in violation of 2–1–1401; and

(e) all drug paraphernalia as defined in 2–1–1402(1).

(3) All property subject to forfeiture under subsection (2) of this section may be seized by an officer under a search warrant. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search warrant issued for another purpose;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the Tribes in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the officer has probable cause to believe that the property was used or is intended to be used in violation of 2–1–1401.

(4) Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of 2–1–1401 and that are seized under the provisions of this part are contraband and shall be summarily forfeited to the Tribes. Controlled substances which are seized or come into the possession of the Tribes and the owners of which are unknown are contraband and shall be summarily forfeited to the Tribes.

2–2–212. Procedures for seizures related to controlled substances. (1) Property seized pursuant to Section 2–2–211 (2)(a), (c), (d), or (e) is subject to summary forfeiture.

(2) Property seized pursuant to Section 2–2–211 (2)(b) is subject to the following procedure. An officer who seizes such property shall, within 45 days of the seizure, file a petition to institute forfeiture proceedings with the Clerk of the Court. The Clerk shall issue a summons at the request of the petitioner, who shall cause the same to be served upon all owners or claimants of the property as provided by the civil procedures of this Code.

(3) Within 14 days after the service of the petition and summons, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property described in the petition to institute forfeiture proceedings. No extension of the time for filing the answer may be granted and failure to answer within 14 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

(a) If a verified answer to the petition is not filed within 14 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the Tribes.

(b) If a verified answer is filed within 14 days, the forfeiture proceeding must be set for hearing without a jury no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of the petition and summons.

(c) An owner of property who has a verified answer on file may prove that the use of the property occurred without his or her knowledge or consent;

(d) A claimant of a security interest in the property who has a verified answer on file must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business within the Flathead Reservation under any applicable law relating to financial institutions, loan companies or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

(4) If the court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(5) If the court finds that the property was used for the purpose charged and that the property was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this part to forfeit only the right, title, or interest of the owner. If the amount due the secured creditor is less than the value of the property, the property, if it is sold, must be sold at public auction by the Tribal police, or the police may return the property to the secured creditor without an auction.

(b) If no claimant exists and the Law and Order Department wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold.

(c) If a claimant who has presented proper proof of his or her claim exists and the Law and Order Department wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(6) In making a disposition of property under this part, the court may take any action to protect the rights of innocent persons.

(7) Whenever property is seized, forfeited and sold under the provisions of this part, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property,

(b) the remainder, if any, to the Tribal Police Drug Enforcement Fund, and

(c) if the property was seized as a result of the cooperative efforts of the Tribal police and the Mission Mountain Drug Task Force, the remainder, if any, to the funds of the respective agencies in proportion to their involvement.

2–2–213. Disposition of seized property not associated with a drug–related crime. (1) A hearing may be requested before the Tribal Court within 10 working days of any seizure to determine the disposition of all property seized by law enforcement officers.

(2) Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is contraband or is to be used as evidence in a pending case.

(3) Non–contraband property taken as evidence shall be returned to the owner after final judgment has been rendered.

(4) Non–contraband property may be returned to the owner prior to final judgment upon application to and at the discretion of the court.

(5) Property confiscated as contraband or taken as evidence and of unknown ownership and unclaimed for six months shall become the property of the Tribes and may be:

(a) destroyed;

(b) sold at public auction;

(c) retained for the benefit of the Tribes;

(d) lawfully disposed of as ordered by the Tribal Court; or

(e) otherwise disposed of in accordance with Tribal Law.

2–2–214. Investigative stop. In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a law enforcement officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense.

2–2–215. Stop and frisk. A law enforcement officer who has lawfully stopped a person under Section 2–2–214:

(1) may frisk the person and take other reasonable steps necessary for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present;

(2) may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe the object is a deadly weapon;

(3) may demand the name and present address of the person; and

(4) shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that the officer is a law enforcement officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation, the person will be released if not arrested.

2–2–216. Roadblocks. (1) Law enforcement officers may use a temporary roadblock in order to apprehend a person suspected of committing a criminal offense.

(2) Unless exigent circumstances exist justifying a departure from the requirements given below, the minimum requirements to be met by law enforcement officers when establishing roadblocks include:

(a) establishing a roadblock at a point on the highway clearly visible at a distance of not less than 100 yards in either direction;

(b) placing a sign on the center line of the highway at the point of the roadblock displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;

(c) placing a flashing or intermittent beam of light, which is visible to oncoming traffic for at least 100 yards, on the side of the road at the point of the roadblock; and

(d) placing warning signs, which will attract an oncoming driver's attention, at least 200 yards prior to the roadblock indicating that all vehicles should be prepared to stop.

2–2–217. Duration of stop. A stop authorized under Section 2–2–214 and Section 2–2–216 may not last longer than is necessary to effectuate the purpose of the stop.

Part 3

Commencing Prosecution

2–2–301. Citation. Prosecution for all Class A offenses shall be initiated by citation issued by a law enforcement officer upon Probable cause where the officer has attested to the truth of the allegations contained in the citation under oath.

2–2–302. Complaint. (1) All criminal prosecutions for Class B, Class C, Class D, and Class E offenses shall be initiated by complaint.

(2) The complaint is a written statement of the essential facts constituting the offense charged.

(3) Application for leave to file a complaint shall be made by a Tribal prosecutor to a judge. An application shall either be by affidavit supported by such evidence as the judge may require or be based on the sworn oral statement of a Tribal prosecutor made on the record. When leave to file a complaint has been granted, a warrant or summons may issue for the defendant's arrest or appearance. The Tribal prosecutor shall file the complaint within 30 days after leave of court is granted.

(4) The complaint shall contain:

(a) the name of the person accused, if known, or a description sufficient to identify the person accused of committing the alleged offense;

(b) the general location where the alleged offense was committed;

(c) the name and code citation of the alleged offense;

(d) a short, concise statement of the specific acts or omissions to act constituting an offense;

(e) the person, if any, against whom the alleged offense was committed, if known, except in the case of a sexual offense or an offense involving a minor;

(f) the date and approximate time of the commission of the alleged offense, if known; and

(g) the signature of a Tribal prosecutor.

(5) No minor omission from or error in the form of the complaint shall be grounds for dismissal unless the defendant is shown to be significantly prejudiced by the omission or
error.

(6) A specific Class of an offense need not be included in the complaint. If a factual allegation is contained in the complaint which will supply the information needed to determine the degree of the offense, the Judge may use that information to determine bail. If no factual allegation is made, the offense shall be considered the least degree possible under the offense charged, for the purposes of setting bail.

(7) The judge issuing the complaint shall examine the complainant under oath to:

(a) ascertain the validity of the complaint;

(b) determine whether probable cause exists to believe that the defendant has committed the crime alleged; and

(c) decide whether an arrest warrant or a summons should issue.

2–2–303. Amending the complaint. (1) A complaint may be amended in matters of substance at any time prior to arraignment without leave of the Tribal Court.

(2) A complaint may be amended in matters of substance at any time not less than 5 days before trial with leave of the Tribal Court.

(3) When the prosecution seeks leave to amend a complaint as to a matter of substance, the prosecutor shall file:

(a) a motion for leave to amend stating the nature of the proposed amendment;

(b) a copy of the proposed complaint, as amended; and

(c) an affidavit setting forth facts and circumstances sufficient to show probable cause exists to justify the amended complaint.

(4) If the motion is timely filed and the amended complaint is supported by probable cause, the court shall grant leave to amend.

(5) The defendant shall be arraigned on the amended complaint without unreasonable delay.

(6) The defendant shall be given a reasonable period of time to prepare for trial on the amended complaint.

(7) The court may permit a complaint to be amended as to form at any time before a verdict or a finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(8) No charge may be dismissed because of a formal defect which does not tend to prejudice any substantial right of the defendant.

2–2–304. Joinder and severance of offenses and defendants. (1) Two or more offenses or different statements of the same offense may be charged in the same complaint in separate counts, or alternatively, if the offenses charged are of the same or similar character and are based on the same transactions connected together or constituting parts of a common scheme or plan. Allegations made in one count may be incorporated by reference in another count.

(2) The Tribal Court may order that different offenses or counts set forth in the complaint be tried separately or consolidated.

(3) The prosecution is not required to elect between the different offenses or counts set forth in the complaint and the defendant may be convicted of any number of the offenses charged, except as provided in section 2–2–306. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the Tribal Court.

2–2–305. Discharge of codefendant. (1) When two or more persons are included in the same charge, the Tribal Court may, at any time prior to the defendants presenting their cases and upon application of the prosecutor, direct any defendant be discharged so that the defendant may be a witness for the prosecution.

(2) When two or more persons are included in the same complaint and the Tribal Court determines that there is insufficient evidence to prosecute one of the named defendants, the Tribal Court must discharge that defendant before the evidence is closed so that the discharged defendant may be a witness for the codefendant.

2–2–306. Multiple charges from the same transaction. (1) When the same transaction may establish the commission of more than one offense, a person charged with conduct may be prosecuted for each offense.

(2) A person may not, however, be convicted of more than one offense if:

(a) one offense is included in the other;

(b) one offense consists only of a conspiracy or other form of preparation to commit the other;

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a specific instance of conduct; or

(e) the offense is defined to prohibit a continuing course of conduct, and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of the conduct constitute separate offenses.

Part 4

Arrest and Related Procedures

2–2–401. Method of arrest. (1) An arrest is made by actually restraining the person to be arrested or by that person voluntarily submitting to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain the person.

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

2–2–402. Time of making arrest. An arrest may be made any day of the week and at any time of the day or night. A person, however, cannot be arrested in her or his home or private dwelling at night for a Class A, Class B, or Class C offense without an arrest warrant specifically permitting arrest at night except for an offense involving damage to a person and the provisions of 2–2–403 are followed.

2–2–403. Arrest by law enforcement officer. (1) A law enforcement officer may arrest a person within the exterior boundaries of the Flathead Reservation under the following circumstances:

(a) when the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds that a warrant for the person's arrest has been issued by the Tribal Court or that a warrant for the person's arrest has been issued in another jurisdiction;

(b) when the person has committed an offense in the officer's presence; or

(c) when the officer has probable cause, as reflected by stated and provable facts, to believe the person to be arrested has committed an offense and exigent circumstances require an immediate warrantless arrest in order to prevent the person from

(i) fleeing the jurisdiction or concealing himself or herself to avoid arrest;

(ii) destroying or concealing evidence of the commission of an offense;

(iii) injuring another person; or

(iv) damaging property belonging to another.

(2) When an arrest is made without an arrest warrant, the arresting officer must inform the person to be arrested, as soon as practicable, of his or her authority to make the arrest and the reasons for making the arrest.

(3) A law enforcement officer may arrest a person, including at her or his place of residence, without an arrest warrant if the officer has probable cause to believe the person is committing or has committed abuse against an elder, family member, or household member, regardless of whether the offense took place in the responding law enforcement officer's presence.

(4) Arrest is the preferred response in situations:

(a) involving bodily harm to an elder, family member or household member;

(b) involving use or threatened use of a weapon against an elder, family member or household member; or

(c) where there appears to be imminent danger of bodily harm to another.

(5) If an arrest is made without a warrant, the Court shall make a determination of the existence of probable cause for the arrest within 48 hours of the arrest.

(6) For any class of offense, in lieu of making a custodial arrest, a law enforcement officer may issue a citation requiring the defendant to appear in Tribal Court at a designated time and on a designated date.

(7) An arrest made outside the boundaries of the Flathead Reservation shall be valid if made pursuant to the laws of the jurisdiction where the arrest occurred.

2–2–404. Arrest warrants. (1) An arrest warrant shall be issued by a judge, based on a sworn complaint or affidavit showing there is probable cause to believe an offense has been committed and the named person has committed the offense. The warrant shall:

(a) be in writing in the name of the Tribes;

(b) set forth the nature of the offense;

(c) command the person against whom the sworn complaint or affidavit was made be arrested, or a description of the person as well as any alias used by the person;

(d) be signed by a judge; and

(e) include any bail amount, if deemed appropriate by the issuing judge.

(2) A law enforcement officer shall, as soon as practicable, inform the person named in the arrest warrant of:

(a) her or his authority to make the arrest;

(b) the intention to arrest the person;

(c) the grounds for the arrest;

(d) the existence of an arrest warrant; and

(e) the amount of bail, if specified in the warrant.

(3) A copy of the arrest warrant must be shown to the person arrested, as soon as practicable.

(4) An arrest made pursuant to a warrant shall not be dismissed due to minor irregularities in the warrant which do not substantially affect any rights of the arrested person.

2–2–405. Notice of rights prior to interrogation. (1) Prior to questioning any person in custody, a law enforcement officer must inform the person in clear and unequivocal terms of the following rights:

(a) that the person has the right to remain silent;

(b) that anything said by him or her can and will be used against the person in any subsequent court proceedings;

(c) that the person has the right to legal counsel or representation as provided in Sections 2–2–503, prior to answering any questions; and

(d) that if, at any point during questioning, the person indicates that she or he wishes to remain silent the questioning will cease.

(2) Any statement obtained in violation of these rights may not be admitted into evidence.

(3) The fact that a person chooses to remain silent cannot be used against her or him in any subsequent criminal proceedings.

2–2–406. Summons. (1) The Tribal Court may or, upon request of a prosecutor, shall issue a summons instead of an arrest warrant.

(2) The summons may be served personally or by first–class mail.

(3) A summons shall:

(a) be in writing in the name of the Tribes;

(b) state the name of the person summoned, along with that person's address, if known;

(c) set forth the nature of the offense charged;

(d) set the date issued;

(e) command the person to appear in Tribal Court at a specified date and time; and

(f) be signed by a judge.

2–2–407. Written report when no arrest made in abuse situation. When a law enforcement officer is called to the scene of a reported incident of elder or domestic abuse but does not make an arrest, the officer shall file a written report with the commanding officer stating the reasons for deciding not to make an arrest.

2–2–408. Notice of rights in abuse situation. (1) Whenever a law enforcement officer is called to the scene of a reported incident of domestic abuse, the officer shall advise the injured party, if present, of the availability of services in the community and give the injured party immediate notice of legal rights and remedies available.

(2) The notice given by the law enforcement officer must include furnishing the injured party with a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the Tribal Prosecutor's Office can file criminal charges against your abuser. You also have the right to go to court and file a petition requesting:

(a) that your abuser be restrained from further abuse;

(b) that the abuser leave the household and stay away for a period of time;

(c) that your abuser be restrained from transferring any property except in the usual course of business;

(d) that you be granted temporary custody of your child or children; or

(e) that your abuser be restrained from interfering with your custody of your child or children;

2–2–409. Extradition. (1) If a Tribal law enforcement officer arrests an individual based on a warrant issued by the State of Montana, or a reasonable belief that a warrant has been issued by the State of Montana, the Tribes may hold such individual for up to forty-eight hours, after any Tribal sentence has been served, for transport by State officials. If State officials do not retrieve the defendant within that time, he or she shall be released. The defendant shall be entitled to bail at the amount set in the State warrant.

(2) If a Tribal law enforcement officer arrests an individual pursuant to Section 2-2-403 above based on a warrant from a jurisdiction other than the State of Montana, or based on a reasonable belief that a warrant has been issued by a jurisdiction other than the State of Montana, he shall be entitled to a hearing before the Tribal Court on the following issues:

(a) whether such warrant exists; and

(b) whether the individual arrested is the person named in the warrant; and

(c) whether the court issuing the warrant had jurisdiction to issue the warrant; and

(d) whether the arrest by Tribal law enforcement was lawful.

After being fully informed of his or her rights, the defendant may, in writing, waive the right to a hearing. If not waived, the hearing shall be held within two days of the arrest, and the defendant shall have the right to be represented by the Tribal Defenders Office. Prior to the hearing the defendant shall be entitled to bail at the sum set in the warrant.

(3) If at the hearing the Court does not find these factors to be established by the Tribal Prosecutor by clear and convincing proof, it shall order the defendant immediately released. If at the hearing the Court finds these factors to be established by the Tribal Prosecutor by clear and convincing proof, it shall order the defendant held for a reasonable time not to exceed ten days, after any Tribal sentence has been served, for the other jurisdiction to retrieve the defendant. After the hearing the defendant may be admitted to bail in an amount set by the Tribal Court, on the condition that he or she surrender himself or herself at a specified time, and on such additional restrictions as the Court deems appropriate. If such other jurisdiction does not retrieve the defendant within that time, the defendant shall be released.

(4) Nothing in this section shall be considered to limit or restrict an individual's right to seek a writ of habeas corpus under Section 1-2-722.

Part 5

Initial Appearance, Presence of Defendant, and Right to Counsel

2–2–501. Initial appearance. (1) A person arrested, whether with or without a warrant, must be taken before a judge of the Tribal Court for an initial appearance within two working days following the arrest.

(2) A person not arrested shall appear for an initial appearance at the time and place designated in the citation or summons. *(Rev. 1-27-00)*

2–2–502. Duty of court at initial appearance. (1) The judge shall inform the defendant of:

(a) the charge or charges against him or her;

(b) the maximum penalty allowed under Tribal Law for the offense;

(c) the defendant's right to counsel provided by the Tribal Defender's Office pursuant to Section 2–2–504 or to obtain private counsel at her or his own expense.

(d) the right to call any witness on her or his behalf;

(e) the right to request a jury trial;

(f) the right to remain silent and that any statement made by her or him may be used in evidence against her or him at any subsequent court proceedings;

(g) the general circumstances under which the defendant may obtain pretrial release;

(h) the right to cross–examine the Tribes' witnesses; and

(i) the right to have up to 10 working days before arraignment.

(2) The judge shall admit the defendant to bail as provided by Section 2–2–602 of this Code.

2–2–503. Presence of defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

2–2–504. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel, and must be asked if the aid of counsel is desired.

(2) If the defendant desires counsel and is indigent as defined in Section 1–2–402, and if the court desires to retain imprisonment as a sentencing option or if the interests of justice so require, the court shall assign the Tribal Defender's Office to provide counsel to the defendant.

(3) If the defendant wishes to obtain private counsel, the court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause.

(4) A defendant may waive the right to counsel when the court ascertains that the waiver is made knowingly, voluntarily, and intelligently in writing.

Part 6

Bail

2–2–601. Release prior to criminal proceedings. A person charged with any offense is bailable before conviction and shall be released from custody by the court upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person.

2–2–602. Release or detention. (1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.

(2) The criteria for determining the conditions of release include, but are not limited to the following:

(a) defendant's employment status and work history;

(b) defendant's financial condition;

(c) the nature and extent of defendant's family relationships and ties to the Reservation community;

(d) defendant's past and present residences;

(e) names of individuals personally agreeing to assure defendant's court appearance;

(f) the nature and circumstances of the current charge, including whether the offense involved the use of force or violence;

(g) the defendant's prior criminal record, if any, and whether, at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for an offense;

(h) the defendant's record of appearance at court proceedings; and

(i) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

(3) The Court may in its discretion grant temporary release from custody under any conditions the Court deems appropriate.

2–2–603. Release on own recognizance and reasonable bail. (1) Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required.

(2) In all cases, the amount set for bail must be reasonable.

(3) Reasonable bail reflects an amount which is:

(a) sufficient to ensure the presence of the defendant in any pending criminal proceeding;

(b) sufficient to assure compliance with the conditions set forth in a bail or release order; and

(b) not oppressive.

2–2–604. Conditions upon defendant's release. (1)The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including, but not limited to the following conditions:

(a) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(b) the defendant may not commit an offense during the period of release;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall comply with a specified curfew;

(g) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(h) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(i) the defendant shall report on a regular basis to a designated agency or individual, or both;

(j) the defendant shall furnish bail; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

2–2–605. Bail schedule. (1) The Chief Judge of the Tribal Court shall establish and post a schedule of bail for offenses to be used by law enforcement officers.

(2) A law enforcement officer may accept bail on behalf of the Tribal Court whenever the amount of bail is specified in the warrant of arrest or in accordance with the posted bail schedule.

(3) When a law enforcement officer accepts bail, based on an arrest warrant or current bail schedule, the officer shall give a signed receipt to the offender setting forth the bail received and the name of the person posting the bail. At the earliest time practicable, the law enforcement officer shall deliver the bail and duplicate copy of the bail receipt to the Tribal Court; obtaining a receipt for the bail delivered from a Clerk of Court.

(4) The Chief Judge of the Tribal Court shall replace any existing bail schedule with a revised bail schedule by January 31 of each year.

(5) Bail may be specifically set by a judge for any offense not listed on the posted bail schedule.

2–2–606. Changing bail or conditions of release. (1) Upon application by the Tribes or the defendant, the Tribal Court may increase or reduce the amount of bail, alter the conditions in the bail or release order, or revoke bail.

(2) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

2–2–607. Forms of bail. (1) Bail may be furnished in the following ways, as the court may require:

(a) by a deposit with the court of an amount equal to the required bail of cash or other personal property approved by the court;

(b) by pledging real estate situated within the Reservation with an unencumbered equity, not exempt, owned in fee simple by the defendant or sureties at a value double the amount of the required bail;

(c) by posting a written undertaking by the defendant and by two sufficient sureties; or

(d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding and remain in effect until final sentence is pronounced in open court.

(3) Nothing in this part prohibits a surety from surrendering the defendant in a case in which the surety feels insecure in accepting liability for the defendant.

2–2–608. Property and surety bonds. (1) If property posted as a condition of release is personal property, the defendant or sureties shall file a sworn schedule that must contain a list of the personal property, including a description of each item, its location and market value, and the total market value of all items listed.

(2) If the property is real estate the defendant or sureties shall file a sworn schedule that must contain a legal description of the property, a description of any encumbrance on the property, including the amount of each encumbrance and its holder, and the market value of the unencumbered equity owned by the defendant or sureties;

(3) If the property is a written undertaking with sureties, each surety must be a Reservation resident and worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court may allow more than two sureties to justify severally and in amounts less than that expressed in the undertaking if the whole justification is equivalent to the amount required.

(4) If the property posted is a commercial bond, it may be executed by any domestic or foreign surety company that is qualified to transact surety business in Montana. The undertaking must state the following:

(a) the name and address of the surety company that issued the bond;

(b) the amount of the bond and the unqualified obligation of the surety company to pay the court should the defendant fail to appear as guaranteed; and

(c) a provision that the surety company may not revoke the undertaking without good cause.

(5) The court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted.

2–2–609. Release of bail. When all conditions of release have been satisfactorily performed and the defendant has been discharged from any obligations imposed by the Tribal Court, the court shall return any security posted by the defendant to satisfy bail requirements.

2–2–610. Violation of a release order. (1) If a defendant violates a condition of release, including failure to appear, the prosecutor may make a motion to the court for revocation of the order of release. The court may issue a warrant for the arrest of a defendant charged with violating a condition of release and declare the bail to be

revoked. Upon arrest, the defendant must be brought before the court without unnecessary delay and the court shall conduct a hearing and re–determine bail. On finding probable cause that the defendant has violated a tribal, state, or federal law, or on finding a violation of any other release condition by clear and convincing evidence, the Court may:

(a) reinstate the original release order on the same conditions and amount of bail; or

(b) revoke the original bail, increase the amount of the bail and modify the conditions of release; or

(c) at the defendant's request, revoke the defendant's release for any period of time, up to 10 days, and then reinstate release on the original conditions and bail or on such conditions and bail as the Court deems appropriate. Such time shall not be credited as time served under Section 2-2-1210 or 2-2-1211.

(2) This section provides the exclusive remedy for a violation of a release order. A defendant may not be charged with contempt or found in contempt for violation of a release order.

(3) Neither a cash bond nor a commercial bond may be forfeit for violation of release conditions, except for failing to appear for court proceedings without a lawful excuse.

(4) Notice of an order of forfeiture must be mailed to the defendant and the defendant's sureties at their last–known address(es) within 10 working days of the date of the order or the bond becomes void. *(Rev. 1-27-00)*

2–2–611. Forfeiture order. (1) If within 90 days of the forfeiture order, the defendant, or the defendant's surety, appears and presents evidence justifying the defendant's failure to appear or otherwise meet the conditions found in the release order, the Tribal Court may direct the forfeiture of the bail to be discharged upon such terms as are just.

(2) If the forfeiture order is not discharged by the Tribal Court, the court shall proceed with the forfeiture of bail as follows:

(a) if money has been posted as bail, the court shall pay the money to the Tribal Executive Treasurer; or

(b) if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the forfeiture must be paid to the Tribal Executive Treasurer.

(3) If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions. *(Rev. 1-27-00)*

2–2–612. Surrender of defendant. (1) At any time before the forfeiture of bail:

(a) the defendant may surrender to the court or any Tribal law enforcement officer; or

(b) the surety company may arrest the defendant and surrender the defendant to the court or to any Tribal law enforcement officer.

(2) The law enforcement officer will detain the defendant in the officer's custody and shall file a certificate, acknowledging the surrender, in court. The court may then order the bail exonerated.

Part 7

Arraignment of the Defendant

2–2–701. Joint defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

2–2–702. Procedure on arraignment. (1) A defendant shall be arraigned in open Tribal Court whenever a complaint has been filed by a Tribal prosecutor. Arraignment consists of reading the charge, unless the defendant waived the reading, and supplying a copy of it to the defendant and calling on the defendant to plead to the charge.

(2) If a defendant waives his or her right to counsel in writing, the court may arraign the defendant at the initial appearance.

(3) Prior to accepting any plea at the time of arraignment, the presiding judge must: (a) verify that the person appearing before the Tribal Court is the defendant named in the complaint, and that the defendant's true name appears on the complaint and if different from the name used on the complaint, order the complaint amended to reflect the true name;

(b) determine whether the defendant has a mental disorder that would prevent the defendant from understanding the charges, the penalties, or the effects of a plea, and, if the determination is that defendant has a mental disorder, the arraignment may be continued until the defendant is able to proceed; and

(c) allow a reasonable time, not less than 1 day, if the defendant requires it, to answer or plead to the complaint by incorporating appropriate pretrial motions into the answer, or otherwise.

2–2–703. Plea alternatives. (1) A defendant shall enter a plea of guilty, not guilty, or, if the judge agrees, no contest, to all charges each charge contained in the complaint. A plea of no contest may be accepted by a judge only after due consideration of the views of the parties and interest of the Tribes in the effective administration of justice.

(2) The court may not accept a plea of guilty or no contest without first determining: (a) that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecutor and the defendant or the defendant's attorney;

(b) that the defendant understands the following: (i) the nature of the charge for which the plea is offered, any mandatory minimum penalty, the maximum penalty, and, when applicable, that the court may require the defendant to make restitution to the victim; (ii) the defendant will be giving up his or her right to a trial;

(c) that if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted; and

(d) that, in charges for which imprisonment is a possible penalty, there is a factual basis for the plea.

(3) A defendant pleading not guilty must inform the judge at the time of arraignment if a jury trial is requested.

(4) If a defendant voluntarily enters a plea of guilty the judge may impose a sentence at that time or, on the court's own motion or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.

(5) Prior to the imposition of any sentence, the judge shall allow the defendant an opportunity to inform the court of any extenuating or mitigating circumstances which should be considered by the court in imposing penalties.

(6) With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty or no contest, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.
(Rev. 1-27-00)

2–2–704. Record of arraignment. The Clerk of Court shall prepare and keep a record of all arraignment proceedings.

2–2–705. Plea agreement procedure. (1) A prosecutor and counsel for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do one of the following:

(a) move for dismissal of other charges; or

(b) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding on the court.

(2) A plea bargain agreement may be entered into anytime prior to a verdict or finding of guilt by judge or jury.

(3) Final plea bargain offers shall be given to the defendant no later than 8 working days prior to trial. Plea bargains entered into up to 5 days prior to trial will be reviewed by the court and approved if not unconscionable. After that time, plea bargains will receive heightened scrutiny with no assurance being given of the acceptability of such plea bargains.

(4) If a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court at the time the plea is offered.

2–2–706. Telephonic change of plea. In exceptional circumstances and at its discretion, the court may accept a defendant's change of plea through a recorded telephonic proceeding.

Part 8

Pretrial Motions and Discovery

2–2–801. Pretrial defenses and objections. (1) Except for good cause shown, any defense objection, or request which is capable of determination without trial on the general issues must be raised before trial by motion to dismiss or for other appropriate relief. All motions must be in writing and must be supported by a statement of the relevant facts upon which the motion is being made unless otherwise directed by the judge.

(2) Failure of a party to raise defenses or objections or to make requests that must be made prior to trial, except lack of jurisdiction or the failure of a complaint to state an offense which must be noticed by the court at any time during the pendency of a proceeding, constitutes a waiver of the defense, objection, or request. The court, for good cause shown, may grant relief from any waiver provided in this section.

(3) Motions in Limine should be made at least 5 days before trial, unless good cause is shown.

2–2–802. Suppression of evidence. (1) A defendant aggrieved by an unlawful search and seizure may move to suppress as evidence anything obtained by the unlawful search and seizure. The motion must be filed at least 10 days before trial, unless good cause is shown for waiving this time restriction.

(2) The motion must specify the evidence sought to be suppressed and the grounds upon which the motion is based.

(3) When the motion to suppress challenges the admissibility of evidence obtained without a warrant, the prosecution has the burden of proving, by a preponderance of the evidence, that the search and seizure were valid.

(4) If the motion is granted, the evidence is not admissible at trial.

2–2–803. Motion to suppress confession or admission. (1) A defendant may move to suppress as evidence any confession or admission given by her or him on the ground that it was not voluntary or that was otherwise obtained in violation of his or her rights.

(2) The motion must be filed at least 10 days before trial, unless good cause is shown for waiving this time restriction.

(3) If the allegations of the motion state facts which, if true, show that the confession or admission was not voluntarily made or was otherwise obtained in violation of the defendant's rights, the Tribal Court shall conduct a hearing on the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was not obtained in violation of the defendant's rights.

(4) The issue of admissibility of the confession or admission may not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

(5) If the motion to suppress is granted, the confession or admission may not be admitted into evidence by the prosecution at the time of trial. *(Rev. 1-27-00)*

2–2–804. Disclosure by prosecution. (1) At the time of the initial appearance, the prosecutor shall disclose to the defendant the name of the person, if any, against whom the offense was committed if not disclosed in the complaint.

(2) At the arraignment or as soon thereafter as practicable the defendant may request notice of all evidence the prosecutor intends to use in the prosecution case–in–chief at trial.

(3) Upon defendant's request, any of the following information or evidence which is within the possession, custody, or control of the Tribal Prosecutor is subject to disclosure and production and may be copied or photographed, as appropriate for the item, by the defendant:

(a) any relevant written or recorded statement made by the defendant while in the custody of the Tribes and of any person who will be tried with the defendant;

(b) the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case in chief.

(c) the defendant's prior criminal record, if any;

(d) any books, papers, documents, photographs, tangible objects, drawings of buildings or places, or other physical or demonstrative evidence which is intended for use by the prosecution at trial;

(e) any written reports of or statements of experts who have personally examined the defendant or any evidence in the particular case, together with results of physical examinations, scientific tests or experiments, or comparisons; and

(f) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.

(4) At the same time, the prosecutor shall inform the defendant of, and make available to the defendant for examination and reproduction, any written or recorded material or information within the prosecutor's control regarding:

(a) whether there has been any electronic surveillance of any conversation to which the defendant was a party;

(b) whether an investigative subpoena has been executed in connection with the case; and

(c) whether the case has involved an informant and, if so, the informant's identity.

(5) Attorney work product of the Tribal Prosecutor's office is not subject to disclosure and production.

(6) The Prosecution shall provide written notice of any evidence of other crimes, wrongs, or acts, that it intends to offer under Rule 404(b) of the Federal Rules of Evidence, at least two weeks prior to the close of discovery. The notice shall describe the evidence in sufficient detail to inform the Defendant of the date, time, place, and witnesses to the alleged incidents, and shall also state the purpose for which such evidence shall be offered.

(7) The obligations imposed by this section are continuing.

2–2–805. Disclosure by defendant. (1) At any time after the filing of a complaint, the defendant, in connection with the particular offense charged, shall upon written request of the prosecutor and approval of the court:

(a) appear in a lineup;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) provide handwriting samples;

(g) permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions; and

(h) submit to reasonable physical or medical examination where the examination does not involve psychological or psychiatric evaluation.

(2) Except as provided in Section (4), not later than the close of discovery upon request of the prosecution or at another time as the court for good cause may permit, the defendant or defendant's counsel shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case in chief;

(b) the names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case;

(c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(3) (a) At the close of discovery as set forth in the Pre–Trial Order, or at a later time as the Court shall so permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or of any affirmative defenses.

(b) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, including all reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless the defendant intends to use the privileged report or statement, or the witness who made it, at trial.

(4) Attorney work product of defense counsel is not subject to disclosure or production.

(5) The obligations imposed by this section are continuing.

2–2–806. Severance. (1) A defendant may move for severance of defendants or charges. Such motion shall be filed at least 10 days prior to trial unless otherwise directed by the Tribal Court.

(2) If it appears that the defendant is prejudiced by a joinder of related prosecutions or defendants in a single charge, or by a joinder of separate charges or defendants for trial, the Tribal Court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

2–2–807. Notice of alibi. (1) At the time of the pretrial conference or order, the prosecutor shall provide a written statement of the time, date, and place at which the alleged offense was committed.

(2) If a defendant intends to rely upon a defense of alibi, the defendant will so notify the prosecutor, in writing, within 10 days of receiving the information required by subsection (1).

(3) Defendant's notice of alibi defense shall state the specific place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call to establish such alibi.

2–2–808. Motion for continuance. The defendant or the Tribes may file a written motion for continuance, or the court may continue the proceedings on its own motion. If a party so moves less than 10 days before a scheduled

hearing or trial, the Tribal Court may require that the motion be supported by an affidavit, whether or not the motion is opposed by the adverse party. This section, however, shall be applied in a manner which insures criminal cases are tried with due diligence consistent with the rights of the defendant to a speedy trial.

2–2–809. Pretrial conference. (1) Any party may move the Tribal Court for one or more conferences to consider such matters as will promote a fair and expedient trial.

(2) In the interest of justice, the Tribal Court may order a pretrial conference based on its own motion.

(3) At the conclusion of any pretrial conference, the presiding judge shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or defendant's counsel at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the defendant's counsel.

(4) In the interest of judicial economy, the Court may Order the parties to prepare a proposed Pretrial Order, without a pretrial conference, for the Court's signature.

2–2–810. Pretrial diversion. (1)(a) At any time, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions, including voluntary exclusion from the reservation.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

2–2–811. When depositions may be taken. (1) A deposition may be taken if it appears that a prospective witness:

(a) is likely to be either unable to attend or otherwise prevented from attending a trial or hearing;

(b) is likely to be absent from the state at the time of the trial or hearing; or

(c) is unwilling to provide relevant information to a requesting party and the witness's testimony is material and necessary in order to prevent a failure of justice. The court shall, upon motion of any party and proper notice,

order that the testimony of the witness be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be introduced at the time the deposition is taken.

(2) The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the court, taking into account the convenience of the parties and of the witness.

(3) If it appears upon the affidavit of counsel for a party that good cause exists to believe that a witness will not respond to a subpoena and the administration of justice requires, a judge may issue an arrest warrant commanding the arrest of a material witness. The arrest warrant must further order a deposition to be taken without unnecessary delay. A person may not be imprisoned for the purpose of securing testimony in any criminal proceeding longer than is necessary to take the person's deposition.

2–2–812. Procedure for taking depositions. (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice must state the name and address of each person to be examined. On motion of the party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition.

(2) A deposition must be taken in the manner provided in civil actions. However, a deposition may not be taken of a party defendant without the defendant's consent, and the scope and manner of examination and cross-examination must be restricted as would be allowed in the trial itself.

(3) The deposition must be filed with the court making the order and held until the trial. Either party shall make available to the other party or the other party's counsel for examination and use at the taking of the deposition any relevant, nonprivileged statement of the witness being deposed that is in the possession of either party.

(4) Objections to deposition testimony or evidence may be reserved for subsequent determination by the court.

(5) Unless a defendant in custody has waived, in writing, the right to be present at the taking of a deposition, the officer having custody of the defendant must be notified of the time and place set for the deposition. The officer having custody shall produce the defendant and keep the defendant in the presence of a witness during the deposition.

(6) A defendant not in custody who fails to appear, without good cause, at the taking of a deposition after being notified of the time and place set for the deposition will be considered to have waived the right to be present. The waiver includes a waiver of any objection to the taking and use of the deposition based upon that right.

(7) Whenever a deposition is taken at the instance of the prosecution or whenever a deposition is taken at the instance of a defendant who is unable to bear the expense of taking a deposition, the court shall direct that the cost of the transcript of the deposition be paid by the Tribes.

2–2–813. Use of depositions at trial. Any deposition may be used by any party for any purpose allowed by the Federal Rules of Evidence.

2-2-814. Subpoenas. A Judge of the Tribal Court has the power to issue subpoenas to compel the attendance of witnesses and the production of documents either on the Court's own motion or on the request of any party to a case, which shall bear the signature of the Judge issuing the subpoena. The subpoenas may direct the attendance of witnesses or the production of documents or evidence at a specified date, time, and location. Subpoenas under this section may be issued for purposes of discovery, for pretrial hearing, or for a trial or post trial proceeding.. *(Rev. 1-27-00)*

Part 9

Mental Disorder

2–2–901. Mental disorder. As used in this chapter, the term " mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

2–2–902. Evidence of mental disorder admissible as an affirmative defense. Evidence that the defendant suffered from a mental disorder is admissible to prove that the defendant could not appreciate the criminality of his conduct. This is an affirmative defense which the defendant has the burden of proving by a preponderance of the evidence.

2–2–903. Mental disorder excluding fitness to proceed. A person who, as a result of a mental disorder, is unable to understand the proceedings against the person or to assist in the person's own defense may not be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures.

2–2–904. Examination of defendant. (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the Court, prosecution, or defense counsel, the Court shall appoint at least one qualified psychiatrist or licensed clinical psychologist to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist or licensed clinical psychologist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from a mental disorder. The cost of the examination must be paid by the Tribes. *(Rev. 1-27-00)*

2–2–905. Prosecution's right to examination. (1) When the defense discloses the report of the examination to the prosecution or files a notice of the intention to rely on a defense of mental disorder, the prosecution is entitled to have the defendant examined by a qualified psychiatrist or licensed clinical psychologist.

(2) The report must be disclosed to the defense within 10 days of its receipt by the prosecution. *(Rev. 1-27-00)*

2–2–906. Access to defendant for examination. If either the defendant or the prosecution wishes the defendant to be examined by a qualified psychiatrist or licensed clinical psychologist selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether the defendant was able to appreciate the criminality of his conduct, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination.

2–2–907. Report of examination. (1) A report of the examination must include: (a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant suffers from a mental disorder and may require commitment or has a disability that is expected to continue indefinitely that is attributable to mental retardation, or related neurological conditions or illnesses;

(c) if the defendant suffers from a mental disorder, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disorder, to appreciate the criminality of the defendant's conduct.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of a mental disorder. *(Rev. 1-27-00)*

2–2–908. Psychiatric or psychological testimony upon trial. (1) Upon trial, any psychiatrist or licensed clinical psychologist who reported under this part may be called as a witness by the prosecutor or by the defense. Both the prosecution and the defense may summon any other qualified psychiatrist or licensed clinical psychologist to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or licensed clinical psychologist who has examined the defendant testifies concerning the defendant's mental condition, the psychiatrist or licensed clinical psychologist may make a statement as to the nature of the examination and the medical or psychological diagnosis of the mental condition of the defendant. The expert may make any explanation reasonably serving to clarify the expert's examination and diagnosis, and the expert may be cross-examined as to any matter bearing on the expert's competency or credibility or the validity of the expert's examination or medical or psychological diagnosis.

2–2–909. Form of verdict and judgment. When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disorder could not appreciate the criminality of his conduct, the verdict and the judgment must state that reason.

2–2–910. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric or psychological examination or treatment provided for in this section by a person subjected to examination or treatment is not admissible in evidence against the person at trial on any issue other than that of the person's mental condition. It is admissible on the issue of the person's mental condition, whether or not it would otherwise be considered a privileged communication, only when and after the defendant presents evidence that due to a mental disorder the defendant could not appreciate the criminality of his conduct.

2–2–911. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) The issue of the defendant's fitness to proceed may be raised by the Court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the Court. If neither the prosecutor nor the defendant's counsel contests the finding of the report, the court may make the determination on the basis of the report. If the finding is contested, the Court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to an appropriate institution for so long as the unfitness endures.

(b) The institution shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the institution may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the Tribes have proven an overriding justification for the order and that the treatment being ordered is medically appropriate.

(c) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4), and the prosecutor shall petition the court in the manner provided in Title III, Chapter 4, of this Code, to determine the disposition of the defendant pursuant to those provisions, except as provided in subsection (3), below.

(3) If the court determines that the defendant lacks fitness to proceed because the defendant has a disability that is expected to continue indefinitely that is attributable to mental retardation, or related neurological conditions or illnesses, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title III, Chapter 5, of this Code.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to an appropriate institution, of keeping the defendant there, and of bringing the defendant back are chargeable to the Tribes. *(Rev. 4-15-03)*

2–2–912. Proceedings if fitness regained. When the court, on its own motion or upon the application of the prosecution or the defendant or the defendant's legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness set forth in Ordinance 98, order the defendant committed to an appropriate institution.

2–2–913. Commitment upon finding of not guilty by reason of mental disorder -- hearing to determine release or discharge. (1) When a defendant is found not guilty for the reason that due to a mental disorder the defendant could not appreciate the criminality of his conduct , the court shall order a predisposition investigation, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, or actual bodily injury the court may find that the defendant suffers from a mental disorder that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant has a disability that is expected to continue indefinitely that is attributable to mental retardation, or related neurological conditions or illnesses, the prosecutor shall petition the court in the manner provided in Title III, Chapter 5, of this Code.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title III, Chapter 5, of this Code.

(3) A person so committed must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disorder that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment. The court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that

originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the Tribes to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disorder that causes the person to present a substantial risk of:

(a) serious bodily injury or death to the person or others; or

(b) an imminent threat of bodily injury to the person or others.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to appropriate mental health facility for custody, care, and treatment.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the defendant, or his counsel, may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3). *(Rev. 4-15-03)*

2–2–914. Discharge or release upon motion. (1) If the director of the appropriate mental health facility believes that a person committed may be discharged or released on condition without danger to the person or others because the person no longer suffers from a mental disorder that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of bodily injury to the person or others, the director shall notify the defendant's counsel, who shall make application for the discharge or release of the person in a report to the Tribal Court and shall send a copy of the application and report to the prosecutor.

(2) The person committed may also make application to the court for discharge or release as part of the person's annual treatment review.

(3) The court shall then appoint at least one person who is either a qualified psychiatrist or licensed clinical psychologist to examine the person and to report as to the person's mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the court may have the person confined in any mental health facility located near the place where the court sits that may be suitable for the temporary detention of persons suffering from a mental disorder.

(4) The committed person or the person's attorney may secure a professional person of the committed person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons, the court shall appoint an additional professional person to perform the examination. Whenever possible, the court shall allow the committed person or the person's attorney a reasonable choice of an available professional person qualified to perform the requested examination. The professional person must be compensated by the Tribes.

(5) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting psychiatrist or licensed clinical psychologist that the committed person may be discharged or released on condition because the person no longer suffers from a mental disorder that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others the court shall order the person's discharge.

(6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released on the grounds that the person no longer suffers from a mental disorder that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others; or

(ii) an imminent threat of bodily injury to the person or others.

(b) A hearing is considered a civil proceeding, and the burden is upon the Tribe to prove by clear and convincing evidence that the person may not be safely discharged or released because the person continues to suffer from a mental disorder that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others; or

(ii) an imminent threat of physical injury to the person or others.

(c) According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted, subject to discharge or release only in accordance with the procedures provided in this part.

2–2–915. Application for discharge or release by committed person. A committed person may make application for discharge or release to the Tribal Court by which the person was committed, and the procedure to be followed upon the application is the same as that prescribed in the preceding section. However, an application by a committed person need not be considered until the person has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person may not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for the person's release or discharge.

2–2–916. Revocation of conditional release. (1) The court may order revocation of a person's conditional release if the court determines after hearing evidence that:

(a) the conditions of release have not been fulfilled; and

(b) based on the violations of the conditions and the person's past mental health history, there is a substantial likelihood that the person continues to suffer from a mental disorder that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others; or

(ii) an imminent threat of bodily injury to the person or others.

(2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.

(3) If the court finds that the conditional release should be revoked, the court shall immediately order the person to be recommitted, subject to discharge or release only in accordance with the procedures provided in this part.

Part 10

Trial

2–2–1001. Right to a jury trial. (1) A defendant charged with a Class B, Class C, Class D, or Class E offense has a right to trial by jury of six fair and impartial jurors.

(2) A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(3) A defendant must maintain contact with his or her counsel. By failing to maintain contact with counsel, a defendant waives his or her right to a jury trial.

2–2–1002. Priority on the Tribal Court calendar. (1) Prosecutions against defendants held in custody must be disposed of in advance of prosecutions against defendants released on bail, unless otherwise directed by the Tribal Court.

(2) Criminal actions take precedence over civil actions when determining a hearing or trial date.

2–2–1003. Questions of law and fact. (1) Issues of fact shall be submitted to the jury, unless a defendant has waived the right to a jury trial. Where there is no jury, issues of fact shall be submitted to the judge.

(2) All questions of law must be decided by the judge.

2–2–1004. Rules of evidence in criminal cases. Unless otherwise directed by a specific code provision, the Federal Rules of Evidence apply in criminal actions. Privileges will be those recognized under Tribal Law.

2–2–1005. Trial preparation time. The defendant is entitled to reasonable time, as determined by the judge, to prepare for trial after entering a plea of not guilty.

2–2–1006. Burden of proof. A plea of not guilty requires that the prosecution prove beyond a reasonable doubt that the crime alleged was committed and that the defendant committed every necessary element of it.

2–2–1007. Order of trial. (1) In a jury trial, after selecting and empaneling the jurors, the Tribal Court shall state the nature of the charges and generally instruct the jurors as to their duties.

(2) Unless waived, the prosecution and the defense will be afforded an opportunity to make an opening statement, prior to the presentation of any evidence or testimony. The defense may reserve her or his opening statement until after the prosecution has presented its case in chief.

(3) After presenting the opening statement(s), the prosecution must offer evidence supporting the allegations contained in the complaint. The defense shall be given an opportunity to cross–examine any witness called by the prosecution.

(4) After the prosecution has rested its case, the defense may give any reserved opening statement and present any defenses or evidence relating to the allegations contained in the complaint. The prosecution shall be given an opportunity to cross–examine any witness called by the defense.

(5) Rebuttal evidence may be presented by the prosecution after the conclusion of the defense case when appropriate, and, if necessary, surrebuttal evidence may be offered by the defense.

(6) No new evidence may be presented after the prosecution and the defense have rested their cases, unless allowed by the judge in the interest of justice.

(7) In a trial by jury, after the close of evidence and before the closing statements arguments are given, the instructions on the law of the case, as submitted in writing by the prosecution and defense shall be considered singly by the court and each one shall be:

(a) given as requested or proposed by counsel,

(b) refused based on stated grounds, or

(c) given with modification by the judge to the jury.

All instructions shall be in writing and filed as part of the record.

(8) After the judge reads the instructions to the jury and gives the jury a copy of the same, the prosecution and the defense may make a closing argument. The prosecution precedes the defense and may also make a rebuttal closing argument.

(9) The jury, or the judge if the case is tried without a jury, shall render a verdict upon the conclusion of the case. If the case is tried to a judge, the verdict shall set forth the court's findings of fact, conclusions of law and a judgment of guilty or not guilty. If the case is tried to a jury, the verdict shall be guilty or not guilty in accordance with the facts and the jury instructions.

2–2–1008. Insufficient evidence. If the Tribal Court determines at the close of the prosecution's case in chief, or at the conclusion of the case, that the evidence presented is insufficient to sustain a conviction for the charged offense or offenses, the Tribal Court may, on its own motion or on the motion of the defense, dismiss the action and discharge the defendant. No new trial may be granted unless the judgment of acquittal is vacated or reversed on appeal.

Part 11

Juries

2–2–1101. Motion to discharge a jury panel. (1) Any objection to the manner in which the venire has been selected or drawn shall be raised by motion to discharge the jury. The motion shall be made at least 7 days prior to the trial date.

(2) The motion shall be made in writing supported by an affidavit which shall state facts which show that the venire was improperly selected or drawn.

(3) If the motion states facts which would show that the venire was improperly selected or drawn, it shall be the duty of the Tribal Court to conduct a hearing. The burden of proof shall be on the movant.

(4) If the Tribal Court finds that the jury was improperly selected or drawn, the court shall order the jury discharged and the selection or drawing of a new jury.

2–2–1102. Examination of prospective jurors. (1) After sending summons and at least 10 days before trial, the Clerk of Court shall notify the prosecution and defense the names and addresses of the members of the jury panel.

(2) In selecting a jury from among the panel members, the initial questioning of the jurors shall be conducted by the judge in order to determine whether each prospective juror is capable of being fair and impartial. Questions to be asked by the court include whether a panel member:

(a) is directly related to any person involved in the action, including, but not limited to, the defendant, defense counsel, arresting officer, alleged victim, or any prospective witness;

(b) is or has been involved in any business, financial, professional, or personal relationship with a party or alleged victim;

(c) has had any previous involvement in a civil or criminal lawsuit or dispute with a party or alleged victim;

(d) has a financial or personal interest in the outcome of the action before the court;

(e) has formed an opinion as to the defendant's guilt; or

(f) has a belief that the punishment fixed by law is too severe for the offense charged.

(3) Any panel member whom the Tribal Court determines incapable of acting with impartiality and without prejudice to the rights of either party shall be excused.

(4) After questioning by the judge, the prosecutor and defendant or defense counsel may question the panel members to determine impartiality. Either party may question the panel members concerning the nature of the burden of proof in criminal cases and the presumption of innocence. The judge may limit the prosecutor's and defendant's or defense counsel's examination of a panel member when the judge believes such examination to be improper.

2–2–1103. Challenges. (1) The prosecution and defense shall have unlimited challenges for cause. Each challenge must be tried and determined by the Court at the time the challenge is made.

(2) The prosecution and defense shall have three peremptory challenges and one peremptory challenge in the event that an alternate juror is selected, unless a lesser number is agreed to by the parties in writing.

(3) All challenges must be made to the Tribal Court before the jury is sworn. When a potential challenge for cause is discovered after the jury is sworn and before the introduction of any evidence, the Tribal Court may allow a challenge for cause to be made.

2–2–1104. Conduct of jury during trial. (1) Once empaneled, jurors shall be instructed by the judge that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon, until the issues of the case are finally submitted to them.

(2) At each adjournment recess prior to submission of the case to the jury, the judge shall instruct the jurors as to whether they may separate or must remain in the care of the bailiff or other proper officer of the court.

2–2–1105. View of relevant place or property. (1) Upon request by the prosecution or defense, the Court may allow the jury to view any place or property deemed pertinent to the just determination of the case.

(2) If viewing of a place or property is deemed appropriate, the Court shall place the jury under the custody of the bailiff, or other proper officer of the court, who shall then transport the jury to the viewing place.

(3) The place or property will be shown to the jury by a person appointed by the court for that purpose, and the jurors may personally inspect the same.

(4) The bailiff, or other proper officer of the court, must insure that no person speaks or otherwise communicates with the jury, on any subject connected with the trial, while viewing the place or property or traveling to or from the viewing site.

(5) After the jury has viewed the place or property, the bailiff, or other proper officer of the court, shall return the jurors to the courtroom without unnecessary delay or at a specified time, as directed by the court.

2–2–1106. Jury instructions. (1) General instructions may be furnished by the Tribal Court. When either the defendant or the prosecutor desires a special instruction to be given to the jury, such proposed instruction shall be reduced to writing, signed by the party offering the instruction and delivered to the judge at least 5 days before trial unless a different time is established by the judge. For good cause shown, the parties may supplement or withdraw instructions at the close of evidence.

(2) All jury instructions shall adequately inform the jurors of:

(a) which decisions are made by the jury and which by the presiding judge;

(b) the issues of fact in the case;

(c) the rules of law to be applied to the issues of fact;

(d) the burden of proof with respect to each issue of fact; and

(e) the proof needed to discharge that burden.

(3) The party not offering a proposed instruction shall be allowed reasonable opportunity to examine the proposed instruction and object to it. The objection must specifically state on what grounds the instruction is not an accurate statement of the law or is not an appropriate instruction for this particular case and, therefore, should not be given.

(4) A dispute regarding a proposed jury instruction must be settled outside of the jury's presence by the court which may hold a settlement hearing.

(5) A record must be made at a hearing to settle instructions.

(6) A party may not appeal as error any portion of the instructions or omission from the instructions unless an objection was made specifically stating the matter objected to, and the grounds for the objection, at the settlement of instructions or in writing prior to a settlement hearing.

(7) The presence of the defendant is not required during the settlement of instructions.

(8) After all evidence has been presented, and before closing arguments, the court shall give both general and specific instructions to the jurors.

(9) For the record, but not for the jury, the court shall mark or endorse each instruction in such a manner that it shall distinctly appear what proposed instructions were rejected, what were given in whole and what were modified, together with the court's reasons for giving as requested, as modified, or refusing a proposed instruction.

(10) All proposed instructions are part of the court record. All objections to jury instructions must be noted on the court record, as well as the Tribal Court's reasons for either giving as requested, as modified, or refusing a proposed instruction.

2–2–1107. Jury deliberations. (1) After closing arguments, the court shall commit the jury to the care of a bailiff or other officer of the court who shall keep the jurors together and prevent communication between the jurors and others.

(2) Upon retiring to deliberate, the jurors shall select a juror as foreperson.

(3) After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they shall notify the bailiff or the officer appointed to keep them together, who shall then notify the court. The information requested may be given, in the discretion of the court, after consultation with the parties.

2–2–1108. Items that may be taken into jury room. Upon retiring for deliberation, the jurors may take with them the written jury instructions read by the court, notes of the proceedings taken by themselves, and all exhibits that have been received as evidence in the cause that in the opinion of the court will be necessary.

2–2–1109. Activity of the court during jury's absence. While the jury is absent, the court may adjourn or conduct other business, but it must be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

2–2–1110. Form of verdict. (1) The jury shall return a verdict as instructed by the court and for each offense charged. The verdict must be unanimous in all criminal actions. The verdict must be signed by the foreperson and returned by the jury to the judge in open court.

(2) When two or more defendants are involved in the case before the jury, the jurors may reach a verdict regarding any one of the defendants. If the jury cannot agree with respect to all the defendants, the defendant or defendants as to whom it does not agree may be tried again.

2–2–1111. Polling the jury. When a verdict is returned, but before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If the results of the poll show that the verdict does not reflect unanimous concurrence by each juror, the jury may be directed to return for further deliberations or may be discharged at the court's discretion.

2–2–1112. Conviction of lesser included offense. (1) When it appears to the jury beyond a reasonable doubt that the defendant has committed an offense but there is reasonable doubt as to whether he or she is guilty of a given offense or one or more lesser included offenses as provided in subsections (2), (3), and (4) of this section, he or she may only be convicted of the greatest included offense about which there is no reasonable doubt.

(2) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged.

(3) A lesser included offense instruction must be given when there is a proper request by one of the parties and the jury, based on the evidence, could be warranted in finding the defendant guilty of a lesser included offense.

(4) When a lesser included offense instruction is given, the court shall instruct the jury that it must reach a verdict on the crime charged before it may proceed to a lesser included offense. Upon request of the defendant at the settling of instructions, the court shall instruct the jury that it may consider the lesser included offense if it is unable after reasonable effort to reach a verdict on the greater offense.

2–2–1113. Discharging jurors. When the jury has reached a verdict or has determined that it shall be is unable to either acquit or find the defendant guilty, even with additional deliberation, the court shall discharge the jurors from service.

2–2–1114. Motion for a new trial. (1) Within 20 days of a guilty verdict, the defendant may file with the court, and serve upon the prosecution, a written motion for a new trial. The motion must specify the grounds for a new trial.

(2) After hearing the motion for a new trial, the court may, in the interest of justice:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or not guilty.

(3) The granting of a new trial places the parties in the same position as if there had been no trial.

Part 12

Sentence and Judgment

2–2–1201. Rendering judgment and pronouncing sentence. (1) This Part controls all sentencing in all circumstances. Changes in Montana Law do not apply unless expressly adopted by Tribal Council.

(2) The judgment shall be rendered in open court.

(3) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his or her bail bond.

(4) (a) If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record his or her reasons for the sentence imposed.

2–2–1202. Sentencing considerations. (1) Sentences imposed upon those convicted of crime must be based primarily on the following:

(a) the crime committed;

(b) the prospects of rehabilitation of the offender, including the possible resources and needs of the offender's dependents, if any;

(c) the circumstances under which the crime was committed;

(d) the criminal history of the offender; and

(e) alternatives to imprisonment of the offender.

(f) the ability of the defendant to pay a fine.

2–2–1203. Imposition of sentence. (1) No sentence shall be imposed until:

(a) the offender and the offender's counsel have had an opportunity to examine any pre–sentence report and to cross–examine the preparer of such report on the basis for any sentencing recommendations contained in the report,

(b) the prosecution and defense have had an opportunity to present evidence, witnesses, and an argument regarding the appropriateness of a sentencing option; and

(c) the offender has had the opportunity to speak on his or her own behalf and to present any information likely to mitigate the pending sentence.

(2) Sentencing shall be imposed on all offenses pursuant to Tribal law. To the extent that any Montana statute incorporated into Tribal law provides a penalty that conflicts with Tribal sentencing law, Tribal sentencing law will control.

(3) An offender found guilty of an offense may be sentenced to one or more of the following penalties:

(a) deferred imposition of sentence with reasonable restrictions and conditions monitored by the Tribal Probation Officer, and with the following characteristics:

(i) the record of the offense shall be expunged upon satisfactory performance by the offender of the restrictions and conditions of deferral for a period not to exceed one year for Class A, Class B, Class C, and Class D offenses and three years for a Class E offense, and

(ii) imposition of sentence will occur immediately upon violation of a restriction or condition of the deferral;

(b) suspended execution of all or part of a sentence for one year for Class A, Class B, Class C, and Class D offenses and three years for a Class E offense, with the offender being placed on probation under reasonable restrictions and conditions for the period of suspension, and with a violation of a restriction or condition resulting in execution of the suspended portion of the sentence;

(c) imprisonment for a period of time not to exceed the maximum permitted for the offense;

(d) a fine in an amount not to exceed the maximum permitted for the offense;

(e) community service;

(f) any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate;

(g) restitution to a victim of an offense for which the offender was convicted; or

(h) a person may be allowed to serve home arrest at the person's expense, but will not be eligible for parole under Section 2–3–302.

(4) The court may impose any or all of the following restrictions or conditions as part of a sentence, suspended or otherwise, or a deferred imposition of sentence, for rehabilitative purposes or to protect the Reservation community:

(a) prohibiting the offender from owning or carrying a dangerous weapon;

(b) restricting the offender's freedom of movement;

(c) restricting the offender's freedom of association;

(d) requiring the offender, if employed, to remain employed and, if unemployed, to actively seek employment; and

(e) any requirement or limitation intended to improve the mental or physical health or marketable skills of the offender.

(5) Unless the Tribal Court otherwise directs in its pronouncement of sentence, all sentences stemming from offenses occurring in the same transaction or course of conduct shall run concurrently and not consecutively.

(6) Any monies paid to the Tribes or to the victim of an offense as a result of this provision shall be paid through the Clerk of Court.

(7) Where the Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in this Code.

2–2–1204. Execution of sentence. (1) If the offender is sentenced to imprisonment, the court shall deliver a Detention Order or Judgment outlining the specific requirements of detention to the Tribal law enforcement officers serving as Tribal jailers. The offender shall be discharged from custody by the Tribal law enforcement officers after satisfactorily fulfilling the conditions of the imposed sentence or upon earlier order of the court.

(2) If judgment is rendered imposing a fine only, the offender must be discharged after making acceptable arrangements to pay the fine within the period of time specified by the court. The Tribal Court may also allow the offender to perform community service to offset any fine or allow the offender to be imprisoned until the fine is satisfied, applying $50.00 for every day served, unless a different amount is otherwise established by Tribal Council. If no such permission is included in the sentence, the fine shall be paid prior to formal release.

(3) If judgment is rendered imposing both imprisonment and a fine, the offender shall be discharged after fulfilling the requirements of subsections (1) and (2) of this section.

(4) The Court may in its discretion grant temporary release from custody under any conditions the Court deems appropriate.

2–2–1205. Restitution. (1) When restitution is ordered, the court shall specify the amount, method and payment schedule imposed upon the offender. Before restitution may be ordered, the defendant shall receive notice of the amount and terms requested and shall be entitled to a hearing upon his or her timely request.
(2) The fact that restitution was ordered is not admissible as evidence in a civil action and has no legal effect on the merits of a civil action.

(3) Except as otherwise provided in this subsection, restitution paid by an offender to an injured person must be deducted from any monetary award granted to said injured person in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall determine the amount of any reduction due to payment of restitution by an offender under this section. However, in the event that criminal and civil actions against an offender arising from the same transaction or events are heard in courts of different jurisdictions, one of which is the Tribal Court, the Tribal Court shall adjust offender's payments within its jurisdictional control for restitution or otherwise to assure that an injured party does not recover twice for the same harm.

(4) An offender may petition for modification of sentence imposing restitution and request a hearing on the matter. The injured person shall be given notice by the offender of any proposed modification and afforded an opportunity to be heard on the proposed modification. *(Rev. 4-15-03)*

2–2–1206. Payment of fines and restitution. (1) All monies collected as the result of a fine imposed by the Tribal Court shall be paid through the Clerk of Court. Upon receiving the monies, the Clerk shall:

(a) issue a receipt to the paying person;

(b) credit the account of the offender, noting whether the fine is paid in full or what balance, if any, remains due; and

(c) transfer the monies to the general fund of the Tribes, unless otherwise specifically directed by a provision of this Code.

(2) All monies collected for restitution shall be paid through the Clerk of Court. Upon receiving the monies the Clerk shall:

(a) issue a receipt to the paying person;

(b) credit the account of the offender, noting whether the fine is paid in full or what balance, if any remains due; and

(c) transfer the monies to the person to whom restitution is to be paid.

2–2–1207. Revocation of parole or suspended or deferred sentence. (1) If a petition requesting revocation has been filed and a revocation hearing held, the Tribal Court may revoke a defendant's parole or suspension or

deferral of sentence if a preponderance of the evidence shows the imposed conditions of the parole, or suspension, or deferral of sentence have been violated.

(2) A petition seeking revocation of a parole or a suspended sentence or imposition of a sentence previously deferred must be filed during the period of parole, suspension or deferral, or within 5 days after the period of parole, suspension, or deferral ends if the offender's violation of a condition of parole or probation occurred within the final 48 hours prior to the end of the period. Expiration of a parole or the time ordered under a suspended or deferred sentence prior to a hearing for revocation does not deprive the Tribal Court of jurisdiction to rule on the revocation petition.

(3) This is the exclusive remedy for violation of a condition of parole, or suspended or deferred sentence.

2–2–1208. Dismissal and expungement after deferred sentence. Whenever the court has deferred the imposition of sentence and after expiration of the period of deferral and after the defendants successful completion of any conditions of deferral, upon motion by the court, the defendant, or the defendant's counsel, the court shall allow the defendant to withdraw his or her plea of guilty or strike the verdict or judgment expunging the court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

2–2–1209. Failure to pay a fine. (1) If a defendant sentenced to pay a fine or restitution fails to make payment as ordered, the Court or the Prosecutor may move that the offender show cause why the offender's nonpayment should not be treated as contempt of court. Notice of a show cause hearing on the contempt charge shall be served on the offender by law enforcement officers at least five days prior to the date set for hearing. Notice shall also be served on the victim if the show cause was issued for failure to pay restitution.

(2) Unless the offender shows that the nonpayment was not attributable to an intentional refusal to obey a Tribal Court order or the offender's failure to make a good faith effort to make the ordered payments, the Tribal Court may find the offender in contempt and order the person incarcerated until the fine is satisfied. Time served shall be credited against the fine at the rate of $50.00 per day unless otherwise set by the Tribal Council.

(3) If the Court determines that the offender's nonpayment does not constitute contempt, the Court may modify the original sentence, judgment, or order, allowing the offender additional time to pay the fine or restitution or reducing the amount owed. *(Rev. 4-15-03)*

2–2–1210. Credit for time served. If a defendant has served any of the defendant's sentence under a commitment based upon a judgment that is subsequently declared invalid or that is modified during the term of imprisonment, the time served must be credited against any subsequent sentence received upon a new commitment for the same criminal act or acts. This does not include time served pursuant to Section 2-2-610(1)(c). *(Rev. 1-27-00)*

2–2–1211. Credit for incarceration prior to conviction. (1) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction, except that the time allowed as a credit may not exceed the term of the prison sentence rendered. This does not include time served pursuant to Section 2-2-610(1)(c).

(2) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense must be allowed a credit for each day of incarceration prior to conviction, except that the amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration is $50.00 per day unless otherwise set by the Tribal Council. This does not include time served pursuant to Section 2-2-610(1)(c). *(Rev. 1-27-00)*

Part 13

Traffic Court Procedure

(Enacted 4-15-03.)

2-2-1301. Purpose. The Traffic Court is a division of the Tribal Court of the Confederated Salish and Kootenai Tribes. The procedure in this part is intended to provide for the just determination of traffic cases through a simple and uniform process and the elimination of unnecessary expense and delay.

2-2-1302. Traffic Court Proceedings. All proceedings in Traffic Court shall be held before a Judge of the Tribal Court designated to hear such cases. Traffic Court Trials shall be tape recorded, and the tape shall be maintained for a period of 20 days after entry of Judgment, but the tape will not be archived unless a timely appeal is filed in the manner provided by this Code.

2-2-1303. Presumption of Innocence and Burden of Proof. Traffic Court defendants shall be presumed innocent until proven guilty or until a plea of guilty or no contest is entered. A plea of not guilty requires that the Tribes prove beyond a reasonable doubt that the defendant committed the cited traffic offense.

2-2-1304. Defendants Rights in Traffic Court. All defendants in Traffic Court matters shall have the following rights:

(1) the right to be informed of the charge(s) against the defendant and the maximum penalty allowed under Tribal law for each charge;

(2) the right to have assistance from or be represented by an attorney (at the defendants own expense) or to have another Tribal member speak on the defendant's behalf (see Tribal Member Representation, §1-2-506 of this code);

(3) the right to plead either guilty, not guilty, or no contest, and if the defendant pleads guilty or no contest, to have the Judge immediately sentence the defendant as provided in the CSKT Laws Codified or if the Defendant pleads not guilty to have the Judge immediately schedule a trial of the charge(s);

(4) the right to a prompt, open and public trial before the Judge and at that hearing to cross-examine the Tribes witnesses and to call witnesses and present relevant evidence on the defendant's behalf;

(5) the right to remain silent and, if the defendant chooses to remain silent, the right to have no inference drawn from the defendant's silence;

(6) the right to be advised that any statement made by the defendant may be used in evidence against the defendant;

(7) the right to request that the Court issue subpoenas for witnesses;

(8) the right to appeal the Judge's final judgment to the Tribal Appellate Court within 20 days of the date of final judgment.

2-2-1305. Initial Appearance in Traffic Court. (1) A defendant shall make an initial appearance in Traffic Court on the date and time specified on the traffic citation. If the defendant is under the age of eighteen (18) years, a parent or guardian must accompany the defendant to the initial appearance, be available to advise the defendant, and sign applicable forms with the defendant.

(2) At the Initial Appearance, the judge shall advise the defendant of his or her rights and of the Traffic Court procedures for appearance.

(3) After informing the defendant of the charge(s) and possible penalties, the judge shall ask the defendant how he or she pleads.

(4) If the defendant pleads guilty or no contest, the judge shall then proceed to sentencing. After the judge informs the defendant of the sentence, the defendant may make arrangements for the payment of any fines imposed. A Judgment form shall be completed and signed by the judge and a copy shall be provided to the Defendant. The Judgment shall announce the Judgment rendered, sentence imposed, and the fine payment deadline.

(5) If the defendant pleads not guilty, the judge shall schedule a date and time for a Traffic Court Bench Trial. Jury trials are not provided in Traffic Court.

(6) If the defendant pleads not guilty, the judge shall order the citing officer to provide the defendant with a written report describing the circumstances of the offense. The report shall be provided at least 10 days before the trial.

2-2-1306. Forfeiture of Bond in lieu of Appearance. A defendant may pay and forfeit the scheduled bond for the cited offense and thereby be relieved of the obligation to appear. Forfeiture of the bond shall constitute a conviction on the cited offense and shall no further proceedings.

2-2-1307. Traffic Court Bench Trials. (1) Traffic Court Bench Trials shall be held in the Tribal Courtroom on the date and time set in the Scheduling Order. Either the defendant or the citing officer may request a continuance of the bench trial which shall be granted for good cause by the Court.

(2)The citing officer and the defendant each bear the responsibility of notifying the witnesses they wish to call to testify at the bench trial. Upon request by either party, the Court shall issue subpoenas for any witness whose testimony is necessary for a just adjudication of the case at trial.

(3) Traffic Court Bench Trials shall be recorded as provided in § 2-2-1301 of this code and all witnesses shall be sworn before being allowed to testify.

(4) The citing officer shall present the Tribes' case first. The citing officer may testify and present evidence to the Court. The Defendant may cross-examine the citing officer and any witnesses called by the citing officer.

(5) After the citing officer has presented the Tribes' case, the defendant may then present his or her case to the Court. The defendant may elect to testify, but may not be required to testify. The defendant may call witnesses to testify on his or her behalf and may present other evidence regarding the charge(s). The citing officer may cross-examine the defendant's witnesses.

(6) After the defendant has concluded his or her case, the parties may make concluding arguments before the Court.

(7) On the record, after considering the testimony and evidence presented at trial, the judge shall find the defendant either guilty or not guilty on the charge(s). If the defendant is found guilty, the judge shall announce the sentence for each offense and the deadline for payment of fines or the completion of other penalties. The defendant may enter into a payment schedule agreement with the Court.

2-2-1308. Failure to Appear. (1) If a defendant fails to appear in Traffic Court on the date and time scheduled for initial appearance or on the date and time scheduled for trial, the Judge may issue a warrant for the defendant's arrest.

(2) If a juvenile defendant fails to appear in Traffic Court on the date and time scheduled for initial appearance or on the date and time scheduled for trial, the judge may issue a Summons for the defendant and for the defendant's parent or guardian to appear and show cause for non-appearance.

(3) If a juvenile defendant and the defendant's parent or guardian fail to appear after having been summonsed to show cause, the Judge may issue a warrant for the arrest of the defendant's parent or guardian for contempt and may further refer the matter to Juvenile Court for action.

2-2-1309. Sentencing in Traffic Court. Traffic Court may only hear cases involving violations punishable by a fine or other penalty which does not include jail time. No one appearing in Traffic Court may be sentenced to serve time in jail unless he or she is found in contempt. Violations cited into Traffic Court which carry a possible jail sentence shall be transferred to the Criminal Court Division.

2-2-1310. Appeal. Decisions rendered in Tribal Traffic Court may be appealed according to the Rules of Appellate Procedure.

2-2-1311. Record of Convictions. The Clerk of Court shall submit a record of conviction to the Montana Department of Motor Vehicles for all Tribal Traffic Court convictions which become part of defendant's driving record.