

FALLON PAIUTE-SHOSHONE TRIBE



LAW AND ORDER CODE

Title 4

Criminal Procedures

Fallon Paiute-Shoshone Tribe

Law & Order Codes

Law and Order Code TITLE 4 CRIMINAL PROCEDURES

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Title 4 – Criminal Procedures

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Law and Order Code
TITLE 4
CRIMINAL PROCEDURES

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TITLE 4 – CRIMINAL PROCEDURES

4-10 GENERAL PROVISIONS

4-10-010 Definitions

- (a) Accused - An Indian Defendant, or any other Indian suspected of the commission of an offense.
- (b) Arrest - The taking into custody of a person so that he may be charged with an offense.
- (c) Defendant - An Indian charged with the commission of an offense, at any stage of the proceedings after a Judge has issued a summons or warrant upon a sworn complaint.
- (d) Evidence - Anything tending to show that an offense was or was not committed, or tending to prove or disprove some fact relevant to the commission of an offense.
- (e) Misdemeanor - A crime committed under the jurisdiction of the Fallon Paiute-Shoshone Tribe that defines the maximum sentences and fines that are applied pursuant to Federal Statute and Federal Court decisions.
- (f) Fruit of an Offense - Anything the possession of which relates to an offense, such as stolen goods, money or proceeds from the sale of stolen goods, or items purchased with stolen money.
- (g) Indian – For criminal jurisdictional purposes, “Indian” shall mean any person who would be subject to the jurisdiction of the United States as an Indian under 18 U.S.C § 1153 if that person were to commit an offense listed in that section in Indian country to which that section applies. *See* 25 U.S.C. § 1301(4).
- (h) Instrumentality - Anything used to commit or aid in the commission of an offense.
- (i) Motion - An oral or written request of the Tribal Court for an order, stating the grounds upon which it is made, setting forth the relief or order sought, and if necessary, supported by sworn written statements.
- (j) Offense - Any act or failure to act which is prohibited by this Code and which is made punishable by fine, imprisonment, or both.
- (k) Party - The defendant or defendants, or the prosecutor; if in the plural, the defendant or defendants and the prosecutor.
- (l) Probable Cause – A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime.

- (m) Prosecutor - Any person who presents the case against the defendant. The prosecutor may be any person designated by the Fallon Business Council or the Chief Tribal Judge, including a Tribal police officer. The Prosecutor shall be considered to be acting on behalf of the Tribe in prosecuting the case against the defendant. No Tribal Judge shall act as prosecutor.
- (n) Representative - Any person with authority to speak or act on behalf of another pursuant to Section 1-80-010 of this Code.
- (o) Tribal Police Officer - Any person commissioned to be a law enforcement officer for the Tribe. This does not include persons holding limited commissions from the Fallon Business Council to enforce only portions of the Tribe's laws; such persons shall have all the powers of a Tribal police officer only when enforcing laws within the scope of their commission.

4-10-020 Time Limit for Commencing Criminal Prosecution

Time during which the accused is outside the jurisdiction of the Tribal Court, for whatever reason, shall not be included in time limit set forth in Section 1-20-070.

4-10-030 Rights of a Defendant

- (a) In addition to rights set forth elsewhere in this Code, every defendant in a criminal proceeding shall have the following rights:
 - (1) To receive, at or prior to arraignment, written notice of the offense charged, including the Section number and heading of the Code provision allegedly violated, a brief summary of the facts constituting the alleged offense, and a statement of the place and time the offense is alleged to have occurred.
 - (2) To receive written notice of the place and time when his case will be heard.
 - (3) To appear and present a defense, in person or by a representative, except that the defendant shall not have a right to an appointed representative at the Tribe's expense.
 - (4) To testify on his own behalf, or to refuse to testify regarding the charge against him; provided, however, that once a defendant testifies on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to refuse to testify on all matters relevant to the immediate charges against him at trial and at later proceedings in that case. Testimony by a defendant on a Motion to Suppress Evidence does not affect his right to refuse to testify at trial.
 - (5) To present evidence on his own behalf, in accord with the rules of evidence contained in 4-60-070.
 - (6) To use subpoenas to compel the attendance of witnesses on his own behalf, where such are within the jurisdiction of the Tribal Court.
 - (7) To confront and cross-examine all witnesses against him.
 - (8) To have a speedy public trial by an impartial Judge or jury.
 - (9) To appeal the decision of the Tribal Court and to have such an appeal heard within one (1) year of the date of appeal.
 - (10) Not to be twice put in jeopardy for the same offense, or the danger of conviction, arises at the beginning of trial at the earliest occurrence of any of the following events:
 - (a) The swearing of the jury (Subsection 4-60-020(g)).

- (b) The first word of the prosecution's opening statement (Subsection 4-60-050(b)); or
 - (c) Hearing of the first word of evidence at trial (Subsection 4-60-050(c)).
- (b) Remedies - If any of the rights of a defendant listed in Subsection (a) of this Section 4-10-030 are denied or violated, the case against the defendant must be dismissed, and cannot thereafter be renewed. A defendant may assert a violation of these rights in any or all of the following procedures: a Motion to Dismiss (Section 4-50-060); a Writ of Habeas Corpus (Section 4-10-040); or an Appeal (Section 4-10-030, Section 1-90-020).

4-10-040 Habeas Corpus

- (a) Right to a Writ of Habeas Corpus - A Petition for a Writ of Habeas Corpus may be filed by any person who believes that he or another is wrongfully imprisoned, held, or in any way restrained of liberty by the Tribal Court, a Tribal police officer, or any other person, in violation of this Code or in violation of the rights of the person under any applicable law. A Petition may be filed by a person on his own behalf or on behalf of another person believed to be wrongfully restrained of liberty.
- (b) Contents of Petition -- Any person wishing to exercise the right to a Writ of Habeas Corpus shall file with the Tribal Court a simple pleading stating:
 - (1) The name of the person held or restrained of liberty;
 - (2) The name of the individual or institution holding or restraining the liberty of the person held;
 - (3) The reasons the holding or restraint of liberty is felt to be unlawful, including, if possible, references to sections of this Code alleged to be violated, and
 - (4) The name and signature of the person filing the petition as petitioner.
- (c) Issuance of a Writ of Habeas Corpus - If a petition for the Writ of Habeas Corpus fulfills the requirements of Subsection 4-10-040(b), the Tribal Judge shall issue a Writ of Habeas Corpus. The Writ shall direct the individual or institution restraining the liberty of the person held to appear at a hearing before the Tribal Court, with the person held.
- (d) Hearing on a Writ of Habeas Corpus - The hearing on the Writ of Habeas Corpus shall consider evidence on the lawfulness of the restraint of the person held. The Petitioner shall first present his evidence on behalf of the person held, and shall have the burden of proving by a preponderance of the evidence that the restraint is unlawful.
- (e) Order of Freedom - If the Judge determines that the restraint of liberty is unlawful, the Judge shall issue an Order of Freedom, ordering the release of the person held.

4-10-050 Multiple Offenses and Defendants

- (a) Two or more offenses may be charged in the same complaint if the Code provision section number and heading for each offense is separately listed and if all such offenses are based on the same acts or transactions or constitute parts of a common scheme or plan.
- (b) Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same acts or transactions constituting an offense or offenses. Such defendants may be charged with one or more offenses together or separately, and all of the defendants need not be charged with each offense.
- (c) Defendants or offenses may be joined where one defendant is charged with an offense against another.

- (d) The Tribal Court may order two or more defendants tried together if they could have been joined in a single complaint, or may order a single defendant tried on more than one complaint at a single trial.
- (e) If it would be unfair to any party for any reason to join offenses or defendants, the Judge shall order separate complaints and may order separate trials or provide such other relief as justice requires. The Judge may take such actions on his own motion or upon motion of a party.

4-10-060 Misconduct by the Prosecutor

If the prosecutor purposely does or causes to be done any act of misconduct intended to prejudice the case against the defendant, the Tribal Court may impose an appropriate remedy.

4-20 COMPLAINTS AND INITIATION OF PROSECUTION

4-20-010 Complaint Required

All criminal prosecutions for violation of this Code shall be initiated by a complaint.

4-20-020 Complaint Defined

A complaint is a written statement, sworn to by the complaining witness as required by Subsection 4-20-030(d), charging that a named or described person or persons have committed a particular offense. A citation may constitute a complaint.

4-20-030 Contents of Complaint

A complaint shall contain:

- (a) The name or description of the person or persons alleged to have committed the offense;
- (b) A written statement describing in ordinary language the facts constituting the offense, including the time and place as nearly as is known;
- (c) The Section number and heading of the Code provision allegedly violated; and
- (d) The oath and signature of the complaining witness sworn before a Tribal Judge, the Court Clerk, a Tribal police officer, or a person designated by the Tribal Judge. The complaining witness may be a Tribal police officer or any other person. The oath shall state that, under penalties of perjury, the complaining witness knows or believes the truth of the complaint.

4-20-050 Filing Complaint

Complaint shall be filed by the Tribal Prosecutor and submitted without unnecessary delay to a Tribal Judge to determine whether a warrant or summons should be issued.

4-20-060 Probable Cause to Arrest upon Complaint, Warrant or Summons

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

- (a) Issue an arrest warrant instructing the Tribal police to arrest the named accused; or

- (b) Issue for service upon the accused, a summons commanding the accused to appear before the Tribal Court at a specified time and place to answer to the charge.

4-20-070 Filing Complaint after Arrest

When an accused has been arrested without a warrant, a complaint shall be filed with the Tribal Court immediately for review at the next Court date, but no person shall remain incarcerated for more than 72 hours without review by the Court of the sufficiency of the complaint or booking documents to determine if probable cause exists to hold the person until the next Court date. Failure to file a complaint at or prior to arraignment shall require an immediate dismissal of the case at arraignment. A case so dismissed may be renewed by filing a complaint in the manner set forth in this Chapter 4-20.

4-30 ARRESTS, SUMMONS, AND CITATIONS

4-30-010 Arrest by Tribal Police Officer

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

- (a) The Officer has a warrant signed by a Tribal Judge commanding the arrest of the person, or the officer knows for a certainty that a Tribal Court arrest warrant has been issued and is outstanding; or
- (b) The offense is committed in the presence of the arresting officer; or
- (c) The officer knows for certainty that an offense has been committed and has probable cause to believe the person to be arrested has committed the offense, and obtaining a warrant would involve a dangerous delay, considering the likelihood of a breach of the peace, injury to persons or property, or escape of the accused.

4-30-020 Arrest by Private Citizens

A private citizen may arrest any person when he has probable cause to believe that an offense is being committed or attempted in his presence by the person to be arrested. The private citizen must contact the Tribal Police as soon as possible after making such an arrest.

4-30-030 Fresh Pursuit

- (a) “Fresh Pursuit” Defined - the effort made to capture a person suspected of committing an offense, immediately or without unreasonable delay after the commission of the offense.
- (b) Fresh Pursuit by a Tribal Police Officer - A Tribal police officer may leave the Tribe’s jurisdiction in fresh pursuit of a person who is reasonably believed by the officer or agent to have committed a felony within the boundaries of the reservation or colony, or has committed, or attempted to commit, any criminal offense within those boundaries in the presence of the officer.
- (c) Fresh Pursuit by Outside Officers - Any officer of a state, county, municipal, federal, or tribal law enforcement organization who enters the Tribe’s jurisdiction in fresh pursuit of an Indian in order to arrest him on the ground that he is believed to have committed a felony in another jurisdiction, shall have the same authority to arrest and hold such person in custody as the officer had in his own jurisdiction. The suspect need not be held within the tribal boundaries but the arresting officer immediately shall advise a

Tribal police officer of the arrest. The Tribal police officer shall make a written record of the arrest and the Tribal Police shall maintain a file of such arrest.

4-30-040 Arrest Warrants

- (a) Power to Issue Arrest Warrant - Every Judge of the Tribal Court has authority to issue warrants to arrest. An arrest warrant shall be issued only upon a showing of probable cause in a complaint meeting the requirements of Section 4-20-030.
- (b) Contents of Warrant - the arrest warrant shall contain the following information:
 - (1) The name, if known, or description of the person to be arrested, and his address, if known;
 - (2) The date of issuance of the warrant;
 - (3) The section number and heading of the Code provision allegedly violated;
 - (4) The place and time the offense is alleged to have occurred; and
 - (5) The signature of the issuing Judge.
- (c) Length of Time Warrant is Valid - An arrest warrant is valid and outstanding for one year from the date of the alleged offense unless a Tribal Judge specifically shortens this time.
- (d) Time of Executing Arrest Warrant - An arrest warrant may be executed only between the hours of 7 a.m. and 9 p.m., unless the accused is apprehended in a public place or unless the Tribal Judge specifies other hours during which the warrant may be executed.

4-30-050 Return of Warrant

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

4-30-060 Rights at Time of Arrest

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

- (a) That he has the right to remain silent and make no statements whatsoever;
- (b) That, should he make a statement, he retains the right to stop talking at any time;
- (c) That any statements made by him may be used against him in court;
- (d) That he has the right to obtain a representative at his own expense, and to consult in private with his representative before making any statements or answering any questions; and
- (e) That he has the right to make telephone calls consistent with Section 4-30-070.

4-30-070 Telephone Calls

- (a) Any Indian arrested has the right to make at least one (1) completed telephone call to a friend or bail bondsman and at least one (1) completed call to a representative.
- (b) The accused shall be allowed to make telephone calls under Subsection (a) above immediately after being registered and identified at the jail, or sooner if there is a delay in taking the accused to jail or in processing at the jail. In no event shall the delay from time of arrest to the making of telephone calls be longer than three (3) hours unless it is impossible for the accused to reach a telephone within three (3) hours.
- (c) The accused has the right, at appropriate times, to make a reasonable number of completed calls, including at least two (2) calls per day to make arrangements for his family and business or job.

- (d) A denial of the right to call a friend, bondsman or a representative under Subsection (a) above shall be grounds for a dismissal of the case, unless the Judge finds that there was good reason for the denial. A denial of the right to make calls to arrange the affairs of family and business or job under (c) above shall create a civil cause of action for damages against the person responsible. If no actual damages shown, or if actual damages are less than two hundred dollars (\$200.00), minimum damages of two hundred dollars (\$200.00) shall be awarded.
- (e) Telephone calls may be limited to local calls, except that long distance calls may be made by the accused at his own expense.

4-30-080 Summons Instead of Arrest Warrants

- (a) Power to Issue Summons - Whenever authorized to issue a warrant for the arrest of an accused who has been identified, a Tribal Judge instead may issue a summons commanding the accused to appear before the Tribal Court at a stated time and place to answer the charge. In determining whether to issue a summons, the Judge may consider the following factors concerning the accused:
 - (1) Whether detention appears reasonably necessary to prevent injury to property, a breach of the peace, or imminent bodily harm to the accused or to another;
 - (2) His employment, residence, family ties and other relationships to the community;
 - (3) The nature of the crime charged and his prior criminal record, including the record of prior release on recognizance or bail; and
 - (4) Any other factors bearing on the risk of willful failure to appear.
- (b) Contents of Summons - A summons shall contain the same information as a warrant, as required by Section 4-30-040(b).
- (c) Failure to Answer Summons - If a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.
- (d) Routine Issuance of Summons - The Chief Judge may prepare a list of offenses for which a summons will routinely be issued instead of an arrest warrant.

4-30-090 Citations

- (a) Power of Judge - In addition to offenses for which this Code specifies that citations may be issued, the Chief Judge may prepare a list of those offenses for which citations be issued.
- (b) Issuing Citations - Any Tribal Police Officer who apprehends a resident of the Reservation for an offense for which a citation may be issued shall issue a citation to the Indian and release the Indian. The officer shall file the citation, which shall serve as a complaint.
- (c) Content of Citation - The citation shall contain the same information as an arrest warrant under Subsections 4-30-040(b)(1), (2) and (3), the signature of the issuing officer, and such further information as may be required by other Titles of this Code, and shall command the Indian to either appear before the Tribal Court at a stated time and place to answer to the charge or to post and forfeit bail as provided in Subsections 4-30-090(d) and (e).
- (d) Bail for Citation - All criminal offenses for which citations may be issued shall be listed on the bail schedule described in Section 4-50-030. Indians issued citations shall be

allowed to pay and forfeit the listed bail rather than appear and answer to the charge as directed by the citation.

- (e) Failure to either Pay and Forfeit Bail or Appear-
 - (1) If bail has been posted and the defendant does not appear, the Judge shall enter a judgment of conviction, impose a fine equal to the bail and treat the bail as payment of the fine; or
 - (2) If an Indian to whom a citation was issued neither pays and forfeits bail, nor appears, either an order to show cause shall be issued or a warrant shall be issued for his arrest.

4-30-100 Extradition

- (a) Any Indian found within the Tribe's jurisdiction who is wanted by state authorities for a violation of state law committed outside the Tribe's jurisdiction, and an arrest warrant having been issued by a state court based on the alleged violation, may be arrested as a fugitive from justice and taken into custody by a Tribal law enforcement officer for further proceedings under this Section. Such arrest may only occur if the Tribal law enforcement officer has contact with the person based on a reasonable, articulable suspicion of an offense under the Law and Order Code, or other lawful contact. Prior to making any such arrest, Tribal law enforcement shall take all reasonable steps to confirm the existence of the warrant and that the person to be arrested is the person named in the warrant.
- (b)
 - (1) Law enforcement officers of another jurisdiction who seek to arrest an Indian within the jurisdiction of the Tribe shall apply for a Tribal arrest warrant in accord with this Section 4-30-100.
 - (2) An application by a law enforcement officer of another jurisdiction for a warrant to arrest an Indian within the Tribal jurisdiction shall be made in a form substantially complying with Section 4-30-040.
 - (3) If the application and accompanying documents give the Tribal Judge probable cause to believe that an offense has been committed, that the person charged has committed it, and that the court seeking arrest of the Indian has jurisdiction over the crime, then the Judge shall issue a Tribal arrest warrant to be executed and returned as are other Tribal arrest warrants.
- (c) As used in this Section, the term "fugitive from justice" means a person who has been found within the Tribe's jurisdiction who has been charged in another jurisdiction with the commission of a crime and an arrest warrant from that jurisdiction has been issued for the person.
- (d) Any person arrested under this Section shall have all of the rights of defendant under Sections 4-30-060 and 4-30-070.
- (e) Any Indian arrested as a fugitive from justice shall have the right to an extradition hearing before the Tribal Court as soon as practicable. A copy of the state arrest warrant shall be presented to the Tribal Court judge for review as to the date, charge and person named thereon, and to determine its apparent validity. If the judge is satisfied as to the apparent validity of the arrest warrant, the judge shall issue an extradition order for Tribal law enforcement officers to transfer the person into the custody of state law enforcement officials. If the judge is not satisfied as to the validity of the warrant, the judge shall issue an order for Tribal law enforcement officers to release the person from custody.

- (f) Waiver of Extradition – A person may waive his/her right to an extradition hearing by written execution of a waiver of the hearing. The waiver form must provide that the person is aware that he/she has a right to an extradition hearing before the Tribal Court prior to any transfer to the custody of another jurisdiction and that he has not been coerced into signing the waiver, but that the person is waiving the right to an extradition hearing. If a person waives the extradition hearing, he/she shall be transferred to the custody of law enforcement officers of the other jurisdiction upon their request.
- (g) Opposition to Extradition - If a person wishes to oppose extradition, the Tribal Judge shall hold an extradition hearing as soon as possible. The person may be represented by an attorney or advocate at the hearing.

Note: Section 4-30-100 was amended on April 9, 2019 by FBC Res. No. 19-F-059.

4-40 SEARCHES AND SEIZURES

4-40-010 Search Warrants

- (a) Issuance of Search Warrants
 - (1) Every Tribal Judge has the power to issue warrants for the search and seizure of any property, premises or person within the jurisdiction of the court.
 - (2) No warrant of search and seizure shall be issued, except upon a written and sworn application by a Tribal Police Officer, based upon reliable information from the officer or others that gives the Judge probable cause to believe that an offense has occurred and that a search will discover:
 - (a) Property that is stolen or otherwise illegal to possess;
 - (b) Property which has been or is being used as an instrumentality to commit a crime; or
 - (c) Evidence or fruits of a crime.
- (b) Contents of Search Warrant -
 - (1) The warrant shall be directed to a Tribal police officer for execution. It shall:
 - (a) Give the names of the person(s) whose statements were taken in support therefore;
 - (b) State the section number and heading of the Code provision allegedly violated;
 - (c) Specifically name or describe the place or Indian to be searched and the property to be seized;
 - (d) Command the officer to search forthwith the Indian or place named for the property specified; and
 - (e) Be signed by the issuing Judge.
 - (2) The warrant shall direct that it be served between 7:00 a.m. and 9:00 p.m., unless the Tribal Judge, upon a showing of good cause therefore, inserts a direction that it be served at some other time.
 - (3) The warrant shall state that it must be executed within a specified time no more than ten (10) days after the date of issuance, and shall name the Tribal Judge to whom it shall be returned.
 - (4) The prosecutor may request an affidavit or statement be sealed to protect the name of the witness or for other good cause.

- (c) Execution and Return of Search Warrant –
 - (1) Warrants of search and seizure shall be executed only by Tribal police officers. The executing officer shall search the place described in the warrant and shall return the warrant to the Tribal Court within the time shown on the face of the warrant, together with the items seized in the search, if any, and a written description of the time and place of the search and the items seized.
 - (2) Warrants not executed within ten (10) days of issuance, or any shorter time specified by the Tribal Judge, shall be void. Any search or seizure under a void warrant shall be unlawful and subject to the provisions of Section 4-40-040 relating to unlawful searches and seizures.
 - (3) In the execution of any search warrant, no Indians or places other than those specifically described in the warrant shall be searched, and no property other than that specified in the warrant shall be seized. However, the executing officer may seize any property listed is in plain view or otherwise is plainly noticeable to the physical senses of that officer.

4-40-020 Search Warrants by Telephone

- (a) Availability - Regardless of the provisions of Subsection 4-40-010(a)(2), a Tribal Judge may issue a search warrant based upon the sworn oral testimony of a person who is not in the physical presence of the Tribal Judge, when:
 - (1) It is not practical for the person presenting the testimony to personally appear before the Tribal Judge;
 - (2) The immediate issuance of a search warrant based upon such oral testimony is necessary in order to permit an immediate search; and
 - (3) There is a significant danger that failure to grant a search warrant by telephone will result in the concealment or destruction of the objects sought.
- (b) Procedure -
 - (1) To obtain a search warrant pursuant to this section 4-40-020, a tribal police officer or other person shall give sworn oral testimony to a Tribal Judge, by telephone or by other electronic means of communication. This testimony shall be recorded and transcribed, and after transcription shall be certified by the Tribal Judge and filed with the Tribal Court.
 - (2) The issuance of a search warrant may be authorized only if the sworn oral testimony gives the Judge probable cause to believe that an offense has occurred and that a search will discover:
 - (a) Property that is stolen or otherwise illegal to possess;
 - (b) Property which has been or is being used as an instrumentality to commit crime; or
 - (c) Evidence or fruits of a crime.
 - (3) The tribal police officer requesting the warrant shall read to the tribal Judge the language of the proposed warrant. The Tribal Judge may direct that the language of the proposed warrant be modified as necessary. The Tribal Judge may then approve the warrant and may authorize the tribal police officer requesting the warrant to sign the Judge's name to the warrant. At the same time, the Tribal Judge shall prepare a duplicate original warrant, with language identical to the warrant authorized to be issued, shall sign the duplicate original warrant at the

same time as he authorizes the signing of the original warrant, and shall indicate on the duplicate original warrant the exact time of issuance.

- (4) The original warrant completed by the tribal police officer shall be a valid search warrant for all purposes. The duplicate original warrant completed by the tribal Judge shall be filed with the court and shall remain a part of the court record of the case. When the original warrant is returned to the Tribal Court, the person upon whose sworn oral testimony the warrant was based shall sign, under oath, a copy of the transcript of that testimony.
- (c) Liability of Police Officers and Others - Any person who gives false or misleading oral testimony in order to obtain a search warrant pursuant to this Section 4-40-020 shall be criminally liable for the offense of perjury, Section 5-60-050. Any person who knowingly fails to follow the procedures set forth in this Section 4-40-020 shall be criminally liable for official misconduct, Section 5-60-030.

4-40-030 Searches without a Warrant

- (a) It is the policy of the Tribe that a search warrant be obtained under Sections 4-40-010, or 4-40-020, unless unusual circumstances make it impossible to obtain a warrant.
- (b) Power to Search - A Tribal police officer may conduct a search and seize property without a valid warrant when:
 - (1) Incident to making a lawful arrest, the search is limited to a search of the Indian himself and the immediate surrounding area within which the Indian arrested might find a weapon before the officer could protect himself, or might destroy evidence before the officer could prevent it.
 - (2) The search is with the consent of the person to be searched or a person with authority over the place to be searched, after that person has been informed of his right to require the officer to obtain a search warrant.
 - (3) In the absence of arrest, the officer has reason to believe that the Indian to be searched may be armed and dangerous, but any such search shall be limited to a pat down or frisk of the suspect solely to determine the existence of weapons.
 - (4) The search is of a vehicle capable of moving on its own power or from which items would probably be taken before a warrant could be obtained, and the officer has probable cause to believe the vehicle contains property which could be seized with a search warrant under Section 4-40-010 (a).
- (c) Arrest After Stop and Frisk - If, in the course of a pat down or frisk under Subsection 4-40-030(b)(3), the officer gains probable cause to arrest, he may do so.

4-40-040 Disposition of Seized Property

- (a) Inventory - Tribal police seizing property, by warrant or otherwise, shall make an inventory of all such seized property. A copy of this inventory shall be left with the person from whom the property was taken.
- (b) Hearing and Disposition -
 - (1) After the seizure of property, the Tribal Court shall hold a hearing in accord with Subsection (c), below, to determine the disposition of such property.
 - (2) Upon petition by an person claiming ownership, after a hearing and presentation of satisfactory proof, the seized property shall be delivered to the owner, unless the property is being confiscated pursuant to Subsection (c) or is to be used as evidence in a still pending case.

- (3) Property held as evidence shall be returned to the owner after final judgment, unless it falls under the provisions of Subsection (c), below.
 - (4) Property confiscated under Subsection (c) shall be either destroyed, sold at a public auction, retained for the benefit of the Tribe, or otherwise lawfully disposed of as ordered by the Tribal Court.
 - (5) The Clerk shall keep written records of all transfers, sales and other dispositions of property taken into custody of the Tribal Court and shall issue appropriate certificates of title to new owners.
- (c) Time of Hearing - The hearing to determine ownership of seized property may be held at any time after the seizure, but only after at least five (5) days' notice to all persons claiming ownership of the property on which a hearing is to held, and no more than four months after the criminal trial of the matter.
- (d) Tribal Ownership -
 - (1) The Tribe shall confiscate and take ownership of property that is illegal to possess and may confiscate and take ownership of property that was instrumental in the commission of a crime and used either by the owner or with the owner's knowledge and acquiescence in the use and commission of the crime.
 - (2) If a defendant is also the owner of seized property, the value of any confiscation resulting from the offense shall be separate from and not instead of any sentence imposed upon conviction of the offense.

4-40-050 Unlawful Searches and Seizures

- (a) Exclusion of Evidence
 - (1) Illegally obtained evidence shall not be admissible. After an unlawful search and seizure, whether as a result of an arrest with or without a warrant or as result of a search with or without a warrant, any person may make a motion for the return of the property and to exclude from use as evidence anything obtained by the unlawful search or seizure.
 - (2) If the Tribal Court finds that the evidence was obtained as the result of an illegal search and seizure, the evidence shall not be admissible at any hearing or trial. The evidence shall be returned to the owner or otherwise dealt with as provided in Section 4-40-040.
- (b) Basis for Exclusion - Any of the following are a basis for a motion to exclude evidence:
 - (1) That the property was illegally seized without warrant contrary to Section 4-40-030; or
 - (2) That the warrant was insufficient on its face in that it did not meet the requirements of Subsection 4-40-010 (b) (1); or
 - (3) That there was not probable cause to issue the warrant under Subsection 4-40-010(a); or
 - (4) That the warrant was illegally executed contrary to Subsection 4-40-010(c).
- (c) Raising Search and Seizure Objections - Objections to the admissibility of any evidence may be made in any of the following ways:
 - (1) By written motion to suppress illegally seized evidence, such motion to be made at least thirty (30) days prior to the date set for trial of the offense, which must be served upon the opposing party. Upon proper filing of a motion, a pre-trial exclusionary hearing shall be held to determine the admissibility of the suspect

evidence and the possible imposition of supplementary sanctions, as provided in Subsection 4-40-050(d); or

- (2) The Tribal Judge may inquire verbally of the parties at arraignment or immediately before trial as to whether there is any seized evidence which will be presented in the case, and if so, whether there is any objection to its admissibility. Argument may be heard on its admissibility at the time of inquiry or at a later date to be determined by the Judge; or
- (3) The trial may proceed until such time as the suspect evidence is offered and objection is made, at which time argument may be heard on its admissibility.

4-40-060 Search Warrants for other Jurisdictions

- (a) Requirement - Except as otherwise provided by Federal law or this Code, no search or seizure of any person or property within the jurisdiction of the Tribe shall take place except pursuant to a valid search warrant, issued by the Tribal Court, even though the offense involved may have occurred in another jurisdiction.
- (b) Application - An application by law enforcement officers of another jurisdiction be made in a form substantially complying with Section 4-40-010.
- (c) Issuance and Execution - If the application and accompanying documents give the Tribal Judge probable cause to believe that a criminal offense has occurred, over which the government requesting the search has jurisdiction, and that the search will discover property which will substantially aid the requesting government and which is stolen, or illegal to possess or is the instrumentality, evidence, or fruit of crime, then the Judge may issue a Tribal search warrant to be executed and returned as are other Tribal search warrants.
- (d) Other Tribal Jurisdiction Requests - Notwithstanding the provisions of Subsection (c), applications for search warrants by other Tribal jurisdictions may be made under this Section 4-40-060 for any crime that would be an offense under this Code.
- (e) Disposition of seized items - Items seized under Subsection (c) or (d) above may be relinquished by the Judge to the custody of the other jurisdiction upon the condition that the other jurisdiction agrees that the items shall be returned to the Tribe when no longer needed for the criminal prosecution. When returned, the items shall be disposed of in accordance with Section 4-40-040.

4-50 PROCEDURE BEFORE TRIAL

4-50-010 Confessions

- (a) Illegal Confessions - It shall be illegal to obtain a confession from an accused by means of force, threats or a denial of the rights listed in Sections 4-10-030 and 4-30-060 and elsewhere within this Code.
- (b) Excluding Confessions - Any confession illegally obtained may be excluded from use as evidence by procedures substantially the same as for excluding other evidence under Subsection 4-40-050(a), above, and the accused shall have the rights and remedies of Subsection 4-10-030 and 4-30-060 above.

4-50-020 Presence of the Defendant Required

The defendant shall be present at any bail hearing, at the arraignment, at every stage of the trial including the selection of the jury and the return of the verdict, and at the imposition of sentence, unless the Tribal Court orders the defendant removed for continued misconduct, in which case the proceeding may proceed in the defendant's absence.

4-50-030 Bail Release by Tribal Police Officer

- (a) Bail Schedule for Specific Offenses - The Chief Judge shall prepare a bail schedule, which establishes for specific offenses the amounts of money bail which an accused may pay and be released without appearing before the Judge to have bail set.
- (b) General Bail Schedule - The Chief Judge shall establish, for each class of offenses as listed in Subsection 4-70-070(a), a maximum bail to be paid for any offense of that class where no specific bail has been set.
- (c) Right to Release - Any Indian accused of an offense listed on the bail schedule shall be entitled to release upon payment of bail to the Clerk or other designated person.
- (d) Bail Hearing -
 - (1) Any arrested Indian who does not pay the bail established in the bail schedule shall be brought before a Tribal Judge for a bail hearing at the earliest regular court date following arrest. The bail hearing may be held electronically or telephonically.
 - (2) An Indian denied a bail hearing under Subsection (1) above shall earn credit for time served against any sentence that may follow from the arrest, at the rate of three (3) days earned for every day the bail hearing is delayed past the proper date.
 - (3) Any Indian arrested for an offense for which no bail has been set by schedule shall be brought before a Tribal Judge for a bail hearing within seventy-two (72) hours after arrest, or if no working day occurs in that time, then on the next working day.
 - (4) An Indian denied a bail hearing under Subsection (3) above shall earn the credit for the time served as described in Subsection (2) above.

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

- (a) Personal Recognizance -
 - (1) Every defendant who is not issued a citation or a summons and is not released under the bail schedule is entitled to a hearing on the issue of release as specified in Subsections 4-50-030(d)(1) and (3). He shall be eligible for release from custody on personal recognizance, that is, upon his written promise to appear for trial, unless the Judge determines that such a release would not reasonably assure the appearance of the person at the required times.
 - (2) Additional hearings to review bail may be held at any time, and persons released on bail under Section 4-50-030 above may apply to the Tribal Court for a bail hearing under this Section 4-50-040.
- (b) Maximum Bail - No bail shall ever exceed the maximum possible fine for all the offenses charged, whether bail is set for all the offenses charged, whether bail is set by schedule or at a bail hearing.

- (c) Factors in Setting Bail - In determining the risk of non-appearance and in setting bail, the Judge shall take into account the following factors concerning the accused:
 - (1) Whether detention appears reasonably necessary to prevent injury to property, a breach of the peace, or bodily harm to the accused or to another;
 - (2) His employment, residence, family ties, and other relationships to the community;
 - (3) The nature of the offense charged and his prior criminal record, including the record of prior release on recognizance or bail; and
 - (4) Any other factor bearing on the risk of willful failure to appear.
- (d) Conditions of Release - In addition to or instead of a release on personal recognizance or on money bail, the Tribal Judge may release the accused under any one or more of the following conditions, as necessary to assure the appearance of the accused at the required times:
 - (1) Release to the custody of a designated person or organization agreeing to assure the accused's appearance.
 - (2) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.
 - (3) Release after deposit by the accused or a bondsman of a bond; that is a partial or zero payment of bail plus a promise to pay the full bail if the accused fails to appear as ordered.
 - (4) Release after execution of an agreement by two (2) responsible members of the community to pay and forfeit the accused's bail if he shall fail to appear. The two members must execute a promissory note or other document guaranteeing payment.
 - (5) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.
- (e) Denying Bail - If the Judge has substantial reason to believe that no condition of release will reasonably assure the appearance of the accused, or that release of the accused is likely to pose a danger to the community, to the accused, or to any other person, the Judge may order detention of the accused.

4-50-050 Arraignment

- (a) Definition - Arraignment is the bringing of an accused before the Tribal Court, informing him of his rights and of the charge against him, and receiving his plea to the charge.
- (b) Time limits:
 - (1) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody within the time limits set for bail hearings by Subsection 4-50-030(d).
 - (2) A bail hearing to set or review bail may be held at the same time as arraignment.
 - (3) A person whose arraignment is delayed past the time set in Subsection (2) above shall have those rights and remedies provided in Subsections 4-50-030(d) (2) or (4).
- (c) Rights of Accused at Arraignment - Before an accused is required to plead to any criminal charge, the Judge shall:
 - (1) Read the complaint and the section of the Tribal Code the defendant is charged with violating, including the maximum authorized penalty.

- (2) Determine that the defendant understands the charge against him and the penalty which may be imposed.
 - (3) Provide the defendant with a copy of the complaint.
 - (4) Advise the defendant that he has the right to remain silent; the right to a jury trial upon oral or written request filed and served on the prosecutor on or before the date the Court schedules the trial date; the right to a representative at his own expense; the right to request an appointed representative free of charge if he is unable to obtain a representative at his own expense, he is charged with a Class A offense and the Tribe has a contract with an attorney to act as a public defender; and the right to have the arraignment postponed should he desires to consult with a representative.
 - (5) If the case is one where a jury trial is permitted under Section 4-60-020(a), specifically ask the defendant if he wishes a jury trial and record his answer for the record.
- (d) Receipt of Plea at Arraignment -
- (1) A defendant may plead either “guilty” or “not guilty” or “nolo contendere.” If the defendant refuses to plead or if the Tribal Court refuses to accept a plea of “guilty” the Tribal Court shall enter a plea of “not guilty”.
 - (2) If the defendant pleads “not guilty” the Judge may set a trial date, and shall establish conditions of bail prior to trial and inform the defendant in writing of those conditions.
 - (3) “Nolo contendere” means a no contest plea, which is a criminal defendant’s plea that, while not admitting guilt, the defendant will not dispute the charge.
- (e) Procedures Upon a Guilty Plea - If the defendant pleads “guilty” either at arraignment or at a later hearing, the following procedures shall be followed:
- (1) The Judge shall determine whether the plea of “guilty” is made voluntarily and because the defendant is actually guilty. The Judge shall personally address the defendant to assure that no person threatened the defendant, made improper promises, misled him as to the consequence of his plea, or otherwise improperly induced him to plead “guilty”. If coercion or other impropriety exists, the Judge shall reject a plea of “guilty” and enter a plea of “not guilty”.
 - (2) The Judge shall determine that the defendant understands the consequences of the plea, including the maximum penalties to which he may be subjected and the waiver of his rights to trial by jury, if any, to confront and cross-examine his accusers, and to avoid self-incrimination.
 - (3) The Judge may impose sentence immediately after a “guilty” plea, or may defer sentencing for a reasonable time in order to obtain any information he deems necessary for the imposition of a just sentence.
 - (4) Before a sentence is imposed, the defendant shall be allowed to address the Tribal Court and present facts relevant to sentencing.
- (f) Withdrawal of Guilty Plea
- (1) The Judge shall allow the defendant to withdraw a plea of “guilty” as a matter of right at any time before a sentence is imposed.
 - (2) The Judge, in response to a written motion, in his discretion may set aside a conviction upon a plea of guilty” and allow the defendant to withdraw his plea, when it appears that the interest of justice and fairness would be served by doing so.

- (g) Trial Date; Dismissal for Delay
 - (1) The date set for trial, and the actual beginning of trial, shall be within sixty (60) days of arrest unless the case is continued at the request of the defendant or for other very good cause. It is not sufficient for a continuance that the Tribal Court or the prosecution finds a delay convenient.
 - (2) Denial of the right to a speedy trial under this subsection (g) shall require dismissal of the case. An order for the dismissal of the action under this Subsection (g) is a bar to another prosecution for the same offense based on the same set of facts.
- (Subsection (g)(1) amended by Res. No. 09-F-057)

4-50-060 Pre-Trial Motions

- (a) Types of Motions - Before a trial, a defendant may make a motion to suppress evidence, a motion to dismiss the case, or any other motion appropriate to meet the ends of justice.
- (b) Motions to be in Writing - A pretrial motion shall be in writing, unless allowed to be made orally by the Tribal Court or by a specific provision of this Code.
- (c) Time for Motions - Motions made prior to trial shall be in writing and filed no less than fifteen (15) days prior to the date set for trial and shall be served on opposing counsel, except that motions asserting lack of Tribal Court jurisdiction may be made at any time. The Judge may permit an untimely motion to be made when good cause for the delay is shown.
- (d) Ruling Upon Motions - All pre-trial motions shall be heard and ruled upon as soon as possible unless good cause for the delay is shown.
- (e) Motion to Dismiss the Complaint -
 - (1) A motion to dismiss the case may be made for a violation of any provision of this Title 4 unless some other remedy is specifically provided for the violation.
 - (2) The decision to grant the motion to dismiss shall be discretionary with the Judge, based on the harm the violation has done to the defendant or to his ability to present his case, unless some other provision of this Title 4 absolutely requires the granting of the motion to dismiss.
 - (3) In addition to absolute requirements of dismissal stated elsewhere in this Title 4, the complaint must be dismissed in the following situations:
 - (a) Upon a finding that the complaint does not comply with Section 4-20-030.
 - (b) Upon a finding that the defendant has been charged or arrested without probable cause.
 - (c) Upon finding that the Tribal Court has no jurisdiction over the person or the offense.
 - (4) An order dismissing a complaint is not a bar to subsequent prosecution for the same offense unless:
 - (a) The dismissal is for a violation occurring after jeopardy has attached under Section 4-10-030(a) (10);
 - (b) This Title 4 specifically provides that dismissal for the particular reason involved shall be a bar; or
 - (c) The grounds for the dismissal were lack of Tribal Court jurisdiction over the person or the offense, except that prosecution may be renewed if jurisdiction is later acquired.

- (f) Motions for Disqualification of a Judge -
 - (1) Disqualification for interest in a case - Upon motion by any party prior to sentencing, a Judge shall disqualify himself and shall not hear any portion of a case, when the Judge has a blood or marriage relationship as described in Section 1-40-110(a) to either the defendant, the prosecutor, or a complaining witness, unless the conflict is consented to as provided in Section 1-40-110(b).
 - (2) Disqualification for bias -
 - (a) The defendant may move to disqualify the Judge at any stage of the proceeding prior to sentencing if in his opinion he cannot receive a fair and impartial hearing by reason of the bias or prejudice of said Judge.
 - (b) Upon a motion under this Subsection (f)(2), the Judge shall consider whether granting the motion would be in the best interests of justice. If the motion is granted, the Judge shall cease to participate in the case and shall call another Judge to hear the matter. An abuse of discretion in the denial of a motion shall require reversal on appeal.

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

- (a) Subpoenas: Issuance, Contents
 - (1) Upon request of any party or upon the Tribal Court's own initiative, the Tribal Court shall issue subpoenas to compel the testimony of witnesses, the presence of jurors or the production of books, records, documents, or any other physical evidence, which is relevant to the determination of the case and is not an undue burden on the person possessing the evidence. If empowered by the Tribal Judge, the Clerk may issue subpoenas.
 - (2) A subpoena shall bear the name of the person or description of the physical evidence being subpoenaed, the name of the person who has custody of and the obligation to deliver the physical evidence, the title of the proceeding, and the time and place where the person to appear or the evidence is to be produced.
- (b) Subpoenas: Service, Failure to Obey -
 - (1) A subpoena may be served at any place within the Tribal jurisdiction.
 - (2) A subpoena may be served by any Tribal police officer or other person appointed by the Tribal Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at this place of residence with any person sixteen (16) years of age or older who appears to reside there or to responsible recipient.
 - (3) Proof of service of the subpoena shall be filed with the Clerk by noting on the back of a copy of the subpoena, the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.
 - (4) In the absence of a justification satisfactory to the Tribal Court, a person who fails to obey a subpoena served within the Tribal jurisdiction, upon which proof of service has been filed under Subsection (b) (3) above, may be deemed to be in contempt of court and a bench warrant may be issued for his arrest.
- (c) Requests for Evidence outside the Jurisdiction -
 - (1) When a subpoena would be proper under Subsections (a) and (b), above, except that the person or items desired are outside the jurisdiction of the Tribal Court,

then upon the request of any party or upon the Tribal Court's own initiative, the Judge may issue a signed Request for Evidence.

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

4-50-080 Discovery and Inspection

- (a) Open Records of Prosecution and Defense - All records relating to statements or confessions of the defendant, or reports of physical, mental or other scientific tests or examinations relating to or performed on the defendant, when in the possession or control of a party reasonably obtainable by a party, shall be open to inspection and copying by any party. A request for such records must be in writing and submitted to the Tribal prosecutor through the Tribal Police after the Tribal prosecutor makes a formal charging decision.
- (b) List of Witnesses- If requested in writing by any other party, each party shall provide in writing to all other parties, at least five (5) working days before trial, the names of any witnesses upon whom the party intends to rely to provide an alibi or other evidence. Failure to provide a list of witnesses will prevent the use of such witnesses unless it can be shown that no unfairness in the case has resulted, or that other good cause exists. The Judge may order the trial delayed or make such other orders as will assure a just determination of the case.

4-60 TRIALS

4-60-010 Witnesses

- (a) Who May Be a Witness - Any person who understands his responsibility to tell the truth may be a witness.
- (b) Expert Witness and Interpreters -
 - (1) At any time in the criminal process, if scientific, technical, or other specialized knowledge will assist the Judge or jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by special knowledge, experience or training may testify to matters within the scope of that knowledge, experience, or training.
 - (2) At any time in the criminal process, the Judge may appoint an interpreter of his own selection and each party may provide its own interpreter at its own expense. An interpreter through whom testimony is communicated shall be put under oath to faithfully and accurately translate and communicate as required by the presiding Judge. With the consent of all parties, the trial Judge or Clerk may act as interpreter.
- (c) Immunity of Witness from Prosecution
 - (1) In any trial, the Judge, on motion of the prosecutor, may order that any witness be released from all liability to prosecution or punishment on account of any testimony or other evidence he may be required to produce.
 - (2) Such an order of immunity shall forever prohibit prosecution of the witness for any offense shown other evidence, except for perjury committed in whole or in

part by such testimony or other evidence, except for perjury committed in giving such testimony.

- (3) The Judge shall deny the motion under Subsection (c) (1), above, if it reasonably appears to the Judge that such testimony or evidence would subject the witness to prosecution under the laws of any jurisdiction.
- (4) Any witness who, having been granted immunity, refuses to testify or produce other evidence is in contempt of court. Any witness who is jailed for such contempt but who believes the motion should have been denied under Subsection (c) (3), above, may challenge the lawfulness of his imprisonment by Habeas Corpus, in accord with Section 4-10-040.
- (d) Fees - each witness answering a subpoena shall be entitled to a fee of ten dollars (\$10.00) for each day his services are required in court. In addition, the Judge may order the payment of reasonable travel and living expenses of the witnesses. All fees and expenses shall be paid by the Tribe.

4-60-020 Jury Trial

- (a) Right to a Jury - A defendant has a right to a jury trial in all cases where the punishment for the offense charged may include jail time, except if the prosecutor states before trial that the punishment for the particular case shall not include jail time and shall only seek a fine and/or restitution, in which case the Tribal Court shall not impose any jail time punishment.
- (b) Request for Jury Trial - Unless a defendant claims his right to a jury by oral or written request at arraignment or on or before the date the Court schedules the trial date, the case shall be tried by a Tribal Judge without a Jury.
- (c) Size of Jury - A jury shall consist of six (6) persons selected at a random from a list of eligible jurors prepared each year by the Fallon Business Council or other designated body as the Fallon Business Council shall direct. When a trial is expected to take more than four (4) days, an alternate juror or jurors may be selected, who shall replace any juror who is unable to perform his duties.
- (d) Eligible Jurors - An eligible juror is any person who is a Tribal member, resides within Churchill County, is an adult, and has not been convicted of a felony within the last (5) years.
- (e) Examination of Prospective Jurors - Prospective jurors shall be questioned for impartiality and other qualifications, either by the Judge, or if the Judge allows by each party.
- (f) Challenges to Jurors -
 - (1) During questioning of the jury, each party shall have the right to challenge an unlimited number of prospective jurors for cause on the basis of lack of eligibility, prejudice, or the demonstration of a likelihood that the prospective juror would not be able to make an impartial decision. Either party may challenge any prospective juror for cause at any time during the examination of prospective jurors. The Judge shall decide if a prospective juror is ineligible for cause.
 - (2) After examination and challenges for cause, when six prospective jurors and the alternates, if any, have been selected, each party shall have the right to a maximum of two (2) peremptory challenges of jurors. Peremptory challenges are requested to remove a prospective juror for which no reason need be given

and which the Judge must grant. If alternate jurors are chosen, each party shall have the right to one peremptory challenge of a prospective alternate juror. Neither of the two (2) regular peremptory challenges may be used against a prospective alternate juror.

- (3) Peremptory challenges, if used, shall be exercised one at a time, alternating between the prosecution and the defense, the prosecution going first. When all peremptory challenges desired to be used against the first group of prospective jurors have been exercised, replacements for those peremptorily challenged shall be called, who shall be examined for bias under Subsection (e) and who may be challenged for cause under Subsection (f) (1).
- (g) Swearing the Jury - After examination of prospective juror, challenges for cause, and the exercise of peremptory challenges, the Judge shall have the six jurors and the alternates, if any, swear to fully consider all evidence and to render an impartial verdict, and shall declare them a jury.
- (h) Jury Instructions - During the course of jury trial and at the end of trial, the Judge shall instruct the jury about the applicable law. The jury shall decide all questions of fact on the basis of that law.
- (i) Jury Verdict - The jury shall deliberate in secret and shall return a verdict of “guilty” or “not guilty”. All verdicts shall be by unanimous vote. The Judge shall render judgment in accordance with the jury verdict.
- (j) Hung Jury -
 - (1) If the jury is unable to reach a unanimous verdict, the Judge shall declare a mistrial and dismiss the jury.
 - (2) The case may be reset for trial upon an immediate oral motion by the prosecution or upon a written motion made within fifteen days, regardless of the provision against double jeopardy under Section 4-10-030(a)(10).
 - (3) If a motion to reset for trial is not made immediately, the defendant shall be released from custody and from all conditions of bail except personal recognizance. At the end of fifteen days, if the motion to reset has not been filed, the Judge shall dismiss the case, and the prosecution may not be renewed.
- (k) Jury Fees - Each juror shall be paid by the Tribe the sum of \$25.00 for each day of service. In addition, the Judge may order the payment by the Tribe of reasonable travel and living expenses to jurors.

Note: Section 4-60-020 amended by FBC Res. No. 18-F-207 on September 18, 2018.

Note: Section 4-60-030 Misconduct by the Prosecutor has been moved to Section 4-10-060.

4-60-040 Fees and Expenses

- (a) Payment by Tribe or Defendant -
 - (1) Fees and expenses established in this Title 4 and designated as payable by the Tribe shall be paid by the Tribe upon completion of the trial. However, such expenses, in an amount up to \$50.00, may be charged to the defendant as costs, if he is found guilty, and if the Judge finds that the imposition of costs is proper.
 - (2) Costs shall be enforced against a defendant in the same manner as a fine imposed upon conviction. No defendant shall be jailed because of his inability to pay

costs immediately, Defendants shall be given a reasonable time to pay costs or shall be allowed to make installment payments.

(b) **Payment by Complainant -**

- (1) If the Tribal Court, upon its own or the defendants motion, finds that a complaint was not filed in good faith but was filed with frivolous or malicious intent, it may order the complainant to pay the costs of the action, or to give security to pay costs within thirty (30) days.
- (2) If the complainant does not comply with such an order of the Tribal Court, judgment may be entered against him for the amounts of costs. Such judgments may be enforced and appealed from in the same manner as those rendered in civil actions.

4-60-050 Order of Trial

- (a) **Reading of Complaint and Receiving Defendant's Plea** - When the jury has been sworn, or if there is no jury, when the Judge is ready, the complaint shall be read, the defendant shall be advised of his right to change his plea at any time, and the defendant shall state his plea.
- (b) **Opening Statements** - The prosecution shall present an opening statement. The defendant or his representative may then make an opening statement or may reserve the statement to be made immediately prior to the presentation of evidence on behalf of the defendant.
- (c) **Presenting Evidence** -
 - (1) The prosecution shall first present its evidence in support of the charge, and when finished shall rest its case.
 - (2) The defendant then may offer evidence in his defense.
- (d) **Closing Arguments** - When all evidence has been presented, the prosecution may make the first closing argument. The defense may then make a closing argument. Finally the prosecution may make final arguments.
- (e) **Verdict by Judge or Jury** - At the end of closing arguments and after any motions the Judge allows, the Judge shall make his findings and decision. If there is a jury, the Judge shall instruct the jury as to the law either before or after closing arguments. The jury shall deliberate in secret, and shall report its decision of the Judge.
- (f) **Verdict** - Upon receiving the decision of the jury, the Judge shall enter judgment upon the verdict, if any or shall proceed as provided in Section 4-60-020(J1) if the jury is unable to agree.

4-60-060 Burden of Proof

- (a) **Proof beyond a Reasonable Doubt** – A defendant in a criminal proceeding is presumed to be innocent, and the charges against him must be proven beyond a reasonable doubt to find him guilty.
- (b) **Reasonable Doubt Defined** – A “reasonable doubt” is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more serious affairs of life. After considering all of the evidence, if the jurors have a sincere and lasting belief in the truth of the charge, there is not a reasonable doubt.

4-60-070 Rules of Evidence

In any trial pursuant to this Title 4, the Tribal Court shall apply the rules of evidence set forth in this Title as applicable to criminal proceedings.

4-60-080 Regulation of Conduct in Courtroom

(a) Disruptive Conduct -

- (1) Any person, including a defendant, who repeatedly interferes with the orderly course of a proceeding by disorderly or disruptive conduct, may be ordered removed from the courtroom, or cited for contempt, or both.
- (2) No such order or citation shall be issued until after the person has been fully and fairly informed that his conduct is unacceptable and has been warned of the consequences of continued misconduct.
- (3) A person who has been removed from the courtroom may return upon his promise of good conduct. If his misconduct continues after his return, the court may proceed as provided in Subsection (1) and (2) above.

4-60-090 Disability of a Judge

- (a) Trial by Another Judge - If the Judge presiding at the trial of a criminal action determines on his own motion that he is unable to proceed, or if the Fallon Business Council determines that a Judge is unable to proceed with a trial by reason of death, sickness, or other disability, any other Tribal Judge may proceed with the trial, upon certifying in writing as part of the record that he has familiarized himself with the record of the trial.
- (b) New Trial - If a substitute Judge feels that he cannot fairly proceed with the trial, a new trial may be ordered, notwithstanding the provisions of sub-section 4-10-030(a)(10).
- (c) Sentencing - If the only responsibility of the substitute Judge is the sentencing of the defendant, a new trial shall not be ordered, but the Judge may hold a sentencing hearing at which he will receive and consider evidence relating to sentencing. Any sentencing hearing shall comply with all procedural hearing shall comply with all
- (d) Delay – If the disability of the Judge and finding a replacement causes a delay in the trial of more than 10 days for a defendant in custody, the defendant shall be entitled to a bail hearing at the next court date.

4-70 PROCEDURE AFTER A VERDICT OR AFTER TRIAL

4-70-010 Judgment and Sentence

- (a) Judgment - In every case, upon a conviction, a verdict of “not guilty”, a failure to reach a verdict, or any other disposition of the case, the Judge shall sign a judgment which the Clerk shall file as part of the record. The Clerk shall give a copy of the judgment to the defendant.
- (b) Contents of Judgment - The judgment shall set forth at least:
 - (1) The names of the parties and the case number;
 - (2) The offense(s) charged;
 - (3) The plea;
 - (4) The disposition;

- (5) The dates of the alleged offense, the filing of the complaint, and the disposition;
 - (6) A brief summary of any findings;
 - (7) The verdict returned by the jury or Tribal Court;
 - (8) Terms of the sentence or discharge;
 - (9) Any other items specified in the Form of Decision required by Section 1-60-030 or any other provision in this Code;
 - (10) The signature of the Judge.
- (c) Sentence
- (1) Sentence shall be imposed as soon as possible, but in no case more than thirty (30) days after the date of conviction. Before sentencing, the Judge may commit the defendant to jail or may continue or alter the bail in accord with the procedures of Section 4-50-040. Before imposing sentence, the Judge shall address the defendant personally and ask him if he or his attorney/advocate wishes to make a statement or to present any information relevant to sentencing.
 - (2) At the time of sentencing, in a case which has gone to trial on a plea of “not guilty”, the court shall orally advise the defendant of his right to appeal.
 - (3) The determination and imposition of sentence shall be in accord with the provisions on sentencing set forth in Sections 4-70-070 through 4-70-120.
 - (4) A defendant held in jail pending the imposition of sentence shall earn credit toward the sentence equal to the number of days served. A defendant also may seek a Writ of Habeas Corpus under Section 4-10-040 to test the reasonableness of any delay in sentencing.
- (Subsection 4 amended by Res. No. 15-F-158.)

4-70-020 Appeal

- (a) Right to Appeal; Time for Filing - Subject to the provisions of Title 1, an appeal may be taken by any defendant convicted upon a plea of “not guilty”, or by any defendant who believes he has a right to appeal under Subsection 4-70-050(b), who files a written notice of appeal with the Clerk within thirty (30) days after the sentence is entered.
- (b) Bail on Appeal - Any defendant convicted of an offense under this Code, who has filed a timely appeal, shall be considered for release pending hearing of the appeal in accord with the procedures of Section 4-50-040.
- (c) Appeal by Prosecution - The prosecution has no right to appeal a judgment of acquittal regardless of the provisions of Section 1-90-020. The prosecution may appeal, or file for an appropriate writ, decisions upon pretrial motions and all other orders of the Tribal Court that allegedly deny the prosecution its rights under this Title 4 and may continue or renew a prosecution when doing so does not place the defendant in double jeopardy under Subsection 4-10-030(a)(10) and is not otherwise prohibited by this Title 4.

4-70-030 Granting of New Trial

- (a) Grounds - The Judge may grant a convicted defendant a new trial if justified on the grounds of newly discovered evidence, jury misconduct, or for other good reasons when a new trial will serve the purpose of justice.
- (b) Procedure - If the trial was by the Judge without a jury, the Judge may vacate any judgment filed, take additional testimony, and make a new disposition and a new judgment. If the trial was by jury, a new trial may be held either by Judge or jury, as requested by the defendant.

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

4-70-040 Illegal Sentences and Clerical Mistakes

- (a) Illegal Sentences – the Tribal Court may correct a sentence that is in violation of this Code at any time, on its own motion or on the motion of any party.
- (b) Clerical Mistakes - Clerical mistakes in judgments, orders or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the Tribal Court at any time and after such notice, if any, as the Judge orders.

4-70-050 Effect of Irregularities

- (a) Insubstantial Mistakes - Neither a failure to follow the rules of this Title 4 as to form or content of any pleading or proceeding, nor an error or mistake in the form or content, shall render a pleading or proceeding invalid, unless the defendant has been prejudiced or unless this Title 4 requires otherwise.
- (b) Denial of Rights and Prejudicial Error - Whenever the Tribal Court or any person denies to a defendant any right which is absolute under this Title 4, or commits any error, makes any mistake, or denies any right in such a way that is prejudicial to the defendant, the defendant shall have an immediate right of appeal. This right of appeal is in addition to any other remedy for the denial or error provided elsewhere in this Title 4.

4-70-060 Sentencing in General

- (a) General Applicability - A person found guilty of an offense under this Code shall be sentenced in accordance with the guidelines of Sections 5-90-010, 4-70-060, 4-70-070, 4-70-080, 4-70-090, 4-70-100, 4-70-110, and 4-70-120.
- (b) Applicability to Later Laws - Laws relating to Offenses enacted or adopted after the effective date of this Code shall be classified for sentencing purposes in accord with the provisions of Section 5-90-010.
- (c) Classes of Offenses - Offenses shall be designated as Class A, Class B, Class C, Class D, Class E offenses.
- (d) Unclassified Offenses - Any offense for which no penalty or sentence is specified or which is not specifically designated as a certain class of offense shall be treated for purposes of sentencing and punishment as a Class D offense.

4-70-070 Payment of Fines and Other Monies

- (a) Cash or Equivalent - Fines shall be paid in cash unless, upon request of the defendant, the Judge allows payment by good of like value, or by other means.
- (b) Installments - The Judge may, upon request of a defendant or upon his own motion, allow any fines or other required payments to be paid in installments or on conditions tailored to the means of the defendant.
- (c) Imprisonment after Failure to Pay - Imprisonment shall not be imposed as an automatic response to default in payment of a fine or other money due. Instead, the Tribal Court shall examine the reason for the default and may, if the default was willful or if justice

requires, impose an additional sentence of community service or imprisonment of no more than one (1) day for each one hundred dollars (\$100.00) of the required money remaining unpaid.

- (d) Civil Collection of Fines - Upon order of the Tribal Court, following a failure to make any required payments, the methods for collection of civil judgments shall be available to collect any unpaid money arising from a sentence.
- (e) Canceling Fines - When justice requires, the Judge may cancel a fine or any unpaid portion thereof, or any other money required to be paid, or may modify the terms and conditions of the required payment.
- (f) Use of Fines - Fines and other monies collected as a result of the commission of criminal offenses under this Code shall go into the general uncommitted funds of the Tribe and shall not be specifically designated for the expenses of law enforcement. This Subsection shall not apply to restitution ordered paid to the victims of an offense; restitution shall be paid and ordered by the Tribal Court, and shall be the property of the recipient.

4-70-080 Sentencing - Factors to be considered

- (a) Factors - The sentence imposed in each case should impose the minimum penalty consistent with the protection of the public, the seriousness of the offense, and the rehabilitative needs of the defendant. In determining the nature or duration of the penalty to be imposed, the Tribal Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, whether the offender has attempted make amends, and the state of the offender's mental health at the time of the offense and sentencing. The Tribal Court further shall give due consideration to the extent of the defendant's resources and the needs of his dependents.
- (b) Consecutive Sentences - Unless the Tribal Court otherwise orders, all sentences stemming from offenses occurring in the same transaction or course of conduct are presumed to run concurrently and not consecutively.
(Subsection (b) amended by Res. No. 15-F-158.)

4-70-090 Credit for Time Served

- (a) Amount of Credit Earned - A defendant subject to a judgment of imprisonment must be allowed credit for each day of incarceration prior to trial or pending sentencing. This does not include time served pursuant to a violation of a release order. No credit shall be allowed for time served on other charges and/or for other jurisdictions unless specifically provided by the Tribal Court.
- (b) Credit Pursuant to Modification – 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 a violation of a release order.
(Subsections (a) and (b) amended by Res. No. 15-F-158.)
- (c) When Computed - Credit as provided in this section should be computed and considered by the Tribal Court at the time of sentencing, and at other times as appropriate.

4-70-100 Probation

- (a) Power to Grant Probation - After a judgment of “guilty” has been entered where a sentence of imprisonment has been imposed, the Tribal Court may, in its discretion, suspend the serving of such sentence and release the defendant on probation, on that person’s signed pledge of good conduct for the duration of the probation.
- (b) Conditions of Probation - The Tribal Court may attach further and reasonable conditions of probation, including, but not limited to, a requirement that the defendant do one or more of the following:
 - (1) Serve a lesser period of imprisonment;
 - (2) Undergo available medical, psychiatric, or other rehabilitative treatment, and enter and remain in a specified institution when required for that purpose, for a period not to exceed the maximum possible imprisonment, as provided in Subsection 4-70-070(a);
 - (3) Refrain from all use of intoxicants, narcotics, or drugs unless taken under a doctor’s orders;
 - (4) Report as directed to a probation officer and permit the officer to visit his home;
 - (5) Remain within the jurisdiction of the Tribal Court, and to notify the probation officer of any change of address or employment;
 - (6) Not to have in his possession any firearm or other dangerous weapon unless granted permission by his probation officer; and
 - (7) Satisfy any other conditions reasonably related to the rehabilitation of the defendant and not incompatible with his freedom of conscience or unduly restrictive of his liberty.
- (c) Notice of Probation Conditions - The defendant shall be given a written statement of the requirements of his probation, stated with sufficient specificity to enable him to act accordingly.
- (d) Length of Probation - The length of the period of probation shall not exceed twice the maximum sentence for offense involved.

4-70-110 Revocation of Probation

- (a) Probation Violators to Serve Sentence - Any defendant who violates the terms of his probation may be required by the Judge to serve the sentence originally imposed or such part of it as the Judge determines is suitable, giving due consideration to all circumstances involved.
- (b) Arrest for Probation Violation - A defendant may be taken into custody for a violation of probation as follows:
 - (1) Upon a showing of probable cause that a violation has occurred, the Judge may summon the defendant to appear before him or may issue a warrant for his arrest; or,
 - (2) A Probation or law enforcement officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of probation, or that the defendant has committed another offense, may arrest him without a warrant.
- (c) Hearing on Probation Violation - Probation shall not be revoked except after a hearing, held following written notice to the defendant of the grounds on which the revocation is proposed. At the hearing, the defendant shall have the right to confront and cross-

examine the witnesses against him, to offer evidence in his defense, and to have a representative pursuant to Subsection 4-10-030(a)(3).

- (d) Time for Hearing - Whenever a defendant is taken into and held in custody for violation of probation conditions, he is entitled to a bail hearing as provided in Subsection 4-50-030(d), and to a hearing on the revocation of his probation within fifteen (15) working days of arrest, unless he requests further time to prepare his defense, or unless he is being held for the commission of another and separate offense.

4-70-120 Parole

- (a) Eligibility for Parole

- (1) Except as otherwise provided in this Section 4-70-120, a defendant sentenced to and serving a term of imprisonment of more than sixty (60) days shall be eligible to petition the Tribal Court for release on parole after having served one-half (1/2) of the time sentenced.
- (2) Parole may be granted as provided herein to a defendant who has demonstrated good behavior while imprisoned.
- (3) Parole shall not be considered or granted to a defendant who has been convicted of an offense involving the death or serious bodily injury of a victim of the offense, unless the defendant has been sentenced to consecutive sentences totaling in excess of one (1) year. In such cases, consideration for parole may be given only after the defendant has served one (1) year under such sentences.
- (4) The provisions for parole contained in this Section shall apply only to confinement in a jail and shall not apply to confinement ordered in a medical or rehabilitative facility.

- (b) Petition for Parole

- (1) Parole may be granted by the Judge on his own motion or on the petition of an imprisoned defendant.
- (2) Any defendant eligible for parole as set forth in Subsection (a), above, may petition the Tribal Court for parole. A petition may be made in any written form that will reasonably inform the Tribal Court of the defendant's desire for parole. Upon request, a defendant shall be allowed an opportunity to contact and meet with an attorney/advocate of his choice at the jail to aid in the preparation of the petition for parole. The completed petition shall be forwarded without unnecessary delay to the Tribal Court by the defendant's attorney/advocate or the jailer.

- (c) Consideration of Parole -

- (1) Upon receipt of a petition for parole, the Judge shall have the Clerk prepare a report stating the term for which the defendant was sentenced, the offenses charged, and the time served, the report may include a sworn statement from the appropriate jailer regarding the conduct of the defendant while in jail, and any other information deemed relevant by the Tribal Court.
- (2) Unless the defendant is not eligible for parole under the time requirements of Subsections 4-70-120(a)(1) and (3), above, the Judge shall schedule a hearing within fourteen (14) days of receipt of the petition, on the issue of defendant's eligibility for parole for good behavior under Subsection 4-70-120(a)(1).
- (3) A hearing shall be held at which the defendant shall have the right to present evidence and to be represented pursuant to Subsection 4-10-030 (a). The Tribal

Court may, after consideration of all relevant factors, grant parole to a defendant upon any or all of the conditions set forth in Subsection 4-70-110 for the granting of probation. Parole shall be granted for a period of time no longer than the defendant's remaining sentence.

- (4) The Judge's decision to grant or refuse parole shall be reviewable only for an abuse of discretion.
- (d) Procedures and Conditions of Parole - After parole is granted the defendant shall be subject to the same procedures and conditions as if he were originally placed on probation. The Judge shall have the power to modify or revoke the parole as provided in this Section 4-70-120 for defendants on probation.