



Walker River Paiute Tribe

1022 Hospital Road • P.O. Box 220 • Schurz, Nevada 89427

Telephone: (775) 773-2306

Fax: (775) 773-2585

**RESOLUTION OF THE GOVERNING BODY
OF THE
WALKER RIVER PAIUTE TRIBE
RESOLUTION NO. WR-49-2021**

BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE WALKER RIVER PAIUTE TRIBE THAT:

WHEREAS, the governing body of the Walker River Paiute Tribe (“Tribe”) is organized under the provisions of the Indian Reorganization Act of June, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of the economic and social welfare of its members, and

WHEREAS, the Tribe’s Constitution and By-Laws create the foundation for the governance of the Tribe and the framework for all Tribal operations and authorizes the Walker River Paiute Tribal Council to act on behalf of the Walker River Paiute Tribe and to promulgate ordinances for the purpose of safeguarding the peace and safety of residents of the Reservation, and

WHEREAS, pursuant to this power, the Tribal Council has created a Law & Order Code and other laws and ordinances to govern the conduct of people within the Tribe’s jurisdiction, and

WHEREAS, the Tribal Council has recognized the importance of reviewing and updating the Law & Order Code to ensure the Code meets the Tribe’s needs and best serves to protect the interests of the Tribe, its members and persons living, visiting and working on Tribal lands, and

WHEREAS, to meet this goal, the Tribal Council drafted a new Title 4 of the Law & Order Code titled “Criminal Procedure”, and

WHEREAS, the new proposed Title 4 was posted for at least thirty days to allow for public comment, the Tribal Council considered the comments and is now prepared to take action to approve Title 4, and

NOW THEREFORE BE IT RESOLVED, by the Walker River Tribal Council, the governing body of the Walker River Paiute Tribe, hereby adopts, approves and promulgates the attached

version of Title 4 titled "Criminal Procedure" of the Tribe's Law & Order Code, which shall go into effect on June 1, 2021, and which shall supersede and replace any and all prior versions of Title 4, and

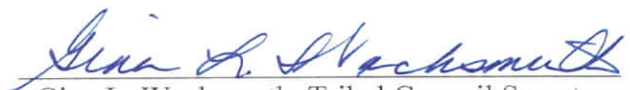
BE IT FURTHER RESOLVED, that the Walker River Tribal Council hereby directs that the Tribal Court make Title 4 of the Law & Order Code available to those Tribal members and attorneys/advocates who request a copy. The expense for each copy will be at the cost of the requester, and

BE IT FURTHER RESOLVED, that the Tribal Chairwoman or her designee is hereby authorized to effectuate any and all administrative actions necessary for the implementation of this resolution and the approved Title 4 of the Law & Order Code, and

BE IT FINALLY RESOLVED, that nothing in this resolution shall be construed as a waiver of the sovereign immunity of the Tribe.

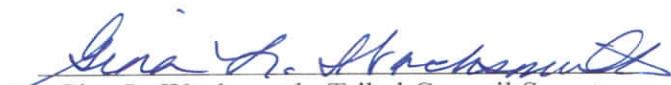
CERTIFICATION

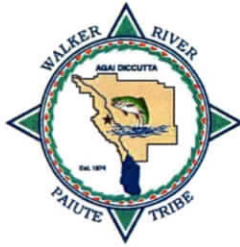
It is hereby certified that the foregoing resolution of the Walker River Paiute Tribal Council of the Walker River Paiute Tribe composed of seven members, of whom 7, constituting a quorum were present a meeting held on the 29th day of April 2021, and that the foregoing resolution was adopted by the affirmative voter of 6-FOR and 0-AGAINST and 0-ABSTENTIONS, pursuant to the authority contained in Article VI, Section I (e), of the Constitution and Bylaws of the Walker River Paiute Tribe of Nevada, approved on March 26, 1937.


Gina L. Wachsmuth, Tribal Council Secretary
WALKER RIVER PAIUTE TRIBE

RE-CERTIFICATION

It is hereby certified that the foregoing resolution of the Walker River Paiute Tribal Council of the Walker River Paiute Tribe composed of seven members, of whom 6, constituting a quorum were present a meeting held on the 8th day of July 2021, and that the foregoing resolution was adopted by the affirmative voter of 5-FOR and 0-AGAINST and 0-ABSTENTION, pursuant to the authority contained in Article VI, Section I (e), of the Constitution and Bylaws of the Walker River Paiute Tribe of Nevada, approved on March 26, 1937.


Gina L. Wachsmuth, Tribal Council Secretary
WALKER RIVER PAIUTE TRIBE



Walker River Paiute Tribe
Tribal Court

Title 4

Criminal

Procedure

Title 4 Approved by Walker River Tribal Council on April 29, 2021
Resolution No.: WR-49-2021
Effective: June 1, 2021

Post Office Box 225, Schurz, NV 89427 * Telephone: (775) 773-2232 • Fax: (775) 773-2333

LAW AND ORDER CODE
TITLE 4 – CRIMINAL PROCEDURE

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LAW AND ORDER CODE

TITLE 4

CRIMINAL PROCEDURE

4-10 GENERAL PROVISIONS

4-10-010 Definitions –

- (a) Accused: A defendant, or any other person 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) Code: The Walker River Paiute Tribe's Law and Order Code, which this Title is a part.
- (d) Defendant: A person 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.
- (e) 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.
- (f) Felony: Any crime punishable by a fine of more than five thousand dollars (\$5,000.00), or imprisonment for more than one (1) year or both, established by some jurisdiction other than the Tribe.
- (g) 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.
- (h) He or Him: Pronouns typically referring to a male. In this Code, it shall also mean any person and is interchangeable to she, her, it, they, etc.
- (i) Instrumentality: Anything used to commit or aid in the commission of an offense.
- (j) Motion: An oral or written request of the Court for an order stating the grounds upon which it is made, setting forth the relief or order sought, and if necessary, supported by sworn written statements.
- (k) Offense: Any act or failure to act which is prohibited by this Code and which is made punishable by fine, imprisonment, or both.

- (l) Party: The defendant or defendants, or the Tribe; if in the plural, the defendant or defendants and the Tribe.
- (m) Probable Cause: Reasonably reliable prior knowledge of facts and circumstances that would justify a careful and cautious person in his beliefs or acts.
- (n) Prosecutor: Any person who presents the case against the defendant. The prosecutor may be any person designated by the Tribal Council or the Chief Tribal Judge, including a complaining witness or a Law Enforcement officer who is a complaining witness if designated by the Chief Tribal Judge. 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.
- (o) Representative: Any person with authority to speak or act on behalf of another pursuant to Section 1-80-010 of this Code.
- (p) Law Enforcement Officer: Any person commissioned by resolution of the Tribal Council to enforce all of the Tribal laws, or any Law Enforcement officer employed by the Bureau of Indian Affairs. This does not include persons holding limited commissions from the Tribal Council to enforce only portions of the Tribe's laws; such persons shall have all the powers of a Law Enforcement officer only when enforcing laws within the scope of their commission.

4-10-020 Time Limit for Commencing Criminal Prosecution – Criminal prosecution shall commence within one (1) year from the commission of an offense. Time during which the accused is outside the jurisdiction of the Court, for whatever reason, shall not be included in this one (1) year time limit.

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. However, the Tribal Court may prepare a list of volunteer representatives, and upon request of the defendant or on its own motion may appoint a volunteer representative

in any case where the defendant has no representative of his choice.

- (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 Title 6.
 - (6) To use subpoenas to compel the attendance of witnesses on his own behalf, where such witnesses are within the jurisdiction of the 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 Trial Court and to have such an appeal heard within six (6) months of the date of appeal.
 - (10) Not to be twice put in jeopardy for the same offense. Jeopardy, 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) The 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 Law Enforcement officer, or any other person, in violation of the Law and

Order 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 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 the Law and Order Code alleged to be violated.
 - (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 a 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 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 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 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.
- (c) 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.

4-20 COMPLAINTS AND INITIATION OF PROSECUTION

4-20-010 Complaint Required – All criminal prosecutions for violation of this Code shall be initiated by a complaint filed by the prosecutor (as defined herein).

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 an offense.

4-20-030 Contents of a 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.
- (d) The oath and signature of the complaining witness, sworn before a Tribal Judge, the Court Clerk, a Law Enforcement officer, or a person designated by the Tribal Judge. The complaining witness may be a Law Enforcement 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.

4-20-040 Assistance in Preparing Complaint – The Chief Judge of the Tribal Court may designate by court order individuals who shall be available to assist persons in drawing up complaints, so long as Court personnel are not designated as individuals that may assist with drawing up complaints.

4-20-050 Filing Complaint – Complaints shall be filed and submitted without unnecessary delay to the Court Clerk, and then the Court Clerk shall submit it 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 Law Enforcement officer to arrest the named accused; or

- (b) Issue, for service upon the accused, a summons commanding the accused to appear before the 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 Court immediately for review as to whether there is probable cause to hold the accused. 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, SUMMONSES, AND CITATIONS

4-30-010 Arrest by Law Enforcement Officer - A Law Enforcement officer may arrest an accused 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 warrant has been issued and is outstanding;
- (b) The offense is committed in the presence of the arresting officer; or
- (c) The officer knows for a 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 Citizen – A private citizen may arrest any person when:

- (a) He has probable cause to believe that an offense is being committed or attempted in his presence by the person to be arrested. Or
- (b) When a felony in another jurisdiction has in fact been committed and he has probable cause to believe that the person to be arrested has committed it.

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 Law Enforcement officer – A Law Enforcement officer may leave the Tribe's jurisdiction in fresh pursuit of a person suspected of committing a Class A or B offense.
- (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 a person in order to arrest him on the ground that he is believed to have committed a felony in another jurisdiction, shall have the same authority to arrest and hold such person in custody as the officer had in his own jurisdiction. The suspect need not be held within the

reservation boundaries, but the arresting officer immediately shall advise a Law Enforcement officer of the arrest. The Law Enforcement officer shall make a written record and shall inform the Tribal Court.

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.
 - (5) The signature of the issuing Judge.
- (c) Length of Time Warrant is Valid – An arrest warrant is valid and outstanding for one (1) 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 7:00 a.m. and 9:00 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 any 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.

- (e) That if he is unable to obtain a representative of his own choice he may ask the Judge to appoint a volunteer representative to assist him, and that if a volunteer representative is appointed, he has the right to consult in private with that representative before making any statements or answering any questions.
- (f) That he has the right to make telephone calls as specified in Section 4-30-070.

4-30-070 Telephone Calls –

- (a) Any person 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) 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.

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.
 - (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 Tribal 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 Tribal Judge may prepare a list of those offenses for which citations may be issued.
- (b) Issuing Citations –
 - (1) Any Law Enforcement officer who apprehends an Indian for an offense for which a citation may be issued shall issue a citation to the person and release the person. The officer shall file the citation instead of 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 person to either appear before the Tribal Court at a stated time and place to answer to the charge or to post and forfeit bail as provided in 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. Persons 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.
 - (2) If a person to whom a citation was issued neither pays and forfeits bail nor appears, a warrant shall be issued for his arrest.

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 Law Enforcement 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 Law Enforcement 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 person to be searched and the property to be seized.

(D) Command the officer to search forthwith the person or place named for the property specified.

(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.

(c) Execution and Return of Search Warrant –

(1) Warrants of search and seizure shall be executed only by Law Enforcement 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 4-40-050, relating to unlawful searches and seizures.
- (3) In the execution of any search warrant, no persons, or places other than those specifically described in the warrant shall be searched, and no property other than that specified in the warrant shall be seized. However, the executing officer may seize any property listed in subsection 4-40-010(a)(2) if such property is in plain view or otherwise is plainly noticeable to the physical senses of the officer.
- (d) Liability of Police Officers and Others – Any person who gives false or misleading oral testimony to obtain a search warrant pursuant to this Section 4-40-010, shall be criminally liable for official misconduct under Title 5.

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 Law Enforcement 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 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 Law Enforcement 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 Law Enforcement 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 Law Enforcement 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 official misconduct under Title 5.

4-40-030 Searches Without a Warrant –

- (a) Policy Favors Warrant – 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 Law Enforcement 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 person himself and the immediate surrounding area within which the person arrested might find a weapon before the officer could protect himself, or might destroy evidence before the officer could prevent it.
 - (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 person to be searched may be armed and dangerous, but any 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 Pat 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 – Law Enforcement Officers 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 a 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 (d) 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 (d), below.
 - (4) Property confiscated under subsection (d) shall be either destroyed, sold at public auction, retained for the benefit of the Tribe, or otherwise lawfully disposed of as ordered by the Court.
 - (5) The Clerk of the Court 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 a five (5)

day notice to all persons claiming ownership of the property on which a hearing is to be held, and no more than four months after the criminal trial of the matter.

(d) Confiscation –

- (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 a 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 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 4-40-020 or Section 4-40-030;
- (2) That the warrant was insufficient on its face in that it did not meet the requirements of subsection 4-40-010(b)(1);
- (3) That there was not probable cause to issue the warrant under subsection 4-40-010(a) or 4-40-020(b); 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 five (5) days prior to the date set for trial of the offense. 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);
 - (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.
- (d) Supplementary Remedies for Illegal Searches and Seizure – Upon a finding of illegal search and seizure, the Tribal Judge shall consider the degree of police misconduct and the seriousness of the crime charged and may, in addition to the exclusion of illegally obtained evidence, impose any one or more of the following sanctions:
- (1) Recommend to the Tribal Council that the offending officer be suspended for a period not to exceed thirty (30) days.
 - (2) Recommend the removal of the offending officer from the police force.
 - (3) Order the filing of criminal trespass or other charges against the offending officer.
 - (4) Recommend that the defendant file a civil suit for trespass or other damages.

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 for a search warrant within the Tribal jurisdiction shall 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 felony has occurred, over which the government requesting the search has jurisdiction, and that the search will discover property which will substantially aid the requesting government and which is stolen, or illegal to possess, or is the instrumentality, evidence, or fruit of a crime, then the Judge shall issue a Tribal search warrant to be executed and returned as are other Tribal search warrants.
- (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 agree 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.
- (f) Reciprocity for Search Warrants – None of the provisions of this Section 4-40-060 shall apply on behalf of any jurisdiction unless that jurisdiction consents in writing to apply its search warrant procedures on behalf of the Tribe.

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 fraud, 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 Section 4-40-050, above, and the accused shall have all the rights and remedies of Subsection 4-40-050(d) 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 Court orders the defendant removed for continued misconduct, in which case the proceeding may proceed in the defendant's absence. However, the defendant may, by choice, be absent from any portion of the proceeding other than arraignment and sentencing so long as a representative of the defendant appears and the defendant's absence does not delay or interfere with the orderly progress of the case.

4-50-030

Bail Release by Law Enforcement Officer –

- (a) Bail Schedule for Specific Offenses – The Chief Tribal Judge may prepare a bail schedule, which establishes for specific offenses the amounts of bail which an accused may pay and be released without appearing before the Judge to have bail set.
- (b) General Bail Schedule – The Chief Tribal Judge may establish, for each class of offenses as listed in Section 4-70-070, a maximum bail to be paid for any offense of that class where no specific bail has been set.
- (c) Right to Release – Any person accused of an offense listed on the bail schedule shall be entitled to release upon payment of bail to the Clerk of the Court or other designated person.
- (d) Bail Hearing –
 - (1) Any arrested person 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.
 - (2) A person 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 person 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) A person denied a bail hearing under subsection (3) above, shall earn the credit for 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 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 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 offenses charged, whether bail is set by schedule or at a bail hearing.
- (c) Factors in Setting Bail – In determining the risk of nonappearance 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.
 - (4) Any other factors 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.
 - (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.

Arrestment –

- (a) Definition – Arrestment is the bringing of an accused before the Court, informing him of his rights and of the charge against him, and receiving his plea to the charge.
- (b) Time Limits –
 - (1) Arrestment 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 arrestment.
 - (3) A person whose arrestment 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 Arrestment – 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; for certain cases, the right to a jury trial upon oral or written request not less than five days before the date set for trial; the right to a representative or appointment of a volunteer, pursuant to section 4-10-030(a)(3), free of charge if he is unable to obtain a representative at his own expense; and the right to have the arrestment postponed should he desire 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 Arrestment –
 - (1) A defendant may plead either "guilty" or "not guilty." If the defendant refuses to plead or if the Court refuses to accept a plea of "guilty," the Court shall enter a plea of "not guilty."

(2) If the defendant pleads "not guilty" the Judge shall set a trial date and shall establish conditions of bail prior to trial and inform the defendant in writing of those conditions. At the arraignment hearing, the Judge shall also address all pre-trial matters, including but not limited to, briefing and discovery schedules, administrative matters, settlement offers, pre-trial motions, settling undisputed facts, etc. There shall be no additional pre-trial hearing unless good cause exists at the discretion of the Judge.

(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 a 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 Court and to 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 interests 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 forty-five (45) days of arrest unless the case is continued at the request of the defendant or for other good cause. It is not sufficient for a

continuance that the Court or the prosecution finds a delay convenient. In no circumstance, shall the actual beginning of trial be later than 120 days from the date of arrest, unless good cause exists at the sole discretion of the Judge.

- (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.

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 pre-trial motion shall be in writing unless allowed to be made orally by the Court at the arraignment/pre-trial hearing or by a specific provision of this Code.
- (c) Time for Motions – Motions made prior to trial shall be made no less than five (5) days prior to the date set for trial, except that motions asserting lack of Tribal Court jurisdiction may be made at any time. The Judge may permit an untimely motion to be made when good cause for the delay is shown.
- (d) Ruling Upon Motions – All pre-trial motions shall be heard and ruled upon as soon as possible unless for good cause the Judge postpones the hearing and ruling until trial or another time.
- (e) Motion to Dismiss the Complaint –
 - (1) A motion to dismiss a complaint may be made upon the following grounds:
 - (A) Failure to arraign within one year, Section 4-10-020.
 - (B) Denial of a defendant's rights under Section 4-10-030.
 - (C) A defective complaint, Section 4-20-030.
 - (D) Failure to file a complaint before or at the time of arraignment, Section 4-20-070.
 - (E) A finding that the defendant has been charged or arrested without probable cause, Sections 4-20-060, 4-30-010, and 4-30-020.
 - (F) Violation of the fresh pursuit rules, Section 4-30-030.

- (G) A defect in the warrant or its service, Section 4-30-040, or the summons, Section 4-30-080, or the citation, Section 4-30-090.
 - (H) A denial of the defendant's rights at the time of arrest, Section 4-30-060.
 - (I) A violation of the bail procedures, Sections 4-50-030 and 4-50-040.
 - (J) A violation of any other provision of this Title 4.
- (2) The decision to grant the motion to dismiss shall be discretionary with the Judge, based on the harm the violation has done to the defendant or to his ability to present his case, unless some other provision of this Title 4 absolutely requires the granting of the motion to dismiss.
 - (3) In addition to absolute requirements of dismissal stated elsewhere in this Title 4, the complaint must be dismissed in the following situations:
 - (A) Upon a finding that the 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 a finding that the Court has no jurisdiction over the person or the offense.
 - (4) An order dismissing a complaint is not a bar to subsequent prosecution for the same offense unless:
 - (A) The dismissal is for a violation occurring after jeopardy has attached under Section 4-10-030(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 – No Judge shall hear or determine any case when he has a direct interest in the outcome of such case or where he is related by blood or marriage to one of the parties as: husband, wife, brother, sister, father, mother, grandfather,

grandmother, grandson, granddaughter, son, daughter, uncle, aunt, nephew, or niece. Any party or the Judge may raise the question of conflict of interest. If a conflict of interest exists, the Judge is disqualified, and another Judge shall hear the matter. When grounds of disqualification exist, denial of the motion shall require reversal on appeal.

(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 that 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 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 Court 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 is 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 Law Enforcement officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his place of residence with any person sixteen (16) years of age or older who appears to reside there or to be a responsible recipient.

(3) Proof of service of the subpoena shall be filed with the Court 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 served the subpoena.

(4) In the absence of a justification satisfactory to the 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 persons or items desired are outside the jurisdiction of the Court, then upon the request of any party or upon the Tribal Court's own initiative, the Judge may issue a signed Request for Evidence.

(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 or reasonably obtainable by a party, shall be open to inspection and copying by any party.

(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 any party or on his own initiative, may order that any witness be released from all liability to prosecution or punishment on account of any testimony or other evidence he may be required to produce.
- (2) Such an order of immunity shall forever prohibit prosecution of the witness for any offense shown in whole or in part by such testimony or other evidence, except for perjury committed in giving such testimony.
- (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 another 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 and/or prospective juror excluding actual juror answering a subpoena and/or jury summons issued by the Court shall receive a fee of \$20.00 and that an actual juror shall receive \$30.00 for each day his services are required in Court. If sufficient funds are available, 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 via oral or written request at arraignment or at least five (5) days before the date set for trial, 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 random from a list of eligible jurors prepared each year by the Council or other body, as the Council shall direct. When a trial is expected to take more than four (4) days, an alternate juror or jurors may be selected, who shall replace any juror who is unable to perform his duties.
- (d) Eligible Jurors – An eligible juror is any person who resides within the Tribal jurisdiction, is an adult, and has not been convicted of a felony within the last five (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 requests to remove a prospective juror for which no reason need be given and which the Judge must grant. If alternate jurors are chosen, each party shall have the right to one peremptory challenge of a prospective alternate juror. Neither of the two (2) regular peremptory challenges may be used against a prospective alternate juror.
 - (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).

(4) Any remaining peremptory challenges may be exercised against the new prospective jurors chosen under subsection (f), above, and so on until a jury and alternates, if any, are chosen.

(g) Swearing the Jury – After examination of prospective jurors, 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 a written motion made within fifteen (15) days, regardless of the provisions 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 (15) days, if the motion to reset has not been filed, the Judge shall dismiss the case, and prosecution may not be renewed.

4-60-030 Misconduct by the Prosecutor – If the prosecutor purposely does or causes to be done any act of misconduct intended to prejudice the case against the defendant, the Court shall dismiss the case upon its own or the defendant's motion, and prosecution may not be renewed.

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 installment payments.

(b) Payment by Complainant –

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

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

4-60-050 Order of Trial –

(a) Reading 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.

(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, or if there is a jury, the Judge shall instruct the jury as to the law, the jury shall deliberate in secret, and shall report its decision to 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(j) 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. This means that the evidence presented and the arguments put forward by the prosecution establish the defendant's guilt so clearly that they must be accepted as fact by any rational person. Stated another way, if the jury or Judge have a reasonable doubt as to the defendant's guilt, the jury or judge should pronounce the defendant not guilty. Conversely, if the jurors or Judge have no doubt as to the defendant's guilt, or if their only doubts are unreasonable doubts, then the prosecutor has proven the defendant's guilt beyond a reasonable doubt and the defendant should be pronounced guilty.
- (b) Reasonable Doubt Defined – A "reasonable doubt" is one based on reason. It is not a 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 the evidence, if the jurors have a reasonable doubt about something, then he or she should pronounce the defendant "not guilty."

4-60-070 Rules of Evidence –

In any trial pursuant to this Title 4, the Court shall apply the rules of evidence set forth in Title 6 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 subsections (1) and (2) above.
- (b) News Coverage – The taking of photographs in the courtroom during judicial proceedings, or the radio or television broadcasting of judicial proceedings from the courtroom, shall not be permitted, unless there are

special circumstances, all of the parties' consent, and the Judge feels that the purposes of justice will not be thwarted.

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 Walker River Tribal 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 subsection 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 requirements of this Title 4.
- (d) Delay – If the disability of the Judge and finding a replacement causes a delay in the trial of more than thirty (30) days for a defendant in custody or of more than sixty (60) days for a defendant not in custody, the case shall be dismissed, and the prosecution cannot be renewed.

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 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 representative 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 4-70-180.
- (4) A defendant held in jail pending the imposition of sentence shall earn credit toward the sentence imposed at the rate of three (3) days for every day served, for all time in excess of ten (10) days served while awaiting sentencing. A defendant also may seek a Writ of Habeas Corpus under Section 4-10-040, to test the reasonableness of any delay in sentencing.

4-70-020 Appeal –

(a) Right to Appeal; Time for –

- (1) Subject to the provisions of Title 1, an appeal may be taken by any person convicted upon a plea of "not guilty," or by any person who believes he has a right to appeal under subsection 4-70-050(b), who files a written notice of appeal with the Clerk of the Court within thirty (30) days after judgment is filed. An appeal may be filed immediately after a verdict of "guilty." The defendant need not wait for sentencing or judgment.

(2) The time for appeal shall not begin to run against a defendant convicted upon a plea of "not guilty" until a reasonable effort has been made to serve the defendant with a copy of the judgment.

- (b) Bail on Appeal – Any person 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 decisions upon pretrial motions and all other orders of the Court that allegedly deny the prosecution its rights under this Title 4 and may continue or renew a prosecution when doing so does not place the defendant in double jeopardy under subsection 4-10-030(a)(10) and is not otherwise prohibited by this Title 4.

4-70-030 Granting a 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 a 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 a 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 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 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 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) A person found guilty of an offense under this Code shall be sentenced in accordance with this part.
- (b) Penal laws enacted or adopted after the effective date of this Code shall be classified for sentencing purposes in accordance with the provisions of this part.

4-70-070 Designation of Offenses –

Offenses are designated as Class A offenses, Class B offenses, Class C offenses, Class D offenses and Class E offenses.

4-70-080 Class of Offense Not Specified –

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 E offense.

4-70-090 Use of Deadly Weapon, Additional Penalty –

- (a) Any person who uses a firearm, or other deadly weapon in the commission of a crime, whether or not its possession is pursuant to the appropriate permit, shall be punished by a term of imprisonment not less than the maximum sentence for a Class A offense, without the possibility of parole or a suspended sentence.
- (b) This section does not create any separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.
- (c) The provisions of subsection (a) and (b) do not apply where the use of a firearm or other deadly weapon is a necessary element of such crime.

4-70-100 Habitual Criminal –

A person convicted under this Code of a Class A offense who has previously been convicted of Class A offenses three or more times is a habitual criminal and shall be punished by the maximum punishment available for the Class A offense charged without the possibility of parole. Conviction as a habitual criminal operates only to increase, not to reduce, the sentence otherwise provided by this Code for the principle offense.

4-70-110 Sentencing – General Principles –

It is within the Court's discretion to impose sentence within the parameters set forth in this Code. In imposing a sentence, the Court should consider the gravity of the offense, the need to protect the public, and the rehabilitative needs of the defendant.

4-70-120 Sentences and Combination of Sentences; –

(a) The Court may, as provided in this part, sentence a person adjudged guilty of an offense to any one of the following sentences or a combination of such sentences:

- (1) A sentence for a Class of Offenses as outlined in Section 4-70-130.
- (2) Community service.
- (3) Payment of a fine not outlined in Section 4-70-130.
- (4) Removal from and/or disqualification of public or private office, but only if such is specifically provided for as a punishment for conviction of a specific offense.
- (5) Probation and/or suspension of sentence on such terms and conditions as the Court may direct.
- (6) Imprisonment or confinement, either full or part time.
- (7) Required participation and attendance in wellness treatment and/or program, including but not limited to, mental health treatment, drug and alcohol abuse programs, fatherhood or motherhood programs, etc.
- (8) Reporting of traffic violations to the State of Nevada Department of Motor Vehicles, as authorized by law.
- (9) Prohibit a person from driving a motor vehicle on the Tribe's Reservation.
- (10) Any other reasonable sentence as deemed necessary and prudent by the Judge.

(b) In addition, the Court shall have the authority to order a person adjudged guilty of an offense to pay any or all the following amounts or do the following acts:

- (1) Pay Court costs not to exceed one thousand dollars (\$1,000.00);
- (2) Pay any penalty provided by law; or

(3) Pay money damages or other forms of restitution, surrender property, or perform any other act for the benefit of any person or party injured personally or in his property by the person adjudged guilty, provided such injuries are fairly attributable to the act or failure to act constituting the offense for which guilt was adjudged. This part shall not deprive the Court of authority to cite for contempt, cancel or suspend a license, forfeit property, or do any other act or make any other order authorized by law.

(c) This part shall not deprive the Court of authority to cite for contempt, cancel or suspend a license, forfeit property, or do any other act or make any other order authorized by law.

4-70-130 Sentences for Classes of Offenses –

(a) A person convicted of a Class A, B, C, D, or E offense may be sentenced as follows:

(1) If the offense is a Class A offense, to a term of imprisonment not to exceed one (1) year, to a fine not to exceed five thousand dollars (\$5,000.00), or to both imprisonment and a fine. Additionally, a requirement of community service not to exceed two hundred (200) hours shall be issued.

(2) If the offense is a Class B offense, to a term of imprisonment not to exceed nine (9) months, to a fine not to exceed five thousand dollars (\$5,000.00), or to both imprisonment and a fine. Additionally, a requirement of community service not to exceed one hundred (100) hours shall be issued.

(3) If the offense is a Class C offense, to a term of imprisonment not to exceed six (6) months, to a fine not to exceed five thousand dollars (\$5,000.00), or to both imprisonment and a fine. Additionally, a requirement of community service not to exceed sixty (60) hours shall be issued.

(4) If the offense is a Class D offense, to a term of imprisonment not to exceed thirty (30) days, to a fine not to exceed five thousand dollars (\$5,000.00), or to both imprisonment and a fine. Additionally, a requirement of community service not to exceed forty (40) hours shall be issued.

(5) If the offense is a Class E offense, to a fine not to exceed three hundred dollars (\$300.00), without imprisonment.

(b) In addition to the sentences listed in this part, any further punishment or penalty specifically established for a particular offense also may be

imposed.

- (1) Considerations for the Judge when imposing additional punishments or penalties shall also include the defendant's previous conviction(s), the seriousness of the offense(s), and any other reasonable factors related to the offense.

4-70-140 Payment of Fines and Other Monies –

- (a) Fines shall be paid in cash, money orders or checks.
- (b) The Court may in its discretion, allow that any fines or other required payments be paid in installments and on conditions tailored to the means of the defendant.
- (c) Upon default to pay a fine or other money as required the Court may in its discretion impose an additional sentence of incarceration of no more than one (1) day for each ten dollars (\$10.00) of the required money left unpaid.
- (d) Following ascertainment of the reasons for failing to make any required payment the Court may, in its discretion, order the execution and sale of personal property owned by the defendant as provided in Title 2 of the Law and Order Code. The Court also may in its discretion cite the defendant for Failure to Obey a Lawful Order of the Court as provided under this Code.
- (e) The Court in its discretion may revoke or cancel a fine or any unpaid portion thereof, or any other monies required to be paid, or may modify the terms and conditions of payment.

4-70-150 Concurrent and Consecutive Sentences –

- (a) Unless the Court shall direct otherwise in its pronouncement of sentence, all sentences shall run consecutively and not concurrently.
- (b) The Court may consider the gravity and circumstances of the offenses and the history, character, and rehabilitative needs of the defendant, as well as the need to protect the public in determining whether to impose concurrent sentences.
- (c) Whenever the Court in its discretion imposes concurrent sentences the greater sentence shall be the term to be served with all lesser sentences merging therein, or, if equal sentences are imposed, they shall merge into one sentence, but in no event, shall the imposition of one sentence cut short the time to be served on another sentence unless the Court specifically directs that such be the result.

4-70-160

Credit –

- (a) Credit against a term of imprisonment imposed following a guilty verdict shall be given to a defendant for all time spent in custody as a result of the criminal charge for which the sentence is imposed or as a result of the conduct on which such charge is based. Unless stated otherwise in this Title, such credit shall apply to time spent in custody prior to trial, pending sentence, and pending resolution of an appeal on a one-day-for-one-day (1 day for 1 day) basis.
- (b) In case of re-prosecution for any reason of this same offense or an offense based on the same conduct for which a defendant has been imprisoned, credit shall be given for all time spent in custody under the prior prosecution as provided in subsection (a) above.
- (c) Credit as provided in this section should be considered and computed by the Court at the time of sentencing.

4-70-170

Modification of Sentences –

- (a) The Court may in its discretion and in the interest of justice modify a sentence within a reasonable time after its imposition if new factors bearing on the sentence become known. Such reduction or modification shall be done in open Court.
- (b) If commitment to a special type of facility other than a jail or penitentiary is imposed or accepted as a condition of probation or parole, the Court may, for good cause shown, terminate or reduce such commitment.
- (c) The Court shall have authority to terminate at any time continued supervision or the power to revoke either a sentence not involving confinement or a sentence involving less than total confinement in a jail or penitentiary. The Court shall also have the power to lessen the condition on which such sentences were imposed or lessen the time in which the power to revoke will exist.
- (d) Except as otherwise specifically provided in this part, the Court shall not increase a term of imprisonment once it has been imposed.

4-70-180

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 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 4-70-130(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 or other designated person and permit that person to visit his home.
 - (5) Remain within the jurisdiction of the Court, and to notify the probation officer or other designated person 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 or the person so designated.
 - (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 the offense involved.

4-70-190

Revocation of Probation

- (a) Probation Violators or Serve Sentence – Any person who violates the terms of his probation shall be required by the Judge to serve the sentence originally imposed or such part of it as the Judge determines is suitable, giving the 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 a 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 ten (10) 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.

4-70-200

Parole –

(a) Eligibility for Parole

- (1) Except as otherwise provided in the Section 4-70-200 a defendant sentenced to and serving a term of imprisonment of more than sixty (60) days shall be eligible to petition the 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.
- (4) The provisions for parole contained in this Section shall apply only to confinement in a jail or penitentiary and shall not apply to confinement 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 Court for parole. A petition may be made in any written form that will reasonably inform the Court of the defendant's desire for parole. Upon request, a defendant shall be allowed an opportunity to contact and meet with a representative of his choice at the jail to aid in the preparation of the petition of parole. The completed petition shall be forwarded without unnecessary delay to the Court by the defendant's representative or the jailer.

(c) Consideration of Parole

- (1) Upon receipt of a petition for parole, the judge shall have the Clerk of the Court 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 Court.
- (2) Unless the defendant is not eligible for parole under the time requirements of subsection 4-70-200(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 4-70-200(a)(2).
- (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 Court may, after consideration of all relevant factors, grant parole to a defendant upon any or all of the conditions set forth in subsection 4-70-180(b) for the granting of probation. Parole shall be granted for a period of time not 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 Section 4-70-190 for defendants on probation.

CERTIFICATION

As a duly-elected official of the Walker River Paiute Tribe, I do hereby certify that at a meeting duly called, noticed, and convened on the day of April 29, 2021, at which time a quorum of 6 was present, the Title 4, Criminal Procedure was duly amended by a vote of 6 FOR, 0 AGAINST, 0 ABSTAINED, and said Code has not been rescinded or amended in any form.

Amber Jones

Tribal Council Chairperson

4/30/2021

Date

ATTEST:

Kim M. Stachem

Tribal Secretary

4/30/2021

Date