MIAMI TRIBE OF OKLAHOMA
CRIMINAL PROCEDURE CODE

Section 1 Short Title

This Code may be cited as the Criminal Procedure Code.

Section 2 Scope, Purpose and Construction

A. This Code governs the procedure in all criminal proceedings in the District Court and all preliminary or supplementary procedures as specified herein.

B. This Code applies to the prosecution of all criminal offenses punishable under the laws of the Miami Tribe of Oklahoma.

C. Every proceeding in which a person is charged with a criminal offense of any degree and brought from arraignment to trial and punished is a criminal proceeding.

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

E. In any case wherein no particular procedure is provided herein, resort shall be had to the Civil Procedure Code or other applicable Tribal law subject always to the rights of the defendant. If no procedure is provided in this Code, the Civil Procedure Code, or other Tribal law, the Court may proceed in any lawful fashion while protecting the rights of the defendant.

Section 3 Court Defined

As used in this Code, "Court" means the District Court of the Miami Tribe of Oklahoma and "Supreme Court" means the Supreme Court of the Miami Tribe of Oklahoma.

Section 4 Rules of the Court

The Chief Judge of the District Court may make rules for the conduct of criminal proceedings not inconsistent with this Code with the approval of the Supreme Court. Copies of the rules must be furnished to the Office of Secretary and made available to the public.

Section 5 Practice When Procedure Not Specified

In any situation not provided for by rule or statute, the Court may proceed in any lawful manner not inconsistent with these provisions or any applicable statute.

Section 6 Uniformity of Application and Construction

These provisions must be applied and construed to effectuate their general purpose to make uniform the rules of criminal procedure for proceedings in the courts of the Miami Tribe of Oklahoma.

Section 7 Severability

If any provision of this Code or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

Section 8 Effect on Existing Laws and Rules

All of the existing laws of the Tribe and rules of the Courts shall remain in full force and effect unless such laws or rules are expressly contrary to the provisions of this Code.

CHAPTER ONE: PRELIMINARY PROVISIONS

Section 101 Prosecution of Offenses

A. No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt or nolo contendere in open court, by a court of competent jurisdiction, provided, however, that no incarceration or other disposition of one accused of an offense prior to trial in accordance with this Code shall be deemed punishment.

B. All criminal proceedings shall be prosecuted in the name of the Tribe as Plaintiff, against the person charged with an offense, referred to as the Defendant.

C. The Prosecutor's Office is a department of the Miami Tribe of Oklahoma comprised of at least one Tribal Prosecutor. A Tribal Prosecutor must be appointed to the position by the Business Committee. The Prosecutor's Office is broadly vested with the authority to prosecute criminal and civil offenses on behalf of the Tribe.

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

E. For the purposes of this Code, "Tribal Prosecutor" or "prosecuting attorney" shall mean the Tribal Prosecutor appointed by the Business Committee, the Tribal Prosecutor's designee, or any other appropriate legal advisor as designated by the Business Committee.

Section 102 Rights of Defendant

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

A. To appear and defend in person or by counsel except:

1. Trial of traffic or hunting and fishing offenses not resulting in injury to any person, nor committed while using alcohol or non-prescription drugs may be prosecuted without the presence of the defendant upon a showing that the defendant received actual notice five (5) days prior to the proceeding, if no imprisonment is ordered, and any fine imposed does not exceed Three Hundred Dollars ($300.00).

2. The defendant may represent himself or be represented by an adult enrolled Tribal member with leave of the Court, if such representation is without charge to the defendant, or by any attorney or advocate admitted to practice before the District Court, but no defendant shall have the right to have appointed professional counsel provided at the Tribe's expense. However, the privilege to have counsel appointed may be granted by the Court or any Tribal law as may be provided in the rules of the Court relating to attorneys and lay advocates.

B. To be informed of the nature of the charges against him and to have a written copy

thereof;

C. To testify in his own behalf, or to refuse to testify regarding the charge against him, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding against him, he shall be deemed to have waived all right to refuse to testify in that immediate criminal proceeding. He shall not, however, be deemed to have waived his right to remain silent in other distinct phases of the criminal trial process.

D. To confront and cross examine all witnesses against him, subject to the Evidence Code.

E. To compel by subpoena the attendance of witnesses on his own behalf;

F. To have a speedy public trial by an impartial judge or jury as provided in this Code;

G. To appeal in all cases;

H. To prevent his present or former spouse from testifying against him concerning any matter which occurred during such marriage, except;

1. In any case in which the offense charged is alleged to have been committed against the spouse or the immediate family, or the children of either the spouse or the defendant, or against the marital relationship;

2. Any testimony by the spouse on the defendant's behalf will be deemed a waiver of this privilege;

I. Not to be twice put in jeopardy by the Tribe for the same offense; and

J. To be advised of the foregoing rights, and all other applicable rights of the defendant, at the time of arraignment.

Section 103 Rights of Defendant Subject to Enhanced Sentencing

To impose a total term of incarceration for more than one (1) year, the defendant shall have the following rights:

A. All rights enumerated under Section 102 of this Code and to those provided for by the Indian Civil Rights Act, 25 U.S.C. § 1302. Should there be any inconsistency between Section 102 of this Code and 25 U.S.C. § 1302, those rights provided in 25 U.S.C. § 1302 shall apply;

B. To effective assistance of counsel at least equal to that guaranteed by the United States Constitution, including the appointment of a public defender for any indigent defendant at no cost to the defendant. Defense attorneys shall be licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and professional responsibility standards to its licensed attorneys;

C. To have a presiding judge with sufficient legal training to preside over the criminal proceeding and that is licensed to practice law by any jurisdiction in the United States;

D. To have publicly available the criminal laws, rules of evidence, and rules of criminal procedure prior to charging the defendant; and

E. To have the District Court maintain a verbatim record of criminal proceedings, with a copy of any and all such records to be available upon request and payment of any reasonable fee for production of the copy, provided that such a fee may be waived for an indigent defendant at the Tribal Court's discretion.

Section 104 Rights of Defendant Subject to Special Tribal Criminal Jurisdiction

To exercise special tribal criminal jurisdiction over a non-Indian Defendant who is charged with a covered crime, as provided by Section 3 of the Criminal Offenses Code, the defendant shall have the following rights:

A. All rights enumerated under Sections 102 and 103 of this Code and to those provided for by the Indian Civil Rights Act, 25 U.S.C. § 1302. Should there be any inconsistency between Sections 102 and 103 of this Code and 25 U.S.C. § 1302, those rights provided in 25 U.S.C. § 1302 shall apply;

B. To have the privilege of the writ of habeas corpus in a court of the United States pursuant to 25 U.S.C. §§ 1303 and 1304(e), and to be notified of such right at the time of arraignment, to test the legality of the defendant's detention by order of the District Court, provided the defendant has first exhausted any remedies provided herein unless there is an absence of available tribal corrective process or such circumstances exists that render the tribal corrective process ineffective to protect the rights of the defendant;

C. If detention is ordered, to be provided written notice of defendant's right to file a petition for a writ of habeas corpus in the court of the United States pursuant to 25 U.S.C. §§ 1303 and 1304(e), as provided in Subdivision (B) above;

D. To be timely notified in writing of their rights and privileges under Indian Civil Rights Act, 25 U.S.C. § 1304; and

E. To be entitled to jury trial drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community.

Section 105 Limitation of Prosecution

A. Every criminal proceeding except an offense for which banishment is a possible punishment shall be commenced within four (4) years of the date of commission and diligent discovery of the offense, or prosecution for that offense shall be forever barred. Every criminal offense for which banishment is a possible punishment shall be commenced within seven (7) years of the date of commission and diligent discovery of the offense, or prosecution for that offense shall be forever barred.

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

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

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

Section 106 No Common Law Offenses

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

Section 107 Presence at Proceedings

A. The defendant has a right to be present at all proceedings, except as otherwise provided in this Code.

B. The defendant must be present at every stage of trial and at the sentencing hearing, but if the defendant will be represented by a lawyer at the trial or hearing, the Court may:

1. Excuse the defendant from being present at the trial or part thereof, or the sentencing hearing, if the defendant in open court understandingly and voluntarily waives the right to be present;

2. Direct that the trial or part thereof or sentencing hearing be conducted in the defendant's absence if the court determines that the defendant understandingly and voluntarily failed to be present after personally having been informed by the court of:

a. The right to be present at the trial or hearing;

b. When the trial or hearing would commence; and

c. The authority of the Court to direct that the trial or hearing be conducted in the defendant's absence; or

3. Direct that the trial or part thereof be conducted in the defendant's absence if the Court justifiably excluded the defendant from the courtroom because of the defendant's disruptive conduct.

C. If the defendant is not present at the trial or part thereof or the sentencing hearing and the defendant's absence has not been excused, the court by order may direct a law enforcement officer to bring the defendant forthwith before the court for the trial or hearing.

Section 108 Public Right of Access

A. The trial and other courtroom proceedings must be open to the public, except as provided in this section.

B. On motion of the defendant or the prosecuting attorney with the defendant's consent, or on its own motion, the Court may order temporary deferral of public access to all or part of a pretrial proceeding or, if the jury is not sequestered, courtroom trial proceedings occurring outside the jury's presence if the Court finds the deferral is necessary for a compelling reason that cannot be adequately protected by reasonable alternative means. The Court shall state its findings and conclusions in open court if it orders a deferral.

C. The Court may not continue the deferral longer than the reason therefore exists.

D. The deferral must be by means of excluding the public from the courtroom, making at public expense a full transcript or sound recording of all parts of the trial or courtroom proceeding the public would have heard had it not been excluded, and opening the transcript or sound recording to public inspection as soon as the reason for deferral ceases to exist and in any case not later than immediately after disposition of the case at the District Court level.

E. The Court may also order that all parts of the trial or courtroom proceeding the public would have heard had it not been excluded be recorded by audio-visual recording. If the Court so orders, the audio-visual recording must be shown once, not later than shortly after disposition of the case at the District Court level, at a time and place set by the court and open to the public.

CHAPTER TWO: PROCEDURES BEFORE COURT APPEARANCE

Section 201 Detention to Determine Whether to Cite, Release, or Arrest

A. Detention authorized. Under circumstances in which a law enforcement officer is authorized by law to arrest an individual without a warrant for the commission of a crime, the officer may detain the individual to determine whether the individual should be issued a citation under Section 301, released without a citation under Section 202, or arrested under subsection B of this section.

B. When arrest permitted in lieu of release with or without a citation. An individual detained under subsection A may be arrested rather than released with or without a citation only if the law enforcement officer making the determination reasonably believes that:

1. The officer has probable cause to believe that the person to be arrested has committed an offense;

2. The individual has committed or attempted to commit a criminal offense in the officer's presence;

3. Arrest is necessary to prevent imminent bodily harm to the individual or to another; or

4. There is substantial likelihood that the individual will not respond to a citation because the individual:

a. Failed to provide satisfactory identification after being afforded reasonable opportunity to do so;

b. Refused to sign the citation after the officer explained that the citation was not an admission of guilt and represented only the individual's promise to appear;

c. Lacks sufficient family, employment, residential, or other ties to ensure the individual's appearance; or

d. Previously failed to appear in response to a citation, summons, or other legal process for a crime.

C. Summons or prosecuting attorney's citation. If a law enforcement officer knows that a summons or prosecuting attorney's citation has been issued to an individual, the officer may not arrest the individual for a crime arising out of the same conduct without an arrest warrant.

D. Previous determination not to issue complaint, summons, or warrant. If the law enforcement officer knows that a prosecuting attorney has determined not to issue a complaint or that a judge has determined not to issue a summons or arrest warrant

against an individual for a crime, the officer may not detain, cite, or arrest the individual for a crime arising out of the same conduct unless doing so is supported by newly discovered evidence.

E. Effect of detention. If a detained or arrested individual is released with a citation, or released without a citation under Section 202, the detention must not be recorded as an arrest.

Section 202 Release of Detained or Arrested Individuals

A. Mandatory Release. A law enforcement officer responsible for the custody of an individual detained or arrested without an arrest warrant shall promptly release the individual without bringing the individual before a judge or issuing a citation if it is determined that:

1. No probable cause exists to believe that the individual committed a crime for which arrest is authorized by law; or

2. The prosecuting attorney has determined not to issue a complaint against the individual.

B. Permissive release. Unless the law enforcement officer responsible for the custody of an individual detained or arrested without a warrant sooner learns that the prosecuting attorney has determined to issue a complaint against the individual, the officer may release the individual in conformity with a departmental enforcement standard without bringing the individual before a judge or issuing a citation.

Section 203 Procedure Upon Detention

A. Informing detainee. If an individual is detained under Section 201(A), a law enforcement officer as promptly as reasonable under the circumstances shall:

1. Provide identification as a law enforcement officer, unless the officer's identity is apparent; and

2. Inform the individual generally of the crime believed to have been committed, unless it is apparent.

B. Warnings upon removal from scene. A law enforcement officer, as promptly as reasonable under the circumstances, shall inform a detained or arrested individual who is to be removed from the scene:

1. Where the individual will be taken;

2. Of the right to remain silent and that anything the individual says, orally or in writing, will be used against the individual;

3. That there will be no questioning unless the individual wishes, and that the

individual has the right to consult with a lawyer before being questioned or saying anything and to have a lawyer present during any questioning;

4. That if the individual desires to consult with a lawyer, but is unable to obtain one, the individual will not be questioned without a lawyer; and

5. That if at any time during any questioning the individual expresses a desire to consult with a lawyer or for questioning to stop, questioning will stop.

C. Warnings upon determination to take to place of detention. A law enforcement officer, as promptly as reasonable under the circumstances, shall inform a detained or arrested individual who is to be taken to a place of detention where the individual will be taken and that the individual will be informed upon arrival about how to communicate with a lawyer and relatives or friends.

D. Informing of arrest. A law enforcement officer who has determined to arrest an individual rather than to release the individual with or without a citation shall promptly inform the individual that an arrest is being made.

Section 204 Detention of Individual Arrested by Private Citizen

A law enforcement officer who, pursuant to law, takes custody of an individual arrested by a private citizen shall proceed in accordance with Sections 201 and 203 as if the officer had detained the individual under Section 201(A).

Section 205 Commitments

No person shall be detained or jailed by a warrantless arrest for a period longer than forty-eight (48) hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of a Judge or Magistrate of the District Court has been issued within the forty-eight hour time period.

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

B. A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the District Court.

CHAPTER THREE: CITATION, SUMMONS, AND ARREST WARRANT

Section 301 Issuance of Citation, Summons, or Arrest Warrant

A. Citation.

1. By law enforcement officer. A law enforcement officer may issue a citation to an individual who has been detained under Section 201(A).

2. By prosecuting attorney. Upon signing a complaint, the prosecuting attorney may issue a citation, request the issuance of summons under subsection B, or request the issuance of an arrest warrant, if authorized by subsection C. The prosecuting attorney need not issue a citation for an individual who has been issued a law enforcement officer's citation.

B. Summons. A judge may issue a summons to a defendant whenever a complaint has been filed and affidavit or testimony shows probable cause to believe that a crime has been committed and that the defendant committed it. The judge shall issue a summons rather than an arrest warrant if a warrant is not permitted under subsection C or, absent extraordinary circumstances, if the prosecuting attorney requests the issuance of a summons.

C. Arrest warrant—prerequisites. A judge may issue a warrant for the arrest of a defendant if affidavit or testimony shows:

1. Probable cause to believe that a crime has been committed and that the defendant committed it; and

2. At least one of the following grounds is met:

a. The crime was a tribal criminal offense or a felony;

b. Arrest is necessary to prevent imminent bodily harm to the defendant or to another;

c. The defendant's whereabouts are unknown and issuance of an arrest warrant is necessary to subject the defendant to the Court's jurisdiction; or

d. There is substantial likelihood that the defendant will not respond to a summons because the defendant:

i. Previously has failed to appear in response to a citation, summons, or other legal process for a crime; or

ii. Lacks sufficient family, employment, residential, or other ties to assure appearance.

Arrest warrant—procedure. A complaint must be filed before the issuance of an arrest warrant unless the judge finds that a prosecuting attorney is not available and an affidavit states the essential facts constituting the crime charged and the official or customary designation of any statute, ordinance, rule, regulation, or other provision of law that the defendant is alleged to have violated. If a warrant is issued before the filing of a complaint, a complaint must promptly be made, filed, and a copy furnished to the defendant. Before ruling on a request for an arrest warrant, the judge may require any individual, other than the defendant, who appears likely to have knowledge relevant to the crime charged to appear personally and give testimony relative to the crime charged. A judge who issues a warrant shall state in writing or on the record the reasons for not issuing a summons.

D. Arrest warrant after citation or summons. The fact that a citation or summons has been issued or served does not preclude the issuance of an arrest warrant under subsection C.

E. Failure to respond.

1. Upon citation. If a defendant fails to respond to a citation that has been served, or a complaint has been filed, and affidavit or testimony shows probable cause to believe that a crime has been committed and that the defendant committed it, the judge may issue a summons or, if permitted under subsection C, an arrest warrant.

2. Upon summons. If a defendant fails to respond to a summons, the judge may issue an arrest warrant.

Section 302 Criminal Citations

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

B. Contents of Citation.

1. The citation shall contain the name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.

2. The citation shall contain an agreement by the defendant as a condition to be released and to appear before a Judge within thirty (30) days or on a day and time certain to answer to the charge, and the signature of the defendant. Failure by the defendant to receive or sign the citation shall not release the defendant of his responsibility to appear before the Court in response to the citation.

3. The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue, and that the defendant may be further charged with disobeying a lawful order of the Court.

4. One (1) copy of the citation shall be given to the defendant, one (1) copy shall be given to the District Court Clerk, and one (1) copy shall be delivered to the Tribal Prosecutor.

Section 303 Form of Citation, Summons, or Arrest Warrant

A. Citation and summons generally. A citation or summons must be in writing and signed by the individual issuing it with the title of the issuer's office. It must state the date of issuance and the jurisdiction where issued, specify the defendant's name and designate a time for appearance not more than forty (40) days after issuance. It must inform the defendant that intentional failure to appear in response to the citation or summons without just cause is punishable under law. It must inform the defendant of the right to be represented by a lawyer at his own expense.

B. Citation by law enforcement officer. A citation issued by a law enforcement officer is a conditional release of the defendant and must contain the matters specified in subsection A, describe the crime charged against the defendant, set forth for the defendant's signature a promise to appear that is specified not to constitute an admission of guilt, and state that if the defendant does not appear at a stated time and place before a judge, an application may be made for the issuance of a summons or arrest warrant.

C. Citation by prosecuting attorney. A citation issued by a prosecuting attorney must contain the matter specified in subsection A, have attached a copy of the complaint, state the date upon or after which the prosecuting attorney intends to file the complaint, and state that if the defendant does not appear at a stated time and place before a judge, an application may be made for the issuance of a summons or arrest warrant.

D. Summons. A summons must contain the matters specified in subsection A, be in the name of the Miami Tribe of Oklahoma, have attached a copy of the complaint, summon the defendant to appear before a judge at a stated time and place, and state that if the defendant does not so appear, an application may be made for the issuance of an arrest warrant.

E. Contents of Summons. A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before a District Court Judge within forty (40) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the Court. If the defendant fails to appear in response to a summons or refuses to accept the summons, an arrest warrant shall issue.

F. Arrest Warrant. An arrest warrant must be in writing and in the name of the Miami Tribe of Oklahoma, be directed to all law enforcement officers in the jurisdiction, and be signed by the judge with the title and location of the judge's office and the date of

issuance. It must specify the defendant's name or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It must have attached a copy of the complaint, if filed, or if not filed, a copy of an affidavit supporting its issuance. It may specify the manner in which it is to be executed, conditions of release, and requirements for appearance. It must command that the defendant be arrested and that unless the defendant sooner complies with the specified conditions of release, if any, the defendant be brought before a judge without unnecessary delay. It must have printed upon it the information specified in Section 203(B) and (C).

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

Section 304 Service or Execution of Citation, Summons, or Arrest Warrant

A. Service of citation or summons. The citation or summons may be served by a law enforcement officer delivering a copy of the citation or summons and of the complaint, if one has been issued, to the defendant personally at any place within the jurisdiction of the Tribe or mailing a copy thereof to the defendant by certified mail. If the defendant is a corporation, the citation or summons may be served in any manner provided for service of a summons upon a corporation in a civil action.

B. Execution of arrest warrant. The arrest warrant must be executed by arrest of the defendant as directed in the warrant at any place within the jurisdiction of the Tribe. The law enforcement officer shall provide identification as a law enforcement officer, unless the officer's identity is apparent, and inform the defendant that the defendant is under arrest. The officer need not have the warrant in possession at the time of arrest, but in that case the officer shall inform the defendant of the crime charged and of the fact that a warrant has been issued. The officer shall inform the defendant of the matters specified in Section 203(B) and (C). The defendant must be furnished without unnecessary delay a copy of the warrant and of the complaint, if filed, or if not filed, a copy of an affidavit supporting its issuance.

Section 305 Return of Citation, Summons, or Arrest Warrant

A. Citation. If a citation is served and the prosecuting attorney files a complaint, the prosecuting attorney shall file the original of the citation and proof of the service.

B. Summons. On or before the return day, the officer to whom a summons was delivered for service shall make return thereof to the judge before whom the summons is returnable.

C. Arrest Warrant. The officer executing an arrest warrant shall make prompt return of it to the judge who issued it.

Section 306 Cancellation of Summons or Arrest Warrant

At the request of the prosecuting attorney, an unserved summons or unexecuted warrant must be returned to the judge by whom it was issued, who shall cancel it.

CHAPTER FOUR: PROCEEDINGS BEFORE TRIAL

Section 401 The Complaint

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

B. Contents of Complaint. The complaint shall contain:

1. The name and address of the Court:

2. The name of the defendant if known, or some other name if not known plus whatever description of the defendant is known;

3. The signature of the Tribal Prosecutor or the Tribal Prosecutor's designee; and his typewritten name.

4. A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated;

5. The person against whom or against whose property the offense was committed and the names of the witnesses of the Tribe if known, otherwise no statement need be made;

6. The general name and Tribal code title and section number of the alleged offense.

7. If the offense(s) is punishable by banishment, the Tribal Prosecutor may state in the complaint or an amendment of the complaint that banishment will be recommended as a punishment if the defendant is convicted. If such statement is not made, banishment may not be imposed.

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

D. Time of filing complaint. A complaint may be filed with the District Court at any time within the period prescribed by this Code, provided, that if an accused has been arrested without a warrant the complaint shall be filed promptly and in no case later than the time of arraignment.

E. Filing. If the prosecuting attorney determines to go forward with the prosecution, the complaint must be filed with the Court in the jurisdiction where the crime was allegedly

committed:

1. Before the prosecuting attorney applies for a summons or arrest warrant;

2. If a citation has issued, before the end of the second business day preceding the date for appearance specified therein; if it is not so filed, the defendant need not appear, and the prosecuting attorney shall give notice to the defendant so stating; or

3. If the defendant was arrested without a warrant and not released upon issuance of a citation, by the time of the defendant's appearance before a judge or promptly thereafter; failure so to file is ground for release on personal recognizance under Section 406(A)(1) through (4) upon application of the defendant or on the judge's own motion.

F. Amendment.

1. Before trial. If trial has not commenced, the prosecuting attorney may amend the complaint to allege, or to change the allegations regarding, any crime arising out of the same alleged conduct of the defendant that gave rise to any crime alleged or attempted to be alleged in the original complaint.

2. After commencement of trial. After commencement of trial, the Court may permit the prosecuting attorney to amend the complaint at any time before verdict or finding if no additional or different crime is charged and substantial rights of the defendant are not thereby prejudiced. An amendment may charge an additional or different crime with the express consent of the defendant.

3. Continuance. The defendant must be granted any extension of time, adjournment, or continuance reasonably necessitated by an amendment.

G. Dismissal by prosecuting attorney. The prosecuting attorney may dismiss the complaint or any count thereof by filing a notice of the dismissal. The notice must state the reasons for the dismissal. The dismissal is with prejudice only if jeopardy has attached or the Court has approved a stipulation for dismissal with prejudice.

Section 402 Arrest Warrant or Summons to Appear

A. If it appears from the complaint that an offense has been charged against the defendant, a judge of the District Court shall issue a summons to the defendant to bring him before the Court. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Tribe supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

B. Issuance of Arrest Warrants or Summons. Unless the District Court Judge has

reasonable grounds to believe that the person will not appear on a summons, or unless the complaint charges an offense which is punishable by banishment, a summons shall be issued instead of an arrest warrant.

C. Service of Arrest Warrants and Summons.

1. Warrants for Arrest and Criminal Summons may be served by any Tribal or federal law enforcement officer or any adult person authorized in writing by the District Court Judge. Service may be made at any place within the jurisdiction of the Tribe.

2. Warrants of Arrest and Summons are to be served at a person's home only between the hours of 7:00 am and 9:00 pm, unless an authorization to serve such process at night is placed on the face thereof by a judge.

3. The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the Court. A copy, so signed, shall be given to the person served or arrested at the time of arrest if reasonably possible, or as soon thereafter as is reasonable possible.

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

Section 403 Appearance by Defendant Not in Custody

A defendant not in custody shall appear in person at the time and place specified in the citation, summons, or conditions of release, but the defendant is deemed to have appeared if the defendant's lawyer, on or before that time, files a statement that the lawyer represents the defendant and that the defendant agrees to the conditions of release specified in Section 406(A)(1) through (4).

Section 404 Procedure Upon Defendant's Lawyer Filing Statement

Upon receiving a statement filed under Section 403, the judge shall furnish the defendant's lawyer a copy of any document filed with the judge in support of the charge. If the next proceeding is to be before another court, the judge shall transmit to that court all documents in the case, but transcripts of recorded proceedings must be made or transmitted only if requested by that court.

Section 405 Arraignment; Appearance in Person

A. Arraignment Defined. Arraignment is the bringing of an accused person before the Court, informing him of the charge against him and of his rights, receiving his plea and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a complaint, criminal summons, or citation.

B. Procedure at Arraignment. Arraignments shall be conducted in the following order:

1. The judge should request the Tribal Prosecutor to read the charges.

2. The Tribal Prosecutor should read the entire complaint, deliver a copy to the defendant unless he has previously received a copy thereof, and state the minimum and maximum authorized penalties.

3. The judge should determine that the accused understands the charge against him and explain to the defendant that he has, in addition to the rights contained in Section 102, the following rights:

   a. The right to remain silent; and

   b. The right to consult with an attorney at his own expense and that if he desires to consult with an attorney, the arraignment will be postponed.

4. The judge shall ask the defendant if he wishes to obtain counsel and, if the defendant so desires, he will be given a reasonable time to obtain counsel. If the defendant shows his indigency and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea until the date set for his appearance.

5. The judge should then ask the defendant whether he wishes to plead "guilty", "nolo contendere", or "not guilty."

C. Receipt of Plea at Arraignment. The defendant shall plead "guilty", "nolo contendere", or "not guilty" to the offense charged.

1. If the defendant refuses to plead, the judge shall enter a plea of "not guilty" for him.

2. If the defendant pleads "not guilty," the judge shall set a disposition date or a trial date and conditions for bail or release pending further hearing and prior to trial.

3. If the defendant pleads “nolo contendere” or “guilty," the judge shall question the defendant personally to determine that he understands the nature of his action, the rights that he is waiving, and that his action is voluntary. The judge may refuse to accept a guilty plea and enter a plea of "not guilty" for him. If the guilty plea is accepted, the judge may immediately sentence the defendant or order a sentencing hearing.

D. Conditions of release; informing defendant in custody. The judge shall:

1. Prescribe conditions of release under Section 406 if the defendant is eligible for release;

2. If the defendant is not released from custody, inform the defendant of the right to communicate by telephone or otherwise with:

   a. Relatives or friends; and

   b. Other persons reasonably needed to obtain the services of a lawyer and to meet any conditions of release; and

   c. If the defendant is eligible for release and is not released from custody, advise the defendant of the right to a hearing on conditions of release under Section 409 and, if the hearing will be held, set the time for the hearing.

Section 406 Release Before and During Trial

A. Release on personal recognizance defined. "Release on personal recognizance" means release of a defendant without monetary conditions under an order to:

   1. Appear before the Court at all appropriate times;

   2. Report any change of address to the Court;

   3. Refrain from committing any crimes;

   4. Refrain from intimidating or otherwise interfering with potential witnesses; and

   5. Obey any additional conditions the judge may impose.

B. Factors to be considered. In setting conditions of release for a defendant eligible for release, the judge shall consider relevant factors including:

   1. The defendant's employment status and history;

   2. The nature and extent of the defendant's family ties and relationships;

   3. The length and character of the defendant's past and present residence;

   4. The defendant's reputation, character, and mental condition;

   5. The identity of individuals who would vouch for the defendant's reliability or who agree to assist the defendant in attending court at appropriate times;

   6. The defendant's previous criminal record, if any, and, if previously released pending trial, whether the defendant appeared as required;

   7. The nature of the current charge, the apparent probability of conviction, and the

likely sentence, insofar as those factors are relevant to the risk of nonappearance;

8. Any other factors relevant to the defendant's ties to the community or the risk of the defendant's intentional failure to appear;

9. The assets available to the defendant to meet any monetary conditions upon release; and

10. Any facts indicating the likelihood of violations of law if the defendant is released without restrictions.

C. Release on personal recognizance. If the defendant is eligible for release, the judge shall release the defendant on personal recognizance under subsection A(1) through (4) unless the judge finds that there is a substantial risk of nonappearance or a need for additional conditions under subsection F. In determining whether there is a substantial risk of nonappearance, the judge shall consider the factors specified in subsection B(1) through (8). If the judge finds that release on personal recognizance is unwarranted, the judge shall state in the record the reasons for the finding and, if the defendant appeared pursuant to a citation or summons, any new or newly discovered information unavailable to the official issuing the citation or summons which justifies more stringent conditions of release.

D. Additional nonmonetary conditions. If the judge determines from affidavit or testimony, or a judge has determined, that there is probable cause to believe that the defendant has committed the crime charged, the judge, upon finding that release on personal recognizance without conditions in addition to those specified in subsection A(1) through (4) is unwarranted, shall impose the least onerous one or more of the following conditions necessary to ensure the defendant's appearance in court, protect the safety of the community, and prevent intimidation of witnesses and interference with the orderly administration of justice:

1. Release the defendant to the custody of the release agency established or designated under Section 407;

2. Release the defendant into the care of some other qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court, who shall maintain close contact with the defendant, assist the defendant in making arrangements to appear in court, and, if appropriate, accompany the defendant to court, but may not be required to be financially responsible for the defendant or to forfeit money if the defendant fails to appear in court;

3. Impose reasonable restrictions on the defendant's activities, movements, associations, and residences, including prohibitions against the defendant approaching or communicating with particular persons or classes of persons and going to designated geographical areas or premises;

4. Prohibit the defendant from possessing any dangerous weapon or using intoxicating liquor or a controlled substance; or

5. Impose any other reasonable restriction that will ensure the defendant's appearance, protect the safety of the community, and prevent intimidation of witnesses and interference with the orderly administration of justice.

E. Monetary conditions.

1. Prerequisites. The judge may not set monetary conditions in addition to any nonmonetary conditions under Section 406(D) unless:

a. The judge determines from affidavit or testimony, or a judge has determined, that there is probable cause to believe that the defendant committed the crime charged; and

b. The judge finds that no other conditions of release will reasonably ensure the defendant's appearance in court.

2. Kind of bond. Upon finding that monetary conditions should be set, the judge shall require the first of the following alternatives which, in conjunction with any nonmonetary conditions, the judge finds sufficient to provide reasonable assurance of the defendant's appearance:

a. Deposit of a cash bond;

b. Execution of an unsecured bond, either signed by other persons or not;

c. Execution of an unsecured bond accompanied by the deposit of cash or securities equal to ten percent (10%) of the bond's face amount, which deposit must be returned at the conclusion of the proceedings if the defendant has not defaulted in the performance of the bond's conditions; or

d. Execution of a bond secured by the deposit of the full amount in cash or other property or by the obligation of qualified, uncompensated sureties.

3. Amount of bond. The judge shall set monetary conditions no higher than the amount reasonably required to ensure the defendant's appearance in light of the factors specified in subsection B (1) through (9).

F. Informing released defendant. A judge authorizing the release of a defendant under this section shall inform the defendant:

1. Of the conditions imposed;

2. Of the consequences applicable to a violation of a condition of release; and

3. That an arrest warrant may be issued immediately upon a violation of a condition of release.

G. Informing defendant in custody. If the judge sets conditions that result in the defendant being kept in custody, the judge shall inform the defendant of the right to a hearing on conditions of release under Section 409 and, if the hearing is not waived by a defendant represented by counsel, set the time for the hearing.

H. Information considered. Information offered in proceedings under this section need not conform to the rules of evidence.

I. Change in conditions of release. On motion of the prosecuting attorney or defendant alleging facts bearing on the conditions of the release not known or considered when a defendant charged with a crime punishable by incarceration was issued a summons or citation or when the judge imposed the conditions of release, the judge shall hold a hearing to determine whether the conditions of release should be changed. If the motion is by the prosecuting attorney and affidavit or testimony shows probable cause to believe that the defendant would not otherwise appear at the hearing, the judge by order may direct a law enforcement officer to bring the defendant forthwith before the Court. If a defendant who testifies at the hearing does not testify at trial, the defendant's testimony at the hearing is not admissible at trial. If the defendant testifies at trial, the defendant's testimony at the hearing is admissible only to impeach the defendant.

Section 407 Release Agency

A. Duties. Each court, by local rule, shall establish, or designate a person or existing agency to serve as a release agency to monitor and assist released defendants. The Court may assign the agency appropriate duties, including to:

1. Conduct release investigations and formulate detailed guidelines to be utilized in making release recommendations;

2. Provide intensive supervision for defendants released into its custody;

3. Operate or contract for the operation of residential half-way houses, addict and alcoholic treatment centers, counseling services, and other appropriate facilities for the care or custody of released defendants;

4. Promptly inform the Court of all apparent violations of conditions of release or arrests of defendants released into its custody and under its supervision and recommend appropriate modifications of conditions of release;

5. Supervise other agencies that serve as custodians for released defendants and advise the Court as to the eligibility, availability, and capacity of those agencies;

6. Assist released defendants in securing any necessary employment and medical, legal, or social services; and

7. Remind released defendants of their court appearance dates and assist them in getting to court.

B. Disclosure of information. Information obtained from or concerning the defendant by a release agency must not be disclosed to any person other than the defendant's lawyer, except as necessary to advise the appropriate judge or court concerning conditions of release.

Section 408 Approval, Forfeiture, and Satisfaction of Undertaking

A. Justification of sureties. Every surety on an undertaking shall justify under oath or affirmation and may be required to describe the property by which the surety proposes to justify and the incumbrances thereon, the number and amount of other undertakings entered into by the surety and remaining undischarged and all the surety's other liabilities. No undertaking may be approved unless the surety thereon appears to be qualified.

B. Forfeiture.

1. Declaration. If there is a breach of a condition of an undertaking, the Court may declare a forfeiture. The Court shall cause notice of the forfeiture to be mailed forthwith to the defendant and the defendant's sureties, if any, at their last known address.

2. Vacating forfeiture. The Court may direct that a forfeiture be vacated in whole or in part, upon conditions the Court may impose, if it appears that justice does not require the enforcement of the forfeiture.

3. Enforcement. If a forfeiture is not vacated within one (1) month after declaration of the forfeiture, the Court on motion shall direct the entry of a judgment by default. By entering into an undertaking an obligor submits to the Court's jurisdiction and irrevocably appoints the Clerk of the Court as agent upon whom any papers affecting the obliger's liability may be served. The liability may be enforced on motion without an independent action. The motion and any notice of the motion the Court prescribes may be served on the Clerk of Court, who shall forthwith mail copies to each obligor at the obliger's last known address.

4. Remission. After entry of judgment, the Court may remit the forfeiture in whole or in part under the conditions for vacating a forfeiture under subparagraph (2).

C. Exoneration. If the conditions of an undertaking have been satisfied or a forfeiture has been vacated or remitted in whole, the Court shall exonerate the obligors and release any property deposited. If a forfeiture has been vacated or remitted in part, the Court shall correspondingly exonerate the obligors and release part of any property deposited. A surety on an undertaking may be exonerated and obtain a release of property deposited at any time by a deposit of cash in the amount of the undertaking or by a surrender of the defendant into custody.

Section 409 Hearing on Conditions of Release

A. When held. Unless waived by a defendant represented by counsel, the judge shall conduct a hearing on conditions of release not later than five (5) days after the commencement of custody of a defendant who has not met conditions of release. The defendant must be released on personal recognizance under Section 406(A)(1) through (4) if an order is not filed within five (5) days after the custody has commenced unless:

1. The defendant consents to a continuance; or

2. The judge grants one or more continuances of not more than two (2) days each because extraordinary circumstances exist and the delay is indispensable to the interests of justice.

B. Procedures at hearing. Upon request of either party, process must be issued to summon witnesses. The prosecuting attorney shall offer evidence in support of conditions of release. The defendant may offer evidence.

C. Evidence. The judge need not exclude evidence on the ground that it was acquired by unlawful means. Hearsay evidence may be received, if there is a substantial basis for believing that:

1. The source of the evidence related by the witness is reliable; and

2. There is a factual basis for the information furnished.

D. Testimony by defendant. If a defendant who testifies at the hearing does not testify at the trial, the defendant's testimony at the hearing is not admissible at trial. If the defendant testifies at trial, the defendant's testimony at the hearing is admissible only to impeach the defendant.

Section 410 Limited Release from Detention

The Court may order a detained defendant released in the custody of a law enforcement officer for limited periods and under appropriate conditions if the defendant shows that this is necessary for the preparation of the defendant's case or for another compelling reason. The Court may hear the motion ex parte and in camera, and may issue an appropriate protective order.

Section 411 Prosecuting Attorney to Allow Access

A. Duty of prosecuting attorney. Upon the defendant's written request, the prosecuting attorney, except as provided in subsection B, shall allow access at any reasonable time to all matters within the prosecuting attorney's possession.

B. Exceptions.

1. Legal work product. The prosecuting attorney need not allow access to portions of records, correspondence, reports, recordings, or memoranda to the extent that

they are:

a. Legal research; or

b. Opinions, theories, or conclusions of the prosecuting attorney, a member of the prosecuting attorney's staff, or an agent of the prosecuting attorney not intended to be called as a witness.

2. Pending motion for protective order. If the prosecuting attorney moves for a protective order, the prosecuting attorney, pending the Court's ruling on the motion, may deny access to the extent the prosecuting attorney reasonably believes the protective order will permit.

3. Protective order.

a. Risk of harm, intimidation, or bribery; continuing investigation. The Court may permit the prosecuting attorney to defer access for a specified time to the extent earlier access would create a substantial risk to any person of physical harm, intimidation, or bribery, or to the extent justified by the need to protect the integrity of a continuing investigation. Deferral may not be permitted if it prejudices a right of the defendant or allows insufficient time before trial for the defendant to make beneficial use of the information sought, including any additional pretrial discovery thereby necessitated.

b. Protecting evidentiary value. The Court may impose reasonable conditions as to the manner of inspection, photographing, copying, or testing, to the extent necessary to protect the evidentiary value of any matter to which the defendant seeks access or the prosecuting attorney proposes to test.

4. Excision. If only part of a matter is within an exception prescribed by this subsection, the prosecuting attorney shall allow access to a copy of the matter from which the part within the exception has been excised in a manner showing there has been excision.

C. Continuing duty. If any matter relating to the case, other than legal work product specified in subsection B(1), comes within the prosecuting attorney's possession or control after the defendant has had access under this section, the prosecuting attorney shall promptly so inform the defendant.

D. Matters held by other governmental personnel. Upon written request of the defendant for access to specified matters relating to the case which are within the possession or control of an official or employee of any government but which are not within the control of the prosecuting attorney, the prosecuting attorney, except as provided in subsection B, shall use diligent good faith efforts to cause the official or employee to allow the defendant access at any reasonable time and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made.

E. Sanctions for noncompliance. If the prosecuting attorney fails to comply with this section, the Court, on motion of the defendant or its own motion, shall require the prosecuting attorney to comply, grant the defendant additional time or a continuance, grant a mistrial, or grant other appropriate relief.

F. In-camera proceedings. Upon hearing a motion under this section, the Court may permit all or part of a showing of cause for denial or deferral of access to be made in- camera and out of the presence of the defendant and the defendant's counsel. In- camera proceedings must be recorded. If the Court allows any access to be denied or deferred, the entire record of the in-camera proceedings must be sealed and preserved in the Court's records, to be made available to any reviewing court.

Section 412 Notice by Prosecuting Attorney

A. Matters furnished automatically. On or before the time set for trial, the prosecuting attorney shall furnish to the defendant a statement or information:

1. Describing any testimony or other evidence intended to be used against the defendant that:

a. Was obtained as a result of a search and seizure, wiretapping, or any form of electronic or other eavesdropping;

b. Consists of or resulted from any confession, admission, or statement made by the defendant; or

c. Relates to a lineup, showup, picture, or voice identification of the defendant;

2. Informing the defendant that if the defendant contends that any of the above evidence is subject to suppression, the defendant must move the Court, by a specified time set by the Court, to suppress the evidence;

3. Describing any confession, admission, or statement of a codefendant intended to be used at the trial;

4. Precisely describing any crime that the prosecuting attorney intends to show as part of the proof that the defendant committed the crime charged, if the defendant has not been prosecuted for the crime and the crime was allegedly committed at a time other than that of the crime charged; and

5. Describing any matter or information known to the prosecuting attorney which may not be known to the defendant and which tends to negate the defendant's guilt as to the crime charged or would tend to mitigate the penalty.

B. Matters furnished upon request. Upon the defendant's written request made after the time set, the prosecuting attorney shall furnish to the defendant and file with the Court a

statement:

1. Generally describing any book, paper, document, photograph, or tangible object intended to be used in evidence against the defendant and not described under subsection A;

2. Setting forth the name, address, and occupation of each individual intended to be called as a witness against the defendant and, so far as reasonably ascertainable by the prosecuting attorney, any record of criminal convictions of each individual; and

3. Setting forth, so far as reasonably ascertainable by the prosecuting attorney, any record of criminal convictions of the defendant.

C. Continuing duty. If the prosecuting attorney discovers a matter specified in subsection A or B after the time set for trial:

1. The prosecuting attorney shall promptly furnish it to the defendant; and

2. The Court, on motion of the defendant, may grant additional time, a continuance, or other appropriate relief.

D. Sanctions for noncompliance. If the prosecuting attorney fails to comply with this section, the Court, on motion of the defendant or its own motion, shall require the prosecuting attorney to comply, grant the defendant additional time or a continuance, grant a mistrial, or grant other appropriate relief.

Section 413 Disclosure by Defendant

A. Notice of alibi. If a defendant intends to call as a witness an individual other than the defendant to show that the defendant was not present at the time and place of the crime charged, the defendant, on or before the time set for trial, shall notify the prosecuting attorney in writing of that fact and of the witness' name and address.

B. Notice of defense of mental nonresponsibility. If the defendant intends to rely on the defense of mental nonresponsibility, the defendant, on or before the time set for trial, shall notify the prosecuting attorney in writing of that fact.

C. Notice of mental examination. If the defense initiates an examination by a mental-health professional regarding the defendant's mental condition at the time of the crime charged, the defendant, within forty-eight (48) hours after the examination begins, shall notify the prosecuting attorney in writing of that fact. If the defense learns that the mental-health professional has begun an examination regarding the defendant's mental condition at the time of the crime charged, the defendant shall immediately notify the prosecuting attorney in writing.

D. Notice of intent to call witness. If the defendant intends to call as a witness a mental-health professional for testimony relating to the defendant's mental condition at the time of the crime charged, the defendant, on or before the time set for trial, shall notify the

prosecuting attorney in writing of that fact.

E. Identifying witness. If the defendant has given notice of intent to call a witness under subsection D, the defendant, on or before the time set for trial, shall notify the prosecuting attorney in writing of the witness' name, address, and qualifications.

F. Report regarding mental condition. If the defendant intends to call a mental-health professional as an expert witness regarding the defendant's mental condition at the time of the crime charged, the defendant, on or before the time set for trial, shall direct the intended witness to prepare a written report in the form specified in Section 417(B) and shall furnish the prosecuting attorney a copy of the report.

G. Other expert witness report. If the defendant has requested and received discovery under Section 411 or Section 412(B), the defendant, upon the prosecuting attorney's written request after the time set for trial, shall furnish the prosecuting attorney a copy of any report or statement regarding a medical examination or scientific test, experiment, or comparison if the report or statement:

1. Was made in connection with the particular case;

2. Was prepared by an expert whom the defendant intends to call as a witness at a hearing or trial; and

3. Relates to the witness' anticipated testimony.

H. Report relied upon by witness. If the defendant has furnished an intended expert witness' report under subsection F or G, the defendant, upon the prosecuting attorney's written request, shall promptly furnish any other expert's report within the defendant's or intended witness' possession or control upon which the intended witness will rely in testifying.

I. Documents and objects. If the defendant has requested and received discovery under Section 411 or Section 412(B), the defendant, upon the prosecuting attorney's written request after the time set for trial, shall allow the prosecuting attorney access at any reasonable time and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made upon any book, paper, document, recording, photograph, or other tangible object within the defendant's possession or control which the defendant intends to offer in evidence.

J. Continuing duty. If the defendant discovers a matter specified in this section after the time set for trial:

1. The defendant shall promptly furnish it to the prosecuting attorney; and

2. The Court, on motion of the prosecuting attorney, may grant additional time, a continuance, or other appropriate relief.

K. Exceptions.

1. Work product; communications of defendant. The defendant need not furnish any portion of a report, statement, or recording to the extent it is:

    a. Legal research;

    b. An opinion, theory, or conclusion of the defendant's lawyer, a member of the lawyer's staff, or an agent of the lawyer not intended to be called as a witness; or

    c. A communication of the defendant.

2. Pending motion for protective order. If the defendant moves for a protective order, the defendant, pending the Court's ruling on the motion, may withhold the furnishing of a report, statement, document, recording, or object to the extent the defendant's lawyer reasonably believes the protective order will permit.

3. Protective order. Upon a showing of good cause, the Court may order that the furnishing of a report, statement, document, recording, or object may be denied, restricted, or deferred for a specified time. The Court may order the defendant to disclose promptly to the prosecuting attorney a list of the sources of information relied upon in any report the furnishing of which has been denied, restricted, or deferred.

4. Excision. If only part of a report, statement, document, recording, or object is within an exception prescribed by this subdivision, the defendant shall furnish the prosecuting attorney a copy from which the part has been excised in a manner showing there has been excision.

L. Evidence. The fact that the defendant, under this section, has indicated an intention to offer specified evidence or to call a designated witness is not admissible in evidence at a hearing or trial. Evidence obtained as a result of disclosure under this section is not admissible at trial except to refute:

1. The evidence disclosed if the defendant introduces it; or

2. The testimony of a witness whose identity this section requires to be disclosed.

M. Sanctions for noncompliance. If the defendant fails to comply with this section, the Court, on motion of the prosecuting attorney or its own motion, shall require the defendant to comply, grant the prosecuting attorney additional time or a continuance, grant a mistrial, or grant other appropriate relief.

N. In-camera proceedings. Upon hearing a motion under this section, the Court may permit all or part of a showing of cause for denial, restriction, or deferral of disclosure to be made in camera and out of the presence of the prosecuting attorney. In-camera proceedings must be recorded. If the Court allows any access to be denied or deferred, the entire record of the in-camera proceedings must be sealed and preserved in the

Court's records, and made available to any reviewing court.

Section 414 Subpoena

A. For attendance of witnesses; issuance; form. The court clerk or, as to a proceeding before a judge, the judge, shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall fill in the blanks before it is served. The subpoena shall state the name of the Court and the title, if any, of the proceeding, and shall command each individual to whom it is directed to attend and give testimony at a specified time and place.

B. Costs and fees of witnesses for defendant. The costs of service and regular witness fees for up to eight (8) witnesses subpoenaed in behalf of the defendant from within the state must be paid in the same manner as similar costs and fees of witnesses subpoenaed in behalf of the state. The costs of service and witness fees, including reasonable expert witness fees, if any, of any other witness subpoenaed in behalf of the defendant must be so paid if the Court, on motion of the defendant heard ex parte, finds that the testimony of the witness could contribute to an adequate defense. All records respecting defense subpoenas must be sealed until after disposition of the case.

C. For production of documentary evidence and of objects. A subpoena may also command the individual to whom it is directed to produce the books, papers,documents, photographs, or other objects designated therein. The Court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The Court may direct the matters designated in the subpoena be produced before the Court at a time before the trial or before they are to be offered in evidence and upon their production may permit the matters or portions thereof to be inspected, photographed, and copied by the parties.

D. Contempt. Failure by any individual without lawful excuse to obey a subpoena served upon the individual is a contempt of the Court from which the subpoena was issued.

Section 415 Immunity

A. Compelling production of information despite assertion of privilege. In any proceeding under this Code, if a witness refuses to answer or produce information on the basis of the privilege against self-incrimination, the District Court, unless it finds that to do so would not further the administration of justice, shall compel the witness to answer or produce information if:

1. The prosecuting attorney makes a written request to the District Court to order the witness to answer or produce information, notwithstanding the claim of privilege; and

2. The District Court informs the witness that by so doing the witness will receive immunity under subsection B.

B. Nature and scope of immunity. If, but for this section, the witness would have been

privileged to withhold the answer or information given, and the witness complies with an order under subsection A compelling the witness to answer or produce information, the witness may not be prosecuted or subjected to criminal penalty in the courts of the Miami Tribe of Oklahoma for or on account of any transaction or matter concerning which, in compliance with the order, the witness gave answer or produced information.

C. Exception for perjury and contempt. A witness granted immunity under this section may nevertheless be subjected to criminal penalty for perjury, false swearing, or contempt committed in answering, failing to answer, or failing to produce information in compliance with the order.

Section 416 Court Authorization of Expenditures for Defense-Initiated Examination of Mental Condition at Time of Crime

A defendant who because of inability to pay is unable to obtain the services of a mental-health professional may apply to the Court for assistance. Upon a showing of a likely need for examination regarding the defendant's mental condition at the time of the crime charged, the Court shall authorize reasonable expenditures from public funds for the defendant's retention of the services of one or more mental-health professionals to examine the defendant and assist in evaluation, preparation, and presentation of the defense. Upon request by the defendant, the application and the proceedings on the application must be ex parte and in camera and the records regarding the application and proceedings must be sealed until after disposition of the case. Any order under this section authorizing expenditures must be made part of the public record.

Section 417 Prosecution-Initiated Examination of Mental Condition at Time of Crime

A. Order for examination. On motion of the prosecuting attorney made after the prosecuting attorney is notified under Section 413(C) or (D), the Court shall order the defendant to submit to an examination of the defendant's mental condition at the time of the crime charged to be performed by a mental-health professional acceptable to the prosecution. The order must include provisions as to the time, place, and other conditions of the examination.

B. Requirements for examination. The order for examination, or, if the parties agree to a prosecution-initiated examination without a court order, the prosecuting attorney's directions to the mental-health professional, must specify that:

1. The examination may consist of interviewing, clinical evaluation, and psychological testing as the mental-health professional considers appropriate, within the limits of non-experimental, generally accepted psychiatric, psychological, or medical practices;

2. At the beginning of the examination, the mental-health professional shall inform the defendant that:

a. The examination is being made at the request of the prosecuting attorney;

b. The purpose of the examination is to obtain information about the

defendant's mental condition at the time of the crime charged;

c. The defendant must respond to questions during the examination, but information obtained may not be used at trial to show that the defendant committed the conduct charged; it may be used only on the issue of the defendant's mental condition at the time of the crime if the defendant introduces expert testimony on that issue; and

d. If the defendant raises the issue of mental nonresponsibility and is found not guilty by reason of mental nonresponsibility, information obtained from the examination may be used in subsequent proceedings concerning commitment or other disposition;

3. The examination must be audio-recorded and, if the Court directs, video-recorded, and within seven (7) days after completion of the examination, the mental-health professional shall furnish a copy of the recording, under seal, to the Court and a copy of the recording to the defendant but may not otherwise disclose the recording;

4. The defendant's lawyer may be present at the examination only with the mental-health professional's previous approval and if present may actively participate only if requested to do so by the mental-health professional;

5. The prosecuting attorney may not be present at the examination;

6. The mental-health professional shall furnish copies of conclusions and full reports as specified in Section 417(E), but may not otherwise furnish to the prosecuting attorney information from the examination; and

7. If the mental-health professional concludes that the defendant may be mentally incompetent to stand trial, presents an imminent risk of serious danger to another individual, is imminently suicidal, or otherwise needs emergency intervention, the mental-health professional shall promptly notify the defendant's lawyer, the prosecuting attorney, and the Court.

C. Objection to examination procedure. The defendant shall assert any objection to any defect in the examination procedure within seven (7) days after receiving the recording of the examination under subsection B(3).

D. Form of report. The report of the examination must specify:

1. The specific issues addressed;

2. The identity of individuals interviewed and records or other information used;

3. The procedures, tests, and techniques used;

4. The date and time of examination of the defendant, the explanation given to the

defendant concerning the examination, and the identity of each individual present during the examination;

5. The relevant information obtained and findings made, including any statements or information that serve as necessary factual predicates for the findings or opinions even if the statements or information are of a personal or potentially incriminating nature;

6. Matters concerning which the mental-health professional was unable to obtain relevant information and the reasons therefor; and

7. The conclusions and the reasoning on which the conclusions were based.

E. Distribution of report.

1. If defendant has notified under Section 413(D). If the defendant has notified the prosecuting attorney under Section 413(D) of intent to call a mental-health professional as a witness for testimony relating to the defendant's mental condition at the time of the crime charged, the mental-health professional shall furnish a copy of the report to the prosecuting attorney and the defendant.

2. If defendant has not notified under Section 413(D). If the defendant has not notified the prosecuting attorney under Section 413(D), the mental-health professional shall furnish the report to the Court under seal and a copy to the defendant and at the same time furnish to the prosecuting attorney and the defendant the mental-health professional's conclusions without reference to statements made by the defendant or anyone else, the sources of information, or the factual basis for the conclusions. If the defendant later notifies the prosecuting attorney under Section 413(D), the Court shall promptly unseal the full report and furnish the prosecuting attorney a copy.

F. Defendant's refusal to cooperate. If, on motion of the prosecuting attorney, the Court finds that an adequate examination under this section has been precluded because the defendant without just cause deliberately refused to participate or to respond to questions in the examination, and that the refusal was not a result of mental illness or defect, the Court shall grant appropriate relief. In ruling upon the motion, the Court may consider all relevant information, including the recording of the examination, but proceedings concerning the recording must be in camera and out of the presence of counsel and records of proceedings concerning the recording must be sealed until after disposition of the case. The Court at trial may exclude the defendant's introduction of testimony by a mental-health professional relating to the defendant's mental condition at the time of the crime charged only upon determining that less drastic measures are inadequate. The Court may not exclude other evidence because of the refusal to cooperate.

G. Admissibility of evidence. Evidence obtained as a result of an examination under this section, other than the recording of the examination, is admissible over the defendant's objection at trial only if:

1. The defendant introduces testimony of a mental-health professional regarding the defendant's mental condition at the time of the crime charged; and

2. The evidence is offered:

   a. To rebut evidence introduced by the defendant obtained from an examination of the defendant by a mental-health professional; or

   b. To impeach the defendant on the defendant's testimony as to mental condition at the time of the crime charged.

Section 418 Investigatory Deposition

A. Authority. The prosecuting attorney may take by deposition the testimony of an individual believed to possess information concerning the possible commission of a crime within the prosecuting attorney's jurisdiction.

B. Attendance. Attendance of the deponent and production of documentary evidence and objects may be compelled by subpoena under Section 414. A written notification of the matters specified in subsection G must be served along with the subpoena.

C. When taken. A deposition may not be taken under this section after an individual is arrested for, or a citation, summons, arrest warrant, or complaint is issued for, commission of a crime that is a subject of the deposition or any related crime. On motion of a defendant or deponent and a showing that a scheduled deposition is prohibited by this subdivision, the Court shall order that the deposition not be taken except as permitted by Court order.

D. How taken. The deposition must be taken in the manner provided in a civil action, except:

   1. It must be recorded by the means the prosecuting attorney designates; and

   2. On motion of the deponent and upon a showing that the taking of the deposition will unreasonably annoy, embarrass, or oppress the deponent, the Court may order that the deposition not be taken or may limit the scope and manner of its taking.

E. Individuals present. No individual may be present during the taking of the deposition except:

   1. The prosecuting attorney;

   2. A stenographer or operator of a recording device;

   3. An interpreter, when needed;

4. The deponent;

5. The deponent's lawyer;

6. A public officer holding the deponent in custody;

7. A parent or guardian of a deponent who is a minor, unless excluded by order of the Court; and

8. With the Court's approval, an individual whose presence is considered appropriate to protect the physical or mental health of another individual present.

F. Secrecy.

1. Imposition of requirement. Upon the prosecuting attorney's determination that secrecy is needed to obtain relevant information or to protect the interests of a deponent or other person, or upon the deponent's request, the prosecuting attorney shall direct all individuals present during a deposition not to disclose the nature or purpose of the deposition or anything that transpires during the examination, except as permitted under paragraph (2). Neither the prosecuting attorney nor an agent of the prosecuting attorney may disclose, without the deponent's consent, that a subpoena has issued, except as necessary to its issuance or service.

2. Scope. Upon the prosecuting attorney's notification under paragraph (1), an individual present during a deposition may not disclose the nature or purpose of the deposition or anything that transpired during the examination, before an arrest for, or the issuance of a citation, summons, arrest warrant, or complaint for, the commission of a crime that was a subject of the examination or any related crime, except disclosure may be made:

a. To the lawyer for the deponent not present during the examination, and to the staff of the deponent's lawyer;

b. To a prosecuting attorney not present during the examination or a law enforcement officer, for use in the performance of the official duties thereof;

c. To the Court in connection with a challenge to the deposition as provided in this section;

d. In connection with a judicial proceeding on a criminal charge that the witness committed perjury in testimony taken under this section or other testimony relating to the same subject matter; and

e. As directed by the Court in the interest of justice.

3. Further disclosure. An individual to whom disclosure is made under paragraph (2)(a) or (b) may not make a further disclosure beyond that which an individual present during the deposition could make under paragraph (2).

G. Notification of rights. Before examining a deponent, the prosecuting attorney shall inform the deponent:

1. Of the right to refuse to answer on the ground that testimony may tend to incriminate the deponent;

2. Of the right to secrecy under subsection F;

3. Of the right to the assistance of a lawyer during the examination;

4. That upon request the Court may provide a lawyer without cost if indigence is shown; and

5. That upon request the Court will delay the examination to afford the deponent reasonable opportunity to obtain and consult with a lawyer.

H. Recording. The notification of rights under subsection G must be recorded as part of the deposition. If the deponent proceeds without a lawyer, the deponent's express waiver of the assistance of counsel also must be recorded.

I. Immunity. A deponent called to testify under this section may be granted immunity under Section 415.

J. Refusal to testify. A deponent may refuse to answer a question if:

1. The deponent has a privilege not to testify;

2. The deponent has not had an adequate opportunity to consult with a lawyer;

3. The question is based upon information derived from a violation of a constitutional right of the deponent or any other right requiring exclusion of evidence obtained from the violation thereof;

4. The question is not relevant to the investigation of a possible commission of any crime within the jurisdiction of the prosecuting attorney;

5. The question relates to a matter that is not a proper subject of investigation under subsection C; or

6. The taking of the deposition unreasonably annoys, embarrasses, or oppresses the deponent.

K. Judicial order. If a deponent refuses to answer upon a ground provided in subsection J, the Court, on motion of the prosecuting attorney and hearing, shall determine whether the refusal is justified under subsection J. To preserve the secrecy of the examination,

the Court may exclude the public from the hearing. If the Court finds that subsection J is inapplicable, the Court shall require the deponent to answer. A deponent may not be held in contempt for refusal to answer a question in reliance upon subsection J unless first directed by the Court to answer. If the Court finds that the refusal to answer was justified under subsection J, it may limit the future scope and manner of the taking of the deposition, or if the refusal was justified under subsection J(4), (5), or (6), order that the deposition be terminated.

Section 419 Obtaining Nontestimonial Evidence from Defendant upon Prosecution Motion

A. Authority. On motion of the prosecuting attorney, the Court by order may direct a defendant to participate in a procedure to obtain nontestimonial evidence under this section, if the Court finds that:

1. There is good cause to believe that the evidence sought may be relevant and material in determining whether the defendant committed a crime charged;

2. The procedure is reasonable and will be conducted in a manner that does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual;

3. The request is reasonable; and

4. There is, or a Judge has determined there is, probable cause to believe that the crime was committed and the defendant committed it.

B. Emergency procedure. Upon application of the prosecuting attorney, the Court by order may direct a law enforcement officer to bring the defendant forthwith before the Court for an immediate hearing on a motion made under this section, if affidavit or testimony shows probable cause to believe that the evidence sought will be altered, dissipated, or lost if not promptly obtained. Upon presentation of the defendant, the Court shall inform the defendant of the defendant's rights under this section and afford the defendant reasonable opportunity to consult with a lawyer before hearing the motion.

C. Scope. The order may direct the defendant to:

1. Appear, move, or speak for identification in a lineup or, if a lineup is not practicable, in some other reasonable procedure;

2. Try on clothing and other articles;

3. Provide handwriting and voice exemplars;

4. Permit the taking of photographs;

5. Permit the taking of fingerprints, palm prints, footprints, and other body impressions;

6. Permit the taking of specimens of blood, urine, saliva, breath, hair, nails, and material under the nails;

7. Permit the taking of samples of other materials of the body;

8. Submit to body measurements and other reasonable body surface examinations;

9. Submit to reasonable physical and medical inspection, including x-rays, of the body; and participate in other procedures that comply with the requirements of subsection A.

D. Contents of order. The order shall specify with particularity the authorized procedure, the scope of the defendant's participation, the time, duration, place, and other conditions of the procedure, and who may conduct it. It may also direct the defendant not to alter substantially any identifying physical characteristics to be examined or destroy any evidence sought. It shall specify that the defendant:

1. May not be subjected to investigative interrogation while participating in or present for the procedure; and

2. May be held in contempt of court if the defendant fails to appear and participate in the procedure as directed.

E. Service. The order must be served by delivering a copy of the order to the defendant personally.

F. Implementation of order.

1. Individuals present. While participating in or present for an authorized procedure, the defendant may be accompanied by a lawyer and by an observer of the defendant's choice. The presence of other individuals at the procedure may be limited as the Court considers appropriate under the circumstances.

2. Promptness. The procedure must be conducted with dispatch.

3. Supervision. If the procedure involves an intrusion of the body, medical or other qualified supervision must be provided. Upon timely request of the defendant and approval by the Court, a procedure involving intrusion of the body must be supervised by a qualified health-care professional designated by the defendant.

4. Interrogation. The defendant must not be subjected to investigative interrogation while participating in or present for the procedure. No statement of the defendant is admissible against the defendant if made in the absence of the defendant's lawyer and while participating in or present for the procedure.

G. Use of evidence. Any evidence obtained from the defendant may be used only with

respect to the crime specified in the motion under subsection A or a related crime.

Section 420 Obtaining Nontestimonial Evidence from Defendant on Defendant's Motion

A. Authority. On motion of a defendant who has been arrested, cited, or charged in a complaint the Court by order may direct the prosecuting attorney to provide one or more of the procedures specified in Section 419(C) for participation therein by the defendant, if the Court finds that the evidence sought could contribute to an adequate defense.

B. Contents of order. The order shall specify with particularity the authorized procedure, the scope of the defendant's permitted participation, the time, duration, place, and other conditions of the procedure, and who may conduct the procedure.

C. Implementation of order. Section 419(F) applies to procedures ordered under subsection A.

Section 421 Investigatory Nontestimonial Evidence Order

A. Authority. Upon application of the prosecuting attorney, the Court by order may direct any individual to participate in one or more of the procedures specified in Section 419(C)(1) through (8), if affidavit or testimony shows probable cause to believe that:

1. A crime has been committed by one or more of several individuals comprising a narrow focal group that includes the individual;

2. The evidence sought may be of material aid in identifying who committed the crime; and

3. The evidence sought cannot practicably be obtained from other sources.

B. Contents of order. The order shall specify with particularity the authorized procedure, the scope of the individual's participation, the time, duration, place, and other conditions of the procedure, who may conduct the procedure, and the time within which the order must be served. The order may also direct the individual not to alter substantially any identifying physical characteristic to be examined or destroy any evidence sought. It must inform the individual:

1. Of the grounds upon which the order was issued;

2. That the individual may not be subjected to investigative interrogation while participating in or present for the procedure;

3. That the individual may be accompanied by a lawyer during the procedure and that, upon request, a lawyer will be provided without cost;

4. That the individual may request that the Court make a reasonable modification of the order with respect to time, place, or manner of conducting the procedure, including, if practicable, a modification to have the procedure conducted at the

individual's place of residence;

5. That the individual may challenge the order as provided in subsection D;

6. Of the manner in which the individual may request the assistance of a lawyer, request modification of the order, or challenge the order; and

7. That the individual may be held in contempt of court if the individual fails to appear and participate in the procedure as directed.

C. Service. The order must be served by delivering a copy of the order personally to the individual within the time period specified in the order. Unless the Court fixes a shorter time upon a showing of cause, the order must be served at least two (2) business days before the date of the individual's required participation.

D. Modification and challenge. Upon a showing that compliance with the order will unreasonably embarrass or inconvenience the individual, the Court shall change the time, place, or manner of conducting the procedure or vacate the order. Upon a showing that the order was improperly issued or that there are no longer sufficient grounds for issuance of the order, the Court shall vacate it.

E. Implementation of order. An individual participating in a procedure under this section has the same rights as a defendant under Section 419(F).

F. Use of evidence. Any evidence obtained from an individual participating in a procedure under this section may be used against the individual only with respect to the crime specified in establishing probable cause under subsection A(1) or a related crime.

G. Secrecy. Before completion of the procedure, neither the prosecuting attorney nor an agent of the prosecuting attorney may disclose, without the consent of the individual, that an order has been issued, except as is necessary to its issuance or service. Upon application of the individual, the Court may restrict disclosure of the results of any testing or comparison utilizing evidence obtained in the authorized procedure before the introduction of the results in a judicial proceeding, but disclosure may be made:

1. To a prosecuting attorney or a law enforcement officer for use in the performance of official duties; and

2. In connection with a judicial proceeding.

H. Reports. An individual participating in a procedure under this section must be furnished a written report of the result of any testing or comparison utilizing evidence obtained in the authorized procedure. If the evidence is subjected to any scientific test or comparison, a copy of any report prepared by the person conducting the test must be available, upon request, to the individual. Disclosure of the result and report must be made promptly after they become available unless the Court directs that disclosure be delayed.

I. Disposition of evidence. Unless the Court authorizes further retention, nontestimonial evidence obtained from an individual under this section and all copies thereof must be promptly destroyed or, upon request, returned to the individual, if a complaint charging the individual with a crime relating to that evidence is not filed within forty- five (45) days after the evidence was obtained. On motion of the prosecuting attorney, the Court may authorize further retention of nontestimonial evidence as reasonably necessary to facilitate a continuing investigation or prosecution.

Section 422 Obtaining Nontestimonial Evidence from Third Person on Defendant's Motion

A. Authority. On motion of a defendant who has been arrested, cited, or charged in a complaint and after notice to the individual and opportunity for the individual to be heard, the Court, by order, may direct any individual to participate in one or more of the procedures specified in Section 419 (C)(1) through (8), if it finds probable cause to believe that:

1. The crime for which the defendant was arrested, cited, or charged was committed by one or more of several individuals comprising a narrow focal group that includes the subject individual;

2. The evidence sought could contribute to an adequate defense of the defendant; and

3. The evidence sought cannot practicably be obtained from other sources.

B. Notice to individual. The notice shall specify that the individual may be represented by a lawyer at the hearing at his own expense. Unless the Court fixes a shorter time upon a showing of cause, the order must be served at least two (2) business days before the date of the individual's required participation.

C. Contents of order. The order shall specify with particularity the authorized procedure, the scope of the individual's participation, the time, duration, place, and other conditions of the procedure, and who may conduct the procedure. The order may direct any person, including the prosecuting attorney, to provide the procedure. The order also may direct the individual not to alter substantially any identifying physical characteristic to be examined or destroy any evidence sought. It must specify that the individual:

1. May not be subjected to investigative interrogation while participating in or present for the procedure;

2. May be accompanied by a lawyer during the procedure; and

3. May be held in contempt of court if the individual fails to appear and participate in the procedure as directed.

D. Service. The order must be served by delivering a copy of the order personally to the individual.

E. Implementation of order. An individual participating in a procedure under this section has the same rights as a defendant under Section 419(F)(1) through (3). The defendant may be present, but if in custody the defendant may be present only with leave of Court. The prosecuting attorney, an expert of the prosecuting attorney's choice, the defendant's lawyer, and an expert of the defendant's choice also may be present. The individual may not be subjected to investigative interrogation while participating in or present for the procedure. A statement of the individual made while participating in or present for the procedure is inadmissible against the individual if the statement was made:

1. In the absence of the individual's lawyer; and

2. In response to investigative interrogation by the prosecuting attorney or an agent thereof.

F. Use of evidence. Evidence obtained from an individual participating in a procedure under this section may be used against the individual only with respect to the crime specified in establishing probable cause under subsection A(1) or a related crime.

G. Secrecy. Before completion of the procedure, neither the prosecuting attorney, the defendant, nor their agents may disclose, without the consent of the individual, that a motion has been made or an order issued under this section, except as necessary to the presentation of the motion or the issuance or service of the order. Upon application of the individual, the Court may restrict disclosure of the results of any testing or comparison utilizing evidence obtained in the authorized procedure before the introduction of the results in a judicial proceeding, but disclosure may be made:

1. To the defendant, the defendant's lawyer, and the lawyer's staff;

2. To a prosecuting attorney or a law enforcement officer for use in the performance of official duties; and

3. In connection with a judicial proceeding.

H. Reports. An individual participating in a procedure under this section must be furnished a written report of the result of any testing or comparison utilizing evidence obtained in the authorized procedure. If the evidence is subjected to any scientific test or comparison, a copy of any report prepared by the person conducting the test must be available, upon request, to the individual, the prosecuting attorney, and the defendant. Disclosure of the result and report to the individual must be made promptly after they become available unless the Court directs that the disclosure be delayed.

I. Disposition of evidence. Unless the Court authorizes further retention, nontestimonial evidence obtained under this section and all copies thereof must be promptly destroyed, or, upon request, returned to the individual, if a complaint charging the individual with crime relating to that evidence is not filed within forty-five (45) days after the evidence was obtained. On motion of a party, the Court may authorize further retention of nontestimonial evidence as reasonably necessary to facilitate a continuing investigation, prosecution, or defense.

Section 423 Comparing Nontestimonial Evidence

A. Authority. On motion of the defendant, the Court by order may direct a prosecuting attorney to have a scientific comparison made between a specified sample or specimen of nontestimonial evidence in the prosecuting attorney's possession or control and other nontestimonial evidence of a similar character in the prosecuting attorney's possession or control, if the Court finds that the result of the comparison could contribute to an adequate defense.

B. Contents of order. The order shall specify the comparison authorized, who may make it, and appropriate conditions under which it is to be made.

Section 424 Discussion Regarding Disposition of Case

A. Meeting. The parties may meet to discuss the possibility of pretrial diversion under Section 425 or of a plea agreement under Section 426. The Court may not participate in the discussions.

B. Deferring proceedings. Upon stipulation of the parties, the Court shall defer for a reasonable time any pending proceedings in the prosecution so that the procedures under this section may be pursued.

Section 425 Pretrial Diversion

A. Agreements permitted.

1. Generally. The prosecuting attorney, after due consideration of the victim's views, and the defendant may agree that the prosecution will be suspended for a specified period after which it will be dismissed under subsection G on condition that the defendant not commit a crime during the period. The agreement must be in writing and signed by the parties. It must state that the defendant waives the right to a speedy trial. It may include stipulations concerning the existence of specified facts or the admissibility into evidence of specified testimony, evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the charge.

2. Approval required for additional conditions. With the Court's approval after due consideration of the victim's views and upon a showing of substantial likelihood that a conviction could be obtained and that the benefits to society from rehabilitation outweigh any harm to society from suspending criminal prosecution, the agreement may specify one or more of the following additional conditions to be observed by the defendant during the period:

a. That the defendant not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

b. That the defendant participate in a supervised rehabilitation program, which may include treatment, counseling, training, and education;

c. That the defendant make restitution in a specified manner for harm or loss caused by the crime charged; and

d. That the defendant perform specified community service.

B. Limitations on agreements. The agreement may not specify a period longer or any condition other than could be imposed upon probation after conviction of the crime charged.

C. Filing of agreement; release. Promptly after the agreement is made or, if required under subsection A(2), approved by the Court, the prosecuting attorney shall file the agreement together with a statement that pursuant to the agreement, the prosecution is suspended for a period specified in the statement. Upon this filing, the defendant must be released from any custody under Section 406.

D. Modification of agreement. Subject to subsections A, B, and C, and with the Court's approval if required under subsection A(2), the parties by mutual consent may modify the terms of the agreement at any time before its termination.

E. Termination of agreement; resumption of prosecution.

1. Upon defendant's notice. The agreement is terminated and the prosecution may resume as if there had been no agreement if the defendant files a notice that the agreement is terminated.

2. Upon order of Court. The Court may order the agreement terminated and the prosecution resumed if, upon motion of the prosecuting attorney stating facts supporting the motion and upon hearing, the Court finds that:

a. The defendant or the defendant's lawyer misrepresented material facts affecting the agreement, if the motion is made within six (6) months after the date of the agreement; or

b. The defendant has committed a material violation of the agreement, if the motion is made not later than one (1) month after expiration of the period of suspension specified in the agreement.

F. Emergency order. The Court by order may direct a law enforcement officer to bring the defendant forthwith before the Court for the hearing of the motion, if the Court finds from affidavit or testimony that:

1. There is probable cause to believe the defendant committed a material violation of the agreement; and

2. There is substantial likelihood that the defendant otherwise will not attend the

hearing.

G. Release status upon resumption of prosecution. If prosecution resumes under subsection E, the defendant shall return to the release status in effect before prosecution was suspended unless the Court imposes additional or different conditions of release.

H. Termination of agreement; automatic dismissal. If no motion by the prosecuting attorney to terminate the agreement is pending, the agreement is terminated and the complaint is automatically dismissed with prejudice one (1) month after expiration of the period of suspension specified in the agreement. If that motion is then pending, the agreement is terminated and the complaint is automatically dismissed with prejudice upon entry of a final order denying the motion.

I. Order of dismissal. If the prosecution is dismissed with prejudice under subsection H, the prosecuting attorney shall file a notice of dismissal.

J. Termination and dismissal upon showing of rehabilitation. The Court may order the agreement terminated and the prosecution dismissed with prejudice if, upon motion of a party stating facts supporting the motion and opportunity to be heard, it finds that the defendant has committed no later offense and appears to be rehabilitated.

K. Modification or termination and dismissal upon defendant's motion. If, upon motion of the defendant and hearing, the Court finds that the prosecuting attorney obtained the defendant's consent to the agreement as a result of a material misrepresentation by a person covered by the prosecuting attorney's obligation under Section 411(A), the Court may:

1. Order appropriate modification of the terms resulting from the misrepresentation; or

2. If the Court determines that the interests of justice require, order the agreement terminated and the prosecution dismissed with prejudice.

Section 426 Plea Agreements

A. Agreements permitted. The parties may agree that the defendant will plead on one or more of the following conditions:

1. That the prosecuting attorney will amend the complaint to charge a specified crime;

2. That the prosecuting attorney will dismiss or not bring certain charges against the defendant;

3. That the prosecuting attorney will make, or will not oppose, specified recommendations as to the sentence or other disposition that should be imposed; and

4. That the defendant will not seek appellate review, as permitted under Section 427(F), of an order denying a pretrial motion.

B. Court involvement.

1. Plea agreement conference. If the parties are unable to reach a plea agreement, upon request of both parties outlining the areas of remaining disagreement, the Court may order a plea agreement conference. At the conference, the parties may make presentations concerning appropriate sentence limitations and the Court may examine any probation service report. The Court may require any individual, other than the defendant, to appear and testify at the conference, and may permit the defendant to do so. The Court may specify what plea agreement would be acceptable or may state that it wishes to have a presentence investigation report under Section 702 before so specifying. Thereupon, the parties may decide among themselves, outside the Court's presence, whether to enter a plea agreement conforming to the Court's suggested sentence limitations or to agree to the making and review by the Court of a presentence investigation report.

2. Concurrence. If the parties agree that the defendant will plead on condition that the prosecuting attorney will make, or will not oppose, specified recommendations as to the sentence or other disposition, they may submit the agreement in writing to the Court, whereupon the Court shall inform the parties whether it will consider the agreement in advance of a plea. If the Court determines to consider the agreement, it may examine any probation service report and shall:

a. Concur in the agreement;

b. Reject the agreement; or

c. Notify the parties that it wishes to have a presentence investigation report under Section 702, a plea agreement conference under subparagraph 1, or both; if the parties consent, the Court may order a presentence investigation report or a plea agreement conference.

3. General provisions. Any conference under this subsection must be held in open court and the record of the conference must be open to public inspection except to the extent the Court finds that holding the conference in chambers or ordering the record sealed for a specified time or both is necessary for a compelling reason that cannot be adequately protected by reasonable alternative means. The Court shall state its findings and conclusions in open court if it so orders. At the commencement of the conference, the Court shall inform the defendant that if the case goes to trial, the judge may not be disqualified solely because the judge participated at the conference. The Court may not communicate to the parties in any way, directly or indirectly, that a plea agreement should be accepted or that a plea should be entered. If the parties agree to the Court's suggested sentence limitations under paragraph (1) or the Court concurs in a plea agreement under

paragraph (2), the parties shall proceed under Section 427.

Section 427 Plea of Guilty or No Contest

A. Making. Upon reasonable notice to the prosecuting attorney, the defendant may appear before the Court and, after the charge has been read, plead guilty or, if the Court consents, after due consideration of the views of the parties and of the victim or close relative of a deceased or incapacitated victim and of the public's interest in the effective administration of justice, no contest.

B. Counsel. If the defendant is represented by a lawyer, the Court:

1. Shall inquire whether the defendant is satisfied with the lawyer's representation; and

2. May not accept the plea if it appears that the defendant has not had the effective assistance of counsel.

C. Acceptance.

1. Understanding. The Court may not accept the plea without first addressing the defendant personally in open court and determining that the defendant fully understands and has had reasonable time to consider:

a. The nature and elements of the crime to which the plea is offered;

b. The maximum possible sentence on the charge, including, if there are several charges, that possible from consecutive sentences and including, if applicable, that a different or additional punishment may be authorized by reason of a previous conviction or other factor, which may be established, in the present action, after the defendant's plea;

c. Any mandatory minimum sentence on the charge and special circumstances affecting probation or release from incarceration;

d. That, by the plea, the defendant waives the right to a speedy and public trial and waives the rights the defendant would have at trial, including the right to be convicted only if the Tribe, without using evidence obtained in violation of the defendant's constitutional rights, proves beyond a reasonable doubt that the defendant is guilty, the right, if any, to trial by jury, the right to be confronted by the witnesses against the defendant, the right to present evidence in the defendant's behalf and to have the Court's aid in securing the presence of witnesses and evidence, and the right either to be or decline to be a witness in the defendant's own behalf; and

e. That the defendant need not make the plea.

2. Voluntariness. The Court may not accept the plea without first determining that it is voluntary. By inquiry of the prosecuting attorney, the defendant, and the defendant's lawyer, if any, the Court shall determine whether the tendered plea is the result of plea discussions or of a plea agreement, and, if it is, what discussions were had and what agreement, if any, was reached. The Court shall address the defendant personally and determine whether any other promise or any force or threat was used to obtain the plea. If the parties have agreed that the plea is tendered on the condition that the prosecuting attorney will make, or will not oppose, specified recommendations as to the sentence or other disposition, the Court shall:

   a. Inform the defendant that the condition is not binding on the Court; and

   b. Inform the defendant whether, if the Court imposes a sentence or other disposition exceeding that specified, the defendant will be entitled to withdraw the plea.

3. Factual basis. The Court shall defer acceptance of the plea until it is satisfied that there is a factual basis for the plea.

D. Incompetence to plead. A defendant is incompetent to plead if the defendant lacks sufficient present ability to consult with a reasonable degree of rational understanding with the defendant's lawyer or to understand the matters specified in subsection C(1). Sections 431 through 436 apply to incompetence to plead. If the Court has a reasonable doubt as to the defendant's competence to plead, the order under Section 431(E) must require examination and determination of both competence to plead and competence to stand trial.

E. Plea to other crime. Upon acceptance of a plea or after a verdict or finding of guilty, the defendant may request permission to plead to any other crime the defendant has committed in the jurisdiction the penalty for which does not exceed the jurisdictional power of the Court. Upon written approval of the prosecuting attorney of the political subdivision in which the crime is or could be charged, the defendant may plead in conformity with this section. So pleading constitutes a waiver of venue as to any crime committed in another jurisdiction and waiver of formal charge as to a crime not yet charged.

F. Effect. The plea bars an appeal based upon any nonjurisdictional defect in the proceedings, but an order denying (i) a pretrial motion to suppress evidence, or (ii) any pretrial motion that, if granted, would be dispositive of the case, may be reviewed on appeal from an ensuing judgment of conviction.

G. Withdrawal of plea. The Court shall allow the defendant to withdraw the plea:

1. Before sentencing for any fair and just reason unless the prosecution shows it has been substantially prejudiced by reliance upon the plea; or

2. Whenever a motion for withdrawal is made within ten (10) days from the date

judgement is entered and the defendant makes a reasonable showing one of the following occurred:

a. The plea was accepted without substantial compliance with subsection C;

b. The plea was involuntary or was entered without knowledge of the nature and elements of the crime to which the plea was offered or that the sentence actually imposed could be imposed;

c. The plea resulted from the denial to the defendant of effective assistance of counsel guaranteed by constitution, statute, or rule;

d. The plea was not entered or ratified by the defendant, if the defendant is an individual, or was not ratified by a person authorized to so act in the defendant's behalf, if the defendant is a person other than an individual;

e. The sentence exceeds that specified in a plea agreement and:

i. The prosecuting attorney failed to make or to refrain from opposing specified recommendations as promised in the plea agreement;

ii. The plea agreement was either tentatively or fully concurred in by the Court, and the defendant did not affirm the plea after being informed that the Court no longer concurred and after being called upon to affirm or withdraw the plea; or

iii. The plea was entered upon the express condition, approved by the Court, that the plea could be withdrawn if the sentence exceeded that specified in the plea agreement; or

f. The plea is otherwise shown to have been entered as a result of inadvertence, ignorance, misunderstanding, or misapprehension.

H. Withdrawal in other cases. In other cases, if the sentence exceeds that specified in a plea agreement, the Court may permit withdrawal of the plea.

I. Hearing. The Court shall conduct an evidentiary hearing and rule on a motion to withdraw a plea under Sections 427(G) within thirty (30) days of the motion being filed.

J. Appeals. A defendant may appeal a denial of a motion to withdraw a plea, provided that the defendant shall file a Notice of Appeal with the Clerk of Court of the Miami Tribe of Oklahoma District Court within ten (10) days from the date the motion to withdraw a plea is denied.

1. Filing the Notice of Appeal is jurisdictional and failure to timely file constitutes a waiver of the right to appeal.

2. On appeal, the Appellate Court shall review a denial of a motion to withdraw a plea for abuse of discretion.

K. Claim of innocence unnecessary. The defendant may move to withdraw the plea without alleging innocence of the charges to which the plea was entered.

Section 428 Pretrial Motions

A. Use. Any defense, objection, or request capable of determination without trial of the general issue may be raised, and if raised before trial must be raised, by pretrial motion made in conformity with this section.

B. Time for motion. Except as to a motion for pretrial dismissal under Section 440, unless otherwise permitted by the Court in the interest of justice:

1. All pretrial motions must be made by the time set by the Court; and

2. A party making a pretrial motion shall make at the same time all other pretrial motions the party intends to make for which grounds are then available.

C. Matters to be asserted by pretrial motion. Unless otherwise ordered by the Court for cause shown, a party may assert the following only in a pretrial motion made in conformity with subsection B:

1. A defense or objection based on a defect in the institution of the prosecution, other than the lack of jurisdiction of the Court over the person or subject matter which can be raised at any time;

2. A defense or objection based on a defect in the complaint;

3. A request regarding discovery under the rules of discovery;

4. A request that potential testimony or other evidence be suppressed under Section 429;

5. A request for joinder, dismissal, or severance; and

6. A request for bifurcation of mental nonresponsibility issues.

D. Hearing.

1. Generally. Unless the Court otherwise permits, all pretrial motions pending at the time set for hearing a pretrial motion must be heard at the same time.

2. Omnibus hearing. Upon notice to the parties, the Court may conduct an omnibus hearing at which the Court may raise matters on its own motion and permit the parties to raise matters by oral motion.

E. Determination. A pretrial motion must be determined before trial unless the Court, with consent of all parties or upon a finding that it would be impractical to determine the motion before trial, orders the determination deferred until trial of the general issue or until after verdict.

F. Effect of determination. If the Court grants a motion based on a defect in the institution of the prosecution or in the complaint, it may order that the defendant be held in custody or that the conditions of release be continued for a specified time pending the filing of a new complaint. This section does not affect the provisions of any statute relating to periods of limitation.

Section 429 Motion to Suppress

A. Generally. On motion of the defendant conforming to Section 428, the Court shall suppress potential testimony or other evidence if it finds that:

1. Suppression is required under the Constitution of the United States or the law of the Tribe; or

2. The evidence was derived from a violation of this Code or the laws of the Tribe, and the violation significantly affected the discovery of the evidence or the defendant's substantial rights.

B. Pre-charge motion. A person having reasonable grounds to believe that evidence subject to suppression may be used against the person in a criminal proceeding may move for its suppression under subsection A, even though a complaint charging the person has not yet been filed.

Section 430 Incompetence to Stand Trial

A. Incompetent defendant not to be tried. A defendant may not be tried while incompetent to stand trial.

B. Incompetence to stand trial defined. A defendant is incompetent to stand trial if the defendant lacks:

1. Sufficient present ability to consult with a reasonable degree of rational understanding with the defendant's lawyer;

2. Sufficient present ability otherwise to assist in the defense; or

3. A rational as well as factual understanding of the proceedings.

C. Procedures. Sections 431 through 436 apply to incompetence to stand trial.

Section 431 Competency Examination

A. Raising issue.

1. Defendant. The defendant may move for a competency examination.

2. Defense counsel. If the defendant's lawyer has a good faith doubt as to the defendant's competence, and the defendant objects to the lawyer moving for a competency examination, the lawyer shall either:

   a. Move for the examination notwithstanding the objection; or

   b. Notify the Court of the facts known to the lawyer which raise the good faith doubt, other than communications protected by the attorney-client privilege.

3. Prosecuting attorney. The prosecuting attorney shall:

   a. Notify the defendant's lawyer and the Court of any information that comes to the prosecution's attention relative to the defendant's incompetence; and

   b. Move for a competency examination whenever the prosecuting attorney has a good faith doubt as to the defendant's competence.

4. Court. The Court has a continuing obligation, separate and apart from that of counsel, to raise the issue of competence at any time the Court has a good faith doubt as to that issue. The Court may raise the issue at any stage of the proceedings on its own motion.

B. Motion for examination. A motion for examination must set forth the facts that form the basis for the motion, but the defendant's lawyer may not divulge communications in violation of the attorney-client privilege.

C. Issuance of order for examination. Whenever, at any stage of the proceedings, the Court has a reasonable doubt as to the defendant's competence, the Court shall order a competency examination and appoint a mental-health professional or agency to conduct the examination except:

1. The Court may not order the examination before a lawyer consults with the defendant and the lawyer has an opportunity to be heard by the Court; and

2. If there has not been a judicial determination that there is probable cause to believe that the defendant committed the crime charged, the Court may order the examination only if:

   a. The defendant consents; or

   b. The Court determines from affidavit or testimony that there is probable cause to believe that the defendant committed the crime charged.

D. Contents of order to appear. An order for examination must:

1. Require the defendant to appear at a specified time and place before a mental-health professional or agency and to cooperate with appropriate interviewing, clinical evaluation, and psychological testing; and

2. Specify that the purpose of the examination is to determine whether the defendant is competent.

E. Contents of order appointing professional. An order appointing a mental-health professional or agency to conduct the examination must specify that:

1. The purpose of the examination is to determine whether the defendant is competent and set forth the appropriate definition of incompetence stated in this section;

2. The examination may consist of such interviewing, clinical evaluation, and psychological testing as the mental-health professional considers appropriate, within the limits of nonexperimental, generally accepted psychiatric, psychological, or medical practices;

3. The defendant's lawyer may be present at the examination but may actively participate only if requested to do so by the mental-health professional;

4. The prosecuting attorney may not be present at the examination;

5. The mental-health professional or agency must deliver to the Court a report complying with subsections H and I within a specified time not exceeding one (1) month after the examination is completed unless the time is extended by the Court for cause; and

6. If the mental-health professional concludes that the defendant presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention, the mental-health professional must promptly notify the defendant's lawyer, the prosecuting attorney, and the Court.

F. Release pending examination.

1. Generally. A defendant otherwise entitled to release may not be involuntarily confined or taken into custody solely because a competency examination has been ordered.

2. Release determination not postponed. If the defendant is entitled to a determination under Section 406 or 409 of eligibility for release, the determination may not be postponed because of the pendency of competency proceedings.

3. Order to appear for outpatient examination. If the defendant has been released

under Section 406, the Court may order the defendant to appear at a designated time and place for outpatient examination. The Court may make the appearance a condition of the defendant's release.

4. Temporary confinement. If the defendant has been released under Section 406 and the Court determines that the defendant will not appear for outpatient examination as a condition of release or that adequate examination is impossible without confinement of the defendant, the Court may order that the defendant be taken into custody until the examination is completed. The confinement must be in the least restrictive setting and for the minimum amount of time necessary to complete the examination, not to exceed seven (7) days. For compelling reasons or circumstances, upon request of the mental-health professional or agency, the Court may extend the confinement for up to seven (7) additional days. Immediately upon completion of the examination the defendant must be returned to the previous release status.

G. Confining uncooperative defendant for observation. If the Court, upon motion and hearing, finds that the defendant refuses to cooperate in the examination or to provide sufficient information to permit a determination of competence, it may order that the defendant be confined involuntarily for observation to determine the issue of competence. The order may authorize confinement for the time necessary to determine the issue up to twenty-eight (28) days. The confinement order must specify that the person or agency to whom the order is directed must release the defendant from confinement under this subsection if the mental-health professional determines the issue of competence before expiration of the time specified.

H. Issues to be addressed in examination report.

1. Competence. The report of the examination must first address the issue of the defendant's competence. If the mental-health professional determines that the defendant is competent, the report may address issues relating to treatment only as provided in paragraph (2).

2. Treatment. If the mental-health professional determines that the defendant is incompetent or that the defendant is competent but that continued competence is dependent upon maintenance of treatment, the report must address the following issues:

a. The condition causing the incompetence;

b. The treatment required for the defendant to attain or maintain competence, with an explanation of appropriate treatment alternatives in order of choice;

c. The availability of the various types of acceptable treatment in the local geographical area, specifying the agencies or settings in which the treatment might be obtained and whether it would be available to an outpatient;

d. The likelihood of the defendant's attaining competence under the treatment and the probable duration of the treatment.

3. Need for confinement. If the mental-health professional determines that the only appropriate treatment to attain competence would require that the defendant be taken into custody or involuntarily committed, the report must address the following issues:

a. Whether the defendant, because of the condition causing incompetence, meets the criteria set forth by law for involuntary civil commitment or placement;

b. Whether there is a substantial probability that the defendant will attain competence within eighteen (18) months;

c. The nature and probable duration of the treatment required for the defendant to attain competence; and

d. Alternatives other than involuntary confinement which the mental-health professional considered and the reasons for rejecting the alternatives.

I. Form of report. The report of the examination must:

1. Address the issues specified in subsection H;

2. Describe the procedures, tests, and techniques used;

3. State the mental-health professional's findings and opinions on each issue;

4. Identify the sources of information and present the factual basis for the mental-health professional's findings and opinions, including any statement or information that serves as a necessary factual predicate for the findings or opinions even if the statement or information is of a personal or potentially incriminating nature, but the report must exclude information or opinions concerning:

a. The defendant's mental condition at the time of the crime charged; and

b. Any statements made by the defendant regarding the crime charged or any other crime; and

5. Present the reasoning by which the mental-health professional used as a basis for the findings and opinions.

J. Furnishing of report. Upon satisfying itself that the report does not contain information or opinions that should have been excluded under subsection I(4), the Court shall promptly provide a copy to the prosecuting attorney and the defendant.

Section 432 Dual Purpose Examination

The Court may order that an examination under Section 431 be combined with an examination under Section 417 of the defendant's mental condition at the time of the crime charged or an examination for any other purpose only upon the defendant's consent or a showing of good cause. The order must:

1. Specify that the defendant's lawyer may be present at the examination only with the mental-health professional's previous consent and may actively participate only if requested to do so by the mental-health professional; and

2. Require the mental-health professional to prepare a report under Section 431(H) and (I) on the issue of competence separate from the report under Section 417(D) and (E) on mental condition at the time of the crime charged or the report for another purpose.

Section 433 Competency Hearing

A. Time for hearing. As soon as practicable after receipt of the report, the Court shall conduct a competency hearing unless the prosecuting attorney and the defendant stipulate that a hearing is unnecessary and the Court concurs. If no hearing is held, the Court may enter an order under subsection G or H on the basis of the report and other information adduced.

B. Defendant's rights. At the hearing, the defendant has the same rights as at trial, except for the right of trial by jury.

C. Evidence. The rules of evidence applicable to criminal trials apply at the hearing.

D. Court witnesses. The mental-health professional who prepared the report or any individual the mental-health professional designated as a source of information for preparation of the report, other than the defendant or the defendant's lawyer, is considered the Court's witness and may be called and cross-examined as such by either party.

E. Defendant's lawyer as witness.

1. Election to be witness. To the extent that doing so does not divulge communication in violation of the attorney-client privilege, the defendant's lawyer may relate to the Court, subject to examination by the prosecuting attorney, personal observations of and conversations with the defendant. Those disclosures do not automatically disqualify the lawyer from continuing to represent the defendant.

2. Inquiry by Court. The Court may inquire of the defendant's lawyer about the attorney-client relationship and the defendant's ability to communicate effectively with the lawyer. However, the Court may not require the lawyer to divulge communications in violation of the attorney-client privilege. The

prosecuting attorney may not cross-examine a lawyer responding to this inquiry.

F. Going forward with evidence. If the defendant moved for the examination, the defendant shall go forward with evidence at the hearing. If the examination was on motion of the prosecuting attorney or the Court's own motion, the prosecuting attorney shall go forward with evidence unless the Court otherwise directs.

G. Competency issue. The Court shall first consider the issue of the defendant's competence. If no evidence indicating incompetence has been offered or the Court finds by a preponderance of the evidence that the defendant is competent, the Court shall enter an order finding that the defendant is competent. Otherwise, the Court shall enter an order finding that the defendant is incompetent.

H. Treatment issues.

1. Generally. If the Court finds the defendant incompetent, the Court shall consider whether to order the defendant to receive treatment. The Court shall consider the appropriateness of the treatment, its availability in the geographic area of the Court, its probable duration, its likelihood of effecting competence in the reasonably foreseeable future, and the availability of the least restrictive treatment alternative.

2. Competence dependent on continuation of treatment. If the Court finds that the defendant's competence depends on the continuation of treatment, the Court shall consider whether to order the defendant to continue to receive treatment. The Court shall consider the appropriateness of the treatment, its availability in the geographic area of the Court, its probable duration, the likelihood that absent treatment the defendant would be incompetent, and the availability of the least restrictive treatment alternative.

3. Released defendant. If the defendant has been released under Section 406, the Court may make outpatient treatment a condition of the release. The Court may order the defendant involuntarily confined in an in-patient facility to effect competence only if the Court determines by clear and convincing evidence that:

a. There is substantial probability that the defendant's incompetence will respond to treatment and that the defendant will attain competence within eighteen (18) months;

b. Treatment appropriate for the defendant to attain competence is available in an in-patient facility; and

c. No less restrictive appropriate treatment alternative is available.

4. Defendant in custody. If the defendant is in custody the Court may order:

a. With appropriate security measures, the defendant's transfer to another facility for treatment;

b. Outpatient treatment with appropriate security measures; or

c. Treatment to be administered at the facility where the defendant is in custody.

5. Contents of order. The Court's order for treatment to effect competence must:

a. Set forth the Court's findings on the issues of competence, treatment, and involuntary confinement;

b. Identify the mental-health professional or agency to provide the treatment; and

c. Require the mental-health professional or agency to file reports as specified in Section 434(A)(1) and (2).

6. Accompanying documents. The Court shall attach to the order for treatment copies of supporting information sufficient for a professional or agency involved in providing treatment to ascertain the charge against the defendant and the nature of the condition causing the incompetence.

Section 434 Proceedings Regarding Incompetent Defendant

A. Periodic redetermination of incompetence.

1. Periodic redetermination report required. The mental-health professional or agency responsible for treatment shall file with the Court a redetermination report on the defendant's current status, with copies to the prosecuting attorney and the defendant's lawyer and with notice to the defendant:

a. At any time the mental-health professional believes the defendant has attained competence;

b. At any time the mental-health professional believes there is not a substantial probability that the defendant will attain competence within eighteen (18) months after the Court's determination of incompetence; and

c. At intervals not to exceed three (3) months.

2. Contents of redetermination report. The redetermination report must contain:

a. A re-evaluation of the issues required by Section 431 (H) to be addressed in the original report of examination;

b. A description of the treatment administered to the defendant; and

c. If the report concludes that the defendant remains incompetent, an evaluation of the defendant's progress toward attaining competence within eighteen (18) months after the Court's determination of incompetence.

3. Hearing on redetermination report. The Court shall conduct a hearing as provided in Section 433 if the mental-health professional in the redetermination report concludes that the defendant is competent. Before the hearing, on motion of a party and a showing of good cause, the Court shall order an examination and report by one or more additional mental-health professionals or agencies in accordance with Section 431(D) through (J).

4. Uncontested redetermination report. If the mental-health professional in the redetermination report concludes that the defendant remains incompetent, the Court shall review the report and within ten (10) days either:

a. Enter an order accepting the report and requiring the defendant to continue to receive treatment; or

b. If the Court concludes that additional information or examination is necessary, require appropriate action, including the filing of a supplemental report or an examination by one or more additional mental-health professionals or agencies in accordance with Section 431(D) through (J) and after receiving the additional report, either order the defendant to continue to receive treatment or conduct a hearing as provided in Section 433.

5. Motion for redetermination. At any time, on motion of either party and a showing of good cause to believe that the defendant has attained competence or that there is no substantial probability that the defendant will attain competence within eighteen (18) months after the Court's determination of incompetence, the Court shall order an examination and report by one or more additional mental-health professionals or agencies in accordance with Section 431(D) through (J) or a hearing as provided in Section 433.

6. Examination at defense expense. The defendant's lawyer may have the defendant examined at any time at the expense of the defense. Any institution in which the defendant is confined shall make the defendant available to the mental-health professional for examination.

7. Availability of records. The mental-health professional or agency responsible for the defendant's treatment shall make all records necessary to independent examination available at any time to the prosecuting attorney or defendant's lawyer.

B. Proceedings while defendant remains incompetent. The fact that the defendant has been determined to be incompetent does not preclude further judicial action, defense motions, or discovery proceedings that may appropriately be conducted without the defendant's

personal participation.

C. Hearing on unlikelihood of attaining competence. If a mental-health professional concludes in a redetermination report that there is no substantial probability that the defendant will attain competence within eighteen (18) months after the Court's determination of incompetence, the Court may conduct a hearing on that issue. Before the hearing, on motion of a party or its own motion, the Court may order an examination and report on that issue by one or more additional mental-health professionals or agencies. Section 431(D) through (J) and Section 433 apply, but the issue is the unlikelihood of the defendant's attaining competence within eighteen (18) months after the Court's determination of incompetence.

D. Defendant not attaining competence. If the Court determines that there is no substantial probability that the defendant will attain competence within eighteen (18) months after the Court's determination of incompetence, or if eighteen (18) months have elapsed since the Court's determination of incompetence, the Court:

1. Shall order the defendant released from any confinement or conditions of release related to the instant prosecution, effective two (2) days after the date of the order unless the prosecuting attorney agrees that it may take effect immediately; and

2. May cause the defendant to be subjected to commitment procedures.

E. Confinement for maximum time. If the defendant has been confined for the maximum presumptive time of sentence for the crime charged less statutory good time, the Court shall (i) dismiss the complaint with prejudice and discharge the defendant or (ii) cause the defendant to be subjected to commitment procedures.

Section 435 Admissibility of Evidence

Information or testimony given by the defendant in a motion, examination, treatment, or hearing under Sections 431 through 434 and information, opinion, or testimony derived therefrom is privileged and may be used only in a proceeding to determine the defendant's competence and related treatment issues.

Section 436 Defendant on Medication

A. Generally. A defendant is not incompetent merely because the defendant's competence depends upon continuation of treatment that includes medication.

B. Evidence. If the defendant proceeds to trial with the aid of treatment that may affect demeanor, the Court shall permit the defendant and may permit the prosecuting attorney to introduce evidence regarding the treatment and its effects.

Section 437 Joinder

A. Joinder of Offenses. Two or more offenses may be charged in one complaint so long as

they are set out in separate counts and:

1. They are part of a common scheme or plan, or

2. They arose out of the same transaction.

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

Section 438 Severance of Crimes and Defendants on Party's Motion

A. Severance of crimes. Subject to the defendant's right of joinder under Section 437, on motion of a party, the Court shall sever crimes if:

1. The crimes are not related crimes;

2. Before trial, the Court determines severance is appropriate to promote a fair determination of the defendant's guilt or innocence of each crime; or

3. During trial, with the defendant's consent or upon a finding of manifest necessity, the Court determines severance is necessary to achieve a fair determination of the defendant's guilt or innocence of each crime.

B. Severance of defendants.

1. Codefendant's statement. On motion of a defendant for severance because a codefendant's out-of-court statement refers to, but is not admissible against, the movant, the Court shall determine whether the state intends to offer the statement in evidence as part of its case in chief. If so, the Court shall require the prosecuting attorney to elect one of the following courses:

a. A joint trial at which the statement is not received in evidence;

b. A joint trial at which the statement is received in evidence only after all references to the movant have been deleted, if admission of the statement with the deletions made will not prejudice the movant; or

c. Severance of the movant.

2. Other grounds. On motion of a party other than under paragraph 1, the Court shall sever defendants:

a. Before trial, if the defendants cannot be joined or the Court determines severance is appropriate to promote a fair determination of the guilt or innocence of one or more of the defendants; or

b. During trial, with the defendant's consent to be severed or upon a finding

of manifest necessity, if the Court determines severance is necessary to achieve a fair determination of the guilt or innocence of one or more of the defendants.

C. Effect of severance on collateral estoppel. A defendant's motion for severance of crimes precludes the defendant from asserting the collateral estoppel defense, so that a finding of fact in the trial of one of the severed crimes does not bar a contrary finding in the trial of another of the severed crimes, unless the motion was made and granted or should have been granted on the specified ground that the trier of fact would be unable to distinguish the evidence and apply the law intelligently as to each crime because of the number of crimes charged and the complexity of the evidence.

Section 439 Joinder or Severance upon Court's Own Motion

A. Joinder. The Court may order two or more complaints to be tried together if no party objects and the crimes, and the defendants if more than one, could have been joined in a single complaint.

B. Severance. The Court may order a severance of crimes or defendants before trial in order to promote a fair and orderly trial.

Section 440 Motion for Pretrial Dismissal

A. Motion. On or before the time set by the Court, or at a later time before trial if the Court permits in the interest of justice, the defendant may move for pretrial dismissal. The motion shall particularize:

1. The ground on which it is based, which must specify the elements of the crime charged or other necessary parts of the state's case as to which it is believed the prosecuting attorney's evidence is insufficient;

2. Any matters the prosecuting attorney has indicated that the prosecuting attorney intends to use at trial, and any statements discovered or depositions taken under of individuals the prosecuting attorney has indicated that the prosecuting attorney intends to call as witnesses at trial, which are believed to disprove or show the absence of the elements or other necessary parts specified; and

3. Any lesser included crime as to which it is believed the prosecuting attorney's evidence is also insufficient for the grounds particularized.

B. Production by prosecuting attorney. If the grounds stated in the motion, if true, would justify granting the motion, the Court shall direct the prosecuting attorney to produce for examination by the Court:

1. The matters, statements, and depositions particularized in the defendant's motion; and

2. Other matters the prosecuting attorney intends to use at trial and statements or

depositions of persons the prosecuting attorney intends to call as witnesses at trial, which the prosecuting attorney believes establish the elements or other necessary parts specified by the defendant under subsection A(1).

C. Ruling. The Court's ruling on the motion must be made upon the basis of the materials produced by the prosecuting attorney under subsection B, except for that evidence and the statements and depositions relating to that potential testimony which would be inadmissible at trial. The Court shall rule on the motion as to the crime charged and any lesser included crime particularized in the defendant's motion and shall grant the motion as to any crime for which it appears, for the reasons particularized in the defendant's motion, there is not evidence which would reasonably permit a finding of guilty beyond a reasonable doubt.

D. Dismissal with or without prejudice. The Court may grant the motion with or without prejudice. If granted, the order must state whether the dismissal is with or without prejudice.

Section 441 Pretrial Conference

If a trial is likely to be protracted or otherwise unusually complicated, or upon request by agreement of the parties, the District Court may hold one or more pretrial conferences, with trial counsel present, to consider the possibility of stipulations, orders, and other steps to promote a fair and expeditious trial. At the conclusion of a conference, a court-approved memorandum of the matters agreed upon must be signed by counsel and filed. The memorandum is binding upon the parties at trial, on appeal, and in post-conviction proceedings, unless it is set aside or modified by the Court in the interest of justice, but admissions of fact by the defendant at the conference may be used against the defendant only if included in a writing signed by the defendant.

Section 442 Child Victims' and Child Witnesses' Rights

A. Definitions. For purposes of this section:

1. The term "adult attendant" means an adult described in subsection (I) who accompanies a child throughout the judicial process for the purpose of providing emotional support;

2. The term "child" means a person who is under the age of eighteen (18), who is or is alleged to be:

a. A victim of a crime of physical abuse, sexual abuse, or exploitation; or

b. A witness to a crime committed against another person;

3. The term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

4. The term "physical injury" includes, but is not limited to, lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

5. The term “mental injury” means harm to a child’s psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

6. The term “exploitation” means and includes, but is not limited to, child pornography or child prostitution;

7. The term “child pornography” means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

    a. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

    b. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

    c. Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct;

8. The term “multidisciplinary child abuse team” means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse;

9. The term “sexual abuse” includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

10. The term “sexually explicit conduct” means actual or simulated:

    a. Sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

    b. Bestiality;

    c. Masturbation;

d. Lascivious exhibition of the genitals or pubic area of a person or animal; or

e. Sadistic or masochistic abuse;

11. The term "sex crime" means an act of sexual abuse that is a criminal act;

12. The term "negligent treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

13. The term "child abuse" does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

B. Alternatives to live in-court testimony.

1. Child's live testimony by two-way closed circuit television.

a. In a proceeding involving an alleged offense against a child, the attorney for the Tribe, the child's attorney, or a guardian ad litem appointed by the Court may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed circuit television. The person seeking such an order shall apply for such an order at least five (5) days before the trial date, unless the Court finds on the record that the need for such an order was not reasonably foreseeable.

b. The Court may order that the testimony of the child be taken by closed-circuit television as provided in subparagraph (a) if the Court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

i. The child is unable to testify because of fear;

ii. There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying;

iii. The child suffers a mental or other infirmity; or

iv. Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

c. The Court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child of one or more of the factors described in subparagraph (b) is so substantial as to justify an order under subparagraph (a), the Court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of

time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

d. If the Court orders the taking of testimony by television, the attorney for the Tribe and the attorney for the defendant not including an attorney pro se for a party shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are:

i. The child's attorney or guardian ad litem appointed by the Court;

ii. Persons necessary to operate the closed-circuit television equipment;

iii. A judicial officer, appointed by the Court; and

iv. Other persons whose presence is determined by the Court to be necessary to the welfare and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

2. Videotaped deposition of child.

a. In a proceeding involving an alleged offense against a child, the attorney for the Tribe, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed by the Court may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.

b. Procedure.

i. Upon timely receipt of an application described in subparagraph (a), the Court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

I. The child will be unable to testify because of fear;

II. There is a substantial likelihood, established by expert

testimony, that the child would suffer emotional trauma from testifying in open court;

III. The child suffers a mental or other infirmity; or

IV. Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

ii. If the Court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the Court shall order that the child's deposition be taken and preserved by videotape.

iii. The District Court judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are:

I. The attorney for the Tribe;

II. The attorney for the defendant;

III. The child's attorney or guardian ad litem appointed by the Court;

IV. Persons necessary to operate the videotape equipment;

V. Subject to clause (iv), the defendant; and

VI. Other persons whose presence is determined by the Court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney at his own expense, the right to be confronted with the witness against the defendant, and the right to cross- examine the child.

iv. If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the Court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the Court orders that the defendant be excluded from the deposition room, the Court shall order that two-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous

communication with the defendant's attorney during the deposition.

v. Handling of videotape. The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and

preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the Clerk of the Court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

c. If, at the time of trial, the Court finds that the child is unable to testify as for a reason described in subparagraph (b)(i), the Court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The Court shall support a ruling under this subparagraph with findings on the record.

d. Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the Court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the Court as the basis for granting the order.

e. In connection with the taking of a videotaped deposition under this paragraph, the Court may enter a protective order for the purpose of protecting the privacy of the child.

f. The videotape of a deposition taken under this paragraph shall be destroyed five (5) years after the date on which the District Court entered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the Court until it is destroyed.

C. Competency Examinations.

1. Effect of rules of evidence. Nothing in this subsection shall be construed to abrogate Section 601 of the Evidence Code.

2. Presumption. A child is presumed to be competent.

3. Requirement of written motion. A competency examination regarding a child witness may be conducted by the Court only upon written motion and offer of proof of incompetency by a party.

4. Requirement of compelling reasons. A competency examination regarding a child may be conducted only if the Court determines, on the record, that

compelling reasons exist. A child's age alone is not a compelling reason.

5. Persons permitted to be present. The only persons who may be permitted to be present at a competency examination are:

    a. The judge;

    b. The attorney for the Tribe;

    c. The attorney for the defendant;

    d. A court reporter; and

    e. Persons whose presence, in the opinion of the Court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

6. Not before jury. A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.

7. Direct examination of child. Examination of a child related to competency shall normally be conducted by the Court on the basis of questions submitted by the attorney for the Tribe and the attorney for the defendant including a party acting as an attorney pro se. The Court may permit an attorney but not a party acting as an attorney pro se to examine a child directly on competency if the Court is satisfied that the child will not suffer emotional trauma as a result of the examination.

8. Appropriate questions. The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

9. Psychological and psychiatric examinations. Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

D. Privacy Protection.

1. Confidentiality of information.

    a. A person acting in a capacity described in subparagraph (b) in connection with a criminal proceeding shall:

        i. Keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

ii. Disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

b. Subparagraph (a) applies to:

i. All employees of the Tribe connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the Tribe to provide assistance in the proceeding;

ii. Employees of the Court;

iii. The defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

iv. Members of the jury.

2. Filing under seal. All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the Clerk of the Court:

a. The complete paper to be kept under seal; and

b. The paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

3. Protective orders.

a. On motion by any person the Court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the Court determines that there is a significant possibility that such disclosure would be detrimental to the child.

b. A protective order issued under subparagraph (a) may:

i. Provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

ii. Provide for any other measures that may be necessary to protect the privacy of the child.

4. Disclosure of information. This subsection does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the Court, disclosure is necessary to the welfare and well-being of the child.

E. Closing the courtroom. When a child testifies, the Court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the Court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate. Such an order shall be narrowly tailored to serve the Tribe's specific, compelling interest.

F. Victim Impact Statement. In preparing the presentence report, the probation officer shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. A guardian ad litem appointed by the Court shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. A guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

G. Use of Multidisciplinary Child Abuse Teams.

1. In general. A multidisciplinary child abuse team shall be used when it is feasible to do so. The Court shall work with federal, tribal, state, and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the Court and the attorney for the Tribe shall consult with the multidisciplinary child abuse team as appropriate.

2. Role of multidisciplinary child abuse teams. The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including:

a. Medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

b. Telephone consultation services in emergencies and in other situations;

c. Medical evaluations related to abuse or neglect;

d. Psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;

e. Expert medical, psychological, and related professional testimony;

f. Case service coordination and assistance, including the location of services available from public and private agencies in the community; and

g. Training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

H. Guardian Ad Litem.

1. In general. The Court may appoint, and provide reasonable compensation and payment of expenses for, a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the Court shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

2. Duties of guardian ad litem. A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the Court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

3. Immunities. A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties described in paragraph (2).

I. Adult Attendant. A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The Court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The Court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

J. Speedy Trial. In a proceeding in which a child is called to give testimony, on motion by the attorney for the Tribe or a guardian ad litem, or on its own motion, the Court may designate the case as being of special public importance. In cases so designated, the Court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The Court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the Court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The Court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

K. Stay of Civil Action. If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the District Court.

L. Testimonial Aids. The Court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the Court deems appropriate for the purpose of assisting a child in testifying.

M. Prohibition on Reproduction of Child Pornography.

1. In any criminal proceeding, any property or material that constitutes child pornography shall remain in the care, custody, and control of either the Tribe or the Court.

2. Notwithstanding Section 411 of this Code, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography, so long as the Tribe makes the property or material reasonably available to the defendant.

3. For the purposes of subparagraph (1), property or material shall be deemed to be reasonably available to the defendant if the Tribe provides ample opportunity for inspection, viewing, and examination at a tribal facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

N. Protection of the privacy of child victims and child witnesses. A knowing or intentional violation of the privacy protection accorded by this section is a criminal contempt punishable by a fine not to exceed Five Thousand Dollars ($5,000.00), imprisonment in the Tribal jail facility for up to one (1) year, or both.

CHAPTER FIVE: TRIAL

Section 501 Trial by Jury or by the Court

A. Any person accused of a criminal offense (or offenses) punishable by imprisonment shall automatically have their case set for a jury trial. All trials of a criminal offense (or offenses) not punishable by imprisonment shall be by the Court.

B. A defendant shall pay a jury fee, provided this fee shall be waived for any defendant charged with a felony which is subject to enhanced sentencing, as provided by Section 707 of this Code, or for any non-Indian defendant charged with a covered crime, as provided by Section 3 of the Criminal Offenses Act, pursuant to the Tribe's exercise of Special Tribal Criminal Jurisdiction. A judge may, in his discretion, waive the jury fee if the defendant shows that the defendant is without sufficient funds to pay the jury fee.

C. Juries shall be composed of six (6) members with no more than two (2) alternates if alternate jurors are deemed advisable by the Court.

D. At any time before verdict the parties may stipulate that the jury shall consist of a number less than that otherwise required by law, if the defendant in open court understandingly and voluntarily waives the right to trial by a full jury.

E. The Court shall give the prospective jurors appropriate admonitions regarding their conduct during the selection process, including the following admonitions:

1. Not to communicate with other prospective jurors or anyone else on any subject connected with the trial or form or express an opinion on the case;

2. To report promptly to the Court any incident involving an attempt by any person improperly to influence a prospective juror or any violation by a prospective juror of the Court's admonitions; and

3. Not to read, listen to, or view news reports concerning the case. The Court shall explain the reasons for this admonition.

F. The Court shall cause the prospective jurors to be sworn or affirm to answer truthfully the questions they will be asked during the selection process, identify the parties and their lawyers, and briefly outline the nature of the case. The Court may put to the prospective jurors appropriate questions regarding their qualifications to serve as jurors in the case, and shall permit questioning by the parties for the purposes of discovering bases for challenge for cause and enabling an intelligent exercise of peremptory challenges. The Court, on motion of a party or its own motion, may direct that any portion of the questioning of a prospective juror be conducted out of the presence of the other prospective jurors.

G. In a case tried without a jury, the Judge shall make a general finding of guilt or innocence. The Court may also make special findings, and shall do so if a party at the commencement of trial so requests. Special findings may be in writing or stated orally

on the record or may appear in an opinion or memorandum of decision.

Section 502 Trial Jurors

A. Jurors shall be drawn from the list of eligible jurors, prepared as provided in the Civil Procedure Code. Where the Court exercises Special Tribal Criminal Jurisdiction pursuant to Section 3 of the Criminal Offenses Code, jurors must be drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community.

B. The Court shall permit the defendant or his counsel and the Tribal Prosecutor to examine the jurors, and the Court itself may make such an examination.

C. Challenges regarding jury members may be taken as follows:

1. Each side shall be entitled to one (1) peremptory challenges.

2. Either side may challenge any juror for cause.

a. Any party may challenge a prospective juror for cause on one or more of the following grounds:

i. The prospective juror is disqualified from jury service;

ii. Any ground for challenge for cause provided by law; and

iii. The prospective juror's exposure to potentially prejudicial information makes the prospective juror unacceptable. A prospective juror who has been exposed to and remembers a report of highly significant information, such as the existence or contents of a confession or other incriminating matter that may be inadmissible in evidence, or a substantial amount of inflammatory information, is subject to challenge without regard to the prospective juror's testimony as to personal state of mind.

b. The challenge must be made promptly upon the examination's conclusion, but the Court, for cause shown, may permit it to be made later before jeopardy has attached.

c. Challenges must be tried by the Court.

3. An alternate juror shall be treated as a regular juror for purpose of challenges.

D. The alternate juror shall be dismissed prior to the jury's retiring to deliberation if he has not first been called to replace on original juror who has become, for any reason, unable or disqualified to serve.

E. The Court shall give the jurors appropriate admonitions regarding their conduct during the case, including the following admonitions:

1. Not to communicate with other jurors or anyone else on any subject connected with the trial or form or express an opinion on the case until it is finally submitted to the jury;

2. To report promptly to the Court any incident involving an attempt by any person improperly to influence a member of the jury or any violation by a juror of the Court's admonitions; and

3. Not to read, listen to, or view news reports concerning the case. The Court shall explain the reasons for this admonition.

F. Jurors shall otherwise be subject to all rules applicable to juries in civil cases. In the event there is a conflict between this Code and the Civil Code, this Code shall govern with respect to criminal cases.

G. The Court, on motion of the defendant shall, or on its own motion may, order sequestration of the jury if it appears the case is of such notoriety or the issues are of such nature that, absent sequestration, highly prejudicial matters are likely to come to the jurors' attention. The Court may order sequestration in any other case on motion of the defendant or on motion of the Tribe with the consent of the defendant. A motion to sequester may be made at any time. The jury must not be informed which party requested sequestration.

H. If note taking by the jurors will likely assist them in their deliberations, the Court may permit them to take notes under appropriate conditions and admonitions. Jurors may disclose their notes only to other jurors during deliberations.

I. On motion of a party, the Court shall discharge a juror found to be disqualified or unable to perform the juror's duties. A juror is disqualified if, had the juror been subject to the same objection as a prospective juror, the juror could have been successfully challenged for cause therefore and:

1. The movant could not reasonably have asserted the objection in a challenge for cause; or

2. The motion is by the defendant, discharging the juror is necessary to preserve the defendant's constitutional right to an impartial jury or to a fair trial, and the defendant did not understandingly and voluntarily forego asserting the objection in a challenge for cause.

J. The Court, on motion of a party shall or on its own motion may, question a juror, outside the presence of the other jurors, as to possible grounds for discharge of any juror.

Section 503 Order of Proceeding upon Trial

Unless the Court for cause shown otherwise permits, the trial of all criminal offenses shall be conducted in the following manner:

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

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

C. If the case is to a jury, the Court should select a potential jury panel as selected under the Civil Procedure Code by random and question them to determine if they have any interest in the case.

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

E. If it appears that a prospective juror is related to a party within the first degree by blood or marriage, or it appears that a prospective juror is biased for or against a party, or if the outcome would significantly affect the property, family, or other important interest of the prospective juror, the Court shall dismiss him for cause and select another person from the jury panel.

F. Both the Tribal Prosecutor and the defendant may alternatively request the Court to dismiss any juror by peremptory challenge. Each party shall have one (1) peremptory challenges and the Court may not refuse to grant them. No reasons need be given for the challenges, and alternate jurors shall be examined and selected as the original panel was selected. The final jury panel should then be sworn.

G. The Court should request the Tribal Prosecutor to read the criminal complaint and to make his opening statement. Prior to reading the complaint, the Court should explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense charged against the defendant. The Court should also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

H. The Tribal Prosecutor should then read the complaint and briefly present the facts which he intends to prove to show the offense. No argument of the facts or law shall be allowed. In reading the complaint, no reference to any recommendation for banishment may be made prior to the verdict of guilty or not guilty.

I. The defense may then make an opening statement or may reserve their opening

statement until the beginning of the presentation of the defense evidence.

J. If there are two or more defendants and they do not agree as to their order of proceeding, the Court shall determine their order of proceeding.

K. The Tribal Prosecutor shall then present his evidence followed by the defendant's presentation of his defense evidence. After the defendant has presented his evidence, the Tribal Prosecutor may present evidence in rebuttal.

L. The Tribal Prosecutor shall then present his closing argument, the defendant his closing argument, and the Tribal Prosecutor shall be allowed to present a rebuttal.

M. If trial is to a jury, the judge should give them his instructions and they shall retire to decide their verdict. If trial is to the judge, he shall then make his decision or announce the time at which he will present his decision.

N. If the verdict is "not guilty", the defendant should be discharged and bail exonerated.

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

P. After sentencing, the judge may hold a hearing to determine appeal bond if an appeal is filed.

Section 504 Trial by Judicial Panel

A. In every trial for an offense or offenses punishable by imprisonment for more than three (3) months in which a jury trial is waived, the judge may, in his discretion, upon request of the defense or prosecution, order the matter to be heard by a three (3) judge panel.

B. In every trial for an offense or offenses punishable by banishment in which a jury trial is waived, and in which the Tribal Prosecutor recommends in the complaint that banishment be imposed upon conviction, the Court may order the case to be heard before a three (3) judge panel. If no recommendation for banishment is made in the complaint, or an amendment thereof, banishment may not be imposed.

C. The Chief Judge shall assign three (3) judges to sit on the judicial panel for trial, one of whom shall be designated as the presiding Judge for that trial. Those judges shall be subject to disqualification only for good cause shown.

D. The presiding judge in such cases shall rule on all motions, objections, and procedural questions, however, the judgment of conviction or acquittal shall be by majority vote. In cases in which banishment has been recommended, banishment may not be imposed unless there is a unanimous finding of guilt by the judicial panel and a unanimous agreement by the panel that banishment is a proper sentence and the term of banishment must be agreed upon by the judicial panel. The actual vote of each judge shall be held in strict confidence and only the actual decision shall be announced.

Section 505 Judge Disability

A. If by reason of death, sickness, or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge may, upon certifying that he has familiarized himself with the record of the trial, proceed with the trial.

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

Section 506 Evidence

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the Evidence Code of the Tribe, except as herein otherwise provided.

Section 507 Expert Witnesses and Interpreters

A. Either party may call expert witnesses of their own selection and each bear the cost of such.

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

C. The trial judge or court clerk may act as interpreter only with the consent of all parties.

Section 508 Motion for Judgment of Acquittal

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

B. If a motion for judgment of acquittal is made at the close of all the evidence, the Court

may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

Section 509 Instructions

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

B. The Court may not summarize the evidence, express or otherwise indicate to the jury any personal opinion on the weight or creditability of any evidence, nor give any instruction regarding the desirability of reaching a verdict other than a single instruction that informs the jury substantially as follows:

1. In order to return a verdict, each juror must agree thereto;

2. Jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment;

3. Each juror must decide the case, but only after an impartial consideration of the evidence with the other jurors;

4. In the course of deliberations, a juror should not hesitate to reexamine the juror's own views and change the juror's opinion if convinced it is erroneous; and

5. No juror should surrender the juror's honest conviction as to the weight or effect of the evidence solely because of the opinion of other jurors, or for the mere purpose of returning a verdict.

Section 510 Retirement of the Jury

A. Directions upon retirement. The Court shall direct the jury to select one of its members to preside over the deliberations and sign any verdict agreed upon, and admonish the jurors that, until they are discharged as jurors in the case, they may communicate upon subjects connected with the trial only while the jury is deliberating its verdict in the jury room.

B. Submission of instructions and verdict forms. The Court shall submit to the jury one or more copies of the instructions and appropriate forms of verdict.

C. Submission of exhibits. The Court shall submit to the jury all exhibits, other than depositions, received in evidence except exhibits that the parties agree may not be submitted or the Court excludes from the submission for good cause.

D. Submission of other evidence. Upon agreement of the parties, the Court in its discretion may submit to the jury all or any part of a deposition that has been received in evidence or of a prepared transcript or recording of testimony.

Section 511 Jury Deliberations

The jurors must be kept together for deliberations as the Court reasonably directs. If the Court permits the jury to recess its deliberations, it shall admonish the jurors not to discuss the case until they reconvene in the jury room. If the deliberations are recessed, the jurors may not be sequestered unless the Court so orders.

Section 512 Jury Request to Review Evidence

If the jury, after retiring for deliberations, requests a review of any evidence, the Court, after notice to the parties, shall recall the jury to the courtroom. If the jury's request is reasonable, the Court shall have any requested portion of the testimony read or played back to the jury and permit the jury to reexamine any requested exhibit received in evidence. The Court need not submit evidence to the jury for review beyond that specifically requested by the jury, but the Court also may have the jury review other evidence relating to the same factual issue in order to avoid undue emphasis on the evidence requested. If it is likely that the jury cannot otherwise adequately consider any evidence reviewed, the Court may permit the jury to take the evidence, including any part of a deposition or of a prepared transcript or recording of the testimony, to the jury room if it appears:

1. No party will be unduly prejudiced; and

2. The evidence is not likely to be improperly used by the jury.

Section 513 Additional Instructions

A. Upon request by jury. If the jury, after retiring for deliberations, requests additional information, the Court, after notice to the parties, shall recall the jury to the courtroom and give additional instructions necessary to respond properly to the request or direct the jury's attention to a portion of the original instructions.

B. For correction or clarification. The Court, after notice to the parties, may recall the jury to the courtroom and give it additional instructions in order to:

1. Correct or withdraw an erroneous instruction;

2. Clarify an ambiguous instruction; or

3. Instruct the jury on any matter it should have covered in the original

instructions.

C. Other instructions. If the Court gives additional instructions, it may also give or repeat other instructions in order to avoid undue emphasis on the additional instructions.

Section 514 Verdict

A. Except as hereinbefore provided in cases where banishment is recommended, the verdict of a trial to a judicial panel shall be by majority vote and shall be returned in open court.

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

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

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

E. The Court, upon request of a party shall, or on its own motion may, cause the jury to be polled when the verdict is returned. The poll must be conducted by the Clerk of the Court asking each juror individually whether the verdict announced is the juror's verdict. If any juror does not respond in the affirmative, the Court may direct the jury to retire for further deliberations or declare a mistrial.

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

Section 515 Mistrial

A. For prejudice to defendant. On motion of a defendant, the Court may declare a mistrial at any time during the trial. The Court shall declare a mistrial on the defendant's motion if there occurs during the trial an error or legal defect in the proceedings, or conduct in or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant's case. If there are two or more defendants, a mistrial may not be declared as to a defendant who does not make or join in the motion.

B. For prejudice to the Tribe. On motion of the Tribe, the Court may declare a mistrial if there occurs during the trial, either in or outside the courtroom, misconduct by the

defendant, the defendant's lawyer, or someone acting at the defendant's or lawyer's behest, resulting in substantial and irreparable prejudice to the Tribe' case. If there are two or more defendants, a mistrial may not be declared as to a defendant if neither that defendant, that defendant's lawyer, nor a person acting at that defendant's or lawyer's behest participated in the misconduct, or if the Tribe' case is not substantially and irreparably prejudiced as to that defendant.

C. For impossibility of proceeding. On motion of a party or its own motion, the Court may declare a mistrial if:

1. The trial cannot proceed in conformity with law;

2. It appears there is no reasonable probability of the jury's agreement upon a verdict; or

3. Upon a poll of the jury there is not unanimous concurrence with the verdict returned.

CHAPTER SIX: POST-TRIAL MOTIONS

Section 601 Post-Trial Motion for Acquittal

A. Upon mistrial. If a mistrial is declared anytime after the close of the Tribe's case in chief, the Court, on motion of the defendant or its own motion, may order the entry of a judgment of acquittal as to any crime charged, or lesser included crime, for which the evidence would not reasonably permit a finding of guilty beyond a reasonable doubt. The acquittal does not bar prosecution for any crime as to which the Court does not order an acquittal.

B. Upon verdict of guilty. If the jury returns a verdict of guilty, the Court, on motion of the defendant or its own motion, shall order the entry of a judgment of acquittal as to any crime specified in the verdict, or lesser included crime for which the evidence does not or would not reasonably permit a finding of guilty beyond a reasonable doubt. If the Court directs an acquittal for the crime specified in the verdict, but not a lesser included crime, it may either:

1. Modify the verdict accordingly, or

2. Grant the defendant a new trial as to the lesser included crime.

C. Time for motion. Unless the Court otherwise permits in the interest of justice, a motion for acquittal must be made within ten (10) days after mistrial or verdict or within any further time the Court allows during the ten-day period.

Section 602 New Trial

A. Motion. On motion of the defendant, the Court may grant the defendant a new trial if required in the interest of justice. Unless the defendant's noncompliance with this Code precludes asserting the error, the Court shall grant the motion:

1. For an error by reason of which the defendant is constitutionally entitled to a new trial; or

2. For any other error unless it appears beyond a reasonable doubt that the same verdict or finding would have resulted absent the error.

B. Trial by Court. If the trial was by the Court without a jury, the Court, with the defendant's consent and in lieu of granting a new trial, may vacate any judgment entered, receive additional evidence, and direct the entry of a new judgment.

C. Time for motion based on newly discovered evidence. A motion for a new trial based on the ground of newly discovered evidence must be made with reasonable diligence, considering the nature of the allegations in the motion. The Court may grant it even though an appeal is pending.

D. Time for motion based on other ground. Unless otherwise permitted by the Court in the

interest of justice, a motion for a new trial based upon any ground other than newly discovered evidence must be made within ten (10) days after verdict or finding of guilty or within any further time the Court allows during the ten-day period.

CHAPTER SEVEN: SENTENCING AND JUDGMENT

Section 701 Commitment or Release Pending Sentencing

Upon acceptance of a plea to, or a verdict or finding of guilty of, a crime punishable by incarceration, the Court, pending sentencing, may continue or modify conditions of release or commit the defendant with or without conditions of release.

Section 702 Presentence Investigation

A. Making; report. Upon accepting a plea or upon a verdict or finding of guilty, the Court may direct the probation service to make a presentence investigation and report. The report must be submitted to the Court. Except as provided in subsections B and C, the Court shall furnish a complete copy of the report to each party.

B. Excision. Upon request of the probation service or on its own motion, the Court may excise from both parties' copies any portion of the report disclosure of which is likely to result in serious physical or other harm to a person other than the defendant, or serious physical harm to the defendant.

C. Protective order. Upon request of the probation service or on motion of a party or its own motion, the Court may order the defendant's lawyer not to disclose to the defendant a diagnostic opinion, disclosure of which the Court finds would seriously interfere with a program of treatment for the defendant.

D. Modification of Report. On motion of a party, the Court may order an in-camera hearing on whether to delete, correct, or supplement information in the report.

E. Factual summary. If information is excised under subsection B or an order is made under subsection C, the Court, at the beginning of the sentencing hearing under Section 705, shall:

1. State for the record the reasons for its action;

2. Provide the parties a factual summary of the information withheld to the extent feasible without causing the harm specified in subsection B or C; and

3. Afford the parties a reasonable opportunity to be heard regarding the Court's action and the summary without disclosing the excised or protected matter.

Section 703 Court Authorization of Expenditures for Mental-Health Professional

Upon a showing of a likely need for services of a mental-health professional regarding issues relevant to sentencing and that the defendant because of inability to pay is unable to obtain those services, the Court shall authorize reasonable expenditures from non-Court public funds, if available, for the defendant's retention of the services of one or more mental-health professionals to examine the defendant and assist in the defendant's presentation at the sentencing hearing.

Section 704 Sentence

Sentence shall be set forth as follows:

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

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

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

Section 705 Sentencing Hearing

Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the Court shall conduct a sentencing hearing without unreasonable delay, as follows:

A. The Court shall afford the parties an opportunity to be heard on any matter relevant to sentencing;

B. The Court shall accord due consideration to the views of the victim or close relative of a deceased or incapacitated victim;

C. Except as otherwise provided, the Court shall address the defendant personally to ascertain whether the defendant wishes to make a statement in the defendant's own behalf and to present any information in mitigation of punishment or reason why the defendant should not be sentenced and, if the defendant does, afford the defendant a reasonable opportunity to do so;

D. The Court shall impose sentence or make any other disposition authorized by law; and

E. Except as otherwise provided, the Court shall inform the defendant personally of any right the defendant has to appeal and the right to a lawyer at the defendant's own expense.

Section 706 General Sentencing Provisions

Statement of Policy. The sentencing policy of the Tribe in criminal cases is to strive toward restitution and reconciliation of the offender and the victim and Tribe. While one goal of

sentencing is to impress upon the wrongdoer the wrong he has committed, the paramount goal is to restore the victim and Tribe to the position that existed prior to the commitment of the offense, and to restore the offender to harmony with them and the community by requiring him to right his wrongdoing. Therefore, with consideration of these goals in mind, the provisions of this Chapter shall govern Tribal sentencing for criminal offenses.

A. Unless the Court determines that the ends of justice will not be served thereby, or that a civil action will more adequately adjudicate damages in the specific ease at hand, then in addition to any sentence otherwise provided by law the Court shall:

1. Order the offender to pay restitution to the victim in money, property, or services; and/or

2. Order the offender to pay restitution to the Tribe in money, property, or services.

B. In effectuating Tribal sentencing policy, if the offender recognizes the wrong he has committed, and earnestly repents of such wrong, the Court, paying particular attention to prior offenses, in its discretion may:

1. Allow such offender to exchange actual work performed for the Tribe in lieu of a fine or imprisonment, at the rate of eight (8) hours of work per fifty dollars ($50.00) of fine; or

2. Place the offender on probation under such reasonable conditions as the Court may direct for a period not exceeding three (3) times the amount of the maximum sentence allowed; or

3. Defer entering the judgment and imposing sentence for a period not exceeding four (4) times the maximum sentence allowed on condition that if the defendant violated no law and satisfies such other reasonable conditions such as restitution as may be imposed, the plea or verdict guilty will be withdrawn and said charges will be dismissed.

4. In the discretion of the Court, allow the offender to pay a fine in goods or commodities at the fair market value of the goods or commodities to be surrendered, provided, that the Tribe shall not reimburse the offender for any excess value of the property surrendered.

Section 707 Enhanced Sentencing for Felonies

A. Any offense expressly defined as a felony shall be subject to a term of imprisonment of not more than three (3) years, or a fine of $15,000, or both. A total term of imprisonment for any criminal proceeding shall not exceed nine (9) years.

B. A defendant shall not be subject to felony prosecution unless the defendant:

1. Has been previously convicted of the same or a comparable offense by any jurisdiction in the United States, including tribes; or

2. Is being prosecuted for an offense comparable to an offense that would be punishable by more than one (1) year of imprisonment if prosecuted by the United States or any of the states.

Section 708 Sentence of Banishment

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

1. Be considered legally dead and a nonentity with no civil rights to engage in contracts or come before the courts of the Tribe for any reason not related to the original conviction, provided, that the banished person retains all rights of a criminal defendant during any prosecution for an offense during the term of banishment, and while attending a going directly to or from any court, or a proceeding involving a criminal action to which he is a party including the appeal of his case.

2. Be expelled from the jurisdiction of the Tribe and not be allowed to return for any reason during the period of banishment except when required to attend court.

3. Forfeit all positions or offices of honor or profit with the Tribe.

4. Be absolutely ineligible for any service, monies, or benefits provided by the Tribe, or due as a result of citizenship in the Tribe.

5. Be absolutely ineligible to vote in any election conducted by or hold any office in the Tribe.

6. Be grounds for any debtor of the banished person to apply for an order attaching the banished person's personal property within this jurisdiction and bringing execution thereon to satisfy the debt.

B. Violation of Banishment.

1. If the person banished be found within the jurisdiction of the Tribe not going directly to, attending, or returning from a court hearing required in his case, such act shall be considered criminal contempt in violation of a lawful order of the Court and may be punished accordingly.

2. A person under a decree or judgment of banishment found unlawfully within the jurisdiction of the Tribe shall, upon conviction, and in addition to any other punishment imposed for disobedience of a lawful order of the Court, forfeit to the Tribe all personal property brought by him into the jurisdiction of the Tribe

or in his immediate control therein, whether ownership of said property is in the banished person or another, as civil damages for breach of the peace and safety of the Tribe.

C. Expiration of Banishment Term. Upon expiration of the term of banishment and satisfaction of any other terms imposed by the sentence, the banished person shall be restored to all rights forfeited during the banishment and shall thereafter be treated as if banishment had never been imposed.

Section 709 Incompetence at Time of Sentencing

A. Incompetence at time of sentencing defined. A defendant is incompetent at the time of sentencing if the defendant lacks:

1. Sufficient present ability to consult with a reasonable degree of rational understanding with the defendant's lawyer;

2. Sufficient present ability otherwise to assist in the proceeding; or

3. A rational as well as factual understanding of the sentencing proceedings.

B. Procedures. Sections 431 and 433 apply to incompetence at the time of sentencing.

C. Finding of incompetence. If the Court finds the defendant incompetent, the Court shall make a specific finding of the nature of the incompetence and the extent to which the sentencing proceeding is affected by it.

D. Sentencing incompetent defendant. The Court may sentence a defendant even though the defendant is incompetent at the time of sentence, subject to reconsideration of the sentence under subsection E.

E. Attaining of competence. If a defendant who was incompetent at the time of sentencing attains competence, the Court, upon the defendant's motion, shall hold a hearing to reconsider the sentence. The Court shall reconsider the sentence imposed in light of the matters presented at the hearing.

Section 710 Judgment

The judgment must set forth in writing the plea, verdict, or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. The defendant may receive credit for any confinement because of inability to secure release or because of examination, observation, or treatment under Sections 431 through 437. The judgment must be signed by a judge of the Court and entered of record by the Court Clerk.

Section 711 New Trial

The Court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If trial was by the Court without a jury, the Court, on motion of a defendant for

a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one month after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within such further time as the Court may fix during the seven day period.

Section 712 Arrest of Judgment

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

Section 713 Correction or Reduction of Sentence

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

Section 714 Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court at any time and after such notice, if any, as the Court orders.

Section 715 Revocation of Probation, Suspended Sentence, or Acceleration of Deferred Imposition of Sentence

A. Order for revocation hearing. If affidavit or testimony shows probable cause to believe that the defendant has violated a condition of probation, a condition of suspended sentence, or condition of deferred imposition of sentence, the Court may issue an order for hearing on revocation thereof. The order shall state the essential facts constituting the violation and order the defendant to appear at a specified time and place for the hearing. The order must be served by delivering a copy to the defendant personally. If affidavit or testimony shows probable cause to believe that the defendant would not appear in response to the order, the Court by order may direct a law enforcement officer to bring the defendant forthwith before the Court.

B. Appearance of defendant. When the defendant appears, the Court shall proceed in conformity with Section 405(A) and (B) and inform the defendant that the Tribe must prove the violation by clear and convincing evidence unless the defendant admits it and that the defendant is entitled to present evidence and to have the Court's aid in securing the attendance of witnesses in the defendant's behalf. The Court shall set a time for the revocation hearing unless:

1. The defendant does not desire time to obtain evidence or witnesses, and either

has a lawyer or makes a waiver of counsel which is accepted by the Court; and

2. The defendant admits the violation or the Tribe is ready to proceed with its evidence.

C. Conditions of release. If the Court sets a time for a revocation hearing and the defendant is in custody pursuant to an order under subsection A, the Court may prescribe conditions of release. If the Court does not prescribe conditions of release or, if prescribed, they result in detention of the defendant, and the revocation hearing is not set for a time within thirty (30) days after the appearance, the Court shall inform the defendant of the right to a hearing on conditions of release and shall set the time for that hearing.

D. Hearing on conditions of release. Section 409 governs a hearing on conditions of release if the hearing is required, as if the defendant were detained pending trial and the violation for which the revocation hearing is ordered under subsection A were a crime.

E. Revocation hearing. At the revocation hearing the Tribe and the defendant may offer evidence and cross-examine witnesses. If the defendant admits the violation or the Court finds by clear and convincing evidence that the defendant committed it, the Court may make any disposition authorized by law.

Section 716 Motions

An application to the Court for an order must be by motion. A motion other than one made during a trial or hearing must be in writing, unless the Court permits it to be made orally. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. It must state the grounds upon which it is made and set forth the relief or order sought. If factual issues are involved in determining a motion, the Court shall make essential findings.

Section 717 Service and Filing of Papers

A. A written motion, other than one heard ex parte, and any document supporting it and notice of the hearing of the motion must be served upon each party at least five (5) days before the date set for the hearing, unless the Court otherwise directs. Every written notice and similar paper must be served upon each party.

B. Except in situations in which this Code specifies delivery to the defendant personally:

1. Service upon a party represented by a lawyer must be made upon the lawyer unless the Court also orders service upon the party; and

2. Service must be made in the manner provided in a civil action.

C. The Court or clerk shall promptly mail to or otherwise serve a copy of any written order upon each party and notice of any other order made out of a party's presence upon that party, except:

1. The Court may limit the application of this requirement as to an order resulting from in-camera proceedings authorized under this Code; and

2. An order or notice or order respecting issuance of a subpoena under Section 414(B) need be served only upon the movant.

D. Papers required to be served must be filed with the Court. Papers filed must be filed in the manner provided in a civil action.

Section 718 Time

A. In computing any designated period of time, the day from which the period begins to run is excluded. The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. If the period is less than seven (7) days, any intermediate Saturday, Sunday, or legal holiday is excluded in the computation.

B. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon the party and the notice or other paper is served upon the party by mail, three (3) days are added to the prescribed period.

C. If a paper is served by mail, it must either be mailed at least three (3) days before, or be received by, any time otherwise prescribed for service.

Section 719 Recording of Proceedings

A. All oral portions of the following shall be recorded in full:

1. Testimony at any proceeding, including any testimony in support of the issuance of any arrest warrant, summons, or order directing a law enforcement officer to take any individual into custody or to bring any individual before the Court, and any testimony respecting whether there is probable cause to believe that the defendant committed the crime charged;

2. Proceedings upon the defendant's appearance;

3. Hearings;

4. Proceedings respecting waiver of rights;

5. Conferences respecting concurrence in a plea agreement;

6. Proceedings respecting pleas;

7. Pretrial conferences;

8. Hearings upon motions;

9. Trial proceedings;

10. Sentencing hearings;

11. Proceedings respecting revocation of probation, suspended sentence, or of deferred imposition of sentence; and

12. Upon the request of a party, informal conferences in chambers.

B. As used in this Code, "recorded" means taken verbatim by accurate and reliable sound recording, audio-visual recording, or stenographic means.

C. Except as otherwise provided in this Code regarding in camera proceedings, any party must be permitted under reasonable conditions to listen to or view and copy or record any sound or audio-visual recording of any proceeding in the case and to inspect and copy or photograph any prepared transcript of any proceeding in the case. On motion of the defendant and a showing of financial inability to bear the expense, the Court shall order the Tribe to assume the cost of furnishing the defendant a copy of the recording or transcript.

D. On motion of a party, the Court shall order the preparation of a transcript of all or a portion of any proceeding in the case, if the party shows that it is reasonably necessary to the party's case.

Section 720 Preserving Objection

Except as otherwise provided in this Code, a party sufficiently preserves an objection to a ruling or order of the Court if, at the time the ruling or order is made or sought, the party makes known to the Court the action the party desires the Court to take or the objection to the Court's action and the grounds for the objection. If the ruling is one admitting evidence, the party sufficiently preserves an objection by timely objecting or moving to strike, stating the specific ground of objection if the specific ground is not apparent from the context. If the ruling is one excluding evidence, the party sufficiently preserves an objection if the substance of the evidence is made known to the Court by offer or is apparent from the context of the interrogation. If a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice the party. Exceptions are unnecessary.

Section 721 Error Noticed by Court

The Court at any time may call any error to the attention of the parties and, if required in the interest of justice, take appropriate action with respect to an error affecting substantial rights, although an objection was not preserved by a party.

CHAPTER EIGHT: APPEAL

Section 801 Right of Appeal; How Taken

A. The defendant has the right to appeal from the following:

1. A final judgment of conviction; and the sentence imposed thereon; and

2. From an order made, after judgment and sentences, affecting his substantial rights.

B. The Tribe has the right to appeal from the following:

1. A judgment of dismissal, upon a motion to dismiss based on any procedural irregularity occurring before trial, or an order excluding evidence in favor of the defendant prior to trial;

2. An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered.

3. An order of the Court directing the jury to find for the defendant;

4. An order made after judgment and sentence affecting the substantial rights of the Tribe.

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

D. Such appeals shall be had in accordance with the Appellate Procedure Code.

Section 802 Stay of Judgment and Relief Pending Review

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

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

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

CHAPTER NINE: OTHER PROVISIONS

Section 901 Assistance to Police Officers Authorized

Officers and members of the Miami Police Department shall have the authority to request assistance from any other law enforcement agency, or officers of such agency. The officer and the law enforcement agency, or any person, responding to the request of the member of the Miami Police Department shall have the same rights, privileges, and immunities as are possessed by the Enforcement Division of the Miami Police Department.

Section 902 Direction of Officers Contrary to Law Prohibited

No tribal official shall have any power, right, or authority to command, order, or direct any commissioned law enforcement officer or other authorized person of the Miami Police Department to perform any duty or service contrary to the Constitution or laws of the Miami Tribe of Oklahoma.

Section 903 Search and Seizure

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

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

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

D. Service of Search Warrants. Search warrants shall be served by any Tribal or federal law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m., unless otherwise directed on the warrant by the judge or magistrate who issued it. A copy of the warrant shall be left with an occupant or owner over sixteen (16) years of age of the place searched if present during said search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the premises. The officer may break open any outer or inner door or window of a place to be searched, or any part of any place to be searched, or

anything thereon to execute a search warrant, if after notice of his authority and purpose, he is denied or refused admittance, when necessary to liberate himself, or a person aiding in the execution of the warrant or when the premises to be searched are unoccupied at the time of the search.

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

F. Return of Search Warrants.

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

2. The warrant shall be returned to the Court with an inventory of property seized within twenty-four (24) hours of service, Saturdays, Sundays, and legal holidays excluded.

3. In every case, the warrant shall be returned within ten (10) days of the date of issuance, unless return be due on a Saturday, Sunday, or legal holiday, in which case, the return shall be made on the next business day.

G. Property Subject to Seizure. Property which is subject to seizure is property in which there is probable cause to believe such property is:

1. Stolen, embezzled, contraband, or otherwise criminally possessed; or

2. Which is or has been used to commit a criminal offense; or

3. Property which constitutes evidence of the commission of a criminal offense.

H. Warrantless Searches. A law enforcement officer may conduct a search without a warrant only:

1. Incident to a lawful arrest; or

2. With the consent of the person to be searched; or

3. With the consent of the person having actual possession and control of the property to be searched; or

4. When he has reasonable grounds to believe that the person searched may be armed and dangerous; or

5. When the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains property subject to seizure, or upon

inventory of such vehicle after impoundment and seizure.

6. In any other circumstances wherein federal law has held that a search without obtaining a warrant prior to the search in those circumstances would not be unreasonable.

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

J. A law enforcement officer may stop any person in a public place whom he has reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him his name, address, an explanation of his actions and may, if he has reasonable grounds to believe his own safety or the safety of other nearby is endangered, conduct a frisk type search of such person for weapons.

K. The term "property" is used in this section to include, but not be limited to, documents, books, papers, and any other tangible object.

Section 904 Arrest

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

B. A police or law enforcement officer may make an arrest in obedience to an arrest warrant, or he may, without a warrant, arrest a person:

1. When he has probable cause to believe that an offense has been committed in his presence.

2. When he has probable cause for believing the person has committed an offense, although not in his presence, and there is reasonable cause for believing that such person before a warrant can be obtained may:

a. Flee the jurisdiction or conceal himself to avoid arrest, or

b. Destroy or conceal evidence of the commission of an offense, or

c. Injure or annoy another person or damage property belonging to another person.

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

1. When an offense is committed or attempted in his presence; or

2. When an arrest warrant for that person is in fact outstanding.

D. Any person making an arrest may orally summon as many persons as he deems necessary to help him.

E. If the offense charged is an offense punishable by banishment or in violation of the federal major crimes act, the arrest may be made at his residence at any time of the day or night. Otherwise the arrest pursuant to a warrant can be made at a person's residence only between the hours of 7:00 a.m. and 9:00 p.m. unless arrest at night at the residence is specifically authorized by the issuing Judge. Arrest at places other than at the residence may be made at any time.

F. Any person, upon making an arrest:

1. Must inform the person to be arrested of his intention to arrest him, of the cause or reasons for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to, commit an offense, or is pursued immediately after its commission or an escape if such is not reasonably possible under the circumstances;

2. Must show the warrant of arrest as soon as is practicable, if such exists and is demanded;

3. If a law enforcement officer, may use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest except that deadly force may be used only as otherwise provided by law;

4. If a law enforcement officer, may break open a door or window of a building in which the person to be arrested is, or is reasonable believed to be, after demanding admittance and explaining the purpose of which admittance is desired;

5. May search the person arrested and take from him and put into evidence all weapons he may have about his person;

6. Shall as soon as is reasonably possible, deliver the person arrested to a police office or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

Section 905 Arrest in Hot Pursuit

A. Any law enforcement officer otherwise empowered to arrest a person within this jurisdiction may continuously pursue such person from a point of initial contact within the jurisdiction of the Tribe to any point of arrest within or without the jurisdiction of the Tribe and such arrest shall be valid, provided that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made.

B. Any law enforcement officer commissioned by the federal government, any Indian Tribe, or state, when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction, may validly arrest such person within the jurisdiction of the Tribe, provided, that any person so arrested shall be forthwith delivered to a Tribal Police Chief for a show cause hearing pursuant to the extradition laws of the Tribe.

Section 906 Limitation on Arrests in the Home

A person may be arrested in his own home only:

A. By a law enforcement officer pursuant to an arrest warrant;

B. By a law enforcement officer for an offense committed in the home in the presence of the officer; or

C. By a law enforcement officer in continuous pursuit of a person who flees to his home to avoid arrest.

Section 907 Arrest without Warrant for Violations of Civil Protection Orders or No-contact Orders.

A. Probable cause. When a law enforcement officer has probable cause to believe that a valid protection order exists and that a person has violated one of the following Court orders, the officer may, without a warrant, arrest the alleged violator. This section applies to all violations of any protection order or no-contact order, whether civil or criminal. Arrest without a warrant is allowed where the violation is of one of the following, regardless of whether the issuing authority is the Miami Tribe of Oklahoma Tribal Court or another court:

1. A criminal no-contact order;

2. A civil protection order;

3. A vulnerable adult protection order; and

4. A foreign protection order.

B. The defendant shall be held without bail pending the first hearing at which time bail and conditions of release shall be established.

C. Presentation of a protection order or foreign protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid protective order or foreign protection order exists. For the purposes of this section, the protection order or foreign protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order or foreign protection order is not required for enforcement.

D. A law enforcement officer or his or her legal adviser shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of any Court order, or any other action or omission made in good faith under this chapter arising from an incident of alleged domestic violence or family violence or violations of one of the named criminal or civil protection orders identified within this Section.

E. "Foreign protection order" means a temporary or permanent court order issued by another tribal or state court related to Domestic Violence, Harassment, Stalking, and/or Sexual Abuse/Violence, issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to another person.

Section 908 Duty to Expedite Service of Protection Orders.

Law enforcement officers shall serve orders of protection on an expedited basis and shall attempt to complete service within forty-eight (48) hours and provide a declaration of service to the Court by the next calendar day in which the Court is open.

Section 909 Notification of Rights

A. Upon arrest, the defendant shall be notified that he has the following rights:

1. The right to remain silent and that any statements made by him may be used against him in court.

2. That he has the right to obtain an attorney at his own expense and to have an attorney present at any questioning.

3. That if he wishes to answer the questions of the police, he may stop or request time to speak with his attorney at any point in the questioning.

B. Prior to conducting a consensual, warrantless search pursuant to Section 903(H)(2) or (3) of this Chapter, the officer shall specifically inform the person to be searched or the person in charge of the property to be searched that:

1. The search will be conducted only with the person's consent.

2. That the person is under no obligation or requirement to consent to the search and may refuse to consent to the search if he chooses to do so, or request the advice of an attorney at his own expense prior to responding to the requested consent to the search.

3. That if the person refuses to consent to the search, the officer will not search the person or property without first obtaining a warrant from the courts.

C. Whenever possible, the officer should obtain a written statement that the person known these rights, understands, and waives them prior to taking a voluntary statement from a

defendant or conducting a warrantless consensual search, provided that the absence of such a written statement does not preclude the admission of the statement or other evidence if the Court determines that the statement or consent to search were voluntary.

Section 910 Executive Order for Relief from Judgment

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

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

C. Upon the filing of written reasons for disapproval of such proposed pardon or commutation by any Justice or member of the Business Committee referred to in subsection B of this section above, the Chairman may order the proposed pardon or commutation to be placed on the ballot for the next regularly scheduled election to determine, by referendum vote of the Tribe, whether such pardon or commutation shall be granted. The vote of the people of the Tribe shall be conclusive.

Section 911 Prisoner to Pay Costs of Incarceration Authorized

A. The court may require a person who is actually received into custody at a jail facility or who is confined in a jail or holding facility, for any offense, to pay the jail facility or holding facility the costs of incarceration, both before and after conviction, upon conviction or receiving a deferred sentence. The costs of incarceration shall be collected by the clerk of the court as provided for collection of other costs and fines. Costs of incarceration shall include booking, receiving and processing out, housing, food, clothing, medical care, dental care, and psychiatric services. The costs for incarceration shall be an amount equal to the actual cost of the services and shall be determined by the Chief of Police for jails and holding facilities, by the county sheriff for county jails or by contract amount, if applicable. The cost of incarceration shall be paid by the court clerk, when collected, to the municipality, holding facility, county or other public entity responsible for the operation of such facility where the person was held at any time. The court shall order the defendant to reimburse all actual costs of incarceration, upon conviction or upon entry of a deferred judgment and sentence unless the defendant is a mentally ill person. The Chief of Police shall give notice to the defendant of the actual costs owed before any court-ordered costs are collected. The defendant shall have an opportunity to object to the amount of costs solely on the grounds that the number of days served is incorrect. If no objection is made, the costs may be collected in the

amount stated in the notice to the defendant. The Chief of Police, municipality or other public entity responsible for the operation of the jail may collect costs of incarceration ordered by the court from the jail account of the inmate. If the funds collected from the jail account of the inmate are insufficient to satisfy the actual incarceration costs ordered by the court, the Chief of Police, municipality or other public entity responsible for the operation of the jail is authorized to collect the remaining balance of the incarceration costs by civil action. When the Chief of Police, municipality or other public entity responsible for the operation of the jail collects any court-ordered incarceration costs from the jail account of the inmate or by criminal or civil action, the court clerk shall be notified of the amount collected.

B. Costs of incarceration shall be a debt of the inmate owed to the tribe, municipality, county, or other public entity responsible for the operation of the jail and may be collected as provided by law for collection of any other civil debt or criminal penalty.

C. The court may waive the costs of incarceration in their entirety. However, if the court determines that a reduction in the fine, costs, and costs of incarceration is warranted, the court shall equally apply the same percentage reduction to the fine, costs, and costs of incarceration owed by the defendant.

CHAPTER TEN: BAIL

Section 1001 Release in Non-Banishment Cases Prior to Trial

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

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

1. Place the person in the custody of a designated person or organization agreeing to supervise him;

2. Place restrictions on the travel, association, or place of abode of the person during the period of release;

3. Require the execution of an appearance bond in a specified amount and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed ten (10) percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

4. Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

5. Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hour.

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

C. A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such

violation.

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

E. A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release. Provided, that, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (D) shall apply.

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

G. Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the Court by rule from authorizing and establishing a Policeman's Bail Schedule for certain offenses or classes of offenses through which a person arrested may post bail with the Chief of Police for transmittal to the Court Clerk and obtain his release prior to his appearance before a judicial officer.

Section 1002 Appeal from Conditions of Release

A. A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to Section 1001(D) or (E) by a judge of the Court, may move the Court to amend the order and have such motion determined by a judge of the Court. Said motion will be determined promptly.

B. In any case in which a person is detained after (1) a judge of the District Court denies a motion, under subsection A, to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a Judge of the District Court, an appeal may be taken to the Supreme Court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is not so supported, the Supreme Court may remand the case for further hearing, or may, with or without

additional evidence, order the person released pursuant to Section 1001 upon such conditions as the Supreme Court determines to be proper. This appeal shall be determined promptly.

Section 1003 Release in Banishment Case or After Conviction

A person (1) who is charged with an offense punishable by banishment or (2) who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be treated in accordance with the provisions of Section 1001 unless the Court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of Section 1002 shall not apply to persons described in this section.

Section 1004 Penalties for Failure to Appear

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

Section 1005 Persons or Classes Prohibited as Bondsmen

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

Section 1006 Authority to Act as Bail Bondsmen

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

CHAPTER ELEVEN: EXTRADITION

Section 1101 Person Committing Crimes Outside Indian Country; Apprehension in Tribal Jurisdiction

A. Whenever a judge is informed and believes that a person has committed a crime outside of the tribal territory or is wanted by order, warrant, subpoena, or summons of a federal, tribal, or state jurisdictional authority, and is present in Miami territory and using the tribal jurisdiction as an asylum from detection, apprehension, or prosecution by another jurisdiction, the Judge may order any Miami law enforcement officer to apprehend such person and deliver said person to the proper authorities at the Indian territory boundary.

B. No demand for the extradition of a person charged with or wanted for crime in another jurisdiction shall be recognized by the Court unless accompanied by a certified copy of the judgment, order, warrant, subpoena or summons from the demanding jurisdiction.

C. When a demand shall be made upon the Court by the law enforcement of another jurisdiction for the surrender of a person so wanted or charged with crime, the Judge may call upon the Tribal Prosecutor or any prosecuting officer to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

D. If the judge decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

1. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the tribal jurisdiction and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this section to the duly authorized agent of the demanding jurisdiction.

2. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the executive of any criminal process directed to them, with like penalties against those who refuse their assistance.

Section 1102 Hearing Authorized

A. If any person being arrested pursuant to this section so demands, the person shall be taken by the arresting law enforcement officer to the District Court, where the judge shall hold an extradition hearing as soon as it is practicable. If it appears that no probable cause exists to believe the person is guilty of the crime for which he is charged outside the Indian country or is not wanted by another jurisdictional authority, or if it appears the person probably will not receive a fair trial in the other jurisdiction, the judge shall order the person released from custody.

B. Any person who is arrested by virtue of a warrant issued by a judge of the District Court shall not be delivered to the agent of any other jurisdiction until notified of the demand made for his surrender, and given twenty-four (24) hours to make demand for counsel at his own expense; and should such demand be made for the purpose of suing out a writ of habeas corpus, the prisoner shall be forthwith taken to the nearest judge of the District Court, and ample time given to sue out such writ, such time to be determined by the said Judge of the District Court.

C. Any officer who shall deliver to the agent for extradition of the demanding jurisdiction a person in his custody under the judge's warrant, in willful disobedience to this section, shall be guilty of an offense and, on conviction, shall be fined not more than Five Hundred Dollars ($500.00) or be imprisoned not more than six (6) months, or both.

D. The Court may commit, and any officer or persons executing the warrant of arrest may, when necessary, confine the prisoner in the tribal jail for a period of time not exceeding thirty (30) days, as will enable the delivery of the person to the proper authorities; provided that, upon the expiration of thirty (30) days, the person's commitment shall be discharged and the person will be immediately released from custody.

E. The officer or agent of a demanding jurisdiction to whom a prisoner may have been delivered following extradition proceedings in another jurisdiction, or to whom a prisoner may have been delivered after waiving extradition in such other jurisdiction, and who is passing through this Indian territory with such a prisoner for the purpose of immediately returning such prisoner to the demanding jurisdiction may, when necessary, confine the prisoner in the tribal jail of the Indian territory which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding jurisdiction after a requisition by the executive authority of such demanding jurisdiction. Such prisoner shall not be entitled to demand a new requisition while in this territory.

Section 1103 Arrest Warrant Authorized

Whenever any person shall be charged on the oath of any credible person before any judge with the commission of any crime in any other jurisdiction and with having fled from justice or with having been convicted of a crime in that jurisdiction and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge setting forth on the affidavit of any credible person in another jurisdiction that a crime has been committed in such other jurisdiction, and that the accused has been charged in such jurisdiction with the commission of the crime, and has fled from justice, or with having been convicted of a crime in that jurisdiction and having escaped from confinement, or having broken the terms of his bail, probation or parole and is believed to be in this jurisdiction, the judge shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this jurisdiction, and to bring him before the same or any other judge who may be available in or convenient of access to the place where the arrest may be

made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

Section 1104 Arrest Without Warrant Authorized

The arrest of a person may be lawfully made also by any peace officer or a private person, under this Chapter, without a warrant upon reasonable information that the accused stands charged in the courts of another jurisdiction with a crime, but when so arrested the accused must be taken before a judge with all practicable speed and complaint must be made against him setting forth the ground for the arrest; and, thereafter, his answer shall be heard as if he had been arrested on a warrant.

Section 1105 Commitment; Bail

If from the examination before the judge, it appears that the person held is the person charged with having committed the crime alleged and that he has fled from justice, the judge must, by a warrant reciting the accusation, commit him to the tribal jail for such a time not exceeding thirty (30) days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of authority of the court having jurisdiction of the offense, unless the accused give bail as provided by court order, or until he shall be legally discharged.

CHAPTER TWELVE: CERTIFICATION AS CHILD

Section 1201 Persons 16 or 17 Years of Age to be Considered as Adult for Committing Certain Offenses

Any person sixteen (16) or seventeen (17) years of age who is charged with Assault in the First Degree, Mayhem, Kidnapping, Homicide in the First Degree or Rape in the First Degree, shall be considered as an adult. Upon the arrest and detention, such sixteen or seventeen-year-old accused shall have all the statutory and constitutional rights and protections of an adult accused of a crime, but shall be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.

Section 1202 Warrants or Summons

Upon the filing of a complaint against such accused person, a warrant or summons shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian, or next friend of the accused person to be present at the arraignment, to have representation as provided in Section 102 and to make application for certification of such person as a child to the Juvenile Division of the District Court. The warrant or summons shall be personally served together with a certified copy of the complaint on the accused person and on the parents, guardian or next friend of the accused person.

Section 1203 Certification Hearing

A. The accused person shall file a motion for certification as a child within ten (10) days of the arraignment. Upon the filing of such a motion, the complete juvenile record of the accused shall be made available to the Tribal Prosecutor.

B. Within ten (10) days of the filing of such a motion, the Court shall hear evidence regarding certification of the accused person as a child.

C. When ruling on the certification motion of the accused person, the Court shall give consideration to the following guidelines, listed in order of importance:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and

3. The prospects for adequate protection of the public if the accused person is processed through the juvenile system.

D. The Court, in its decision on the certification motion of the accused person, need not detail responses to each of the above considerations, but shall state that the Court has considered each of the guidelines in reaching its decision.

Section 1204 Certification as Child

Upon completion of the Certification Hearing, if the accused person is certified as a child to the Juvenile Division of the District Court, then all adult court records relative to the accused person and the instant charge shall be expunged and any mention of the accused person shall be removed from public record.

Section 1205 Final Order

An order certifying a person as a child or denying the request for certification as a child pursuant to this section shall be a final order, appealable when entered.

CHAPTER THIRTEEN: EXPUNGEMENT OF CRIMINAL RECORDS

Section 1301. Expungement of Criminal Records Authorized; Procedure

A. Persons authorized to file a motion for expungement, as provided herein, must be within one of the following categories:

1. The person has been acquitted;

2. The conviction was reversed with instructions to dismiss by the Supreme Court, or the Supreme Court reversed the conviction and the Tribal Prosecutor subsequently dismissed the charge;

3. The factual innocence of the person was established by the use of deoxyribonucleic acid (DNA) evidence subsequent to conviction, including a person who has been released from incarceration at the time innocence was established;

4. The person has received a full pardon on the basis of a written finding by the Chairman of actual innocence for the crime for which the claimant was sentenced;

5. The person was arrested and no charges of any type, including charges for an offense different than that for which the person was originally arrested are filed or charges are dismissed within one (1) year of the arrest, or all charges are dismissed on the merits;

6. The statute of limitations on the offense had expired and no charges were filed;

7. The person was under eighteen (18) years of age at the time the offense was committed and the person has received a full pardon for the offense;

8. The offense was a misdemeanor, the person has not been convicted of any other misdemeanor or felony, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the judgment was entered;

9. The offense was a nonviolent felony, the person has received a full pardon for the offense, the person has not been convicted of any other misdemeanor or felony, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the conviction; or

10. The person has been charged or arrested or is the subject of an arrest warrant for a crime that was committed by another person who has appropriated or

used the person's name or other identification without the person's consent or authorization.

For purposes of this Code, "expungement" shall mean the sealing of criminal records. Records expunged pursuant to paragraph 10 of this section shall be sealed to the public but not to law enforcement agencies for law enforcement purposes.

Section 1302. Procedure For Sealing Records

A. Any person qualified under Section 1301 of this Code may petition the District Court in which the arrest information pertaining to the person is located for the sealing of all or any part of the record, except basic identification information.

B. Upon the filing of a petition or entering of a Court order, the Court shall set a date for a hearing and shall provide thirty (30) days of notice of the hearing to the Tribal Prosecutor, the arresting agency, and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of such record.

C. Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order such records, or any part thereof except basic identification information, to be sealed. If the Court finds that neither sealing of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to such records.

D. Any order entered under this subsection shall specify those agencies to which such order shall apply. Any order entered pursuant to this subsection may be appealed by the petitioner, the Tribal Prosecutor, the arresting agency, to the Supreme Court in accordance with the rules of the Supreme Court. In all such appeals, the tribal law enforcement department is a necessary party and must be given notice of the appellate proceedings.

E. Upon the entry of an order to seal the records, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person.

F. Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of such records, the Tribal Prosecutor, and only to those persons and for such purposes named in such petition.

G. Employers, educational institutions, tribal government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records provide information

that has been sealed, including any reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

H. All arrest and criminal records information existing prior to the effective date of this section, except basic identification information, are also subject to sealing in accordance with subsection C of this section.

I. Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records.

J. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

K. For the purposes of this Code, District Court index reference of sealed material shall be destroyed, removed or obliterated.

L. Any record ordered to be sealed pursuant to Section 1301 et seq. of this Code, if not unsealed within ten (10) years of the expungement order, may be obliterated or destroyed at the end of the ten-year period.

M. Subsequent to records being sealed as provided herein, the Tribal Prosecutor, the arresting agency, or other interested person or agency may petition the court for an order unsealing said records. Upon filing of a petition, the Court shall set a date for hearing, which hearing may be closed at the Court's discretion, and shall provide thirty (30) days' notice to all interested parties. If, upon hearing, the court determines there has been a change of conditions or that there is a compelling reason to unseal the records, the Court may order all or a portion of the records unsealed.

N. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony.

Section 1303. Expungement in Event of Identity Theft

Notwithstanding any provision of Section 1301 or 1302 of this Code, when a charge is dismissed because the court finds that the defendant has been arrested or charged as a result of the defendant's name or other identification having been appropriated or used without the defendant's consent or authorization by another person, the court dismissing the charge may, upon motion of the district attorney or the defendant or upon the court's own motion, enter an order for expungement of law enforcement and court records relating to the charge. The order shall contain a statement that the dismissal and expungement are ordered pursuant to this section. An order entered pursuant to this section shall be subject to the provisions of subsections D through M of Section 1302 of this Code.