TITLE 11
CRIMINAL PROCEDURE

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Section 1. Scope, Purpose and Construction

(a) This Title governs the procedure in all criminal proceedings in the Tribal District Court and all preliminary or Supplementary procedures as specified herein.

(b) Every proceeding in which a person is charged with a criminal offense of any degree and brought to trial and punished is a criminal proceeding.

(c) This Title 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.

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

[History: Public Law #KT 90-14, February 6, 1990]

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 Title shall be deemed punishment.

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

(c) 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.

[History: Public Law #KT 90-14, February 6, 1990]

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 fifty dollars ($50.00)
>
> (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 Tribal 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 provided 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 in his own behalf;

(f) To have a speedy public trial by an impartial judge or jury as provided in this Title;

(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 in 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.

[History: Public Law #KT90-14, February 6, 1990]

Section 103. Limitation of Prosecution

(a) Every criminal proceeding except an offense for which banishment is a possible punishment shall be commenced within three (3) 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 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.

[History: Public Law #KT90-14, February 6, 1990]

Section 104. No Common Law Offenses

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

[History: Public Law #KT-90, February 6, 1990]

CHAPTER TWO: PROCEEDINGS BEFORE TRIAL

Section 201. 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 Attorney General or his Assistant; 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 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 not 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 Attorney general 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 sh all 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 at any time with the period prescribed by Section 103 of this Title, provided, that if an accused has been arrested without a warrant the complaint shall be filed promptly and in case later than the time of arraignment.

[History: Public Law #KT-90, February 6, 1990]

Section 202. 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 Tribal 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 Tribal 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) **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; a description of the offense charged with a reference to the Section of the Tribal Code alleged to have violated. It shall order and command the defendant be arrest and brought before a Judge of the Tribal 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.

(d) **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 Tribal Judge within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon 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.

(e) **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 Tribal 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 the 7:00 a.m. and 9:00 p.m., unless an authorization to serve such process at night is placed on the face thereof by Tribal 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.

(f) 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.

[History: Public Law #KT-90, February 6, 1990]

Section 203. 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, 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 to appear before a Tribal Judge within five (5) days or on a day certain to answer to the charge, and the signature of the defendant.

(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 and two (2) copies shall be delivered to the Attorney General.

[History: Public Law #KT-90, February 6, 1990]

Section 204. Arraignment

(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 pleas and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a Criminal summons or Citation or, if the accused was arrested and confined, within seven-two (72) hours of the arrest, Saturdays, Sundays, and legal holidays excepted.

(b) **Procedure at Arraignment.** Arraignment shall be conducted in the following order:

(1) The Judge or Magistrate should request the Attorney General to read the charges.

(2) The Attorney General 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 penalized.

(3) The Judge or Magistrate should determine that the accused understands the charge against him and explain to defendant that he has the following rights:

(i) the right to remain silent.

(ii) to be tried by a jury upon request.

(iii) 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 or Magistrate 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 indigence 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 or Magistrate 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", the Judge shall set a trial date and conditions for bail prior to trial.

(2) If the defendant pleads "not guilty", the Judge shall set a trial date and conditions for bail 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.

[History: Public Law #KT-90, February 6, 1990]

Section 205. Commitments

No person shall be detained or jailed for a period longer than seventy-two (72) hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of a Judge or Magistrate of the Tribal Court has been issued.

(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 Tribal Court.

[History: Public Law #KT-90, February 6, 1990]

Section 206. 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 offense. Each defendant need not be charged in each count.

[History: Public Law #KT-90, February 6, 1990]

Section 207. Pleas

(a) A defendant may plead guilty, nolo contendere, or not guilty. The Court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the defendant refuses to plead or if the Court refuses to accept a plea of guilty, or nolo contendere, the Court shall enter a plea of not guilty. The Court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea.

(b) The defendant, with the consent of the Court and of the prosecuting attorney, may plea

guilty to any lesser offense than that charged which is included in the offense charged in the complaint or to any lesser degree of the offense charged.

[History: Public Law #KT-90, February 6, 1990]

Section 208. Withdrawing Guilty Plea

A motion to withdraw a plea of guilty may be made only before a sentence is imposed, deferred, or suspended, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice.

[History: Public Law #KT-90, February 6, 1990]

Section 209. Plea Bargaining

Whenever the defendant pleads guilty as a result of a plea arrangement with the Attorney general, the full terms of such agreement shall be disclosed to the Judge. The Judge in his discretion, is not required to honor such agreement. In the event the Judge decides not to honor such agreement, he should offer the defendant an opportunity to withdraw his plea and proceed to trial.

[History: Public Law #KT-90, February 6, 1990]

Section 210. Pleading and Motions before Trial: Defenses and Objections

(a) Pleadings in criminal proceedings shall consist of the complaint or citation and the plea of either guilty, nolo contendere, or not guilty. All other pleas and motions shall be made in accordance with this Title.

(b) Motions raising defenses and objections may be made as follows:

(1) Any defenses and objections which are capable of determination other than at trial may be raised before trial by motion.

(2) Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the Court or fails to charge an offense may raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charged an offense may be raised as a defense or noticed by the Court on its own motion at any stage of the proceeding.

(3) Such motions shall be made in writing and filed with the Court at least five (5)

business days before the day set for trial. Such motions will be argued before the Court on the date of trial unless the Court directs otherwise. Decisions on such motion shall be made by the Judge and not be the jury.

(4) If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the Judge shall alter the proceedings, allow an interlocutory appeal to be taken as provided in the Appellate Rules, or enter judgment as is appropriate in light of the decision.

[History: Public Law #KT-90, February 6, 1990]

Section 211. Concurrent Trial of Defendants or Charges

(a) The Court may order two or more defendants tried together if they could have been joined in a single complaint, or may order a single defendant tried on more than one complaint at a single trial.

(b) If it appears that a defendant or the Tribe is prejudiced by a joinder of offenses or other defendants for trial, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Tribe to deliver to the Court for inspection in chambers, any statements made be a defendant which the Tribe intends to introduce in evidence at the trial.

[History: Public Law #KT-90, February 6, 1990]

Section 212. Discovery and Inspection

(a) The police, or Attorney General, shall, upon request, permit the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control of or reasonably obtainable by the police or prosecution. The police and prosecution shall make similarly available copies of reports of physical, metal or scientific test or examinations relation to or done on the defendant.

(b) The defendant or his attorney shall reveal by written notice to the Court and the Attorney General at least five (5) working days before trial the names and addresses of any witnesses upon whom the defense intends to rely to provide an alibi or insanity defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case of the Judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

[History: Public Law #KT-90, February 6, 1990]

Section 213. Subpoena

(a) The defendant and the attorney general shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued in blank. Subpoenas in criminal cases shall be issued, served, and returned as in civil cases.

(b) A subpoena may be served any place within the jurisdiction of the Tribal Court, and as provided for service in civil cases.

(c) Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of court, and prosecution thereof may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time, and place of service and the person performing such service.

[History: Public Law #KT-90, February 6, 1990]

CHAPTER THREE: TRIAL

Section 301. Trial by Jury or by the Court

(a) All trials of offenses shall be by the Court without a jury unless the defendant files a request for a jury trial and pays a One Hundred Dollar ($100.00) jury fee not less than ten (10) business days prior to the date set for trial. A Judge may in his discretion waive the jury fee if the defendant shows that he is without sufficient funds to pay the jury fee.

(b) Juries shall be composes of six (6) members with one (1) alternate if an alternate juror is deemed advisable by the Court.

(c) In a case tried without a jury, the Judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be embodies in a written decision.

[History: Public Law #KT-90, February 6, 1990]

Section 302. Trial Jurors

(a) Jurors shall be drawn from the list of eligible jurors, prepared as provided in the Civil Procedure Act.

(b) The Court shall permit the defendant or his counsel and the Attorney General 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 three (3) peremptory challenges.

(2) Either side may challenge any juror for cause.

(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 the has not been called to replace an original juror who has become, for any reason, unable or disqualified to serve.

(e) Jurors shall otherwise be subject to all rules applicable to juries in civil cases.

[History: Public Law #KT-90, February 6, 1990]

Section 303. Order of Trial

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 Act 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 in the case or 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 Attorney general and the defendant may alternatively request the Court to dismiss any juror by peremptory challenge. Each party shall have three (3) 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 as the original panel was selected. The final jury panel should then be sworn.

(g) The Court should request the Attorney general 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 Attorney general 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) The Attorney General shall then present his evidence followed by the defendant's presentation of his defense evidence. After the defendant has presented his evidence, the Attorney General may present evidence in rebuttal.

(k) The Attorney General shall then present his closing argument, the defendant his closing argument, and the Attorney General shall be allowed to present a rebuttal.

(l) 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.

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

(n) 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 an unanimous vote of the jury, although a recommendation that banishment be imposed is not binding on the Judge.

(o) After sentencing the Judge may hold a hearing to determine appeal bond if an appeal is filed.

[History: Public Law #KT-90, February 6, 1990]

Section 304. Trial by Judicial Panel

(a) In every trial for an offense or offenses punishable by imprisonment for more than three months in which a jury trial is not requested, 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 punishably by banishment in which a jury trial is not requested, and in which the Attorney General shall recommend in the complaint that banishment be imposed upon conviction, the Court shall 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 an unanimous finding of guilt by the judicial panel and an 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.

[History: Public Law #KT-90, February 6, 1990]

Section 305. 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 Tribal 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 Tribal 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.

[History: Public Law #KT-90, February 6, 1990]

Section 306. 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.

[History: Public Law #KT-90, February 6, 1990]

Section 307. 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 Clerk may act as interpreter only with the consent of all parties.

[History: Public Law #KT-90, February 6, 1990]

Section 308. 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 decided the motion any time either before or after the jury returns its verdict or is discharged.

[History: Public Law #KT-90, February 6, 1990]

Section 309. Instructions

At the close of evidence or at such earlier time during the trials 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.

[History: Public Law #KT-90, February 6, 1990]

Section 310. Verdict

(a) Except as hereinbefore provided in cases where banishment is recommended, t he 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 unanimous. It shall be returned by the jury to the Judge is open court. If the jury is unable to agree, the jury may be discharged and the defendant tried again 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) Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

(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.

[History: Public Law #KT-90, February 6, 1990]

CHAPTER FOUR: JUDGMENT AND SENTENCE

Section 401. Judgment

A judgment of conviction shall set forth in writing the charge, plea, verdict or findings, and the sentence imposed. If the defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the Clerk.

[History: Public Law #KT-90, February 6, 1990]

Section 402. 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 Title. 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 of 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.

[History: Public Law #KT-90, February 6, 1990]

Section 403. 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 him 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 case 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 twenty-five dollars ($25.00) of fine; or

(2) Place the offender on probation under such reasonable conditions as the Cor. may direct for a period not exceeding three (3) times the amount of 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.

[History: Public Law #KT-90, February 6, 1990]

Section 404. 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 or 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.

[History: Public Law #KT-90, February 6, 1990]

Section 405. 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.

[History: Public Law #KT-90, February 6, 1990]

Section 406. 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 the verdict or finding of guilty or plea of guilty, or within such further time as the Court may fix during the seven day period.

[History: Public Law #KT-90, February 6, 1990]

Section 407. 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 reduce a sentence upon revocation of probation.

[History: Public Law #KT-90, February 6, 1990]

Section 408. 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 after such notice, if any, as the Court orders.

[History: Public Law #KT-90, February 6, 1990]

CHAPTER FIVE: APPEAL

Section 501. 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.

(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 Act.

[History: Public Law #KT-90, February 6, 1990]

Section 502. 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. 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.

[History: Public Law #KT-90, February 6, 1990]

CHAPTER SIX: OTHER PROVISIONS

Section 601. 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 Tribal 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 search. 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 each warrant shall contain the name and addresses of the Court and the signature of the Judge or Magistrate issuing the warrant. It shall specifically describe the places 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 the executing 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 sized 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 searching those circumstances would not be unreasonable.

(i) A person aggrieved by an unlawful search and seizure may move the Tribal 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 documents, books, papers, and any other tangible object.

[History: Public Law #KT-90, February 6, 1990]

Section 602. 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:

(i) flee the jurisdiction or conceal himself to avoid arrest, or
(ii) destroy or conceal evidence of the commission of an offense, or
(iii) 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;

(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 persons 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 arrest either flees or forcibly resists after receiving information of the officer's intent to arrest except that deadly force may be used only as s 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 reasonable possible, deliver the person arrested to a police officer or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

[History: Public Law #KT-90, February 6, 1990]

Section 603. 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, and Indian tribe, or state when in hot and continuous pursuit of any person for the commission of a felony within such other 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.

[History: Public Law #KT-90, February 6, 1990]

Section 604. 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.

(c) By a law enforcement officer in continuous pursuit of a person who flees to his home to avoid arrest.

[History: Public Law #KT-90, February 6, 1990]

Section 605. 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 nay 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 601 (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 refused 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.

[History: Public Law #KT-90, February 6, 1990]

Section 606. Executive Order for Relief From Judgment

(a) The Chief Executive Office for 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 sends 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 tribal Legislative Body. If, within sixty (60) days after the filing thereof, with proof of service, any such Justice or Legislator shall disapprove the 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 Chief Executive Officer of the Tribe.

(c) Upon the filing of written reasons for disapproval of such proposed pardon or commutation by any Justice or Legislator referred to in (b) above, the Chief Executive Officer 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.

[History: Public Law #KT-90, February 6, 1990]

CHAPTER SEVEN: BAIL

Section 701. Release in Nonbanishment 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 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.

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 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 reasonable necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hour.

(b) 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 circumstance of the offense charged, the employment, financial resources, character and mental condition, the length of his residence int he community, his record of conditions, and his record of appearance at Court proceedings or of flight to aloud 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 (72) 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 b e 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 t he Chief of the Tribal Police for transmittal to the Court Clerk and obtain his release prior to his appearance before a Judicial officer.

[History: Public Law #KT-90, February 6, 1990]

Section 702. 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 701(d) or Section 701(e) by a Magistrate 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 91) a Judge of the Tribal Court denies a motion, under subsection (a) above, to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a Judge of the Tribal 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 701 upon such conditions as the Supreme Court determines to be proper. This appeal shall be determined promptly.

[History: Public Law #KT-90, February 6, 1990]

Section 703. Release in Banishment Cases 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 701 unless the Court or Judge has reason to believe that no one or more conditions of release will reasonable assure that the person will not flee or poses a dancer 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 702 shall not apply to persons described in this Section.

[History: Public Law #KT-90, February 6, 1990]

Section 704. 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, 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 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.

[History: Public Law #KT-90, February 6, 1990]

Section 705. 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 officer, magistrates, judges, court clerks and any person having the power to arrest or having anything to do with the control of Tribal prisoners.

[History: Public Law #KT-90, February 6, 1990]

Section 706. 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 a bondsmen and runners in the Tribal 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.

[History: Public Law #KT-90, February 6, 1990]