

TITLE II - CRIMINAL PROCEDURE

CHAPTER 1. COMPLAINT

Sec. 101. Complaint.

(a) A complaint is the written statement of the essential facts charging that a named individual has committed a particular criminal offense. All criminal prosecutions shall be initiated by a complaint filed with the Court and sworn to by a person having personal knowledge of the offense.

(b) Complaints shall contain:

(1) The signature of the complaining witness or witnesses, sworn to before a Judge, a clerk or any law enforcement officer.

(2) A written statement by the complaining witness or witnesses having personal knowledge of the violation describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained.

(3) The name or description of the person alleged to have committed the offense.

(4) A description of the offense charged.

(5) Unless the complaint is signed by a police officer having personal knowledge of the violation, no arrest warrant or summons shall issue to the defendant unless the complaint is approved by a Judge.

(c) Chitimacha Tribal Police or its designated agent shall be available to assist persons in drawing up complaints and shall screen such complaints for sufficiency. Where the content of a person's complaint presents a conflict of interest for the Chitimacha Tribal Police or an employee of the Chitimacha Tribal Police, The Chief Judge the Prosecutor shall be available to assist persons in drawing up complaints and shall screen such complaints for sufficiency. In so doing, the Prosecutor may designate an individual or individuals who shall be available to assist persons in drawing up complaints and ~~who~~ shall screen them for sufficiency. Such complaints shall then be submitted without unnecessary delay to a judge to determine whether an arrest warrant or summons should be issued.

Sec. 102. Time Limit for Commencing Criminal Prosecution.

No prosecution for an offense under this Code shall be maintained unless it is initiated within the limitations prescribed under Title III, Chapter 8, Section 802. ~~the complaint is filed within one (1) year after the commission of the offense. Time during which the accused is outside the jurisdiction of the Court, for whatever reason, shall not be included in this one (1) year time limit.~~

CHAPTER 2. ARRESTS

Sec. 201. Arrest.

(a) Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.

(b) No member of the Tribal Police Department or other law enforcement officer of the Tribe shall arrest or apprehend any person for alleged criminal offense except under the following circumstances:

- (1) When such offense shall occur in the presence of an arresting officer; or
- (2) When the arresting officer shall have probable cause to believe that the person to be arrested has committed an offense contained in Title III of this Code; or
- (3) When the arresting officer acts pursuant to warrant issued by the Tribal Court commanding him or her to arrest such person.

(Revised by Ordinance # 2-97; Adopted: December 11, 1997; Effective: December 11, 1997)

Sec. 202. Warrants for Arrest.

(a) The Tribal Court shall have the authority to issue warrants for arrest only upon satisfaction of the issuing Judge that there is probable cause to believe that an offense against tribal law has been committed by the named accused, based on sworn written statements or sworn oral testimony.

(b) The arrest warrant shall contain the following information:

- (1) Name or description and address, if know, of the person to be arrested.
- (2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing Judge.

(c) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of arrest, but upon request shall, as soon as possible, show it to the defendant.

Sec. 203. Notification of Rights at Time of Arrest.

Upon arrest, the suspect shall be advised immediately of the following rights:

(1) That he has the right to remain silent.

(2) That any statements made by him may be used against him in court.

(3) That he has the right to obtain counsel at his own expense.

(4) That he has the right to make at least one completed telephone call to a friend and at least one completed call to a lay counselor or attorney immediately after being registered and identified at the jail, or sooner if there is an unreasonable delay in taking the accused to jail or in registering the accused at the jail. If the suspect's conduct presents an immediate and credible threat of bodily injury to a law enforcement officer or law enforcement staff at the time that this right is afforded to the suspect, a law enforcement officer may, after taking all reasonable steps to ensure that the suspect may exercise this right, deny the right until immediately after the threat has passed.

Sec. 204. Summons in Lieu of Arrest Warrant.

(a) A law enforcement officer or a judge may, in lieu of an arrest warrant, issue a summons commanding the accused to appear before the Court at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as an arrest warrant, except that it may be signed by a police officer.

(c) The summons shall state that if a defendant fails to appear in response to the summons, a warrant for his or her arrest shall be issued.

(d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his usual residence or place of business with a person of suitable age and discretion who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the records of the case.

CHAPTER 3. SEARCHES

Sec. 301. Search Warrant.

(a) A search warrant is a written order, signed by a judge, directing a law enforcement officer to conduct a search and seize property specified in the warrant. A search warrant shall describe the person, property or place to be searched and shall describe the property to be seized.

(b) A search warrant shall be issued only by a judge and only upon probable cause that a search will discover:

(1) stolen, embezzled, contraband or otherwise unlawfully possessed property;

(2) property which has been, is being, or will be ~~or is being~~ used to commit a criminal offense; or

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

Such probable cause shall be supported by a sworn written statement or sworn oral testimony.

Sec. 302. Execution and Return of Search Warrant.

Warrants shall be served only by authorized law enforcement officers. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than 10 days from the date of issuance. Warrants not returned within such time limits shall be void. The warrant shall be served between 7:00 a.m. and 9:00 p.m., unless the judge, upon a showing of good cause therefore, inserts a direction that it be served at some other time.

Sec. 303. Search Without a Warrant.

No law enforcement officer shall conduct any search without a valid warrant except:

(a) When he is making a lawful arrest; or
(b) With the voluntary consent of the person being searched or the person entitled to possession of property being searched; ~~or~~

(c) When the search is of a ~~moving~~ moveable vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed;

(d) When the search is justified by a law enforcement officer's reasonable fear that their safety, or that of the public, is in imminent danger; or

(e) When a search is justified by credible exigent circumstances, including the inevitable destruction of evidence.

The scope of a warrantless search is defined by and limited to the purpose that justified it.

Sec. 304. Disposition of Seized Property.

(a) The officer serving and executing a warrant shall make an inventory of all property seized and a copy of this inventory shall be left with every person from whom property is seized.

(b) A hearing shall be held by the Court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless the property is contraband or is to be used as evidence in a pending case, or was used in connection with the commission of an unlawful act. Property seized as evidence shall be returned to the owner after final judgment. ~~Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court.~~ Property confiscated as contraband or otherwise forfeited to law enforcement or the Court because it was used in connection with the commission of an unlawful act shall become the property of the Tribe and may be either destroyed, sold at public auction, retained for the purposes of prosecution, retained for the benefit of the Tribe, be returned to its owner or otherwise lawfully disposed of as ordered by the Court. ~~upon notice to and an opportunity to be heard by its owner.~~

Sec. 305. Exclusion of Unlawfully Obtained Evidence.

The Court may prohibit the introduction or use ~~at tribal~~ of any evidence seized in a search

conducted in violation of Section 303 and may, in addition, recommend to the chief law enforcement officer of the Reservation what measures should be taken to correct the conduct of any appropriate disciplinary actions against the law enforcement officer who conducted the unlawful search.

CHAPTER 4. ARRAIGNMENT AND RELEASE

Sec. 401. Arraignment.

(a) Arraignment is the bringing of an accused before the Court to inform him of his rights and of the charge against him, to receive his plea, and to set conditions of pre-trial release as appropriate in accordance with this Code.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than 72 hours after arrest.

(c) Before an accused is required to plead to any criminal charges the Judge shall:

(1) Read to the accused, and provide the accused with a copy of, the complaint and determine that the accused understands the complaint and the section of the Code which he is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he has the right to remain silent, to have a speedy and public trial where he will be confronted with witnesses against him after he has had sufficient time to prepare his defense if he pleads "not guilty," to be tried by a jury if the offense charged is punishable by imprisonment, and to be represented by counsel, at his own expense, before he pleads to the charge; and

(3) When applicable, ensure that the Court provides all the protections and procedures provided for under Title III, Chapter 6 and Chapter 8 of the Code.

(d) If the arrest was without a warrant, in order for the accused is to be continued in custody the Judge shall determine during arraignment whether there is probable cause to believe that an offense against tribal law has been committed by the accused.

(e) At arraignment, the Judge shall call upon the accused to plead to the charge and proceed as follows:

(1) If the accused pleads "**not guilty**" to the charge, the Judge shall set a trial date

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and consider conditions for release prior to trial as provided in Section 402.

(2) If the accused pleads "not guilty by reason of mental disease or defect" to the charge, the Judge shall set a trial date and consider conditions for release prior to trial as provided in Section 402. The Judge may adjudicate a defendant "not guilty by reason of mental disease or defect" without trial if the Prosecutor consents and the Judge makes a finding based on expert testimony that there is a factual basis for the plea. If a Judge accepts such a plea, the defendant shall be sentenced in accordance with Chapter 6, Section 601 of Title II.

(3) If the accused pleads "guilty" to the charge, the Judge shall accept the plea only if the Judge is satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights he is waiving by the plea. The Judge may then impose sentence or defer sentencing for a reasonable time not to exceed thirty days in order to obtain any information the Judge deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing.

(4) If the accused enters a plea of "no contest" to the charge, the Judge may accept the plea only if the Code does not assign the offense charged an Enhanced Felony penalty. If the Judge accepts such a plea, the Judge may then impose sentence or defer sentencing for a reasonable time not to exceed thirty days in order to obtain any information the Judge deems necessary for the imposition of a just sentence. A sentence imposed upon a plea of no contest is a conviction and may be considered a prior conviction and provide a basis for prosecution or sentencing under laws pertaining to multiple offenses, and shall be a conviction for purposes of laws providing for the granting, suspension, or revocation of licenses to operate motor vehicles.

(5) If the accused refuses to plead, the Judge shall enter a plea of "not guilty" on his behalf.

Sec. 402. Release Before Final Judgment of Conviction.

(a) At arraignment, the Judge shall decide whether to release the defendant from custody pending sentencing or trial. As conditions of release, the Judge may, to assure the accused's appearance at all times lawfully required, order any or all of the following:

(1) that the accused deposit cash or other sufficient collateral, in an amount

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specified by the Judge;

(2) that the accused, and/or any other designated person or organization satisfactory to the Judge, execute a written promise to appear or to deliver the accused at all required times;

(3) reasonable restrictions on the travel, association or place of residence of the accused;

(4) any other condition reasonably necessary to assure the appearance of the accused as required.

(b) Any police officer authorized to do so by the Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared and approved by the Court.

(c) The Court may revoke release of any defendant and order the defendant committed at any time if it determines that the conditions of release will not reasonably assure the appearance of the defendant or if any conditions of release have been violated.

Sec. 403. Withdrawal of guilty pleas.

The Court may, in its discretion, allow a defendant to withdraw a plea of guilty—if it appears that the interest of justice and fairness would be served by doing so. The Court may, in its discretion, allow a defendant to withdraw a plea of not guilty and enter a plea of not guilty by reason of mental disease or defect if it appears that the interest of justice and fairness would be served by doing so.

If it appears in the interest of justice and fairness would be served by doing so, the Court may, in its discretion, allow a defendant to:

(a) withdraw a plea of “guilty”; or

(b) withdraw a plea of “not guilty” and enter a plea of “not guilty by reason of mental disease or defect.”

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CHAPTER 5. TRIAL PROCEEDINGS.

Sec. 501. Rights of Defendant in Criminal Cases.

No person shall twice be put in jeopardy for the same offense, nor shall he be compelled in

any criminal case to be a witness against himself. The accused shall have the right to a speedy and public trial, the right to be confronted with witnesses against him, the right to assistance of counsel at his own expense and the right to demand trial by an impartial jury if the offense, or combination of offenses, charges is punishable by imprisonment.

Sec. 502. Limitations on Trial Date.

(a) A defendant must be tried without unnecessary delay after entry of a plea other than guilty.

(b) The following limitations apply to proceedings that involve any defendant who is in the custody of a jail or detention facility:

(1) On demand of any party after entry of a plea other than guilty, the trial must start within sixty (60) days unless the Court finds good cause for a later trial date.

(2) Unless exigent circumstances exist, if trial does not start within one hundred and twenty (120) days from the date that a plea other than guilty is entered and the demand is made, the defendant must be released under any nonmonetary conditions the Court orders.

(3) Unless exigent circumstances exist, if trial does not start within one (1) year from the date that a plea other than guilty is entered, the Court shall dismiss the complaint without prejudice upon demand or may dismiss the complaint without prejudice on its own initiative.

(c) The following limitations apply to proceedings that involve a defendant who is not in custody of a jail or detention facility subsequent to the entry of the plea:

(1) On demand of any party after entry of such plea, the trial must start within eighty (80) days unless the Court finds good cause for a later trial date.

(2) Unless exigent circumstances exist, if trial does not start within one hundred and eighty (180) days from the date that a plea other than guilty is entered and the demand is made, the defendant must be released under any nonmonetary conditions the Court orders.

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(3) Unless exigent circumstances exist, if trial does not start within two (2) years from the date that a plea other than guilty is entered, the Court shall dismiss the complaint without prejudice upon demand or may dismiss the complaint without prejudice on its own initiative.

(d) To determine whether to depart from the time limitations that govern the proceedings under this Section, the Court shall determine whether good cause or exigent circumstances exist upon either party's request or the Court may determine that good cause or exigent circumstances exist on its own initiative. In any order that finds good cause or the existence of exigent circumstances, the Court shall identify the time limitations that will govern the relevant proceedings.

(e) If a defendant's custody status changes after the defendant makes a demand under this Section, the Court may in its discretion modify the time limitations that governed the defendant's proceedings upon either party's request or on its own initiative.

Sec. 50~~32~~. **Issuance of Subpoenas.**

(a) Upon request of the defendant or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses or the production of books, records, documents or other physical evidence relevant to the determination of the case that does not impose an undue burden on the person possessing the evidence. An employee of the Court may act on behalf of the Court and issue subpoenas which have been signed by the Chief Judge or his/her designee, and which are to be served within the confines of the Reservation.

(b) A subpoena shall bear the signature of the Chief Judge or his/her designee and shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the date, time and place where the witness is to appear or the evidence is to be produced.

(Revised by Ordinance #3-93; Adopted: May 10,1993; Effective: May 10,1993)

Sec. 50~~43~~. **Service of Subpoenas.**

(a) A subpoena may be served at any place within or without the confines of the

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Reservation.

(b) A subpoena may be served by any law enforcement officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his usual place of residence or business with any person of suitable age and discretion who also resides or works there.

(c) Proof of service of the subpoena shall be filed with the Court by noting on the back of a copy of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

Sec. 5054. Failure to Obey Subpoena.

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be deemed to be in contempt of court.

Sec. 5065. Witness Fees.

(a) Each witness answering a subpoena shall be entitled to a fee as set by the Court for each day the witness' services are required.

(b) The expenses provided for in this section shall be paid by the Tribe upon completion of the trial, but such expenses associated with witnesses called by the defendant may be taxed as costs against the defendant if he is found guilty and in such case a judgment for the costs of witnesses_

shall be entered against the defendant, provided however that no defendant shall be imprisoned solely because of his inability to pay such costs.

(c) If the Court finds that a complaint was not filed in good faith, but with a frivolous or malicious intent, it may order the expenditures incurred under this section, and such_

order shall constitute a judgment against the complainant.

(Revised by Ordinance # 2-98-; Adopted: June 18, 1998 ; Effective: June 18, 1998)

Sec. 5076. Trial Procedure.

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(a) The prosecution shall present its case first, followed by the defendant. If rebuttal is required, the prosecution shall proceed first, followed by the defendant. The Tribe shall prosecute the charge by presenting the testimony of the law enforcement officer and any other witnesses who have information that support the charge. In presenting such evidence, the Tribe may employ a tribal official, professional attorney, or other approved spokesperson.

(b) Subject to Subsection (c), aAll testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court and available to the defendant. The Court shall abide by Title IV, Chapter 8 of this Code (Chitimacha Rules of Evidence). ~~not be bound by formal rules of evidence, but shall use its own discretion as to what evidence it deems necessary and relevant to the case.~~

(c) In a proceeding involving an alleged sex crime committed against a minor, the Court may order that the minor victim's testimony be taken by video recording in a room outside the courtroom. The Court shall support such an order with findings on the record that the child is unable to testify in open court in the presence of the defendant due to the victim's fear, the substantial likelihood of trauma from testifying, or that a circumstance that arises during the proceeding causes the victim to be unable to continue testifying. Where a victim's testimony is taken under this Subsection, the Court shall ensure that the victim is subject to cross-examination, including by the defendant's attorney, by two-way closed-circuit television, by questionnaire prepared before and after direct examination, or by any other means the Court deems appropriate. The defendant shall not be in the same room as the victim. The defendant shall be provided with the means to hear the victim's testimony.

(d) The defendant may be found guilty of a lesser offense not necessarily included in the offense charged, without the necessity of having been formally charged with the lesser offense.

(e) The defendant shall be present in court at every stage of the trial, including selection of the jury, return of the verdict, and imposition of the sentence.

(f) The defendant is presumed to be innocent. The prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt, including the facts that a crime has actually been committed and that the defendant committed it with the requisite intent when intent is an element

of the offense.

(gf) At the conclusion of the evidence, the prosecution and defendant each in turn shall summarize the proof and make final argument, with the prosecution having the right to speak last.

(hg) All records relating to statements or confessions of the defendant or reports of physical, mental, or other scientific tests or examinations relating to or performed on the defendant, when in the possession or control of the Tribe, shall be open to inspection and copying by the defendant.

Sec. 508. Trial by Jury Upon Request.

Any person accused of an offense punishable by imprisonment shall not be denied, upon request, a trial by jury of not less than six persons selected at random from a list of eligible jurors prepared each year by the Court. If the Tribe's prosecutor informs the Court at any time prior to trial, either in writing or upon the record in open Court, that the imposition of imprisonment will not be sought upon conviction, then upon the Court's approval, trial shall be before the Court without a jury and the Court may not thereafter impose a sentence of imprisonment upon conviction of the crime charged.

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Sec. 509. Jury Eligibility.

(a) Eligible juror; generally. An eligible juror is a person who:

(1) is a member of the Tribe

(2) is at least 18 years of age;

(3) is of sound mind and discretion;

(4) has never been found guilty of the following crimes or their equivalent in any court of competent jurisdiction: Sections 301 (Murder), 302 (Manslaughter), 304 (Kidnapping), 307 (Rape), 308 (Sexual Assault), Patronizing a prostitute who is under the age of eighteen under Section 311, 313 (Indecent Behavior with a Juvenile), 314 (Solicitation of a Minor to Engage in Sexual Activity), 316 (d)(2) – (5) (Pornography Involving a Juvenile), 317 (Computer-Aided Solicitation of a Minor), 320 (Aggravated Assault – Severe Bodily Injury), 321

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Comment [D1]: Tribal equivalent to the crimes identified in the Major Crimes Act, 18 U.S.C. § 1153.

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(Aggravated Assault – Dangerous Weapon), 322 (Aggravated Assault – Great Bodily Harm), 323 (Aggravated Assault – Public Official), Robbery where the amount involved exceeds \$500 under Section 405, 507 (Terroristic Threats), 508 (Aiding Others in Terrorism), 531 (Child Abuse), 532 (Abandonment of a Child), a second or subsequent conviction under Section 533 (Neglect of a Child), 534 (Cruelty of Juveniles), or felony-level domestic violence under Section 610(b)(1), (3), or (4) of Title III of the Code. A person convicted of any other felony-level offense is eligible to serve as a juror if the conviction was issued at least fifteen years prior to the date that their jury summons was issued; and

(5) is not a member of the Tribal Council, or a judge, officer or employee of the Court, or an employee of the reservation police force or reservation jail.

(b) Eligible juror; special domestic violence criminal jurisdiction. Where the Tribe exercises special domestic violence criminal jurisdiction– against a non-Indian pursuant to Title III, Section 603, any potential juror must meet the eligibility requirements of this Section except for 509(a)(1). In such a case, the juror 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.

Sec. 507. Right to Jury Trial.

(a) Any person accused of a crime punishable by imprisonment shall be granted a jury trial upon his or her request, made at the time of arraignment or by a written request filed with the Clerk at least 15 days before the date set for trial. A jury shall consist of at least six members of the Tribe selected at random from a list of eligible jurors prepared each year by the Court.

(b) An eligible juror is a tribal member who is 18 years of age, is of sound mind and discretion, has never been convicted of a felony, is not a member of the Tribal Council, or a judge, officer or employee of the Court, or an employee of the reservation police force or reservation jail.

Sec. 510. Trial Jury – Empaneling Procedures and Powers.

(ae) A current roster of at least 25 tribal memberspersons who are eligible for jury duty shall be prepared and maintained by the Clerk. Potential eligible jurors may be selected by a

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variety of sources to ensure that the requirements of exercising jurisdiction under Title III, Chapter 6, Section 603 are met as prescribed in Title III, Chapter 6, Section 605, including but not limited to enrolled members of the Chitimacha Tribe of Louisiana, residents within the Tribe's Reservation, or full-time or part-time Tribal employees.

(bd) Under the supervision of the Clerk, witnessed by at least two other adult persons, a panel of jurors shall be drawn by lot from the jury roster. A trial jury shall consist of six (6) qualified jurors selected in a random fashion from a panel of twelve (12) eligible persons taken from the jury roster, none of whom has an interest in the case, or is related as spouse, parent, brother or sister to any of the parties or their attorneys. If the jury panel is exhausted before a sufficient number of jurors are selected, additional panels shall be drawn by lot from the jury roster until a trial jury is selected.

(ce) Upon a showing satisfactory to the Clerk, the following persons, upon their request, may be excluded from the jury roster and jury panels:

(1) Persons who reside outside of the Reservation and more than fifty (50) miles from the nearest exterior boundary of the Reservation.

(2) Persons of advanced age, infirmity or illness.

(3) Persons burdened by such other circumstances or subject to such other demands that jury service would cause extraordinary hardship for them. Such hardship must be substantially greater than would be experienced ordinarily by persons serving as jurors.

(4) Employees of the United States.

(df) Each member of a designated jury panel shall be served with a summons, signed by the Judge, indicating the date, place and time that he is first to appear for jury service. The notice shall be served by the Clerk of Court, a member of the Tribal Police Department, or any other person who may be designated in writing by the Court. The notice shall be served not less than seventy-two (72) hours prior to the designated time for initial appearance. After such initial appearance, the times and places for attendance by those persons included on the designated jury panel shall be prescribed by the Court.

(eg) A person summoned to serve as a juror who has not been excused pursuant to any provisions of this Code, or by order of Court, who fails to appear where and when summoned, or

who having so appeared absents himself therefrom without the permission of the Court, or who renders himself unfit to commence or continue the duties of a juror, shall be in contempt of Court. In addition to the penalties for contempt of Court prescribed by this Code, he may be charged by the Court with any costs incurred by the Court or by any other persons which resulted from such failure to be present or from such misconduct.

(fh) Each party may question members of the jury panel for the purpose of selecting a trial jury. In criminal cases, in addition to disqualifying jurors for cause as determined by the Judge, each side shall be entitled to three peremptory challenges without assigning any cause. Where there is more than one defendant, they must join in a challenge before it can be made unless the Court, for good cause shown, shall permit otherwise, or shall permit each defendant to exercise two peremptory challenges.

(gi) Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to compensation at a rate determined by the Court. All payment of compensation shall be supported by the juror attendance logs as verified by the Tribal Courts Director. Payment shall be made from available funds on deposit as the jury bond required by the Court.

(hj) The judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact. At the close of evidence, or at such earlier time during the trial as the Judge directs, any party may file with the Judge written instructions on the law which the party requests the Judge to deliver orally to the jury. At the same time, copies of such requests shall be furnished to the opposing party. The Judge shall inform each party of his proposed action upon request prior to the arguments to the jury, but the Judge shall deliver his instructions to the jury after closing arguments are completed. No party may assign as error any portion of the Judge's charge or any omission unless he makes an objection and presents reasons for the objection before the jury retires to consider its verdict. Opportunity shall be given to make an objection out of the hearing of the jury.

(ik) After deliberation in private, the jury shall return to the Judge, in open court, a verdict of "**Guilty**" or "**Not Guilty**" to each charge for each defendant. A verdict of "**Guilty**" shall require unanimous vote of the jury.

(Revised by Ordinance # 2-98; Adopted: June 18,1998 ; Effective: June 18, 1998)

Sec. 511. Motions.

(a) Definitions. A motion is a formal method by which a party submits a proposed measure of resolution for the consideration and action of the Court.

(b) Content. A motion may be comprised of a notice of motion and a memorandum in support of the motion. At a minimum, the motion must identify the relief the moving party wishes the Court to consider and the basis for a ruling in the moving party's favor.

(c) Pre-trial motions. The following motions shall be made before trial, unless the accused ~~shall show~~ demonstrates at trial that his rights will be prejudiced if the motion is not considered by the Court:

(1) Motion to set aside complaint on the grounds that it does not comply with the requirements of Sections 101 to 102; where it is found that the defendant has been charged without probable cause; or upon determination that the Court has no jurisdiction over the person or offense.

(2) Motion for a bill of particulars on the ground that the defendant must have facts other than those in the complaint in order to prepare a defense.

(3) Motion for a change in trial judge on the ground that there cannot be an impartial trial by reason of a bias, prejudice, or conflict pertaining to the presiding judge.

(4) Motion to suppress evidence that has been obtained in an unlawful manner.

(5) Motion for discovery disclosures as provided in Section 512.

(6) Motion for an order declaring that the individual charged with a violation of any section of Title III, Chapter 5, Subchapter C of the Code has a valid prescription for that substance.

(7) Motion for an order that declares a prior decision of the Court or a portion thereof invalid.

(d) Timing. Subsection (d)(1) shall govern when motions must be submitted unless the Court issues an order pursuant to Subsection (d)(2), in which case the Court's order shall

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(1) Upon notice of motion, the moving party shall secure a hearing date from the Court. The moving party's motion shall be filed with the Court no later than sixty (60) days prior to the hearing date. The nonmoving party may file a response no later than thirty (30) days prior to the hearing date. The moving party may file a reply no later than fifteen (15) days prior to the hearing date.

(2) The Court, in its discretion, may issue a scheduling order to govern the submission of motions at any time, provided that the scheduling order offers the parties a reasonable opportunity to prepare the relevant submissions.

(e) **Rulings on motions.** The Court shall either grant or deny any motion made to it and have the order entered in the record of the case along with the reasons for the ruling. 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 Court shall alter the proceedings or enter judgment as is appropriate in light of the decision.

Sec. 512. Discovery.

(a) **Prosecutor's Disclosure.** Subject to Subsection (e), the prosecutor shall, within fourteen (14) days of the defendant's arraignment or forty two (42) days prior to the defendant's trial date, whichever comes first, provide to the defendant the following disclosures:

(1) **Trial witnesses; other persons.** The names and addresses of witnesses who may be called at trial, along with their record of convictions, if any, within either attorney's actual knowledge. The names and addresses of anyone else who has information relating to the case.

(2) **Statements.** Any written or recorded statements, written summaries of oral statements, or the substance of oral statements known to the prosecutor that relate to the case. The obligation to disclose the preceding types of statements applies whether or not the person who made the statement is listed as a witness.

(3) **Documents and tangible objects.** Books, papers, documents, photographs, law enforcement officer reports, tangible objects, the location of buildings and

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places, reports on prospective jurors or witnesses, and the results or reports of physical or mental examinations, scientific tests, or experiments, along with the identity and experience of the person who prepared the report or conducted the experiment, that relate to the case.

(4) **Exculpatory information.** Material or information in the prosecutor's possession that tends to negate or reduce the defendant's guilt.

(5) **Evidence related to aggravated sentence.** Evidence the prosecutor may rely on in seeking an enhanced or elevated sentence, including the conviction record of a defendant.

(b) **Defense's disclosures.** Subject to Subsection (e), the defendant shall, at the prosecutor's request and either within fourteen days (14) of the defendant's arraignment or forty-two days (42) prior to the trial date, whichever comes first, make the following disclosures to the prosecutor:

(1) **Witnesses.** The names and addresses of witnesses who may be called at trial, along with their record of convictions, if any, within the defendant's actual knowledge.

(2) **Statements.** Relevant written or recorded statements of the persons the defendant intends to call at trial, statements of prosecution witnesses obtained by the defendant, defense counsel, or persons participating in the defense within the defendant's possession or control, or written summaries known to the defense of the substance of any oral statements made by prosecution witnesses to defense counsel or persons participating in the defense, or obtained by the defendant at the defense counsel's direction.

(3) **Documents and tangible objects.** Any books, papers, documents, photographs, tangible objects, the locations of buildings and places that the defendant intends to offer as evidence at trial.

(4) **Reports of examinations and tests.** The reports or results of physical or mental examinations, or scientific tests or experiments, the defense intends to introduce at trial that were made in connection with the case and are within the

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defense's possession or control, or were prepared by a witness the defense intends to call at trial, along with the identity and experience of the person who prepared the report or conducted the experiment.

(5) **Notice of defense.** Notice in writing of any defense, other than a plea of not guilty, that defendant intends to assert.

(6) **Alibi.** If the defendant intends to offer evidence of an alibi, the defendant must inform the prosecutor of the specific place or places where the defendant was when the alleged offense occurred and the names and addresses of the witnesses the defendant intends to call at trial in support of an alibi. As soon as practicable, the prosecutor must then inform the defendant of the names and addresses of the witnesses the prosecutor intends to call at trial to rebut the testimony of any of the defendant's alibi witnesses.

(c) **Continuing duty to disclose.**

(1) All material and information to which a party is entitled must be disclosed in time to afford the other party the opportunity to make beneficial use of it.

(2) If, after compliance with any discovery rules or orders, a party discovers additional material, information, or witnesses subject to disclosure, that party must promptly notify the other party of what it has discovered.

(3) Each party has a continuing duty of disclosure before and during trial.

(d) **Discovery by court order.**

(1) On the defendant's motion, the Court at any time before trial may, in its discretion, require the prosecutor to disclose to the defendant any relevant material and information not subject to Subsection (a), provided that the defendant makes a showing that the information may relate to the guilt or innocence of the defendant or negate guilt or reduce the culpability of the defendant as to the offense charged.

(2) On the prosecutor's motion, the Court at any time before trial may order the defendant to submit to reasonable physical or medical inspection not already subject to disclosure under Subsection (b), provided that the prosecutor make a

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showing that the inspection requested will materially aid in determining whether the defendant committed the crime alleged. The prosecutor shall provide the defendant with the results of the inspection within five days of learning the result, unless the court orders otherwise.

(3) Any party may seek an order that compels compliance with the disclosure requirements provided under Subsections (a), (b), or (c).

(4) An order granting a discovery request must specify the time, place, manner, and scope of discovery, and may impose reasonable terms and conditions.

(e) Information not subject to discovery.

(1) Legal research, records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of a party, a party's attorney, or an attorney's support staff, including information protected by the attorney-client privilege, is not discoverable.

(2) The information concerning witnesses and other persons described in Subsection (a)(1) is not subject to disclosure if the prosecutor files a written certificate with the Court that to do so may endanger the integrity of a continuing investigation or subject witnesses or other persons to physical harm or coercion. Non-disclosure under this rule must not extend beyond the time the witnesses or persons are sworn to testify at the trial.

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CHAPTER 6. SENTENCING.

Sec. 601. Sentences.

Any person who has been convicted of an offense enumerated in this Code may be sentenced by the Court to one or a combination of the following penalties:

(a) Imprisonment for a period not to exceed the maximum permitted by the Code provision defining the offense. Unless otherwise prescribed by the Code, imprisonment may be continuous or intermittent. On any sentence of imprisonment, credit shall be given for all time spent in custody in an institution as a result of the charge for which the sentence was imposed. Imprisonment may include commitment to an appropriate institution or program either on or off

the Reservation, for care, treatment, evaluation, or rehabilitation of the offender. Anyone receiving physical custody of a person sentenced by the Court shall be acting solely as an agent of the Tribe and Court. Jurisdiction over a person sentenced to a program or institution off the Reservation shall be retained by the Tribe and the Court exclusively. No placement off the Reservation shall be valid unless first approved in writing by the Chief Judge, and any order of such placement shall specify that the Tribes and the Court retain jurisdiction over any person so placed.

(b) A money fine in an amount not to exceed the maximum permitted by the code provision defining the offense. If the Court determines that a convicted offender is unable to pay forthwith a money fine assessed under this Section or any costs assessed under Section 5065(b) of this Title, the Court shall allow the offender a reasonable period of time to pay the entire sum or allow the offender to make installment payments to the Clerk of the Court at specified intervals until the entire sum is paid. If the offender defaults on such payments the Court may find the offender in contempt of court and punish the offender accordingly, but no person shall be held in contempt of court where nonpayment is because of indigence. Any convicted offender may, if such person so chooses, elect to serve time in prison at the rate of five (5) dollars per day to be credited against any fine or costs such person owes.

(c) In addition to or in lieu of the penalties provided above, the Court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensation to the injured person by means of the surrender of property, payment of money damages, or the performance of any other act, including appropriate work detail, for the benefit of the injured party.

(d) Unless otherwise prescribed by this Code, in its discretion, the Court may commute or suspend some or all of the sentence imposing a fine or imprisonment, or grant probation, on condition that the convicted person does work for the benefit of the Tribe. A person unable or unwilling to work may be confined in jail or fined as provided above.

(e) In determining the character and duration of the sentence to be imposed, the Court shall take into consideration the previous conduct, background and characteristics of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, whether the defendant has attempted to make amends, the defendant's

financial resources, and the needs of the offender's dependents. Prior to imposing sentence, the Court shall afford a reasonable opportunity to the convicted offender to present information to it. The Court may also request and receive pertinent reports, advice, and recommendations from any other person or agency which may assist the Court in imposing an appropriate sentence, provided, however, that prior to sentencing the convicted person shall be advised of the content, identity, and source of any such report, advice or recommendation and shall be afforded a reasonable opportunity to comment upon or rebut it. The Court may require, as a condition of its sentence, that the convicted offender undergo available medical, psychiatric or substance abuse treatment, not operate a motor vehicle, or remain within geographic areas designated by the Court.

(f) This subparagraph shall govern the sentencing of a defendant who is found “not guilty by reason of mental disease or defect.” When a verdict of “not guilty by reason of mental disease or defect” is returned for an offense that the Code assigns an Enhanced Felony penalty, the Court shall commit the defendant to a proper state mental institution or to a private mental institution approved by the Court for custody, care, and treatment, unless the defendant and the Prosecutor negotiate an alternative remedy approved by the Court. When a defendant is found “not guilty by reason of mental illness or defect” for any other case, the Court shall remand the defendant to the parish jail, a proper state mental institution, or to a private mental institution approved by the Court and shall promptly hold a contradictory hearing at which the defendant shall have the burden of proof, to determine whether the he or she can be discharged or can be release on probation, without danger to others or himself or herself. If the Court determines that the defendant cannot be released without danger to others or himself or herself, it shall order the defendant committed to a proper state mental institution or to a private mental institution approved by the Court for custody, care, and treatment. If the Court determines that the defendant can be discharged or released on probation without danger to others or himself or herself, the Court shall either order the defendant’s discharge, or order the defendant’s release on probation, subject to specified conditions for a fixed or an indeterminate period. The Court shall assign written findings of fact and conclusions of law; however, the assignment of reasons shall not delay implementation of judgement.

Sec. 602. Waiver of Minimum Mandatory Sentences.

(a) Notwithstanding any other provision of law to the contrary, if the commission of an offense specifies a penalty with a minimum term of imprisonment or a minimum fine, or that the sentence shall be served without benefit of parole, probation, or suspension of sentence, the Court, upon conviction, in sentencing the offender shall impose the sentence as provided by the Code for that offense, unless one of the following occurs:

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(1) If the defendant pled guilty pursuant to a negotiated plea agreement accepted by the Court, which specifies that the sentence shall be served with benefit of parole, probation, or suspension of sentence or specifies a reduced fine or term of imprisonment;

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(2) In cases resulting in trial, the prosecution and the defendant, with the Court's approval, entered into a post-conviction agreement, which specifies that the sentence shall be served with benefit of parole, probation, or suspension of sentence or specifies a reduced fine or term of imprisonment.

(b) If such agreements are entered into between the prosecution and the defendant, the Court, at sentencing, shall not impose a lesser term of imprisonment, lesser fine, or lesser period of sentence served without benefit of parole, probation, or suspension of sentence than that expressly provided for under the terms of the plea or post-conviction agreement.

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(c) The provisions of this Section do not apply to the following crimes: Sections 316 (Pornography Involving a Juvenile), 317 (Computer-Aided Solicitation of a Minor), 323 (Aggravated Assault – Public Official), or 610(b)(1) (Enhanced Felony Domestic Violence) of Title III of the Code.

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Sec. 603. Probation.

(a) **Granting probation.** After conviction for an offense, the offender may be placed on probation under such terms and conditions as the Court deems just, including a signed pledge by the offender of good conduct for the duration of the sentence and requiring the offender to pay for or contribute toward the costs associated with monitoring and enforcing the terms and conditions of probation. –The Court shall take into consideration any prior criminal record of the offender,

the offender's background, characteristics, financial condition and any other circumstances helpful in determining the advisability of probation.

(b) **Violation of conditions of probation.** If any convicted offender violates the terms and conditions of probation, the Court may, after giving such person notice and the opportunity for a hearing in open court, revoke or alter the terms of probation, and may, as a penalty for violation of the probation, impose an additional fine or imprisonment.

Sec. 6043. Forfeiture of Weapons.

Any convicted offender owning and using a firearm, or any sharp or dangerous weapon, in the commission of an offense shall forfeit such weapon to the Tribe as part of the sentence. Upon order of the Court, such weapon shall be destroyed, retained by the Police Department, or sold at public sale after appropriate public notice, pursuant to the direction of the Court.

Sec. 6054. Notification of right to appeal.

Following conviction, except upon a plea of guilty, the Court shall inform the convicted offender that he has a right to appeal. Upon the convicted offender's request, the Clerk of the Court shall prepare and file a Notice of Appeal on behalf of the convicted offender. The convicted offender, or the Clerk of the Court filing on his behalf, must file the Notice of Appeal within fifteen working days of the judgment.

CHAPTER 7. EXPUNGEMENT

Sec. 701. Petition for Expungement and Relief,

A petition may be filed under this Section for an order to seal from the public all records relating to an arrest, indictment or information, trial, or verdict if:

(a) all pending actions or proceedings in the underlying case were resolved in favor of the petitioner. For the purpose of this Chapter, a verdict of not guilty by reason of mental illness is not a resolution in favor of the petitioner;

(b) the petitioner was charged for the possession or use of a drug under Title III, Chapter 5, Subchapter C of the Code and those proceedings were dismissed and discharged;

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(c) the petitioner has successfully completed the terms of a Court-ordered diversion program or stayed sentence and has not been charged with a new crime in a court of competent jurisdiction for at least one (1) year since completion of the diversion program or stay of sentence;

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(d) the petitioner was convicted of or received a stayed sentence for a Class B Misdemeanor and has not been convicted of a new crime for at least two (2) years since discharge of the sentence for the crime;

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(e) the petitioner was convicted of or received a stayed sentence for a Class A Misdemeanor and has not been convicted of a new crime for at least four (4) years since discharge of the sentence for the crime; or

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(f) the petitioner was convicted of or received a stayed sentence for a violation of a Felony listed herein, and has not been convicted of a new crime for at least six (6) years since discharge of the sentence for the crime. This Subsection (f) is limited to convictions or stayed sentences imposed under the following sections: Sections 404 (Theft), 408 (Forgery), 501 (Carrying A Concealed Dangerous Weapon), 503 (Use of Dangerous Weapon by Children), 504 (Unlawful Discharge of Firearms), 504 (Unlawful Possession of Firearms), 511 (Bribery), 512 (Interfering with Elections), or 515 (Perjury) of Title III of the Code.

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Sec. 702. Expungement Prohibited.

(a) Crimes of Domestic Violence Ineligible. This Expungement and relief under Section 701 does not apply is not available to a petitioner if the crime sought to be expunged was prosecuted under Title III, Chapter 6 of the Code.

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(b) Crimes Requiring Registration. Expungement and relief under This Section 701 is not available to a petitioner does not apply if the crime sought to be expunged constitutes an offense for which registration is required under Title XII of the Code may not be expunged.

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Sec. 703. Law Enforcement and Court Access to Records.

Nothing in this Chapter shall prohibit officers of the Tribe's law enforcement agency or the Court to access and rely upon records sealed under Section 701 to carry out official acts.

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