

**CITIZEN POTAWATOMI NATION  
CRIMINAL PROCEDURE  
TITLE 11**

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## **CRIMINAL PROCEDURE PREFACE**

### **Section 11-0-001 Scope, Purpose and Construction**

- (A) This Act governs the procedure in all criminal proceedings in the Tribal District Court and all preliminary or Supplementary procedures as specified herein.
- (B) This Act shall be construed to secure simplicity in procedure, fairness and the elimination of unjustifiable expense and delay.
- (C) Where no particular procedure is provided, resort shall be had to the Civil Procedure Act or other applicable tribal law. If no procedure is provided in this Act, Civil Procedure or Tribal law, the Court may proceed in any lawful fashion while protecting the rights of the defendant.
- (D) The Citizen Potawatomi Nation maintains civil and criminal jurisdiction over its members and others who enter into a voluntary relationship with the Nation.
- (E) Citizenship or membership in the citizen Potawatomi Nation is voluntary. Anyone who chooses to disassociate himself or herself from the Nation may do so by withdrawing from the tribal rolls. Therefore, those individuals who maintain membership in the citizen Potawatomi Nation do so knowing that they voluntarily “assume tribal relations” with the Nation.
- (F) Individuals who voluntarily “assume tribal relations” with the Citizen Potawatomi Nation through voluntary tribal membership, intermarriage, Residence, or other substantial activities are subject to the criminal and civil jurisdiction of the citizen Potawatomi Nation. Criminal and civil jurisdiction over tribal members shall not be dependent upon the location of jurisdiction of their residence.

## **CHAPTER ONE PRELIMINARY PROVISIONS**

### **Section 11-1-101 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; no incarceration or other disposition prior to trial shall be deemed punishment.
- (B) All Criminal proceedings shall be prosecuted in the name of the Tribe.
- (C) The case number assigned to criminal actions shall clearly distinguish them.

### **Section 11-1-102 Rights of Defendant**

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

- (A) To appear and defend in person or by counsel. To designate a spokesperson with Court permission or advocate admitted to practice. The privilege to have counsel appointed may be granted by the Court or Tribal Chairman.
- (B) To be informed of the charges and to have a written copy.
- (C) To testify in their own behalf, or refuse to testify. Once a defendant testifies on any matter relevant to the proceeding against them, they shall be deemed to have waived all right to refuse to testify.
- (D) To confront and cross examine all witness against them.
- (E) To compel by subpoena the attendance of witnesses on their behalf.
- (F) To have a speedy public trial by impartial judge or jury.
- (G) To appeal in all cases.
- (H) Not to be twice put in jeopardy by the Tribe for the same offense.

### **Section 11-1-103 Limitation of Prosecution**

- (A) Every criminal proceeding, except an offense where banishment is possible, shall be commenced within five (5) years of commission, or prosecution shall be forever barred. Every criminal offense, for which banishment is a possible punishment, shall be commenced within seven (7) years of commission, or prosecution for that offense shall be forever barred.
- (B) If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the final day.
- (C) Time spent outside the jurisdiction of the Tribe for the purpose of avoiding prosecution shall not be counted toward the limitation period.
- (D) If the crime is committed against a juvenile the limitation does not begin to run until the victim reaches the age of majority.
- (E) The filing of criminal charges stays the running of the limitation.

### **Section 11-1-104 Reserved**

## CHAPTER TWO PROCEEDINGS BEFORE TRIAL

### Section 11-2-101 The Complaint

- (A) **Complaint:** Every criminal proceeding shall be commenced by the filing of a criminal complaint.
- (B) **Contents of Complaint:**
  - (1) The name and address of the court:
  - (2) The name of the defendant; or some other name if not known plus whatever description of the defendant is known.
  - (3) The signature of the Prosecutor; and his typewritten name.
  - (4) A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated.
  - (5) The person against whom or against whose property the offense was committed and the names of the witnesses if known, otherwise no statement need be made.
  - (6) The general name and Tribal code title and section number of the alleged offense.
  - (7) If the offense(s) is punishable by banishment, the Prosecutor may state in the complaint or an amendment that banishment will be recommended. If such statement is not made banishment may not be imposed.
- (C) **Error:** No minor omission or error in the complaint shall be grounds for dismissal unless some significant prejudice against the defendant can be shown.
- (D) **Time of filing complaint:** A complaint may be filed at any time within the period prescribed by Section 103, if an accused has been arrested without a warrant the complaint shall be filed no later than the time of arraignment.

### Section 11-2-102 Arrest Warrant or Summons to Appear

- (A) If a complaint has been filed, a judge shall issue a summons to the defendant. An arrest warrant shall issue only upon a complaint supported by testimony or

affidavit, which the judge can determine probable cause exists to believe an offense has been committed and the defendant committed it.

- (B) **Issuance of Arrest Warrants or Summons:** Unless the Tribal Judge has reasonable grounds to believe the person will not appear on a summons, a summons shall be issued instead of an arrest warrant.
- (C) **Contents of Arrest Warrants:** The warrant shall be signed by the Judge and shall contain the name and address of the Court; the name of the defendant, or any alias and, a description of the offense with a reference to of the Tribal Code. It shall order and command the defendant be arrested and brought before a Judge to enter a plea. When there are multiple charges only one warrant is necessary.
- (D) **Contents of Summons:** A criminal summons shall contain the same information as an arrest warrant except, it shall order the defendant to appear and to enter a plea, and notice upon failure to appear an arrest warrant may issue and the defendant may be further charged.
- (E) **Service of Arrest Warrants and Summons:**
  - (1) Warrants for Arrest and Criminal Summons may be served by any law enforcement officer or any adult person authorized in writing by the Tribal Judge. Service may be made in accordance with Tribal Law.
  - (2) Before service of foreign arrest warrants and summons, all law enforcement officers and process servers will be accompanied by the Tribal police with proper court authorization.
  - (3) A good faith attempt will be made to serve Warrants of Arrest and Summons at a person's home between the hours of 7:00 a.m. and 9:00 p.m.
  - (4) The date, time, and place of service or arrest shall be written on the warrant or summons with the servers signature, and the warrant returned to the Court. A copy shall be given to the person served or arrested at the time of arrest or as soon thereafter as is reasonably possible.
  - (5) An officer need not have the warrant in his possession at the time of arrest. If not, they shall inform the defendant of the charge, that a warrant has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment.

### **Section 11-2-103 Criminal Citations**

- (A) Whenever a law enforcement officer makes an arrest without a warrant but has reasonable grounds to believe an immediate arrest is not necessary, he may issue

the defendant a citation. Such citation, signed by the law enforcement officer, shall be considered a court order, and may be filed in lieu of a formal complaint.

(B) **Contents of Citation:**

- (1) The name and address of the Court, the name or alias and description of the defendant, a description of the offense and the signature of the law enforcement officer.
- (2) The signature of the defendant is an agreement by the defendant to appear before a Tribal Judge to answer the charge,.
- (3) A notice upon defendant's failure to appear, an arrest warrant shall issue and 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 court clerk.

**Section 11-2-104 Arraignment**

(A) **Arraignment:** Arraignment shall be held in open court upon the appearance of an accused, if the accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.

(B) **Procedure:**

- (1) Upon request of the defendant, the prosecutor will read the charges.
- (2) A copy of the complaint shall be delivered to the defendant unless he has previously received a copy.
- (3) The Judge should determine if the accused understands the charge and read the following rights:
  - (i) The right to remain silent.
  - (ii) To be tried by a jury upon request when facing a possible jail sentence.
- (4) The Judge shall ask the defendant if he wishes to obtain counsel and he will be given a reasonable time to obtain counsel. If the defendant shows his indigency and counsel or a public defender is available, counsel may be appointed, upon request of the Tribal Chairman or Judge. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea and a plea of not guilty shall be entered.

(5) The Judge should ask what they wishes to plea.

**(C) Receipt of Plea:**

1. If defendant refuses to plead, the Judge shall enter a plea of “not guilty”. The Judge shall set a trial date and conditions for bail.
2. If defendant pleads “nolo contendere” or “guilty”, the Judge may refuse to accept the plea. If the guilty plea is accepted, the Judge may immediately sentence the defendant or order a sentencing hearing.

**Section 11-2-105 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 order has been issued.

(A) A temporary commitment shall be issued pending charges or trial.

(B) A final commitment shall be issued as a result of a judgment and sentence.

**Section 11-2-106 Reserved**

**Section 11-2-107 Reserved**

**Section 11-2-108 Withdrawing Guilty Plea**

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

**Section 11-2-109 Plea Bargaining**

When the defendant pleads guilty as a result of a plea arrangement the full terms shall be disclosed. The Judge is not required to honor such agreement. If the Judge decides not to honor such agreement, he should offer the defendant an opportunity to withdraw his plea.

**Section 11-2-110 Pleading and Motions Before Trial: Defenses and Objections**

Motions raising defenses and objections:

(A) Any defenses or objections may be raised before trial by motion.

(B) Defenses and objections based on defects of the complaint other than jurisdiction or charge, may be raised on motion only before trial or shall be deemed waived.

- (C) Such motions shall be in writing and filed at least five (5) business days before the day set for trial. Motions will be argued on the date of trial.
- (D) If a motion concerning jurisdiction is denied or granted an interlocutory appeal may be taken.

**Section 11-2-111 Concurrent Trial of Defendants or Charges**

- (A) The Court may order two or more defendants to be tried together, or may order a single defendant tried on more than one complaint.
- (B) If a defendant or the Tribe is prejudiced by a joinder of offenses or other defendants the court may order separate trials.

**Section 11-2-112 Discovery and Inspection**

- (A) The police, or prosecutor shall permit the defendant or his attorney to inspect and copy any statements or confessions, all copies of reports, tests or examinations made by defendant if within the possession or control of or reasonably obtainable by the police or prosecution.
- (B) The defendant or his attorney shall file a written notice to the Court and the Prosecutor at least twenty (20) working days before trial the names and addresses of any defense witnesses to provide an alibi or insanity defense. Failure to provide notice will prevent the use of such witnesses unless prior notice was impossible or no prejudice to the prosecution has resulted. The Judge may order the trial delayed or make other orders to assure a just determination.

**Section 11-2-113 Subpoena**

- (A) The defendant and the Prosecutor shall have the right to subpoena any witnesses including subpoenas issued in blank. Subpoenas shall be issued, served and returned as in civil cases.
- (B) A subpoena may be served any place within the jurisdiction of the Court, and as provided for service in civil cases.
- (C) Failure to obey a properly served subpoena may be deemed contempt and may be prosecuted. 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.

**CHAPTER THREE  
TRIAL**

### **Section 11-3-101 Trial By Jury or By the Court**

- (A) All trials shall be by the Court without a jury unless the defendant files a request for jury trial and a Two Hundred Dollar (\$200.00) jury fee not less than forty-five (45) days prior to the date set for trial. A Judge may in his discretion waive the jury fee.
- (B) Juries shall be composed of six (6) members with at least one alternate.
- (C) A jury trial is a right pursuant to Article 16, Section 1, (J) of the Constitution.

### **Section 11-3-102 Trial Jurors**

- (A) Jurors shall be drawn from the list of eligible jurors, prepared as provided in the Civil Procedures.
- (B) The Court shall permit examination of the jurors.
- (C) Challenges regarding jury members may be taken as follow:
  - (1) Each side shall be entitled to three (3) preemptory challenges.
  - (2) Either side may challenge 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 deliberation.
- (E) Jurors shall be subject to all civil jury rules.

### **Section 11-3-103 Order of Trial**

- (A) The Court shall call the case name and number and ask if the parties are ready to proceed. If not ready, the Court may continue or direct the case to proceed.
- (B) If the parties are ready and if tried by jury, the Judge shall swear the jurors to decide the case in a fair and impartial manner.
- (C) If a jury trial, the Court shall select a potential jury panel.
- (D) When the Court is satisfied no juror should be dismissed for cause, the prosecution and then the defendant shall be allowed to question the prospective jurors.

- (E) If a prospective juror is related to a party or is biased, or if the outcome would significantly affect the property, family, or other interest of the prospective juror, the court may dismiss him for cause.
- (F) The prosecutor and the defendant may request the Court to dismiss any juror by preemptory challenge and the Court may not refuse. The final jury panel should then be sworn.
- (G) The Court should inform the jury the complaint is not evidence, but is read for the purpose of informing the defendant and the jury of the offense charged and the statements of counsel are not evidence but are presented so the jury will hear what counsel for each party expects the evidence to show.
- (H) The prosecutor should then read the complaint and briefly present the facts which he intends to prove. No argument of the facts or law shall be allowed. No reference to any recommendation for banishment may be made.
- (I) The defense may then make an opening statement or may reserve their opening statement until the beginning of the defense.
- (J) The prosecutor shall then present his evidence followed by the defendant. The prosecutor may present evidence in rebuttal.
- (K) The prosecutor shall present closing argument, the defendant closing argument, and the prosecutor shall be allowed to present a rebuttal.
- (L) If a jury trial, the Judge should give instructions and they shall retire. If a bench trial, the Judge shall make his decision or set the time for announcement.
- (M) If the verdict is “guilty”, the Judge may impose sentence immediately or decide later. In a jury trial, the Court, after a verdict of “guilty”, shall inform the jury if banishment has been recommended. The prosecution and defense shall present any additional evidence on the issue of banishment and the prosecution shall be given the final rebuttal. The jury will consider whether banishment should be imposed and the term. No banishment shall be imposed in excess of the term recommended by a jury’s unanimous vote; a banishment recommendation is not binding on the Judge.
- (N) If an appeal is filed, a hearing to determine bond may be held.

**Section 11-3-104 Reserved**

**Section 11-3-105 Judge Disability**

- (A) If by reason of death, sickness or other disability, the Judge in a jury trial is unable to proceed any other Tribal Judge may, upon certifying he has familiarized himself with the record proceed.
- (B) If by reason, of death, sickness or other disability, the Judge is unable to perform after the verdict or finding of guilt, any other Tribal Judge may perform those duties. A new trial shall not be granted if all that remains is the sentencing of a defendant.

### **Section 11-3-106 Expert Witnesses and Interpreters**

- (A) Either party may call expert witnesses and bear the cost.
- (B) The Court may appoint an interpreter and each party may provide their own interpreters. An interpreter shall be put under oath to faithfully and accurately translate and communicate.

### **Section 11-3-107 Motion for Judgment of Acquittal**

The Court on motion from defendant or its own shall order the entry of a judgment of acquittal if the evidence is insufficient as a matter of law. A motion for acquittal by the defendant does not affect the right to present evidence.

### **Section 11-3-108 Instructions**

At the time set by the Court, any party may file written jury instruction requests. Copies of such requests shall be furnished to adverse parties. The Court shall inform counsels of its adopted jury instructions prior to the arguments of counsel, but the Court shall instruct the jury after argument. No party may assign as error any portion of the charge or omission unless he objects before the jury retires, stating distinctly the matter to which he objects and the grounds, argument shall be heard out of the presence of the jury.

### **Section 11-3-109 Verdict**

- (A) The verdict of a jury shall be unanimous. It shall be returned in open court. If the jury is unable to agree, the jury may be discharged and the defendant tried again.
- (B) If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendant or charge and continue to deliberate.
- (C) The defendant may be found guilty of a lesser included offense or attempt to commit the crime charged of a lesser included offense without having been formally charged with the lesser included offense or attempt.

- (D) Upon return of the verdict, the jury may be polled at the request of either party. If there is not unanimous concurrence, the jury may be directed to further deliberate or be discharged.

## **CHAPTER FOUR JUDGMENT AND SENTENCE**

### **Section 11-4-101 Judgment**

A judgment of conviction shall set forth the charge, plea, verdict or findings, and the sentence imposed. An acquittal Judgment shall be entered. The judgment shall be signed by the Judge and entered by the Clerk.

### **Section 11-4-102 Sentence**

- (A) Sentence shall be imposed without unreasonable delay. Pending sentence the Court may commit the defendant to jail, continue or alter bail. Before imposing sentence, the Court shall allow counsel an opportunity to speak on behalf of the defendant and ask defendant if he wishes to make a statement and to present any information in mitigation.
- (B) After imposing sentence, the Court shall inform the defendant of his right to appeal. After a notice of appeal is filed, the defendant may file a motion to set bail pending appeal.
- (C) Time served in jail prior to the judgment and sentence while awaiting or during trial may be allowed as a credit toward any sentence.

### **Section 11-4-103 General Sentencing Provisions**

**Statement of Policy:** The sentencing policy of the Tribe in criminal cases is restitution and reconciliation of the offender, victim and Tribe. One goal is to impress upon the wrongdoer the wrong committed. The paramount goal is to restore the victim and Tribe to their prior position, and to restore the offender to harmony with the community by requiring him to right his wrongdoing. With consideration of these goals, the provisions of this Chapter shall govern Tribal sentencing.

- (A) Unless the Court determines justice will not be served or a civil action is more appropriate in addition to any sentence, 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) If the offender recognizes the wrong he has committed, the Court, paying attention to prior offenses, may:
- (1) Allow such offender to exchange work performed for the Tribe in lieu of a fine or imprisonment, at the rate set by the Court; or
  - (2) Place the offender on probation under conditions for a period not exceeding three (3) times the amount of the maximum sentence; or
  - (3) Defer entering judgment and sentence for a period not exceeding five (5) years on condition that if the defendant violated no law and satisfies such other conditions such as restitution, the plea or verdict guilty will be withdrawn and charges dismissed.
  - (4) Allow the offender to pay a fine in goods or commodities at the fair market value, provided, the Tribe shall not reimburse the offender for any excess value of the property.

#### **Section 11-4-104 Sentence of Banishment**

- (A) **Banishment Defined:** The traditional and customary sentence imposed 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 banishment, a person banished from the territory and association of the Tribe shall:
- (1) Be considered legally dead 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 the banishment, and while attending or going directly to or from any Court, or a proceeding involving a criminal action which he is a party including the appeal.
  - (2) Be expelled from the jurisdiction of the Tribe and not be allowed to return for any reason.
  - (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 to apply for an order attaching the banished person's personal property within this jurisdiction and bringing execution thereon.

**(B) Violation of Banishment:**

- (1) If the person banished is found within the jurisdiction of the Tribe, such act shall be considered criminal contempt and may be punished.
- (2) A banished person found within the jurisdiction of the Tribe shall, upon conviction, in addition to any other punishment, forfeit all personal property brought by him into the jurisdiction of the Tribe or in his immediate control 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 and satisfaction of any other terms imposed, the banished person shall be restored to all rights forfeited and shall thereafter be treated as if banishment had never been imposed.

### **Section 11-4-105 New Trial**

The Court, on motion of a defendant, may grant a new trial if required by justice. If a non-jury trial, the Court, may vacate the judgment, take additional testimony, and direct the entry of a new judgment. A motion 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. A motion based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within further time the Court may allow.

### **Section 11-4-106 Arrest of Judgment**

The Court, on motion of a defendant, shall dismiss if the complaint does not charge an offense or if the Court was without jurisdiction. The motion in arrest of judgment shall be made within seven (7) days after verdict or finding of guilty or plea of guilty, or further time as the Court may allow.

### **Section 11-4-107 Correction or Reduction of Sentence**

The Court may correct a sentence within thirty days after the sentence is imposed, or within thirty days after receipt of a mandate issued upon affirmance or dismissal of the appeal.

### **Section 11-4-108 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 after notice, if any, as the Court orders.

## **CHAPTER FIVE APPEAL**

### **Section 11-5-101 Right of Appeal: How Taken**

- (A) A defendant has the right to appeal:
  - (1) A final judgment of conviction; and sentence.
  - (2) An order made, after judgment and sentence, affecting their substantial rights.
- (B) The Tribe has the right to appeal:
  - (1) A judgment of dismissal, 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 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 10 days of the entry of final judgment and sentence or other appealable order and must be served on all parties.
- (D) Such appeals shall be had in accordance with the Appellate Procedure Act.

### **Section 11-5-102 Stay of Judgment and Relief Pending Review**

- (A) A sentence of imprisonment or banishment may be stayed if appealed and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release, pending appeal, may be given credit for time served.
- (B) A sentence to pay a fine or a fine and costs, may be stayed upon motion of the defendant, but the court may require the defendant to pay such money subject to return.

- (C) An order placing the defendant on probation may be stayed on motion of the defendant.

## **CHAPTER SIX OTHER PROVISIONS**

### **Section 11-6-101 Search and Seizure**

- (A) **Search Warrants:** 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 a sworn affidavit establishing grounds for issuing the warrant. If the Judge is satisfied grounds exist or there is probable cause to believe they exist, he shall issue a warrant. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request, the judge may require the affiant to appear and be examined under oath.
- (C) **Contents of Search Warrants:** Every search warrant shall contain the name and address of the Court, the signature of the Judge and date. It shall specifically describe the place to be searched and the items to be searched for and seized. The warrant shall be directed to any Tribal or Federal police or law enforcement officer or official and shall command them to search, within a specified period of time not to exceed 10 days, the person or place named for the property or persons specified.
- (D) **Service of Search Warrants:** Search warrants shall be served as soon as possible. A copy of the warrant shall be left with an occupant or owner over sixteen (16) years of age. If the place is not occupied, a copy of the warrant shall be left in some conspicuous place on the premises. If after notice of authority and purpose, they are denied or refused admittance, an officer may then 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.
- (E) **Inventory:** The officer shall make a signed inventory of all property seized and attach such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen (16) or left in a conspicuous place.
- (F) **Return of Search Warrants:**
- (1) The officer shall endorse the date, time, and place of service and signature of the officer.

- (2) When served the warrant shall be returned to the Court with an inventory within twenty-four (24) hours of service, Saturdays, Sundays, and Tribal legal holidays excluded.
  - (3) When unserved, the warrant shall be returned within ten (10) days of the date of issuance, if return is due on a Saturday, Sunday, or legal holiday, return shall be made on the next business day.
- (G) **Property Subject To Seizure:** Property which there is probable cause to believe such property is:
- (1) Stolen, embezzled, contraband, or criminally possessed; or
  - (2) Which is or has been used to commit a criminal offense; or
  - (3) 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) When he has probable cause to believe that an offense has been committed in his presence; or
  - (4) When he has probable cause to believe the person has committed an offense, 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.

## **Section 11-6-102      Arrests**

- (A) 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.

- (B) Any person making an arrest may orally summon as many persons as he deems necessary to help him.
- (C) If the offense charged is an offense punishable by banishment or a federal major crime, the arrest may be made at their residence at any time of the day or night. For a non-banishment crime, arrest pursuant to a warrant should be made at a residence only between 7:00 a.m. and 9:00 p.m. unless arrest at night at the residence is supported by reasonable cause. Arrest at other places may be made at any time.
- (D) Any person, making an arrest:
  - (1) Must inform the person of their intention to arrest, the reasons and their authority, except when the person is engaged in the commission of or an attempt to, commit an offense, or is pursued immediately after its commission or an escape.
  - (2) Must show the warrant of arrest as soon as is practicable, if such exists and is demanded.
  - (3) A law enforcement officer, may use reasonable force and all necessary means to effect the arrest. If the person either flees or forcibly resists, deadly force may be used only as provided by law.
  - (4) A law enforcement officer, may break open a door or window 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, take and put into evidence all weapons and relevant items he may find.

### **Section 11-6-103 Arrest in Hot Pursuit**

- (A) Any law enforcement officer empowered to arrest a person may continuously pursue from a point of initial contact within the jurisdiction to any point of arrest within or without the Tribe's jurisdiction. Such arrest shall be valid, provided, such officer shall respect and comply with the outside jurisdiction extradition requirements.
- (B) Any law enforcement officer when in hot and continuous pursuit of a felony from another jurisdiction may validly arrest such person within the Tribe's jurisdiction.

### **Section 11-6-104 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 presence of the officer.
- (C) By a law enforcement officer in continuous pursuit of a person who flees to his home.

### **Section 11-6-105 Notification of Rights**

- (A) Upon arrest, the defendant shall be notified that he has the following rights:
  - (1) The right to remain silent and that any statements made by him may be used against him in Court.
  - (2) That he has the right to obtain an attorney at his own expense and to have an attorney present at any questioning.
  - (3) That if he wishes to answer the questions of the police he may stop or request time to speak with his attorney at any point in the questioning.
- (B) Prior to conducting a consensual warrantless search, the officer shall specifically inform the person 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) The person is under no obligation or requirement to consent and may request the advice of an attorney at their own expense.
  - (3) If the person refuses, the officer will not search the person or property without obtaining a warrant.
- (C) When possible, the officer should obtain a written statement the person knew these rights, understands, and waives them prior to taking a voluntary statement from a defendant or conducting a warrantless consensual search. The absence of a written statement does not preclude the admission of the statement or other evidence if the Court determines the statement or consent was voluntary.

### **Section 11-6-106 Execution Order for Relief From Judgment**

- (A) The Chief Executive Officer of the Tribe shall have authority to pardon, or commute any judgment and sentence for any criminal offense upon determination that a pardon or commutation of sentence promotes justice.

- (B) A pardon or commutation will be entered by filing the proposed action with the Court Clerk. The action shall be submitted (with proof of service) for approval to each Justice of the Supreme Court and to each member of the Tribal Legislative Body for a period of sixty (60) days. If any Justice or Legislator disapproves, a written dissent shall be delivered to the Chief Executive Officer and filed with the Court, such proposed action will then not be approved. Upon expiration of the sixty (60) day period without objection, the pardon or commutation may be issued by the Chief Executive officer of the Tribe.
- (C) Upon for disapproval by any Justice or Legislator, the Chief Executive Officer may order the proposed pardon or commutation to be placed on the ballot for the next regularly scheduled election, by referendum vote of the Tribe. The vote of the people shall be conclusive.

### **Section 11-6-107 Grant of Immunity to Witnesses**

Whenever a witness during or before any civil or criminal proceeding refuses, on the basis of privilege against self-incrimination, to testify or to provide other information, the Judge shall delay testimony and confer with the prosecuting attorney. If the prosecutor concurs, the Judge shall issue an order of immunity. The witness may not refuse to comply with the order. No testimony or other information compelled under the order or any information directly or indirectly derived may be used against the witness in any criminal case except a prosecution for perjury, giving false statement, or failing to comply with the order.

## **CHAPTER SEVEN BAIL**

### **Section 11-7-101 Release in Nonbanishment Cases Prior to Trial**

- (A) Any person charged, with other than a banishment offense, shall be ordered released pending trial on his personal recognizance or execution of cash appearance bond. Such person shall not attempt to influence, injury, tamper with or retaliate against any officer, juror, witness, informant, or victim or violate any other law.
- (B) The Judge may determine a release will not reasonably assure the appearance of the person. The Judge shall, impose one or any combination of the following conditions:
  - (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.

- (3) Require the execution of an appearance bond in a specified amount.
  - (4) Require a bail bond with sufficient sureties, or the deposit of cash; or
  - (5) Impose any other condition deemed reasonably necessary to assure appearance.
- (C) In determining which conditions to impose, the Judge shall, take into account the nature and circumstances of the offense, the weight of the resources, character and mental condition, the length of his residence in the community, record of convictions, and record of Court appearance.
- (D) A Judge authorizing release shall issue an appropriate order containing a statement of the conditions imposed, shall inform such person of the penalties applicable to violations of the conditions and shall advise him a warrant will be issued immediately upon any violation.
- (E) A person for whom conditions of release are imposed and who continues detained, shall, upon application, have the conditions reviewed. If the Judge who imposed conditions is not available, any other Judge may review such conditions.
- (F) A Judge ordering release on any condition may at any time amend his order.
- (G) Information used in consideration of conditions need not conform to the admissibility of evidence rules.

### **Section 11-7-102 Appeal From Conditions of Release**

If a person is detained after conditions of release have been imposed by a Judge, an appeal may be taken to the Supreme Court. The Supreme Court may remand the case, with or without additional evidence, order the person released upon conditions. This appeal shall be determined promptly.

### **Section 11-7-103 Release In Banishment Cases Or After Conviction**

A person charged with a banishment offense or convicted and awaiting sentence or has appealed shall be treated in accordance with Section 701 unless the Court has reason to believe no conditions of release will reasonably assure the person will not flee or pose a danger.

### **Section 11-7-104 Penalties for Failure to Appear**

Whoever is released and willfully fails to appear shall forfeit any security and shall, if released be subject to a fine of One Thousand dollars (\$1,000.00) and imprisonment for a term of one (1) year.

### **Section 11-7-105 Persons or Classes Prohibited as Bondsmen**

The following shall not be bail bondsmen and shall not directly or indirectly receive any benefits of any bail bond; jailer, police officers, judges, court clerks and any person having the power to arrest or control of Tribal prisoners.

### **Section 11-7-106 Authority to Act as Bail Bondsmen**

Any person authorized to act as bail bondsmen or runners in federal or state courts shall be qualified to act 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 and District Court.

## **CHAPTER EIGHT HABEAS CORPUS**

### **Section 11-8-101 Persons Who May Prosecute Writ**

Every person restrained of his liberty, under any pretense may prosecute, a writ of habeas corpus to inquire into the cause of the restraint, and shall be released when the restraint is illegal.

### **Section 11-8-102 Application for Writ**

Application for the writ shall be made by petition, signed and verified by plaintiff or in his behalf, and shall specify:

- (A) The person restrained, and the place where restrained, naming all known parties, or describing them;
- (B) The cause or pretense of the restraint, according to the best of knowledge and belief;
- (C) If the restraint is alleged illegal, what is the illegality.

### **Section 11-8-103 Writ Granted**

Writs of habeas corpus may be granted without delay by any judge or justice at any time.

#### **Section 11-8-104 Direction and Command of Writ**

The writ shall be directed to the officer or party having the person under restraint, commanding them to have person before the Court, at such time and place as the Court shall direct, to show cause they have for the restraint.

#### **Section 11-8-105 Delivery to Tribal Police Chief**

If directed to the Police Chief, it shall be delivered by the Clerk without delay.

#### **Section 11-8-106 Service on Party Other Than Tribal Police Chief**

If directed to any other person, it shall be delivered to the Police Chief and shall be served upon the person without delay.

#### **Section 11-8-107 Service When Person Not Found**

If the person cannot be found, or refuse admittance it may be served by leaving it at the residence by affixing it at some conspicuous place, or where the party is confined under restraint.

#### **Section 11-8-108 Return and Enforcement of Writ**

The Police Chief or person shall make immediate return. If they neglect or refuse, to make return, or to produce the party and no sufficient excuse is shown, the Court shall enforce obedience.

#### **Section 11-8-109 Manner of Return**

The return must be signed and verified by the person making it, who shall state:

- (A) The authority or cause of restraint of the party in their custody;
- (B) If the authority is written, they shall return a copy and produce the original at the hearing;
- (C) If they had the party in custody or under restraint, and have transferred them, they shall state to whom, the time, place and cause of the transfer.

#### **Section 11-8-110 Proceedings in Case of Sickness or Infirmary**

The Court, if satisfied with the truth of the good cause for not producing the person, may proceed to decide on the return, or adjourn until the party can be produced. The plaintiff may except to the sufficiency of, or controvert the return or allege any new matter, except in cases of

commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

### **Section 11-8-111 Hearings and Discharge**

The Judge shall proceed in a summary way to hear and determine the cause, and if no legal cause is shown shall discharge the party.

### **Section 11-8-112 Reserved**

### **Section 11-8-113 Writ Upon Temporary Commitment**

No person shall be discharged from an order of temporary commitment for lack of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged lack of probable cause. In such cases, the court shall summon the prosecutor and inquire into the charge and discharge, let to bail or recommit the prisoner.

### **Section 11-8-114 Writ May Issue to Admit to Bail**

The writ may be for the purpose of setting a prisoner bail in civil and criminal actions.

### **Section 11-8-115 Notice to Interested Persons**

When any person has an interest in the detention, the prisoner shall not be discharged until that person is notified.

### **Section 11-8-116 Powers of Court**

The judge shall have power to require and compel the attendance of witnesses and to do all other acts necessary.

### **Section 11-8-117 Officers Not Liable for Obeying Orders**

No Tribal policeman or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge or enforcement.

### **Section 11-8-118 Issuance of Warrant of Attachment**

Whenever it shall appear by affidavit that anyone is illegally held, and there is good reason to believe such person will be carried out of the jurisdiction or will suffer some irreparable injury, the Court, may cause a Warrant to be issued, reciting the facts, and directing to the Police Chief to take the person held in custody and bring him before the Court.

### **Section 11-8-119 Arrest of Party Causing Restraint**

The judge may insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

### **Section 11-8-120 Execution of Warrant of Attachment**

The officer shall execute the Warrant by bringing the person before the Court and the like return and proceedings shall be required as in writs of habeas corpus.

### **Section 11-8-121 Temporary Orders**

The Court may make any temporary orders that justice may require. The custody of any person restrained may be changed from one person to another, by Court order.

### **Section 11-8-122 Issuance and Service on Sunday**

Any writ, warrant, or process authorized may be issued and served, in case of emergency on any day including Saturdays, Sundays, and holidays.

### **Section 11-8-123 Issue of Process**

All writs and process, may be issued by the Clerk upon Court direction, and except summons, sealed and shall be served and returned unless the Court shall specify a particular time. No writ or process shall be disregarded for any defect if enough is shown to notify the officer or person of the process. Amendments and temporary commitments may be allowed.

### **Section 11-8-124 Protection of Infants and Insane Persons**

Writ of habeas corpus will be granted in favor of parents, guardians, masters, husbands and wives; and to enforce the rights and protection of infants and insane persons.

### **Section 11-8-125 Security for Costs Not Required**

No deposit or security for costs shall be required for a writ of habeas corpus.