



WINNEMUCCA INDIAN COLONY

**Council:**  
Judy Rojo  
Shannon Evans  
Merlene Magiera  
Eric Magiera  
Misty Morning Dawn Rojo-Alvarez

**RESOLUTION NUMBER: 2022-01-004**

**RESOLUTION OF THE COLONY COUNCIL OF  
THE WINNEMUCCA INDIAN COLONY**

**(To Amend the Title 4 of the Law & Order Code)**

**WHEREAS;** the Winnemucca Indian Colony is organized under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat.984) as amended, and

**WHEREAS;**the Winnemucca Colony Council is the governing body of the Winnemucca Indian Colony as set forth in the Tribal Constitution and Bylaws, Article III, Section 1; and

**WHEREAS;** the Winnemucca Indian Colony Council determined that Title 4 should be amended to correct typographical errors and to amend Title 4 the criminal procedure section of the Law & Order Code of the Colony to clearly include the community at large for the selection of neutral jurors to serve as a jury for those defendants charged with a crime that carries an enhanced sentence;

**WHEREAS;** the Colony Council intends for Title 5 to best offer a range of individuals who would be peers of the defendant when the Colony presently has a small residential population and a fairly small membership roll which the Council has determined could restrict the availability of a fair jury for any accused defendant;

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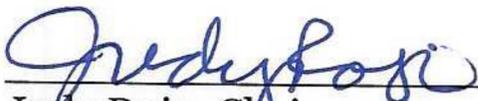
**Winnemucca Indian Colony**  
**Resolution Number : 2022-01-004**  
**January 17, 2022**

**NOW THEREFORE BE IT RESOLVED;** that the Winnemucca Indian Colony Council hereby adopts the Title 4 as is attached to this Resolution for immediate amendment to and to Title 4 of the original Law & Order Code of 1978 and the Council directs the Chairwoman to distribute this amended Title 4 to all police personnel for the Colony, to the Tribal Court and for public access on the Winnemucca Indian Colony website immediately after its adoption by the Council.

**C-E-R-T-I-F-I-C-A-T-I-O-N**

It is hereby certified that the Winnemucca Indian Colony Council is the governing body of the Winnemucca Indian Colony and is composed of five members of whom 3, constituting a quorum were present at a Special Meeting on the 17<sup>th</sup> day of January, 2022, and the foregoing resolution was adopted by an affirmative vote of 4 for, 0 against, and 0 abstentions.

**NEWE SOGOBI' TDOS-A-WEE**

  
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Judy Rojo, Chairwoman  
WINNEMUCCA COLONY COUNCIL

## **Title 4 as amended.**

# **CRIMINAL PROCEDURES**

### **4.01.010 General provisions.**

(1) Criminal Jurisdiction. Tribal Court shall have exclusive jurisdiction over all crimes, as defined in this Title, committed within the exterior boundaries of the lands of the Winnemucca Indian Colony, unless otherwise provided by Federal law. Winnemucca Indian Colony Tribal Court will have concurrent jurisdiction over offenses defined by Federal law. An Indian defendant is subject to prosecution in Tribal Court for any offense enumerated in Title 4 or another Tribal ordinance which is committed totally or partially within the exterior boundaries of the lands of the Winnemucca Indian Colony, or is committed on lands and waters outside the Winnemucca Indian Colony reserved or obtained by the Colony and its people for their use by any treaty or law or in any other manner, except where such exercise of criminal jurisdiction is limited by Federal or Tribal law. Any offense is committed partially within the boundaries of the trust lands of the Winnemucca Indian Colony or within other Colony lands, as described above, if either the conduct which is an element of the offense or the result which is an element occurs within the exterior boundaries of the lands of the Winnemucca Indian Colony. An offense based on an omission to perform a duty imposed by Tribal law is deemed to be committed within the exterior boundaries of the lands of the Winnemucca Indian Colony, regardless of the location of the defendant at the time of the omission when the actual offense and its effect is within the boundaries of the Colony's lands.

(2) Extradition. Nothing in this section shall be considered to limit or restrict an individual's right to seek a writ of habeas corpus in Tribal Court. If a Tribal law enforcement officer arrests an individual based on a warrant issued by another jurisdiction, or a reasonable belief that a warrant has been issued, the Colony may hold such individual for up to 48 hours after any Tribal Court sentence has been served for transport by authorized officials or, if no Tribal sentence has been served, just forty-eight hours. If officials representing the other jurisdiction do not retrieve the defendant within that time, the defendant shall be released. The defendant shall be entitled to bail at the amount set in the warrant of the other jurisdiction which shall be collected by the Tribal Court

or the jail authorities and paid in favor of the jurisdiction of the warrant stating the bail amount.

(3) Jurisdiction over Felony Crimes. The Winnemucca Indian Colony Tribal Court shall have jurisdiction over specific offenses that may be subject to punishment greater than one year or a fine of \$5,000 or both under specific circumstances and conditions. Such offenses are considered felony crimes and classified as a Class F crime codified in this Title 4 under Offenses.

(4) Definitions. Unless otherwise specified in a particular section, the following definitions shall apply to this chapter:

(a) Accused – An Indian or other person subject to the jurisdiction of the Winnemucca Indian Colony.

(b) Arrest – The taking into custody of a person so he/she may be charged with an offense or to keep the peace or to protect the individual taken into custody from harm to himself.

(c) “Bail” means the security given, in the form of cash, stocks, bonds, real property, or any other form of approved collateral, for the primary purpose of insuring the presence of the defendant in a pending criminal proceeding.

(d) “Charge” means a written statement accusing a person of the commission of a specific offense.

(e) “Citation” means a written direction that is issued by a law enforcement officer and that requests a person to appear before the Court at a stated time and place to answer a charge for the alleged commission of an offense.

(ii) Determined by the Court to be an elder; or

(iii) an Individual unable to protect himself or herself from abuse, neglect, or exploitation because of a mental disorder or physical impairment or because of frailties or dependencies brought about by age or disease or addiction or incident of harm.

(g) “Evidence” is any thing, statement, technical recording or replication, or forensic recovery that tends to show that the offense was or was not

committed, or tending to prove or disprove some fact relevant to the commission of an offense.

(h) "Family member" or "household member" means a spouse, former spouse, person related by blood or marriage, person residing with the offender due to adoption or foster placement, or any person currently cohabiting with the offender at any time during the year immediately preceding the commission of any alleged abuse.

(f) "Frisk" means an external patting of a person's outer clothing.

(g) "Incarceration" or "imprisonment" means the confinement or detention of an offender pursuant to Court-ordered sentencing, including, but not limited to, confinement in a jail or correctional facility, treatment facility, residential detention or GPS monitoring.

(h) "Judgment" means an adjudication by the Tribal Court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, the judgment includes the sentence pronounced by the Court.

(i) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

(j) "Offender" means a person who has been convicted of an offense under any Tribal, State or federal law.

(k) "Offense" means a violation of Winnemucca Indian Colony Tribal criminal law and offense includes any violation of State or federal law when located upon the lands of the Winnemucca Indian Colony.

(l) "Personal recognizance" means the release from lawful custody of a defendant upon his or her promise to appear in Court at all appropriate times.

(m) "Probable cause" shall be interpreted first by Tribal code and common law, then, if necessary, when there is an absence of Tribal code and common law, then, police enforcement and the Tribal Court can rely upon the most recent federal common law for a legal definition of probable cause.

(n) "Probation" means the release by the Court without imprisonment of an offender found guilty of a crime upon verdict or plea, subject to conditions imposed by the Court or imposed by another Court but the defendant resides on the lands of the Winnemucca Indian Colony. Probation can be enforced upon the lands of the Winnemucca Indian Colony by arrangement with other jurisdictions, subject to supervision by the Probation Office of the Colony or another jurisdiction upon direction of the Court.

(o) "Prosecutor" means the person who represents the case against the Defendant. The Prosecutor may be any attorney appointed by the Council or the Tribal Judge when appropriate and allowed by law. The Prosecutor shall be considered to be acting on behalf of the Tribe in prosecuting the case against the defendant. Any Tribal Judge appointed by the Winnemucca Indian Colony Council may not act, during that appointment, as a prosecutor.

(p) "Summons" means a written document issued by the Court that commands a person to appear before the Court at a stated time and place.

(o) "Supervised offender" means an offender who is either:

(i) Sentenced to probation; or

(ii) Who is subject to a deferred sentence; or

(iii) Who is subject to a stipulated order of continuance; or

(iv) Released from incarceration subject to conditions imposed by the Tribal Court and any other Court who has imposed conditions of probation because of acts that occurred by the person outside the jurisdiction of the Winnemucca Indian Colony but the offender resides upon the lands of the Winnemucca Indian Colony and is, therefore, subject to the supervision of the Court and Tribal police.

(p) "Temporary roadblock" means any structure, device, or other method used by law enforcement officers to control the flow of traffic through a point on a highway or road whereby all vehicles be slowed or stopped.

(q) "Witness" means a person whose testimony is desired in a criminal action, prosecution or proceeding and is or will submit to the jurisdiction of the Winnemucca Indian Colony Tribal Court.

**4.01.020 Investigative procedures.**

(1) Investigative Subpoenas. A Judge may cause a subpoena to be issued commanding a specified person to appear before the Tribal Prosecutor or a designated agent of the Prosecutor or a police officer and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. An investigative subpoena may only be issued by a Judge when supported by an affidavit of the Prosecutor or police officer sufficient to show that the administration of justice requires the testimony or information being sought.

(2) Immunity from Self-Incrimination. No person subpoenaed to give testimony pursuant to this section may be required to make a statement or to produce evidence that may be personally incriminating. The Prosecutor may, with the approval of the Judge who authorized the issuance of the subpoena, grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution. Nothing in this section prohibits a Prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the Prosecutor determines, in the Prosecutor's sole discretion, that the best interest of justice would be served by granting immunity. After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena. Nothing in this section requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

(3) Relief from Improper Subpoena. A person aggrieved by a subpoena issued pursuant to this section may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

(4) Investigative Hearings. Before a Judge, the Prosecutor may examine under oath all witnesses subpoenaed pursuant to this section. Testimony must be recorded. The witness has the right to have counsel present at all

times. Failure to obey, without just cause, a subpoena served under this section is punishable by contempt of Court. Proceedings conducted under this section are closed and confidential except to the extent that they supply probable cause for arresting or charging a defendant in a subsequent criminal action or are admissible in a later criminal trial. A person who divulges the contents of the Prosecutor's affidavit or the proceedings without legal privilege to do so is punishable for contempt of Court. All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this section.

#### **4.01.030 Search and seizure.**

(1) Search Warrants. A search warrant shall not be valid unless it:

- (a) Is in writing;
- (b) Is in the name of the Winnemucca Indian Colony;
- (c) Is signed by a judge of the Winnemucca Indian Colony Tribal Court;  
and
- (d) Particularly describes the premises, property, place, or person to be searched and the instruments, articles, or items to be seized.

Every Tribal judge has the authority to issue warrants for the search of persons, premises, and property and the seizure of goods, instruments, articles, or items. A warrant issued under this chapter shall not be held invalid due to minor irregularities in the warrant which do not substantially affect any rights of a person named in the warrant.

(2) Grounds for a Search Warrant. No search warrant shall issue except upon a written or oral sworn statement of a law enforcement officer or prosecutor that establishes probable cause to search for and seize any of the following:

- (a) Evidence of a crime;
- (b) Contraband, fruits of crime, or other items illegally possessed;
- (c) Property designed for use, intended for use, or used in committing a crime; or
- (d) A person whose arrest is authorized by law.

(3) Warrant on Sworn Testimony. When a warrant is requested based on oral testimony, communicated by telephone or otherwise, a judge shall:

- (a) Immediately place the requesting person(s) under oath;
- (b) Record by voice recording device if available, or otherwise make a verbatim record of the requesting person's statement and certify the accuracy of this record;
- (c) Enter on an original warrant the grounds indicating probable cause exists to issue a warrant and the scope of the search warrant as requested or as modified;
- (d) Sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued; and
- (e) Direct the requesting party to:
  - (i) Prepare a document identical to the original warrant to be known as a duplicate original warrant;
  - (ii) Sign the duplicate original warrant on behalf of the judge; and
  - (iii) Enter the exact time of execution on the face of the duplicate original warrant.

A judge may require the applicant to furnish further testimony or documentary evidence in support of the application for the warrant.

The warrant shall include a time certain within which it must be executed.

(4) Exceptions to the Warrant Requirement. In addition to Federally recognized exceptions to the warrant requirement, the following exceptions shall apply:

- (a) Pursuant to Arrest. When a lawful arrest is effected, a law enforcement officer may make a reasonable search of the person arrested and the area within such person's immediate presence, without a search warrant, for the purpose of:
  - (i) Protecting the officer from attack;

(ii) Discovering and seizing the fruits of the crime;

(iii) Discovering and seizing instruments, articles, or other property which may have been used in the commission of the offense, or which may constitute evidence of the offense, in order to prevent its destruction; or

(iv) Preventing the person from escaping.

(b) Investigative Stop. In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a law enforcement officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense. The law enforcement officer shall not discriminate in making investigative stops against persons on account of race, ethnicity, sexual orientation or other discriminatory basis.

(c) Stop and Frisk. A law enforcement officer who has lawfully made an investigative stop:

(i) May frisk the person and take other reasonable steps necessary for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present;

(ii) May take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe the object is a deadly weapon, contraband, or evidence of a crime; and

(iii) May demand the name and present address of the person at any time during the stop.

(d) Roadblocks. Law enforcement officers may use a temporary roadblock in order to apprehend a person suspected of committing a criminal offense or to protect the health and safety of the community and upon order by the Council of the Winnemucca Indian Colony. Unless exigent circumstances exist justifying a departure from the requirements given below, the minimum requirements to be met by law enforcement officers when establishing roadblocks include:

- (i) Establishing the roadblock at a point on the highway that is clearly visible at a distance of not less than 50 yards in either direction;
- (ii) Placing a sign on the center line of the highway at the point of the roadblock displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;
- (iii) Placing a flashing or intermittent beam of light, which is visible to oncoming traffic for at least 50 yards, on the side of the road at the point of the roadblock; and
- (iv) Placing warning signs, which will attract an oncoming driver's attention, at least 200 yards prior to the roadblock indicating that all vehicles should be prepared to stop.
- (v) Duration of Stop. An authorized stop may not last longer than is necessary to effectuate the purpose of the stop or to turn persons away from the intended route and require the persons to exit the Colony's lands.

#### (5) Execution of a Search Warrant.

- (a) Generally. Search warrants shall only be executed by law enforcement officers between the hours of 6:00 a.m. and 10:00 p.m., unless the issuing judge otherwise authorizes the warrant to be served anytime day or night. A warrant is only effective within 30 days of the date of issuance or a lesser time which is within the discretion of the issuing judge, and warrants not executed within this time limit are void.
- (b) Return of Warrant. The executing officer shall return the warrant to the Court promptly, and under no circumstances more than 14 days following execution of the warrant, unless a greater time allowance is provided in the warrant. The warrant return shall include the time and date the warrant was executed and an inventory of any property seized. Upon request, the Court must give a copy of the inventory to the person from whom, or from whose premises, the property was taken.
- (c) Reasonable Force. Only reasonable and necessary force may be used to execute a search warrant. Reasonable and necessary force must be determined by the Tribal Law & Order Code, Tribal common law,

or federal law, if the local jurisdictional law is not adequate to describe reasonable and necessary force.

(d) Notice. Unless otherwise specified by the warrant, before entering the premises named in a search warrant, the law enforcement officer shall give appropriate notice of her or his identity, authority, and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. Before undertaking any search or seizure pursuant to the warrant, the executing law enforcement officer shall show and give a copy of the original or duplicate original warrant to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the warrant suitably affixed to the premises.

(e) Receipt for Seized Items. If the warrant is executed, a receipt for all articles taken shall be left with any person at the place from which any items were seized. The inventory of the items shall be made in the presence of an officer and the person from whose possession or premises the property was taken, if present, or in the presence of at least one other credible person. Failure to give or leave a receipt of all items seized shall not render the seized property inadmissible at any subsequent trial. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the receipt suitably affixed to the premises.

(6) Scope of Search Pursuant to Warrant. The scope of any search shall only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the persons or property specified in the warrant. Upon discovery of the person or property named in the warrant, the law enforcement officer shall take possession or custody of the person or property and search no further under the authority of the warrant. If, in the course of an authorized search, the law enforcement officer discovers property not specified in the warrant and the officer has probable cause to believe the discovered property constitutes evidence of the commission of a criminal offense, the officer may also take possession of that property. The person from whom property is taken as evidence may challenge the taking of the property as evidence and a hearing on that challenge must take place as soon as is practicable before the Tribal Court. A destructive search must be limited to what is only necessary.

(7) Procedures for Execution of State, County, Municipal or other Tribal Search Warrant. Where a search and/or seizure is performed within the boundaries of the lands of the Winnemucca Indian Colony within the boundaries of the Colony's lands of any lands or buildings, vehicles or vessels, for a crime committed within the jurisdiction of the issuing court, such search and/or seizure must substantially comply with the procedural search and seizure requirements of Winnemucca Indian Colony law or federal law and shall be governed by the following process:

(a) Winnemucca Indian Colony Tribal Court Approval. The State, County, municipal or other Tribal law enforcement officer shall provide a copy of their judicially approved search warrant and probable cause affidavit, along with any other supporting documents, to a law enforcement officer from the Winnemucca Indian Colony Police Department or its contractor or a BIA police officer prior to the execution of the warrant. The Winnemucca Indian Colony Tribal police officer or its contractor for law enforcement or a BIA law enforcement officer shall prepare an affidavit stating that he or she has received and is incorporating the State, County, municipal or other Tribal law enforcement officer's affidavit and judicially approved search warrant for presentation to a Winnemucca Indian Colony Court judge. The Winnemucca Indian Colony Court Tribal judge shall review the State, County, municipal or other Tribal warrant and if the Tribal Court finds the warrant was issued with proper jurisdiction and substantially complies with the procedural search and seizure requirements of the Winnemucca Indian Colony, the Tribal Court shall endorse the warrant for execution.

(b) Coordination. Any search warrant issued pursuant to this section shall be executed in the presence of and in coordination with a law enforcement officer from the Winnemucca Indian Colony police Department, its subcontractor for law enforcement or BIA. Winnemucca Indian Colony Police or the Colony's subcontractor for police enforcement or the BIA and other law enforcement agencies shall cooperate to the fullest extent possible.

## (8) Warrant for a Tracking Device.

(a) Generally. A tracking device warrant must be in writing, in the name of the Winnemucca Indian Colony, identify the person or property to be tracked, and specify a reasonable length of time that the tracking device may be used. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each.

(b) Execution of Warrant. Any installation authorized by the warrant must occur within 10 days of issuance of the warrant. The officer executing a tracking-device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(c) Return. Within 10 days after the use of the tracking device has ended, the officer executing the warrant must return it.

(d) Service. Within 10 days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the Tribes, the judge may delay notice as provided in subsection (8)(e) of this section.

(e) Delayed Notice. Notice of execution of a tracking warrant may be delayed for a reasonable period not to exceed 30 days, or to a later date certain if the facts of the case justify a longer period of delay, if the court finds reasonable cause to believe that providing notification will endanger the life or physical safety of any individual; lead to the destruction of or tampering with evidence, or the intimidation of potential witnesses; motivate a suspect to flee from arrest or prosecution; or otherwise jeopardize the investigation. A request for delayed notification may be included in the initial application for tracking warrant or in a subsequent written request supported by an affidavit.

(f) Extensions of Delay. Any period of delay authorized by this section may be extended by the court for good cause shown, subject to the condition that extensions should only be granted upon an updated

showing of the need for further delay and that each additional delay should be limited to periods of 90 days or less, unless the facts of the case justify a longer period of delay.

(10) Motion to Return Property. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

#### **4.01.040 Arrests.**

(1) Method of Arrest. An arrest is made by actually restraining the person to be arrested or by that person voluntarily submitting to the custody of the person making the arrest. All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain the person. All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest. An arrest made outside the boundaries of the Winnemucca Indian Colony shall be valid if made pursuant to the laws of the jurisdiction where the arrest occurred and if the defendant is subject to the jurisdiction of the Winnemucca Indian Colony and can be properly brought before the Tribal Court.

(2) Time Restraints. An arrest may be made any day of the week and at any time of the day or night. A person charged with a Class A, B, or C offense can only be arrested at night in a private dwelling with a signed arrest warrant specifically permitting arrest at night, unless there is an immediate threat of harm to another person or threat that the person charged might flee the jurisdiction.

(3) Arrest Warrant. An arrest warrant shall be issued by a Judge, based on a sworn complaint or a declaration under risk of perjury attesting that there is probable cause to believe an offense has been committed, or that a mandate, sentence, or order of the Court has been violated, and that the named person has committed the offense.

(a) Content. The warrant shall be in writing in the name of the Winnemucca Indian Colony; set forth the nature of the offense; command that the person against whom the sworn complaint or affidavit was made be arrested, or contain a description of the person as well as any alias

used by the person; be signed by a Judge; and include any bail amount, deemed appropriate by the issuing Judge.

(b) Duty of Arresting Officer. The officer making an arrest must inform the defendant that he or she acts under authority of a warrant; provided, that if the officer does not have the warrant in his or her possession at the time of arrest, the officer shall declare that the warrant does presently exist and will be shown to the defendant as soon as possible on arrival at the place of intended confinement.

(c) Minor Irregularities. An arrest warrant shall not be dismissed due to minor irregularities in the warrant which do not substantially affect any rights of the arrested person.

(4) Grounds for Arrest. A law enforcement officer may arrest a person within the exterior boundaries of the Winnemucca Indian Colony under the following circumstances:

(a) When the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds that a warrant for the person's arrest has been issued by the Tribal Court or that a warrant for the person's arrest has been issued in another jurisdiction;

(b) When the person has committed an offense in the officer's presence; or

(c) When the officer has probable cause, as reflected by stated and provable facts, to believe the person to be arrested has committed an offense and exigent circumstances require an immediate warrantless arrest in order to prevent the person from:

(i) Fleeing the jurisdiction or concealing himself or herself to avoid arrest;

(ii) Destroying or concealing evidence of the commission of an offense;

(iii) Injuring another person; or

(iv) Damaging property belonging to another.

Arrest is the preferred response in situations involving bodily harm to an elder, family member, or household member; use or threatened use of a weapon against an elder, family member, or household member; or where there appears to be imminent danger of bodily harm to another.

(5) Warrantless Arrest. A law enforcement officer having probable cause to believe that a person has committed or is committing a Class E or F offense shall have the authority to arrest the person without a warrant. A law enforcement officer may arrest a person without a warrant for committing any other class of offense only when the offense is committed in the presence of the officer, except as provided in the subsections below:

(a) Any law enforcement officer having probable cause to believe that a person has committed or is committing a criminal offense under Winnemucca Indian Colony or federal law shall have the authority to arrest the person.

(b) A law enforcement officer shall arrest and take into custody, pending release on bail, personal recognizance, or Court order, a person without a warrant when the officer has probable cause to believe that:

(i) An order from the Tribal Court or another jurisdiction which is an order for domestic violence protection order and a current copy of the Order is presented to the police officer and the persons with the Order of protection or witnesses identify the person who is restrained or the person has violated the terms of the order restraining the person from acts or threats of violence in the police officer's presence, or the Order clearly requires restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or in the case of an order imposing any other restrictions or conditions upon the person; or 100 yards;

(ii) The person has assaulted a family or household member defined in Title V or the Domestic Violence definition, and the officer believes:

(A) A Class E or above assault has occurred;

(B) An assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or

(C) That any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death.

(c) Any law enforcement officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic or natural resource laws which have criminal penalties shall have the authority to arrest the person:

(i) Relating to striking an unattended car or other property;

(ii) Relating to a case of injury to or death of a person or damage to an attended vehicle;

(iii) Relating to reckless driving or racing of vehicles;

(iv) Relating to persons under the influence of intoxicating liquor or drugs;

(v) Relating to driving a motor vehicle while operator's license issued from a political subdivision that is equivalent to a State of the United States is suspended or revoked;

(vi) Relating to operating a motor vehicle in a negligent manner.

(d) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(e) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the State of Nevada or the Winnemucca Indian Colony or federal law.

(f) Except as specifically provided, nothing in this section extends or otherwise affects the powers of arrest prescribed by Tribal, Federal, or State law.

(6) Notice of Rights Prior to Interrogation. Prior to questioning any person in custody, a law enforcement officer must inform the person in clear and unequivocal terms of the following rights:

(a) That the person has the right to remain silent;

(b) That anything said by him or her can and will be used against the person in any subsequent Court proceedings;

(c) That the person has the right to legal counsel or representation at their own expense prior to answering any questions; and

(d) That if, at any point during questioning, the person indicates that he or she wishes to remain silent, the questioning will cease.

Any statement obtained in violation of these rights shall not be admitted into evidence. The fact that a person chooses to remain silent cannot be used against him or her in any subsequent criminal proceedings.

(7) Abuse Situations.

(a) Report Where No Arrest. When a law enforcement officer is called to the scene of a reported incident of child neglect or abuse, elder abuse, or domestic abuse, but does not make an arrest, the officer shall file a written report with the Winnemucca Indian Colony Police Department stating the reasons that an arrest was not made.

**4.01.050 Defendant must appear.**

The defendant shall personally appear at all stages of the proceedings. If the defendant fails to appear, the Court may issue a bench warrant. Appearance by counsel is insufficient to avoid issuance of a bench warrant. The Court may in its discretion, however, allow the defendant to appear by counsel or telephonically.

**4.01.060 Commencing prosecution.**

(1) Complaint. All criminal prosecutions shall be initiated by complaint.

(a) Content. The complaint shall contain:

(i) The name of the person accused, if known, or a description sufficient to identify the person accused of committing the alleged offense;

(ii) The general location where the alleged offense was committed;

(iii) The name, class, and code citation of the alleged offense; special notice shall be given to the defendant for Class F offenses that the charged offense is a felony crime for which the defendant may be subject to the maximum sentence authorized by the resolution codified in this Title 4;

(iv) A concise statement of the specific acts or omissions to act constituting an offense;

(v) The person, if any, against whom the alleged offense was committed, if known, except in the case of a sexual offense or an offense involving a minor;

(vi) The date and approximate time of the commission of the alleged offense, if known; and

(vii) The signature of a Tribal Prosecutor.

(b) Minor Omissions. No minor omission from, or error in, the form of the complaint shall be grounds for dismissal unless the defendant is shown to be significantly prejudiced by the omission or error.

(c) Amending the Complaint. The defendant shall be arraigned on the amended complaint without unreasonable delay in light of the part time nature of the Tribal Court and shall be given a reasonable period of time to prepare for trial on the amended complaint.

(i) Amendments as to Substance. A complaint may be amended in matters of substance at any time prior to arraignment without leave of the Tribal Court. A complaint may be amended in matters of substance at any time before the commencement of trial with leave of the Tribal Court. If the motion is timely filed, the amended complaint is supported by probable cause, and there is no undue prejudice to the defendant, the Court shall grant leave to amend. When the

prosecution seeks leave to amend a complaint as to a matter of substance, the Prosecutor shall file the following:

- (A) A motion for leave to amend stating the nature of the proposed amendment;
- (B) A copy of the proposed complaint, as amended; and
- (C) An affidavit setting forth facts and circumstances sufficient to show probable cause exists to justify the amended complaint.

(ii) Amendments as to Form. The Court may permit a complaint to be amended as to form at any time before a verdict or a finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced. No charge may be dismissed because of a defect in form which does not tend to prejudice any substantial right of the defendant.

(2) Summons in Lieu of Arrest Warrant. The Court may, or upon request of a Prosecutor shall, issue a summons instead of an arrest warrant. The summons may be served personally or by first class mail, and shall:

- (a) Be in writing in the name of the Tribes;
- (b) State the name of the person summoned, along with that person's address, if known;
- (c) Set forth the nature of the offense charged;
- (d) State the date issued;
- (e) Command the person to appear in Tribal Court at a specified date and time; and
- (f) Be signed by a Tribal Judge.

(3) Joinder of Defendants. Two or more defendants may be joined at the discretion of the Prosecutor if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.

(4) Joinder of Offenses. The complaint may charge a defendant in separate counts with two or more offenses if the offenses charged – whether felonies or misdemeanors or both – are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

(a) Prosecution for Multiple Offenses. When the conduct of an offender establishes the commission of more than one offense, the offender may be prosecuted separately for each offense. The offender, however, may not be convicted of more than one offense if:

(i) One offense is included in the other;

(ii) One offense consists only of conspiracy or some other form of preparation for committing the offense;

(iii) Inconsistent findings of fact are required to establish the commission of the offenses;

(iv) The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(v) The offense is defined to prohibit a continuing course of conduct and the offender's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

(b) Each offense of which the defendant is convicted must be stated in the verdict or the finding of the Tribal Court.

(5) Lesser Included Offenses. An offender may be convicted of an offense included in an offense charged without having been specifically charged with the lesser included offense. An offense is included when:

(a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) It consists of attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or

(c) It differs from the offense charged only in that it is a less serious injury or risk of injury to the same person, property, or Tribal interest, or a lesser kind of culpability suffices to establish its commission.

The Tribal Court need not charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting the defendant of the lesser included offense.

**4.01.070 Rights of the defendant in a criminal proceeding.**

(1) Presence of the Defendant. Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

(2) Rights of the Defendant. In all criminal proceedings, the defendant shall have the following rights:

- (a) To be free from excessive bail and cruel punishment;
- (b) To defend in person or by counsel;
- (c) To be informed of the nature of the charges pending against him or her and to have a copy of those charges;
- (d) To confront and cross-examine all prosecution or hostile witnesses;
- (e) To compel by subpoena:
  - (i) The attendance of any witnesses necessary to defend against the charges; and
  - (ii) The production of any books, records, documents, or other things necessary to defend against the charges;
- (f) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- (g) To appeal any final decision of the Tribal Court to the Court of Appeals adopted by the Winnemucca Indian Colony;
- (h) To be tried only once by the Tribal Court for the same offense;

(i) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and

(j) To petition for a writ of habeas corpus.

(3) Right to Counsel. During the initial appearance before the Court, every defendant must be informed of the right to have counsel at his or her own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause. If the defendant is being charged with a felony crime, with potential sentencing in excess of one year:

(a) The defendant shall have the right be represented by an attorney who is a member of the Winnemucca Indian Colony Tribal Bar and who is licensed to practice law by admission to the State Bar of Nevada; and

(b) If the defendant is indigent, the Court shall, at the Tribes' expense, provide the defendant with an attorney meeting the qualifications in subsection (3)(a) of this section at all critical stages of the criminal proceeding.

(4) Right to a Jury Trial. A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of five fair and impartial jurors and one alternate, which juror pool may include persons both on Colony and off Colony for so long as these jurors are fair and impartial as determined by voir dire, and the Tribal Judge. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(5) Subsequent Prosecutions. A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

(a) The defendant consents to the termination or waives, by motion, an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;

(b) The Tribal Court finds that a termination, other than by acquittal, is necessary because:

(i) It is impossible to proceed with the trial in conformity with the law;

(ii) There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;

(iv) The jury cannot agree upon a verdict; or

(v) A false statement of a juror on voir dire prevents a fair trial;

(c) The subsequent prosecution was for an offense which was not completed when the former prosecution began; or

(d) There was a transfer of jurisdiction to another authority.

The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal. The fact that a juror or the Tribal Judge knows the defendant is not grounds for an acquittal unless actual prejudice can be shown.

#### (6) Writ of Habeas Corpus.

##### (a) Availability of Writ.

(i) Except as provided in subsection (6)(a)(ii) of this section, every person within the jurisdiction of the Winnemucca Indian Colony imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(ii) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

(iii) When a person is imprisoned or detained in custody by the Colony on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(b) Issuance of Writ.

(i) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Clerk of the Court. It must specify:

(A) That the petitioner is unlawfully imprisoned or restrained of liberty;

(B) Why the imprisonment or restraint is unlawful; and

(C) Where or by whom the petitioner is confined or restrained.

(ii) The parties to a writ, namely the Winnemucca Indian Colony Prosecutor, Chief Judge of the Tribal Court, and the Winnemucca Indian Colony police department officer in charge, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

(iii) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(c) Granting of the Writ. Any Justice of the Court of Appeals duly appointed by the Winnemucca Indian Colony as its appellate body, may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(d) Time of Issuance and Requirements for Service.

(i) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Colony's Prosecutor and Chief Judge of the Trial Court.

(ii) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Colony Prosecutor.

(iii) The writ must be served by a Tribal Police Officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice, the Court, or the employee of any correctional facility in which the petitioner is held.

(e) Return of the Writ. The Prosecutor or his or her designee shall make a return and state in that return:

(i) Whether the person is in custody or under that person's power of restraint; and

(ii) If the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(iii) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

(f) Hearing. The Tribal Judge commanded by the writ shall cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence of the Winnemucca Indian Colony and the United States.

(g) Refusal to Obey Writ Is Contempt. If the person commanded by the writ refuses to obey, that person will be adjudged to be in contempt by the Tribal Court upon submission of the proof of refusal.

(h) Disposition of Petitioner. If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

(7) Right to a Speedy and Public Trial. A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. A defendant released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than 90 days after the date of arraignment. The following extensions of time limits apply, notwithstanding the preceding time limits:

(a) Revocation of Release. A defendant whose release has been revoked by the Court shall be brought to trial no later than 60 days following the revocation or previously scheduled trial date, whichever is sooner.

(b) Failure to Appear. When a defendant fails to appear for any hearing, all future hearings shall be stricken from the Court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the Judge, the speedy trial clock begins at zero.

(c) Trial Preparation Time. The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

(d) Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the Court, even if the time for trial has expired, may extend the time within which trial must be held in increments of no more than five judicial days unless the defendant will be substantially prejudiced in his or her defense. The Court must state on the record or in writing the reasons for the extension.

(i) Disqualification of Judge. In the event that the trial Judge is disqualified by affidavit or by recusal, the speedy trial date shall be extended beyond its current expiration by 30 days.

(e) Continuances. The Court may continue a trial beyond the speedy trial period as follows:

(i) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the Court on the record or in writing.

(ii) On motion of the Tribal Prosecutor, the Court, or a party, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The Court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(f) Computation of Time. The following periods shall be excluded in computing the time for arraignment and the time for trial:

(i) All proceedings relating to the competency of a defendant to stand trial, terminating when the Court enters a written order finding the defendant to be competent;

(ii) Preliminary proceedings and trial on another charge;

(iii) The time during which a defendant is detained in jail or prison by authorities other than the Winnemucca Indian Colony and the time during which a defendant is subjected to conditions of release not imposed by a Court of the Winnemucca Indian Colony; and

(iv) All proceedings in Juvenile Court.

(g) Waiver. A defendant may waive the right to a speedy trial. Such waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain.

#### **4.01.080 Pretrial release.**

(1) Right to Bail. A person charged with any offense is bailable before conviction and shall be released from custody by the Court upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person unless otherwise provided by ordinance. Bail shall not be excessive.

(a) Bail Schedule. The Chief Judge of the Tribal Court may, if needed, establish and post a schedule of bail for offenses to be used by law enforcement officers. The schedule may be revised yearly, at the discretion of the Chief Judge. Bail may be specifically set by a Judge for any offense not listed on the posted bail schedule.

(2) Conditions of Release. The conditions of release of the defendant must be determined immediately upon the defendant's initial appearance.

(a) Criteria. The criteria for determining the conditions of release include, but are not limited to, the following:

(i) Defendant's employment status and work history;

(ii) Defendant's financial condition;

(iii) The nature and extent of defendant's family relationships and ties to the Winnemucca Indian Colony community;

(iv) Defendant's past and present residences;

(v) Names of individuals personally agreeing to assure defendant's Court appearance;

(vi) The nature and circumstances of the current charge, including whether the offense involved the use of force or violence;

(vii) The defendant's prior criminal record, if any, and whether, at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for an offense;

(viii) The defendant's record of appearance at Court proceedings;

(ix) The nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and

(x) Any drug or alcohol tests ordered by the Court at initial appearance; provided, however, that any results of such tests or statements made by the defendant during such tests shall not be used to criminally charge the defendant and may not be used as evidence against the defendant in the current or any future criminal prosecutions.

(b) Conditions. The Court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including, but not limited to, the following conditions:

(i) The defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the Court, if the designated person is reasonably able to assure the Court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(ii) The defendant may not commit an offense during the period of release;

(iii) The defendant shall maintain legal employment or, if unemployed, actively seek legal employment;

(iv) The defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(v) The defendant shall avoid all contact with an alleged victim and any potential witness who may testify concerning the offense;

(vi) The defendant shall comply with a specified curfew;

(vii) The defendant may not possess a firearm, destructive device, or other dangerous weapon;

(viii) The defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(ix) The defendant shall report on a regular basis to a designated agency or individual, or both;

(x) The defendant shall furnish bail; or

(xi) The defendant shall return to custody for specified hours following release for employment, schooling, or other approved purposes.

The Court shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the Court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(c) GPS Monitoring. GPS monitoring is available as an option, at the discretion of the Court, upon meeting the eligibility requirements as determined by the Court.

(3) Personal Recognizance. Any person in custody, if otherwise eligible for bail, may be released on his own personal recognizance subject to such conditions as the Court may reasonably prescribe to assure his appearance when required.

(4) Forms of Bail. Bail may be furnished in the following ways, as the Court may require:

(a) By a deposit with the Court of an amount equal to the required bail of cash or other personal property approved by the Court;

(b) By pledging real estate situated within the lands of the Winnemucca Indian Colony with an unencumbered equity, not exempt, owned in fee simple by the defendant or sureties at a value double the amount of the required bail;

(c) By posting a written undertaking by the defendant and by two sufficient sureties; or

(d) By posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company.

The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding and remain in effect until final sentence is pronounced in open Court. Nothing in this section prohibits a surety from surrendering the defendant in a case in which the surety feels insecure in accepting liability for the defendant.

(5) Property and Surety Bonds.

(a) Personal. If property posted as a condition of release is personal property, the defendant or sureties shall file a sworn schedule that must contain a list of the personal property, including a description of each item, its location and market value, and the total market value of all items listed.

(b) Commercial Bond. If the property posted is a commercial bond, it may be executed by any domestic or foreign surety company that is qualified to transact surety business in Washington. The undertaking must state the following: the name and address of the surety company that issued the bond; the amount of the bond and the unqualified obligation of the surety company to pay the Court should the defendant fail to appear as guaranteed; and a provision that the surety company may not revoke the undertaking without good cause.

The Court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted.

(6) Exoneration of Bail. When all conditions of release have been satisfactorily performed and the defendant has been discharged from any obligations imposed by the Tribal Court, the Court shall return any security posted by the defendant to satisfy bail requirements.

(7) Changing Bail or Conditions of Release. Upon application by the Colony or the defendant, the Court may increase or reduce the amount of bail, alter the conditions in the bail or release order, or revoke bail. Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

(8) Revocation of Release Order. If a defendant violates a condition of release, including failure to appear, the Prosecutor may make a motion to the Court for revocation of the order of release. The Court may issue a warrant for the arrest of a defendant charged with violating a condition of release; and

declare the bail to be revoked. Upon arrest, the defendant must be brought before the Court without unnecessary delay, and the Court shall conduct a hearing and redetermine bail. On finding probable cause that the defendant has violated a Tribal, State, or Federal law, or on finding a violation of any other release condition by clear and convincing evidence, the Court may:

- (a) Reinstate the original release order on the same conditions and amount of bail; or
- (b) Revoke the original bail, increase the amount of the bail, and modify the conditions of release; or
- (c) At the defendant's request, revoke the defendant's release for any period of time, up to 10 days, and then reinstate release on the original conditions and bail or on such conditions and bail as the Court deems appropriate, but such time shall not be credited as time served.

Sanctions may be given for violating an order without revoking the agreement in its entirety. This section provides the exclusive remedy for a violation of a release order. A defendant may not be charged with contempt or found in contempt for violation of a release order.

(9) Surrender of Defendant. At any time before the forfeiture of bail: the defendant may surrender to the Court or any Tribal law enforcement officer, or the surety company may arrest the defendant and surrender the defendant to the Court or to any Tribal law enforcement officer. The law enforcement officer will detain the defendant. The Court may then order the bail exonerated.

(10) Forfeiture of Bail. If defendant fails to appear for hearing, and bail or bond has been posted, the Court may enter an order for forfeiture of bail or bond. If within 90 days of a forfeiture order, the defendant, or the defendant's surety, appears and presents evidence justifying the defendant's failure to appear or otherwise meet the conditions found in the release order, the Court may direct the forfeiture of the bail to be discharged upon such terms as are just. If the forfeiture order is not discharged by the Court, the Court shall proceed with the forfeiture of bail as follows:

- (a) If money has been posted as bail, the Court shall pay the money to the Colony Council through the Treasurer into the account for the Tribal Court;

(b) If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions; or

(c) If other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all Court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the forfeiture must be paid to the Colony Council through the Treasurer into the Colony's general fund.

Neither a cash bond nor a commercial bond may be forfeited for violation of release conditions, except for failing to appear for Court proceedings without a lawful excuse. Notice of an order of forfeiture must be mailed to the defendant and the defendant's sureties at their last known address(es) within 10 working days of the date of the order or the bond becomes void.

#### **4.01.090 Initial appearance.**

A person arrested, whether with or without a warrant, must be taken before a Judge of the Tribal Court, or by means of any acceptable media, communicate with the Tribal Judge, for an initial appearance within two judicial days following the arrest. A person not arrested shall appear for an initial appearance at the time and place designated in the citation or summons. A person who is arrested without a warrant shall have a judicial determination of probable cause at the initial appearance. If probable cause is not found by the Tribal Court, the person shall be released immediately without conditions.

(1) Duty of Court at Initial Appearance. The Judge shall inform the defendant of:

- (a) The charge or charges against him or her;
- (b) The maximum penalty allowed under Tribal law for the offense;
- (c) The defendant's right to counsel at defendant's expense, or to have counsel appointed;
- (d) The right to call any witness on his or her behalf;
- (e) The right to request a jury trial where the crime charged carries a possible jail sentence;

- (f) The right to remain silent and that any statement made by her or him may be used in evidence against her or him at any subsequent Court proceedings;
- (g) The right to cross-examine the Colony's witnesses;
- (h) The right to have up to five judicial days before arraignment;
- (i) The right to petition for a writ of habeas corpus; and
- (j) The right to discuss bail and conditions of release.

(2) Scheduling Arraignment. Unless the arraignment occurs at the initial appearance, arraignment shall be scheduled within 10 judicial days of the initial appearance, unless waived by the defendant. If the defendant is not arraigned within this time limit, and the right to a speedy trial has not been extended, the defendant shall be released without conditions.

#### **4.01.100 Arraignment.**

(1) Procedure upon Arraignment. A defendant shall be arraigned in open Tribal Court whenever a complaint has been filed by a Tribal Prosecutor. Arraignment consists of reading the charge, unless the defendant waives the reading, supplying a copy of it to the defendant, and calling on the defendant to plead to the charge. If the defendant waives his or her right to counsel in writing, the Court may arraign the defendant at the initial appearance. Prior to accepting any plea at the time of arraignment, the Presiding Judge must:

- (a) Verify that the person appearing before the Tribal Court is the defendant named in the complaint, and that the defendant's true name appears on the complaint, and if different from the name used on the complaint, order the complaint amended to reflect the true name; and
- (b) Determine whether the defendant has a mental disorder that would prevent the defendant from understanding the charges, the penalties, or the effects of a plea, and, if the determination is that defendant has a mental disorder, the arraignment may be continued until the defendant is able to proceed.

(2) Case Management Schedule. A case management schedule shall be ordered at the arraignment, which shall include the following: assignment of trial Judge, pretrial hearing, discovery deadline, trial readiness hearing, trial date, and speedy trial deadline.

(3) Joint Defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the Court.

(4) Entry of Plea. A defendant shall enter a plea of guilty, not guilty, or if the Judge agrees, no contest, to each charge contained in the complaint. All pleas shall be entered in open Court. In exceptional circumstances and at its discretion, the Court may accept a defendant's change of plea through a recorded telephonic proceeding.

#### **4.01.110 Plea procedures.**

##### **(1) Pleas.**

(a) Not Guilty. A plea of not guilty puts in issue every element of the charged offense, and the case shall proceed according to the case management schedule. A defendant pleading not guilty must inform the Judge at the time of arraignment if a jury trial is requested.

(b) Guilty. A plea of guilty may be accepted by a Judge only after due consideration of the views of the parties and interest of the Colony in the effective administration of justice. The Court may not accept a plea of guilty without first determining:

(i) That the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The Court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the Prosecutor and the defendant or the defendant's attorney;

(ii) That the defendant understands the following: (A) the nature of the charge for which the plea is offered, any mandatory minimum penalty, the maximum penalty, and, when applicable, that the Court may require the defendant to make restitution to the victim, and (B) the defendant will be giving up his or her right to a trial and right to remain silent;

(iii) That if the defendant pleads guilty in fulfillment of a plea agreement, the Court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted;

(iv) That, in charges for which imprisonment is a possible penalty, there is a factual basis for the plea; and

(v) If a defendant voluntarily enters a plea of guilty, the Judge may impose a sentence at that time or, on the Court's own motion or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.

(c) No Contest. A no contest plea differs from a plea of guilty only in that the defendant need not make an admission of guilt but accepts an entry of conviction.

(d) Guilty or No Contest Reserving Right to Appeal. With the approval of the Court and the consent of the Prosecutor, a defendant may enter a plea of guilty or no contest, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

## (2) Alternatives to Pleas.

(a) Deferred Prosecution Agreement. Deferred prosecutions may not be agreed to in cases of domestic violence or violent crimes.

(i) Conditions for Agreement. At any time, the Prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(A) That the defendant may not commit any offense;

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

(C) That the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(D) That the defendant shall make restitution in a specified manner for harm or loss caused by the offense, or any other

reasonable conditions, including voluntary exclusion from the lands of the Winnemucca Indian Colony; and

(E) Participation in the Elders Panel or Wellness Court, but until those are established, the Defendant may be required to do alternative community service at the Colony.

(ii) Contents of Agreement. A deferred prosecution agreement is subject to approval by the Tribal Court. The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for an additional 60 days past the end of the deferral period. The agreement may include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement shall be filed with the Court.

(iii) Violations of Agreement. The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms. Sanctions can be imposed for violation of the agreement, without revoking the agreement in its entirety. The conditions of the agreement shall be monitored by the Tribal Court until a Probation Officer is employed.

(iv) Expungement of Records. Whenever the Court has deferred the prosecution and after expiration of the period of deferral and after the defendant's successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court shall allow the expungement of the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

(b) Stipulated Order of Continuance. In certain circumstances, a stipulated order of continuance may be available.

(3) Plea Negotiations and Recommendations. A Prosecutor and counsel for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the Prosecutor will do one of the following:

- (a) Move for dismissal of other charges; or
- (b) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding on the Court; or
- (c) Reduce the charges.

A plea bargain agreement may be entered into anytime prior to a verdict or finding of guilt by Judge or jury. If a plea agreement has been reached by the parties, the Court shall, on the record, require a disclosure of the agreement in open Court at the time the plea is offered. The Tribal Court must announce in open court that the Court is not bound by the plea agreement.

#### **4.25.120 Pretrial.**

##### **(1) Discovery.**

(a) Attorney Work Product Exception. Attorney work product of the Tribal Prosecutor's Office and defense counsel is not subject to disclosure and production, but all efforts in favor of disclosure shall be paramount for fairness to the defendant and the Prosecutor shall disclose all relevant information and not classify evidence as work product unless it is characterized without any doubt to be work product. The presumption is that all relevant information is to be disclosed by the Prosecutor.

(b) Disclosure by Prosecution. At the time of the initial appearance and upon request, the Prosecutor shall furnish to the defendant the name of the person, if any, against whom the offense was committed if it is not disclosed in the complaint. At the arraignment, or as soon thereafter as practicable, the defendant shall be furnished all evidence the Prosecutor intends to use in the prosecution's case in chief at trial. Any of the following information or evidence which is within the possession, custody, or control of the Tribal Prosecutor is subject to disclosure and production and may be copied or photographed, as appropriate for the item, by the defendant, if the defendant is indigent, then the Prosecutor shall furnish the copies to the defendant without charge.

(i) Any relevant written or recorded statement made by the defendant while in the custody of the Colony and of any person who will be tried with the defendant;

(ii) The names, addresses, and statements of all persons whom the Prosecutor may call as witnesses in the case in chief and any other persons who are made known to the Prosecutor and will be called as a witness at trial as soon as that witness's testimony is determined to be used at trial;

(iii) The record of defendant's convictions that is in the possession of the Prosecutor;

(iv) Any books, papers, documents, photographs, tangible objects, drawings of buildings or places, or other physical or demonstrative evidence which is intended for use by the prosecution at trial;

(v) Any written reports of or statements of experts who have personally examined the defendant or any evidence in the particular case, together with results of physical examinations, scientific tests or experiments, or comparisons;

(vi) All material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence;

(vii) Whether there has been any electronic surveillance of any conversation to which the defendant was a party;

(viii) Whether an investigative subpoena has been executed in connection with the case; and

(ix) The Prosecutor shall provide written notice of any evidence of any prior wrongs, acts, or crimes it may introduce in the case in chief at least two weeks prior to the trial readiness hearing. The notice shall describe the prior wrong or act, the closest approximation possible as to when and where it occurred and who witnessed it, unless the prior crime is confirmed as a conviction, in which case the court and date of conviction must be disclosed. The Prosecutor must also disclose the purpose for which the evidence would be offered.

(c) Disclosure by Defendant.

(i) Generally. The defendant or defendant's counsel shall make available to the Prosecutor for testing, examination, or reproduction:

(A) The names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense's case in chief;

(B) The names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case;

(C) All papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(ii) Notice of Affirmative Defenses. At the close of discovery, as set forth in the case scheduling management order, or at such other time as set forth in that order, the defendant shall provide the Prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or of any affirmative defenses. The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, including all reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement, or the witness who made it, at trial.

(iii) Notice of Alibi. If a defendant intends to rely upon a defense of alibi, the defendant will so notify the Prosecutor, in writing, by the pretrial hearing. The defendant's notice of alibi defense shall state the specific place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call to establish such alibi.

(iv) Specific Discovery Requests. At any time after the filing of a complaint, the defendant, in connection with the particular offense charged, shall upon written request of the Prosecutor and approval of the Court:

(A) Appear in a line-up;

- (B) Speak for identification by witnesses;
- (C) Be fingerprinted, palm printed, footprinted, or voiceprinted;
- (D) Pose for photographs not involving reenactment of an event;
- (E) Try on clothing;
- (F) Provide handwriting samples;
- (G) Permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions; and
- (H) Submit to reasonable physical or medical examination where the examination does not involve psychological or psychiatric evaluation.

(d) Depositions. The taking of depositions or the requesting of admissions, the propounding of interrogatories, and other discovery procedures may be available to a party for good cause only upon obtaining prior permission of the Court.

(e) Continuing Duty to Disclose. The obligations imposed by this section are continuing.

(f) Regulating Discovery.

(i) Protective and Modifying Orders. At any time, the Court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The Court may permit a party to show good cause by a written statement that the Court will inspect *ex parte*. If relief is granted, the Court must preserve the entire text of the party's statement under seal.

(ii) Failure to Comply. If a party fails to comply with the requirements of discovery, the Court may:

- (A) Order that party to permit the discovery or inspection; specify its time, place and manner; and prescribe other just terms and conditions;

- (B) Grant a continuance;
- (C) Prohibit that party from introducing the undisclosed evidence;  
or
- (D) Enter any other order that is just under the circumstances.

(g) Custody of Materials. Any materials furnished to a lawyer pursuant to these rules shall remain in the exclusive custody of the lawyer and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the Court, and shall be subject to such other terms and conditions as the parties may agree or the Court may provide. A defense lawyer shall be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the Prosecutor.

## (2) Subpoenas.

(a) Issuance. A Judge of the Tribal Court has the power to issue subpoenas to compel the attendance of witnesses and the production of documents either on the Court's own motion or on the request of any party to a case, which shall bear the signature of the Judge issuing the subpoena. The subpoenas may direct the attendance of witnesses or the production of documents or evidence at a specified date, time, and location. Subpoenas under this section may be issued for purposes of discovery, for pretrial hearing, or for a trial or post-trial proceeding. For witness appearances at pretrial hearings and trial, the parties may issue subpoenas under their own signature directing the witness to appear at the specified date, time, and location of such hearing or trial; provided, however, that copies of those subpoenas and their return of service be filed with the Court.

(b) Service. Service of subpoena shall be made by a Tribal Police Officer or other person appointed by the Court for such purposes, or by a competent person who is at least 18 years of age and not a party to the action. As soon as practicable, proof of service of subpoena shall be filed with the Clerk of Court indicating the date, time, and place of service. The Court, in its discretion, may assess reasonable costs.

(c) Failure to Obey. In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be subject to a bench warrant to compel their attendance.

(d) Material Witnesses.

(i) Warrant. On motion of the prosecuting authority or the defendant, the Court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant shall issue only on a showing, by affidavit or on the record in open Court, that the testimony of the witness is material and that:

(A) The witness has refused to submit to a deposition ordered by the Court; or

(B) The witness has refused to obey a lawfully issued subpoena; or

(C) It may become impracticable to secure the presence of the witness by subpoena. Unless otherwise ordered by the Court, the warrant shall be executed and returned in the same manner as an arrest warrant.

(ii) Hearing. After the arrest of the witness, the Court shall hold a hearing no later than the next Court day. The witness shall be entitled to be represented by counsel at his or her own expense or as appointed at the discretion of the Court.

(iii) Release/Detention. Upon a determination that the testimony of the witness is material and that one of the conditions set forth in subsection (2)(d)(i) of this section exists, the Court shall set conditions for release of the witness. Release of a material witness may be delayed for a reasonable period of time until the testimony or deposition of the witness can be taken.

(3) Pretrial Hearing. The Trial Court shall hold a pretrial hearing to consider such matters as will promote a fair and expedient trial. At the hearing:

(a) The defense shall certify to the Court that they have received the Colony's discovery through the Prosecutor;

(b) The defense shall note any affirmative defenses in writing;

(c) All parties shall note any motions in writing and shall request an order setting a briefing and hearing schedule for such motions; and

(d) The parties may raise other issues of importance that should be addressed by the Court.

Failure of a party to raise defenses or objections or to make a request that must be made prior to trial, except lack of jurisdiction or the failure of a complaint to state an offense, which must be noticed by the Court at any time during the pendency of a proceeding, constitutes a waiver of the defense, objection, or request. The Court, for good cause shown, may grant relief from any waiver provided in this subsection.

#### **4.01.130 Motions.**

(1) Form of Motions. An application to the Court for an order shall be by written motion. A motion need not be in any special form, but must be written in form and substance to enable a person of common understanding to know what is intended. The general rules of pleading shall apply to all motions.

(a) Judicial Copy. A copy of any motion, response, or supporting documentation filed and served under this section shall be provided to the Judge at the time it is filed. The judicial copy shall contain the date and time of the hearing and the Judge assigned to the matter.

(b) Timing. The Court shall set the time frames for any motions not covered by this section. Notice of any hearing date or other deadline shall be given to all parties.

(2) Motion to Sever Co-Defendant or Charge. A defendant may move for severance of defendants or charges. Such motion shall be filed no later than the pretrial hearing unless otherwise directed by the Tribal Court. If it appears that the defendant is prejudiced by a joinder of related prosecutions or defendants in a single charge, or by a joinder of separate charges or defendants for trial, the Court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

(3) Motion to Suppress.

(a) Evidence. A defendant may move to suppress as evidence anything obtained by unlawful search and seizure. The motion must be filed no later than the pretrial hearing, unless good cause is shown for waiving

this time restriction. The motion must identify the evidence sought to be suppressed and the grounds upon which the motion is based. The prosecution has the burden of proving, by a preponderance of the evidence, that the search and seizure were valid. If the motion is granted, the evidence is not admissible at trial.

(b) Confession/Admission. A defendant may move to suppress as evidence any confession or admission given by him or her on the ground that it was not voluntary or that it was otherwise obtained in violation of his or her rights. The motion must be filed no later than the pretrial hearing, unless good cause is shown for waiving this time restriction. The Court shall conduct a hearing on the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was not obtained in violation of the defendant's rights. The issue of admissibility of the confession or admission may not be submitted to the jury. If the confession is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission. If the motion to suppress is granted, the confession or admission may not be admitted into evidence by the prosecution at the time of trial.

(4) Motion for Continuance. Any party may file a written motion for continuance, or the Court may continue the proceedings on its own motion. If a party so moves less than 10 days before a scheduled hearing or trial, the Court may require that the motion be supported by an affidavit, whether or not the motion is opposed by the adverse party. This section, however, shall be applied in a manner which ensures criminal cases are tried in consistence with the rights of the defendant to a speedy trial and effective representation at trial.

(5) Motion in Limine. Motions in limine should be made at least five days before trial, unless good cause is shown.

(6) Motion to Dismiss.

(a) On Motion of Prosecution. The Court may, in its discretion, upon written motion or oral motion when before the Court, of the Prosecuting Attorney, dismiss an indictment, information, or complaint.

(b) On Motion of Court. The Court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The Court shall set forth its reasons in a written order.

(c) On Motion of Defendant for Pretrial Dismissal. The defendant may, prior to trial, move to dismiss a criminal charge due to insufficient evidence establishing a prima facie case of the crime charged.

(i) The defendant's motion shall be in writing and supported by an affidavit or declaration alleging that there are no material disputed facts and setting out the agreed facts, or by a stipulation to facts by both parties. The stipulation, affidavit, or declaration may attach and incorporate law enforcement reports, witness statements, or other material to be considered by the Court when deciding the motion to dismiss.

(ii) The Prosecuting Attorney may submit affidavits or declarations in opposition to defendant's supporting affidavits or declarations. The affidavits or declarations may attach and incorporate police reports, witness statements, or other material to be considered by the Court when deciding defendant's motion to dismiss.

(iii) The Court shall grant the motion if there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. In determining the defendant's motion, the Court shall view all evidence in the light most favorable to the Prosecuting Attorney and the Court shall make all reasonable inferences in the light most favorable to the Prosecuting Attorney. The Court may not weigh conflicting statements and base its decision on the statement it finds the most credible. The Court shall not dismiss a sentence enhancement or aggravating circumstance unless the underlying charge is subject to dismissal under this section. A decision denying a motion to dismiss under this rule is not subject to appeal until the conclusion of the trial. A defendant may renew the motion to dismiss if the Trial Court subsequently rules that some or all of the Prosecuting Attorney's evidence is inadmissible.

(iv) If the defendant's motion to dismiss is granted, the Court shall enter a written order setting forth the evidence relied upon and

conclusions of law. The granting of defendant's motion to dismiss shall be without prejudice except that the same evidence cannot be used subsequently on its own if the motion to dismiss is granted.

(7) Motion for Reconsideration. A motion for reconsideration shall be plainly labeled as such. The motion shall be filed within 10 judicial days after the order to which it relates is filed. The motion shall be noted for consideration for the day it is filed. The motion shall describe with specificity the matters which the movant believes were overlooked or misapprehended by the Court, any new matters being brought to the Court's attention for the first time, and the particular modifications being sought to the Court's prior ruling. Failure to comply with this subsection may be grounds for denial of the motion. The pendency of a motion for reconsideration shall not stay discovery or any other procedure mandated by these rules.

#### **4.01.140 Trial.**

The provisions of Title 4 apply to jury trials, unless otherwise provided in this chapter, when the Tribal Court determines that a jury can be convened.

(1) Trial Priority. Defendants held in custody have priority on the trial calendar over defendants released on bail, unless otherwise directed by the Court. Generally, criminal actions and child dependency actions take precedence over civil actions when determining a hearing or trial date, unless otherwise directed by the Court.

(2) Questions of Law and Fact. Issues of law shall be decided by the Judge. Issues of fact shall be decided by the jury, unless the matter is tried without a jury, in which case issues of fact shall also be submitted to and decided by the Judge. Parties may stipulate to factual issues and submit them for acceptance by the Court.

(3) Testimony. In all trials, the testimony of witnesses shall be taken orally in Court, unless otherwise provided by rule or statute.

(a) Refusal to Testify. If a witness other than the defendant refuses to attend or testify at the trial after proper service of a subpoena, that person shall be subject to contempt of Court. A bench warrant may also be issued by the Court to any witness within the jurisdiction of the Tribal Court.

(b) Counsel as Witness. No person shall appear before the Court as both counsel and witness in the same case.

(c) Witness Fees. Each witness answering a subpoena or appearing voluntarily shall be entitled to fees and mileage as set by resolution of the Winnemucca Indian Colony Council.

#### (4) Order of Trial.

(a) Preliminary Instructions. In a jury trial, after selecting and empanelling the jurors, the Court shall state the nature of the charges and generally instruct the jurors as to their duties.

(b) Opening Statements. The prosecution and the defense will be afforded an opportunity to make an opening statement prior to the presentation of any evidence or testimony, unless waived. The defense may reserve its opening statement until after the prosecution has presented its case in chief.

(c) Prosecution. The prosecution must offer evidence supporting the allegations contained in the complaint. The defense shall be given an opportunity to cross-examine any witness called by the prosecution.

(d) Defense. After the prosecution has rested its case, the defense may give any reserved opening statement and present any defenses or evidence relating to the allegations contained in the complaint. The prosecution shall be given an opportunity to cross-examine any witness called by the defense.

(e) Rebuttal. Rebuttal evidence may be presented by the prosecution after the conclusion of the defense case when appropriate, and if necessary, surrebuttal evidence may be offered by the defense.

(f) Evidence. No new evidence may be presented after the prosecution and the defense have rested their cases, unless allowed by the Judge in the interest of justice.

(g) Jury Instructions. In a trial by jury, after the close of evidence and before the closing arguments are given, the Court shall give final instructions. All instructions shall be in writing and filed as part of the record.

(h) Closing Arguments. After the Judge reads the instructions to the jury, the prosecution and then the defense may make closing arguments. The prosecution may also make a rebuttal closing argument.

(i) Verdict or Judgment. Upon the conclusion of the case, the jury shall deliberate. If the case is tried by a jury, a verdict shall be rendered; if tried by a Judge, a judgment shall be rendered.

(5) Burden of Proof. A plea of not guilty requires that the prosecution prove beyond a reasonable doubt that the defendant committed every element of the crime alleged.

(6) Insufficient Evidence. If the Court determines at the close of the prosecution's case in chief, or at the conclusion of the case, that the evidence presented is insufficient to sustain a conviction for the charged offense or offenses, the Court may, on its own motion or on the motion of the defense, dismiss the action and discharge the defendant. If the judgment of acquittal is vacated or reversed on appeal, the Court may grant a new trial.

(7) Conviction of Lesser Included Offense. A lesser included offense instruction must be given when there is a proper request by one of the parties based on the evidence admitted, and the jury could be warranted in finding the defendant guilty of a lesser included offense. The verdict form for an offense charged or necessarily included in the offense charged, or an attempt to commit either the offense charged or any offense necessarily included therein, may be submitted to the jury.

(8) Motion for a New Trial. Within 20 days of a guilty verdict or judgment, the defendant may file with the Court, and serve upon the prosecution, a written motion for a new trial. The motion must specify the grounds for a new trial. After hearing the motion for a new trial, the Court may, in the interest of justice, deny the motion, grant a new trial, or provide for such other relief that may be deemed appropriate. The granting of a new trial starts the speedy trial clock at zero.

#### **4.01.150 Judgment and sentencing.**

(1) Judgment. The verdict of the jury or the judgment shall be rendered in open Court.

(2) Sentencing. Sentences shall be pronounced within a reasonable time. Sentencing shall be imposed on all offenses pursuant to Tribal law. To the extent that any foreign provisions incorporated into Tribal law provide a penalty that conflicts with Tribal sentencing law, Tribal sentencing law will control. Unless the Court otherwise orders, all sentences stemming from offenses occurring in the same transaction or course of conduct are presumed to run concurrently and not consecutively. Where the Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in this code if that traditional punishment has been adopted by the Council by Resolution as an alternative punishment for conviction of the crime and if traditional punishment is recommended or chosen, then the punishment shall be imposed by the Council by majority vote and shall be limited by Resolution of the Council

(a) Considerations. Considerations in sentencing include:

- (i) The crime committed;
- (ii) The prospects of rehabilitation of the offender;
- (iii) The circumstances under which the crime was committed;
- (iv) The criminal history of the offender;
- (v) The safety of the community, victim, or the offender;
- (vi) Statements of the victim;
- (vii) Alternatives to imprisonment available for the offender;
- (viii) The ability of the defendant to pay a fine; and
- (ix) Any other consideration the Court deems relevant.

(b) Penalties and Consequences. An offender found guilty of an offense may be sentenced to one or more of the following penalties and/or consequences:

- (i) Imprisonment for a period of time not to exceed the maximum permitted for the offense;

(ii) A fine in an amount not to exceed the maximum permitted for the offense;

(iii) Community service, if the community service is monitored by an acceptable party and the Council has adopted a Resolution authorizing community service;

(iv) Any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate;

(v) Restitution to a victim of an offense for which the offender was convicted;

(vi) Participation in an Elders Panel or Wellness Court;

(vii) Suspension of all or part of the sentence for a reasonable time, not to exceed three years, under such terms imposed by the Court;

(viii) Deferred imposition of sentence with reasonable restrictions and conditions monitored by the Tribal Probation Officer, or if no Tribal Probation Officer has been designated, then the Tribal Court, and with the following characteristics (does not apply to the Class F offenses):

(A) The record of the offense, based on criminal history, shall be expunged upon satisfactory performance by the offender of the restrictions and conditions of deferral for a period not to exceed one year for Class A, B, C, and D offenses, and three years for a Class E offense; and

(B) Upon a finding of violation of a restriction or condition of deferral, an appropriate sanction may be ordered, including imposition of sentence;

(ix) Prohibiting the offender from owning or carrying a dangerous weapon;

(x) Restricting the offender's freedom of movement;

(xi) Restricting the offender's freedom of association;

(xii) Requiring the offender, if legally employed, to remain employed and, if unemployed, to actively seek legal employment;

(xiii) Subjecting the offender to search of their residence, vehicle, and person; and

(xiv) Any requirement or limitation intended to improve the mental or physical health or marketable skills of the offender.

(c) Pre-Sentence Report. The Court may order or consider any pre-sentence reports offered by the parties. The offender and the offender's counsel shall be afforded an opportunity to examine any pre-sentence report and to cross-examine the preparer of such report on the basis for any sentencing recommendations contained in the report. The pre-sentence report must be submitted to the Tribal Court under oath.

(d) Imposition of Sentence. No sentence shall be imposed until:

(i) The prosecution and defense have had an opportunity to present evidence, witnesses, and an argument regarding the appropriateness of a sentencing option; and

(ii) The Judge has given the defendant an opportunity to inform the Court of any extenuating or mitigating circumstances which should be considered by the Court in imposing penalties.

(e) Incarceration. If the offender is sentenced to imprisonment, the offender shall be discharged from custody after satisfactorily fulfilling the conditions of the imposed sentence or upon earlier order of the Court.

(f) Credit for Time Served. A defendant subject to a judgment of imprisonment must be allowed credit for each day of incarceration prior to or after conviction for that offense. This does not include time served pursuant to a violation of a release order. No credit shall be allowed for time served on other charges and/or for other jurisdictions unless specifically provided by the Court.

(i) Credit Pursuant to Modification. If a defendant has served any of the defendant's sentence under a commitment based upon a judgment that is subsequently declared invalid or that is modified during the term of imprisonment, the time served must be credited against any subsequent sentence received upon a new commitment

for the same criminal act or acts. This does not include time served pursuant to a violation of a release order.

(ii) Application of Credit Toward Fines. Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense must be allowed a credit for each day of incarceration prior to conviction, except that the amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration is \$50.00 per day, unless otherwise set by the Board of Directors. This does not include time served pursuant to a violation of a release order.

(g) Probation. After conviction by plea or verdict of guilty, the Court may, upon application or its own motion, summarily grant or deny probation. The Court may set a subsequent hearing to consider the matter of probation and the conditions of such probation.

(h) Restitution. When restitution is ordered, the Court shall specify the amount, method of payment, and payment schedule imposed. Before restitution may be ordered, the defendant shall receive notice of the amount and terms requested and shall be entitled to a hearing upon his or her timely request.

(i) Civil Actions. The fact that restitution was ordered is not admissible as evidence in a civil action. The Court trying the civil action shall determine the amount of any reduction due to payment of restitution by an offender under this section. However, in the event that criminal and civil actions against an offender arising from the same transaction or events are heard in courts of different jurisdictions, one of which is the Tribal Court, the Tribal Court shall adjust offender's payments within its jurisdictional control for restitution or otherwise to assure that an injured party does not recover twice for the same harm. Restitution for time lost by the Colony may be imposed and will be calculated by the Judge at the time of the order of restitution.

(i) Payment of Fines and Restitution. All monies collected as the result of a fine or restitution imposed by the Court shall be paid to the Court. Upon receiving the monies:

(i) A receipt shall be issued to the paying person;

(ii) The account of the offender shall be credited, noting whether the fine is paid in full or what balance, if any, remains due; and

(iii) For fines, the monies shall be transferred to the General Fund of the Winnemucca Indian Colony unless otherwise specifically directed by a provision of this code; for restitution, the monies shall be transferred to the person to whom restitution is to be paid.

(j) Failure to Pay. If a defendant sentenced to pay a fine or restitution fails to make payment as ordered, the Probation Officer or the Prosecutor may move that the offender show cause why sanctions should not be imposed for failure to pay.

(i) Show Cause Hearing. Notice of a show cause hearing shall be served on the offender personally or by first class mail at the address provided by the offender at least five days prior to the date set for hearing. Notice shall also be served on the victim if the show cause was issued for failure to pay restitution. Unless the offender shows that the nonpayment was not attributable to an intentional refusal to obey a Tribal Court order or the offender's failure to make a good faith effort to make the ordered payments, the Court may impose sanctions, including incarceration. If the Court determines that the offender's nonpayment was not attributable to an intentional refusal, the Court may modify the original sentence, judgment, or order, allowing the offender additional time to pay the fine or restitution or reducing the amount owed.

(k) Dismissal and Expungement after Deferred Sentencing. Whenever the Court has deferred the imposition of sentence, and after expiration of the period of deferral and the defendant's successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court shall allow the defendant to withdraw his or her plea of guilty or strike the verdict or judgment expunging the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

(3) Fixing and Collection of Costs. Upon conviction or judgment of any offense, costs will be assessed to the defendant as established by the Court. In an exceptional case, the Court may waive costs. Such costs shall be payable to the Court Clerk, and may include: witness fees; cost of service of

Court papers; and any other costs sustained by the Court in connection with the matter.

#### **4.25.160 Revocation of probation.**

(1) Arrest for Violation of Probation. A Probation Officer or a police officer may arrest or cause to be arrested a supervised offender for violation of a condition of probation. Any Probation Officer, when the Colony employs a Probation Officer, may cause the arrest of the supervised offender without a warrant by providing Tribal Police with a statement that the Probation Officer has found probable cause to believe the offender has violated the conditions of his or her probation.

A police officer may arrest a supervised offender for violation of a condition of probation when that violation is observed by the officer or credible evidence is given to the officer of that violation.

If the initial probable cause statement is oral, a written statement shall be prepared by the Probation Officer or credible witness within 24 hours of the arrest. The Probation Officer's or credible witness's statement shall be sufficient to commit the offender to incarceration pending a probable cause determination by the Tribal Court.

(a) In the event of arrest, the Probation Officer or police officer through the Prosecutor, shall cause to be filed a petition for revocation of probation, which shall include, but not be limited to, facts showing the basis for the arrest and for revocation of probation.

(b) A probationer arrested without a warrant is entitled to determination of probable cause for the grounds for his or her arrest by a Tribal Court Judge within two judicial days of the time of arrest. The presence of the offender shall be required for the Judge to make the probable cause determination. If probable cause is found, the arrested probationer shall be or remain incarcerated without bail until the probation revocation hearing is held, provided the Judge in his or her discretion may set bail and such other conditions for release.

#### **(2) Probation Revocation Hearing.**

(a) A probationer is entitled to a hearing before the Court prior to revocation of probation on the date set in any notice of revocation unless

good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

(b) A probationer who is arrested for a probation violation and who remains incarcerated shall appear no later than the date of any regular hearing set therefore, but no later than the tenth day after that arrest date, unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

(c) The supervised offender shall be entitled to notice of the date and time of the hearing, and the grounds for the proposed revocation. Notice to the probationer may be accomplished by personal service or service by first class mail to the probationer's mailing address on record with the Tribal Court.

(d) A violation of a condition is deemed to be a knowing violation if the probationer signed, and was given a copy of, the conditions of the probation.

(e) Supervised offenders do not have a right to a jury trial at a revocation hearing.

(f) If the probationer admits to violating a condition of probation, the Court may revoke the probation after the probationer has had the opportunity to offer testimony or evidence regarding any circumstances tending to mitigate the violation.

(g) If the probationer does not admit to violating a condition of the probation, the Prosecutor or Probation Officer or the arresting police officer has the burden of proving by a preponderance of the evidence that the probationer violated a condition of the probation. Evidence may not be suppressed on the ground that, if an admission of a violation, no warning was given of a right not to incriminate oneself. The Judge may issue an order that any testimony or information from the defendant may not be used against the defendant in any criminal case arising from the same charge or incident that is the basis for the revocation.

(h) Revocation may be based on demonstrably reliable hearsay evidence unless the Judge request witnesses present on the issue. The Prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.

(i) The Court shall determine the appropriate disposition of a petition for revocation. An order revoking probation shall be in writing.

(3) Penalty upon Revocation of Probation. A probationer who is found, after a hearing, to have violated a condition of his or her probation may be required:

(a) In the case of probation during a suspended sentence, to serve the term of the original sentence in whole or in part, including incarceration and payment of fines; or

(b) In the case of deferred imposition of sentence, to serve such sentence as may be imposed by the Court after a sentencing hearing.

(c) Probation may be continued with consent of defendant and approval by the Court.

#### **4.01.180 Funeral release.**

(1) An incarcerated person may move the Court for temporary release for the purpose of attending the funeral of an immediate family member or close friend or to visit an immediate family member or close friend whose death is imminent. An immediate family member or close friend shall be decided according to the relationship with the incarcerated person. Unless release is prohibited by this section, the Court shall have discretion to approve or deny the temporary release. The Court shall base its decision on the following:

(a) The criteria shall be applied to both pretrial and post-conviction motions for temporary release.

(b) The existence of orders for protection and/or no contact orders that restrain the incarcerated person. If the Court finds that release is likely to result in an order violation, the motion shall be denied.

(c) The seriousness of the offense for which the moving party is charged or has been convicted. If the crime is a crime of violence and release would put the victim or community in danger, the motion shall be denied.

(d) The family member's or close friend's prognosis. In motions for release to visit an immediate family member or close friend, the imminence of the family member's or close friend's death and the likelihood that release presents the only opportunity for a meaningful visit shall be considered.

(2) The Court shall impose time constraints and all other conditions it deems appropriate for any temporary release approved under this section and may condition such release upon the availability of the Winnemucca Indian Colony police officer, family, or other responsible parties to supervise the incarcerated person.

1-18-2022 Forwarded to  
Admin. 1000 Winnemucca Indian Colony  
Criminal Department on 1/18/2022  
Charles Taylor  
Winnemucca Indian Colony  
Chief of Police B.A.