



LAW AND ORDER CODE

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1-10 AUTHORIZATION AND DEFINITIONS –

1-10-010 Establishment of the Tribal Court – Pursuant to the authority granted to the Tribal Council by Article VI, Section 1 (g) of the Constitution and By-Laws of the Winnemucca Colony there is hereby established a Tribal Court to be known as the Winnemucca Colony Tribal Court.

1-10-020 Definitions – The following words have the meanings given below when used in this Law and Order Code:

- a. Clerk: Clerk of the Court.
- b. Code: The Law and Order Code of the Winnemucca colony.
- c. Colony: The territory within the jurisdiction of the Winnemucca Colony as set forth in the Tribe's Constitution, including the area commonly referred to as the Winnemucca Colony.
- d. Defendant: The person, persons or entity whom which an action is brought against.
- e. He, him, and his: She, her and hers, when appropriate.
- f. Juvenile Court: The Juvenile Court of the Winnemucca Colony.
- g. Personal Jurisdiction: What persons who are subject to the authority of tribal courts.
- h. Person: Meaning any natural person, partnership, association, and body, political and corporate.
- i. Plaintiff: The person's name whom an action is brought for.
- j. Personal Property: In a general sense, everything that is the subject of ownership, not coming under the denomination of real estate. In addition, personal property shall include anything affixed to a land assignment after the assignment is made.
- k. Real Property: Land, and generally whatever is erected or growing upon or affixed to the land.
- l. Subject Matter Jurisdiction: What types of civil cases can be heard by tribal courts.
- m. Tribe: The Winnemucca Colony.
- n. Tribal Court: The court operating within the jurisdiction of the Winnemucca Colony, whether a Tribal Court or a Court of Indian Offenses.

1-20 JURISDICTION OF THE TRIBAL COURT –

1-20-010 Territorial Jurisdiction of the Tribal Court – Jurisdiction of the Tribal Court shall extend to all territory within the present exterior boundaries of the Colony, as defined by the Tribe's Constitution, including trust and non-trust land and all roads, water, and bridges and to any lands which may be added to the Colony in the future or which may become subject to the jurisdiction of the Tribe by virtue of an Executive Order, a declaration or regulation of the United States Department of the Interior, a declaration or order of a court of competent jurisdiction, or other lawful means.

1-20-020 Civil Jurisdiction –

- a. The Tribal Court shall have subject matter jurisdiction over all civil causes of action.
- b. Personal, jurisdiction shall exist over any defendants, Indian or non-Indian, served in an action pursuant to Title 2, Civil Procedure under any of the following circumstances:
 - 1. Local Presence or Status – In any action whether arising within or without the Winnemucca Colony, against a defendant who when the action is commenced:

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- A. Is a natural person present within the Winnemucca Colony when served; or
 - B. Is a natural person domiciled within the Winnemucca Colony; or
 - C. Is a domestic corporation; or
 - D. Is engaged in substantial and not isolated activities within the Colony whether such activities are wholly interstate, intracolony or otherwise.
- a. Special Jurisdiction Codes – In any action which may be brought under the codes of the Winnemucca Colony that specifically confer grounds for person jurisdiction over the defendant.
 - 2. Local Act or Omission – In any action claiming injury to person, or property within or without the Winnemucca Colony arising out of an act or omission, within the Colony by the defendant.
 - 3. Local Injury; Foreign Act – If an action claiming injury to person or property within the Winnemucca Colony arising out of an act or omission outside the Colony by the defendant.
 - A. Solicitation or service activities were carried out within the Colony, by or on behalf of the defendant; or
 - B. Products, materials or things processed, serviced or manufactured by the defendant, were used or consumed within the Colony in the ordinary course of trade.
 - 4. Local Services, Goods, or Contracts – In any action which:
 - A. Arises out of a promise, made anywhere to the plaintiff or to same third party for the plaintiff's benefit, by the defendant to perform services within the Winnemucca Colony or to pay for services to be performed on the Colony by the plaintiff; or
 - B. Arises out of services actually performed for the plaintiff by the defendant within the Winnemucca Colony, or services actually performed for the defendant by the plaintiff within the Colony was authorized or ratified by the defendant; or
 - C. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within the Winnemucca Colony to ship from the Colony goods, documents or title, or other things of value; or
 - D. Related to goods, documents of title or other things of value actually received by the plaintiff on the Winnemucca Colony from the defendant without regard to where delivery to carrier occurred.
 - 5. Local Property – In any action which arises out of:
 - A. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control, or possess by either party real property situated on the Colony; or
 - B. A claim to recover any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within the Winnemucca Colony either at the time of the

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- first use, ownership, control or possession or at the time the action is commenced; or
- C. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within the Winnemucca Colony at the time the defendant acquired possession or control of it.
6. Deficiency Judgment on Local Foreclosure or Resale – In any action to recover a deficiency upon a trust deed, mortgage note, or conditional sales contract or other security, agreement executed by the defendant has succeeded and the deficiency is claimed either;
- A. In an action on the Winnemucca Colony to foreclose upon real property situated on the Colony; or
- B. Following repossession and sale of property by the plaintiff on the Colony.
7. Director or Officer of a Domestic Corporation – In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of activities of such corporation while the defendant held office as a director or officer.
8. Taxes or Assessments – In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of the Winnemucca Colony.
9. Insurance or Insurers – In any action which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure upon or against the happening of an event and in addition either:
- A. The person insured was a resident of the Colony when the event out of which the cause of action is claimed to arise, occurred; or
- B. The event out of which the cause of action is claimed to arise, occurred within the Winnemucca Colony, regardless of where the person insured resided.
10. Certain Material Actions – Living in a marital relationship within this Colony notwithstanding subsequent departure from this Colony, as to all obligations arising for alimony, child support, or property settlement, if the other party to the marital relationship continues to reside in this Colony.
11. In addition to the jurisdiction assumed in 1-010 above, the Tribe hereby assumes personal jurisdiction in all cases not prohibited by the Tribal Constitution, the U.S. Constitution, or 25 U.S.C., section 1302.
12. Joinder of Claims in the State Action – In any action brought in reliance upon jurisdictional grounds stated in Subs (2) to (11) there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

1-20-030 Criminal Jurisdiction –

The Tribal Court shall have criminal jurisdiction over all offenses enumerated in this Law and Order Code and any subsequent ordinance adopted by the Tribe when committed within the jurisdiction of the court by any Indian.

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- 1-20-040 Probate Jurisdiction - To the extent permitted by federal law, the Tribal Court shall have probate jurisdiction over all of the real and personal property of a decedent who was an Indian located within the jurisdiction of the court at the time of death, and the personal property wherever located, of any member of the Tribe who is a resident of the Colony at the time of death.
- 1-20-050 Juvenile Jurisdiction – The Tribal Court shall have original jurisdiction in all proceedings and matters affecting Indian children under the age of eighteen (18) who are residing or apprehended within the jurisdiction of the court. When exercising such jurisdiction. The Tribal Court shall notify the parent or guardian of the juvenile's location.

1-30 LAW TO BE APPLIED BY THE TRIBAL COURT

1-30-010 Tribal Law –

- a. The Tribal Court shall apply the provisions of this Code and any additional ordinances adopted by the Tribe.
- b. When appropriate, the Tribal Court shall rely on previous opinions issued by the Tribal Court or the Tribal Court of Appeals interpreting this Code or any other Tribal Ordinance.

1-30-020 Tribal Custom –

- a. In matters not covered by this Code or any ordinance, the Tribal Court shall apply traditional customs of the Tribe if an issue is raised by one of the parties or by the Court's own motion.

1-30-030 Federal Law – In any matters not covered under section 1-30-010 and 1-30-020, the Tribal Court shall apply any laws of the United States which could be applied by any courts of general jurisdiction of any state, and any regulations of any administrative agency of the United States which may be of general or specific applicability, subject to the provisions of Section 1-30-040.

1-30-031 Other Laws - In any matter not covered by Section 1-30-010 through 1-30-030, the Tribal Court may apply any laws of any state or tribe, or any foreign country in making its decision. When a case such as this arises the Tribal Court shall advise the Tribal Chairman and the Tribal Chairman shall, within five (5) days, advise the Tribal Court whether the Tribe wishes to be heard on the matter as to which law should be applied. The Tribal Court shall consider the arguments of all the parties in the action as well as the Tribal Council in making its decision as to which law to apply. In the event that the Tribal Council does not request an opportunity to be heard on the matter within five (5) days, the Court shall decide which law to apply on the basis of the arguments of the parties to the action.

1-30-040 Inapplicability of 25 Code of Federal Regulations

Part II – Upon the passage of this Code 25, Code of Federal Regulations (C.F.R), Part 11, shall not be applied by the Tribal Court unless specifically incorporated into this Code by ordinance.

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1-40 JUDGES OF THE TRIBAL COURT

1-40-010 Composition of the Tribal Court –

- a. The Tribal Court shall consist of one Chief Judge and at least one or more Associate Judges as the Tribal Council shall deem necessary to carry out the business of the Tribal Court.

1-40-020 Qualifications of the Chief Judge –_The Chief Judge may be any person, whether Indian or non-Indian and whether a resident or non-resident of the Reservation provided such person:

- a. Is twenty-one (21) years of age or older.
- b. Has never been convicted of a felony, unless a full pardon has been received for the offense.
- c. Has not been convicted of a misdemeanor within the last year.
- d. Is willing to attend training sessions for Tribal Court Judges.
- e. Is not a member of the Tribal Council.

1-40-030 Qualifications of the Associate Judge –_The associate Judge shall be any person, whether Indian or non-Indian, but preferably a Tribal member who meets the requirements for Chief Judge set out in subsection (a) through (e) of Section 1-40-020 above.

1-40-040 Appointment of Judges –

- (a) All Judges shall be appointed by Tribal Council.
- (b) Nothing in this section shall prohibit the Tribal Council from contracting or agreeing with the Bureau of Indian Affairs or any other agency or organization to provide all or part of the compensation of a judge of the Tribal Court.

1-40-050 Term of Office –

- (a) All Judges shall serve for a term of one year and until their successors take office, unless removed for cause.

1-40-060 Oath of Office –

Before taking office each Judge shall take the following oath or affirmation, administered by the Chairman of the Tribal Council or his designate at a regularly scheduled meeting:

“_____, do solemnly swear, I will administer justice impartially, and perform all the duties upon me as Judge with the best of my abilities and understanding.”

1-40-070 Duties and Powers of Judges –

- a. The Chief Judge and Associate Judges in the Tribal Court shall have the duty and power to conduct all court proceedings, and issue all orders and papers thereto, in order to administer justice in all matters within the jurisdiction of this Court. In so doing they shall:
 1. Hold Court regularly at a time and place designated by the Tribal Council.
 2. Hear and decide all cases.
 3. Enter all appropriate orders and judgments.
 4. Issue all appropriate warrants.

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5. Keep such records as are required by the Tribal ordinance and the Rules of Court.
 6. Perform the duties of the Clerk in the absence of the Clerk.
 7. Perform such other acts as are necessary and proper in the administration of the Tribal Court.
- b. Unless a coroner is appointed in accordance with the provisions of this Code, the Chief Judge shall have the authority to perform the duties of the Coroner.
 - c. The Chief Judge shall hear all cases, except those which are assigned to an Associate Judge in order to assure prompt administration of justice.

1-40-080 Appointment of Temporary Judges –

- (a) If due to the disqualification or other unavailability of the Chief and Associate Judges, an additional Judge is needed to adjudicate matters at trial or on appeal, the Tribal Council shall have the power, to appoint a temporary Judge to hear the case.
- (b) The Tribal Council must make such an appointment when it is necessary to insure the prompt administration of justice.
- (c) Whenever possible, a temporary Judge shall have experience as a Tribal Judge.

1-40-090 Compensation of Judges –

- a. The compensation of all Judges of the Tribal Court shall be set by resolution of the Tribal Council. No Judge shall have his compensation reduced during his office.
- b. Nothing in this section shall prohibit the Tribal Council from contracting or agreeing with the Bureau of Indian Affairs or any other agency or organization that such agency or organization shall provide all or part of the compensation of a Judge of the Tribal Court and shall in return have control over the compensation of such Judge. In such situations the Tribal Council shall by resolution make a recommendation to the agency or organization as to the compensation of Tribal Judges.

1-40-100 Removal of Judges –

- (a) Judges may be removed for good cause by a two-thirds (2/3) vote of the Tribal Council.
- (b) Procedures to be followed in removing a judge:
 1. No action will be taken **except** on a written complaint to the Tribal Council setting forth specific facts which justify removal.
 2. The Judge shall be immediately notified of the charges against him.
 3. Within sixty (60) days of receiving a complaint against a Judge, the Tribal Council shall decide by majority vote of a quorum whether the complaint is frivolous and should be dismissed or whether the complaint requires a hearing before the Tribal Council to determine if the Judge should be removed. Notice of this decision must be sent by certified mail, to both the Judge accused and the complainant within five (5) days of the Tribal Council decision. No Judge shall be removed except following a hearing on the complaint and a subsequent decision by the Tribal Council that removal is appropriate.
 4. If the Tribal Council decides a hearing is required, it shall set a date for such hearing, at least thirty (30) days but not more than sixty (60) days in advance. The Tribal Council shall notify the accused Judge and the complainant of the date of the hearing in the notice required subsection (b) (3) of this section. The

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accused Judge shall be suspended from his duties from the date on which the Tribal Council decides that a hearing is necessary.

5. At the hearing, scheduled pursuant to subsection (b) (4) of this section, both the accused judge and the complainant shall be given an opportunity to present evidence, call witnesses, and make a statement to the Tribal Council in support of the contentions.
6. After a hearing is held, the Tribal Council shall vote on whether or not the evidence presented establishes that good cause exists for removing the judge. The parties shall be notified of the Tribal Council's decision in the manner provided for in subsection (b) (3) of this section. Any Judge not removed is restored to his duties as of the date of the decision of the Tribal Council.
7. Nothing in this section shall prohibit the Tribal Council from contracting or agreeing with the Bureau of Indian Affairs or any other agency or organization that such agency or organization shall provide all or part of the compensation of a Judge of the Tribal Court, and shall in return have control over the removal of such Judge. In such situations the Tribal Council shall by resolution recommend to the agency or organization the removal of a Tribal Judge, when appropriate after compliance with the procedures of this section.

1-40-110 Disqualification of Judges; Conflict of Interest –

- a. No Judge shall hear or determine any case when he has a direct interest in the outcome of such case or is he related by blood or marriage to one of the parties as: husband, wife, brother, sister, father, mother, grandfather, grandmother, grandson, granddaughter, son, daughter, uncle, aunt, nephew, niece, or first cousin. Any party or the judge may raise the question of conflict of interest. Upon decision by the Judge involved that disqualification is appropriate, another Judge of the Tribal Court shall hear the matter. If the Judge refuses to disqualify himself, such refusal may be made a basis for appeal of the final decision in the case.
- b. A Judge related to one or both parties in one of the blood, or marriage relationships listed in subsection (a) of this section may hear a case if both or all parties know or are advised to have that Judge hear the case.
- c. A document which agrees to consent, referred to in subsection (b) of this section shall be made part of the record of the case.

1-40-120 Filling vacancies – When a judge's position becomes vacant before the end of the term, the Tribal Council shall fill the vacancy by appointment. The Judge appointed to fill a vacancy will serve the remainder of the original term and be eligible for reappointment. Any appointment under this Section shall be subject to the provisions of 1-40-040 (b) when appropriate.

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1-50 CLERK OF THE COURT

1-50-010 Qualifications of Clerk – The Clerk shall:

- a. Be willing to attend training sessions for Tribal Court Clerks.
- b. Be qualified to perform the duties of the Clerk as set forth in Section 1-50-030

1-50-020 Appointment of the Clerk – The Clerk shall be appointed by the Tribal Council.

1-50-030

- a. The Clerk shall keep the records of the Court, including but not limited to a case file with an identifying number containing all the pleadings and all papers filed in each case.
- b. The Clerk shall send out all noticed required by Tribal law to be sent by the Tribal Court.
- c. The Clerk shall assist all persons or organizations with business before the Court so as to ensure the efficient operation of the Tribal Court. Such assistance may include, but is not limited to, help with the preparing of papers to be filed with the Tribal Court.
- d. The Clerk shall collect all fines paid, pay out all fees authorized by law, and account for all moneys to the Tribal Council.
- e. The Clerk shall attend all sessions of the Tribal Court to administer oaths and otherwise assist the Judge in the conduct of the Duties of the Clerk – court.
- f. The Clerk shall be under the supervision of the Chief Judge and shall perform such other duties with regard to the Tribal Court as the Chief Judge may direct.
- g. Nothing in this Section shall be construed to prohibit the Clerk from having other duties consistent with the office of the Clerk, such as matron, bookkeeper, etc.

1-50-040 Judge may assume duties of the Clerk – When, for whatever reason, the position of Clerk is vacant or the Clerk is unavailable, a Judge may assume and perform the duties of the Clerk.

1-50-050 Termination of Clerk - The Clerk may be removed from office, with or without cause by the Tribal Council, except that if the termination be without cause, two weeks' notice must be given to the Clerk.

1-60 RECORDS OF THE TRIBAL COURT

1-60-010 Court Files –

- a. Court files on a particular case are not generally open to the public. Only the parties and persons authorized by the parties, the Tribal Judge, or the Tribal Council may inspect the records of a case and obtain copies of documents included therein.
- b. Authorized persons may inspect such files only during the ordinary working hours of the Clerk or the Judge, to ensure the integrity of court records. Under no circumstances shall anyone except a Judge hearing a case take a file from the Clerk's office without an order from the Judge.
- c. A copy of any document contained in a court file may be obtained from the Clerk by any authorized person for a reasonable charge to cover the expenses of copying. The Clerk shall certify that such copies are accurate copies of the document on file.

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1-60-020 Recording Court Proceedings –

- a. When requested to do so by one of the parties, the Clerk shall record the proceedings of the court on tape recorder. The recording shall be identified by case number by the Clerk and kept for one year for use in appeals or collateral proceeding; in which the events of the hearing or the manner in which it was conducted are an issue.
- b. To preserve the integrity of the tape recording, the Clerk shall store it in a safe place and release it only to the relevant court, or pursuant to an order of the Judge.

1-60-030 Forms of Decisions –

- a. Each decision of a Tribal Court, either at trial or on appeal, shall be recorded on a form approved by the Tribal Council for such purpose. The decision form shall provide for recording the date, the case number, the parties, the substance of the complaint, a brief summary of the evidence presented, the Judge's decision, and the judgment of the Court.
- b. This decision form shall be placed in the case file as an official document of the Tribal Court.

1-70 RULES OF COURT

1-70-010 Preparation of Rules – The Chief Judge may prepare Rules of Court concerning conduct in the Tribal Court. Such Rules may include the time and place of Court sessions, the form and filing deadlines of pleadings, decorum in the Court room and other matters which will make the Tribal Court function more efficiently.

1-70-020 Approval of Rules – The Rules of Court shall be reviewed by the Tribal Council and become effective upon approval by the Tribal Court.

1-70-030 Amendment of Rules – The Rules of Court may be amended by a resolution of the Tribal Council. Such a resolution should specify which rules are superseded and include the new rules.

1-70-040 Sanctions –

- a. The Tribal Court may require observance of the Rules of Court before taking any action in a matter.
- b. Where one party suffers actual monetary damages, including fees to a representative, due to delay in the proceedings or any other reason, because of the failure of some other party before the court to obey the Rules of the Court, the party injured may sue to recover the actual damages.

1-80 PRACTICE BEFORE THE TRIBAL COURT

1-80-010 Right to represent oneself or have a representative as counsel –

- a. Any Indian, who is a party to a case before the Tribal Court, shall have the right to represent himself, unless the Tribal Court determines that the person is not competent to proceed without a representative.
- b. Any person who is a party to any case may employ a representative as counsel to help present his case.

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1-80-020 Representatives Right to Appear –

- a. A representative may be denied the privilege of appearing before the Tribal Court, permanently or for a stated period of time on any of the following grounds:
 1. Swearing in court to facts known to him to be false.
 2. Conviction within the last year of an offense in Tribal Court, or conviction in another court of an equally serious offense,
- b. No representative may be denied the privilege of appearing before the Tribal Court under subsection (a) of this section without a hearing before the Tribal Court in which the necessary charges must be proven by a preponderance of evidence.

1-90 APPEALS FROM TRIBAL COURT

1-90-010 Composition of the Court of Appeals –

- a. The Tribal Court of Appeals shall consist of all of the Judges of the Tribal Court except the Judge from whose decision the appeal is taken.
- b. When necessary, the Tribal Court shall appoint a temporary Judge to sit on the Tribal Court of Appeals. Whenever possible such a temporary Judge shall have experience as a Tribal Court Judge.
- c. Nothing in this section shall prevent the Tribal Council from entering into an agreement with other Tribes, reservations, and colonies of Nevada Indians whereby Tribal Court Judges are shared among the various Tribal Courts for the purpose of hearing appeals. Any such agreement by the Tribal Council shall take precedence over the general provisions contained in subsections (a) and (b) of this section.

1-90-020 Appeal Procedure –

- a. Any Indian dissatisfied with a decision of the Tribal Court, except the prosecution, in a criminal case, may appeal by a written notice of appeal with the Clerk, within thirty (30) days of the Judges' decision. Where a decision is not delivered at a hearing with the parties present, the thirty (30) days does not begin to run until the party who wishes to appeal received notice of the decision.
- b. Upon receiving the notice of appeal the Clerk shall draw up an appellate case file and transfer the entire record, including any notation indicating the existence of a recording of the proceedings to the Court of Appeals.
- c. Whenever possible, appeals shall be decided on the record of the case, including the decision form and any recording of the proceedings, in order to eliminate unnecessary travel and delay. The Court of Appeals may require a hearing or oral argument if it considers that they would be necessary or helpful.
- d. After the decision by the Court of Appeals, a judge thereof shall fill out a decision form stating the result and reason for the result on appeal. A copy of the completed decision form shall be sent to each party to the appeal by certified mail. The original shall be filed in the case file and remain a part of the record of the case in any further proceedings.

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1-90-030 Scope of Appeal –_The Court of Appeals shall determine:

- (a) Whether the Tribal Court correctly applied the relevant law; and whether the Tribal Court decision is not arbitrary and is based upon sufficient facts.

CIVIL RULES OF THE TRIBAL COURT, TITLE 1A

1-100-010 General Provisions

1. Civil Jurisdiction

1The jurisdiction of the Winnemucca Indian Colony Tribal Courts shall, except as limited by Federal statutory or Winnemucca Indian Colony-adopted Tribal law, to:

- a. All lands and waters within the Winnemucca Indian Colony Trust lands; and to:
- b. All persons natural and legal of any kind; and to:
- c. All subject matters which, now and in the future, are permitted to be within the jurisdiction of any Tribal Court of a sovereign Indian tribe or nation recognized by the United States of America; and to:
- d. All matters having to do with rights in or encumbrances to lands within or without the Winnemucca Indian Colony lands held by the United States in trust for the Winnemucca Indian Colony, or any lands that may be held in the future for the Winnemucca Indian Colony in fee shall extend, except as limited by Federal statutory law or Winnemucca Indian Colony law, to all lands and waters, in fee, trust or restricted fee, within or outside the Colony's lands Reservation and outside the boundaries of the Winnemucca Indian Colony lands to lands and waters reserved or obtained by the Colony and its people for their use by any treaty or law or in any other manner, including, but not limited to, Court decision, purchase, established right of use or gift.

2. Civil Statute of Limitations

No complaint shall be filed alleging a civil cause of action unless the civil cause of action arose and/or accrued within six years prior to the date of the filing of the complaint in a matter involving the breach of a written contract, and in all other matters within three years, unless otherwise specified in a particular ordinance. This general statute of limitations shall not apply to suits filed by the Winnemucca Indian Colony to recover public monies or public property intentionally misspent, misappropriated, or misused, and further, this general statute of limitations shall not apply to any debt owed the Winnemucca Indian Colony or any of its agencies, arms, or instrumentalities.

3. Definitions.

As used in this title, unless the context otherwise requires, the following definitions apply:

- (a) "Days" means calendar days.
- (b) "Judicial Days" means business days of the Winnemucca Indian Colony Tribal Court.

1-100-020 Commencement of an action

There is one form of action called a civil action. It is commenced by filing a complaint or by Colony ordinance and a filing fee must be deposited with the Court Clerk when the action is filed. Filing fees will be set by Colony Ordinance. Once an action is properly commenced, a summons shall be issued by the Clerk and provided to the person filing the civil action to accomplish service upon the parties being sued.

1-100-030 Complaint or petition

Any person who wishes to commence a civil action in Tribal Court shall first file a written and signed complaint with the Court Clerk.

1. Content. A complaint, counterclaim, cross claim, or third-party claim shall:
 - a. State the names and any known Colony affiliations of the parties;
 - b. Describe the basis for the Court's jurisdiction;
 - c. Contain a short and plain statement of the wrong, injury or breach and if the wrong, injury or breach is based upon an Ordinance, Resolution or the Constitution and Bylaws;
 - d. State the legal and factual basis for the wrong, injury, or breach;
 - e. Name or describe the person or entity responsible for such wrong, injury or breach; and
 - f. State the relief requested.
2. Summons and Service of Summons
 - a. Content and Form of Summons. The summons shall be in written form and signed by the plaintiff or his attorney(s). The summons for personal Service shall contain:
 - i. The title of the cause, specifying the name of the Court in which the action is brought and the names of the parties to the action;
 - ii. A direction to the defendant summoning him to serve a copy of his response within a time stated in the summons;
 - iii. A notice that, in case of failure to do so, judgment may be rendered against him by default.
 - b. By Whom Served. Service of summons and complaint may be made by any person over the age of eighteen (18) years who is competent to be a witness and is not a party to the action.
 - c. Personal Service. A copy of the summons and complaint shall be served together upon the defendant. If service is outside the Colony's territorial jurisdiction, the special summons requirements of this chapter shall apply. Personal service shall be made as follows:
 - i. To the defendant personally, or by leaving the summons and complaint at the house of his usual abode with some person of suitable age and discretion then resident therein;
 - ii. If against a minor under the age of fourteen (14), to such minor personally, and also to his father, mother, guardian, or if there be none within the jurisdiction, then to an person having the care of control of such minor, or with whom he resides, or in whose service he is employed, if applicable;
 - iii. If against the Colony or any of its instrumentalities, to the Chairperson of the Council personally;
 - iv. If against any town or incorporated city in the State, to the mayor, manager, or clerk thereof;

- v.If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor;
- vi.If the suit be against a company or corporation, to the president or other head of the company or corporation, secretary, cashier, managing agent of the company or corporation or branch or local office, or to the secretary, stenographer, or office assistant of such individuals;
- vii.If the suit be against a foreign corporation or nonresident joint stock company, partnership, or association doing business within this State, to any agent, cashier, or secretary thereof.
- d. Service Outside the Territorial Jurisdiction of the Colony
 - i.Generally, if service is outside the Colony's territorial jurisdiction, it shall be accomplished by personal delivery in the manner prescribed by the law of the place in which the service is made for service in an action in any of its courts of general jurisdiction. The summons served upon a party outside the Tribal Court's territorial jurisdiction shall be in substantially the same form as that required for person service.
 - A. Whenever any domestic or foreign corporation, which has been doing business on the Colony's lands, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation, service of all process upon such corporation may be made upon the receiver thereof. When the Colony's law authorizes personal service outside the territorial jurisdiction of the Tribal Court, the service, when reasonably calculated to give actual notice, may be made.
 - B. When outside the State of Nevada, service may be made by any form of mail addressed to the person to be served and requiring a signed receipt.
 - C. Service may be made as directed by the foreign authority in response to a letter rogatory.
 - ii.Effect of Service outside Territorial Jurisdiction of Colony's lands.

Personal service of the complaint and summons or other process may be made upon any party outside the territorial jurisdiction of the Colony, in the manner prescribed in this section. If upon a member of the Colony, or resident of the Colony's lands, or a person or entity who has submitted to the jurisdiction of the Tribal Court by any of the acts specified in 1-05-020 (2), it shall have the same force and effect of personal service within the Tribal Court's territorial jurisdiction. Otherwise, it shall have the force and effect of service by publication.
- e. Service by Publication
 - i.Generally, when the defendant cannot be found within the territorial jurisdiction of the Court, and upon the filing with the Court of a declaration of the plaintiff, plaintiff's agent, or attorney stating a belief that the defendant is not a resident of the County where the Colony's lands are located, or the defendant cannot be found, and that a copy of the summons and complaint has been deposited in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons by the plaintiff or his attorney in any of the following cases:

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- A. When the defendant is a foreign corporation and has property within the jurisdictional boundaries of the Colony's lands;
 - B. When the defendant, being a resident of the Colony's lands, has departed therefrom with the intent to defraud his creditors, or to avoid the service of a summons and complaint, or keeps himself concealed therein with like intent;
 - C. When the defendant is not a resident of the Colony's lands, but has property therein and the Court has jurisdiction of the subject of the action;
 - D. When the subject of the action is real or personal property within the Colony's lands, and the defendant has or claims a lien or interest therein, actual or contingent, and the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein;
 - E. When the action is for dissolution in the cases prescribed by law;
 - F. When the action is to foreclose, satisfy, or redeem from a mortgage or deed of trust, or to enforce a lien of any kind on real estate within the lands of the Winnemucca Indian Colony, but can only be a lien or other mortgage or deed of trust that recognizes that the Colony is the beneficial owner of all the lands of the Winnemucca Indian Colony, or satisfy or redeem from the same;
 - G. When the action is against any corporation, whether private or municipal, organized under the laws of the State of Nevada or Winnemucca Indian Colony, and the proper officers on whom to make service do not exist or, after a diligent and good faith search, cannot be found; or
 - H. When the action is brought by one having in his possession, or under his control, any property or money, or being indebted, where more than one person claims to be the owner of, entitled to, interest in, or to have a lien on such property, money or indebtedness, or any part thereof.
- ii. Form of Service by Publication. The publication shall be made in a newspaper of general circulation in Humboldt County, Nevada, once a week for three consecutive weeks; provided, that publication of summons shall not be made until after the filing of the complaint, and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication. The summons must be signed by the plaintiff or his attorney(s). The summons shall contain the date of the first publication, and shall require the defendant or defendants upon whom service by publication is desired to appear and answer the complaint within sixty (60) days from the date of the first publication of the summons. The summons for publication shall also contain a brief statement of the nature of the action.
- iii. Effect of Service by Publication. Service by publication alone shall not by itself be taken and held to give the Court jurisdiction over the person of the defendant. By such service, the Court only acquires jurisdiction to give a judgment which is effective as to property or debts attached or garnished in connection with the suit or other property, which property forms the basis of jurisdiction of the Court. If the defendant appears in a suit commenced by such service, the Court shall have jurisdiction over his

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person. The defendant may appear specifically and solely to challenge jurisdiction over property or debts attached or garnished or other property within the jurisdiction of the Court.

f. Alternative Service. If other forms of personal service have been attempted and service has not been effected, the Court may order service by mail to the last known address, or any other method of service that the Court deems effective in providing the best notice available. Service by mail shall be by sending certified return receipt requested and regular mail. Service shall be effective if the letter sent by regular mail is not returned within thirty (30) days.

g. Return of Service. The person serving the complaint and summons shall file the proof of service with Clerk of the Court promptly, and in any event, within the term during which the person served must respond to the summons. This shall be accomplished by his or her declaration or affidavit of service. Costs shall not be awarded and a default judgment shall not be rendered unless proof of service is on file with the Court. Proof of service shall be made in the following manner.

i. Service outside the Territorial Jurisdiction of the Winnemucca Indian Colony. Proof of service outside the territorial jurisdiction of the Tribal Colony may be made by declaration or affidavit of the individual who made the service or in the manner prescribed by the law of the place in which the service is made for an action in any of its courts of general jurisdiction.

ii. Service by mail. Proof of service by mail shall include a receipt signed by the addressee, a declaration that the mail was not returned to the sender undelivered for a period of thirty (30) days, or other evidence of personal delivery to the addressee satisfactory to the Court.

iii. Service by Publication. Proof of service by publication shall be made by the declaration or affidavit of the printer, publisher, foreman, principal clerk, or business manager of the newspaper showing the same, together with a printed copy of the summons as published.

h. Amendment. At any time in its discretion and upon such terms as it deems just, the Court may allow any process or proof of service thereof result to the substantial rights of the party against whom the process issued.

1-100-040 Service for all other papers and pleadings

1. Service generally. Every order required by its terms to be served, every written pleading subsequent to the original complaint, every written motion, and every written notice, appearance, demand, offer or judgment, or other paper shall be served upon all parties. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service summons and complaint.

a. Manner of Service. Whenever under these rules service of papers other than the complaint and summons is required or permitted, the rules governing the manner of service of such papers shall be agreed to in writing by the parties and ordered by the Court. For example, if all parties have access to email and the parties agree to use email, and the Court orders the use of email, then the agreement entered into by the parties and ordered by the Court system shall govern.

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- b. Filing. All papers after the complaint required to be served upon a party shall be filed with the Court either before service or within a reasonable time thereafter unless otherwise provided by the Court. Further, the Court shall provide in an annual Order, the manner of service on the parties after the initial filing.
2. Service of Subpoenas. 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 eighteen (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.

1-100-050 Parties

1. Real party in Interest. Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought.
2. Reason for nonjoinder of Omitted Persons. In any pleading in which relief is asking, the pleader shall set forth the names, if known to him, of persons who ought to be parties if completed relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.
3. Minors or Incompetent Parties.
 - a. Minors. When a party is a minor, he shall appear by parent or legal guardian, or if he has no parent or legal guardian or in the opinion of the Court the parent or legal guardian is an improper person, the Court shall appoint a guardian ad litem.
 - b. Incompetent Parties. When an incompetent person is a party to an action, he shall appear by guardian. If he has no guardian, or in the opinion of the Court the guardian is an improper person, the Court shall appoint one to act as guardian ad litem. When the incompetent person is plaintiff, a relative or friend shall make the application for a guardian. If no such application is made within the time he is to appear, application may be made by any party to the action.

1-100-060 Third Party practice

1. Timing
 - a. Service of Summons. A defendant may move, on notice to the plaintiff, for leave as a third party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third party defendant, shall make his defense to the third party plaintiff's claim as provided in 1-10-090 and his counterclaims against the third party plaintiff and cross-claims against other third party defendants as provided in 1-10-110.
 - b. Third Party Defendant Response. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the

plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in 1-10-090. A third party defendant may proceed under this section against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

c. When Plaintiff may bring in a Third party. When a counterclaim is asserted against a plaintiff, he may cause a third-party to be brought in under circumstances which under this rule would entitle a defendant to do so.

d. Tort Cases. This rule shall not be applied in tort cases as to permit the joinder of a liability or indemnity insurance company, unless such company is, by statute or contract, directly liable to the person injured or damaged.

2. Joinder of Persons Needed for a Just Adjudication. A person who is subject to service of process and who's joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

a. In his absence complete relief cannot be accorded among those already parties; or

b. He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may;

i. As a practical matter impair or impede his ability to protect that interest; or

ii. Leave any of the persons already parties subject to a substantial risk of occurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Subject to the provisions of subsection (5) of this section, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or an involuntary plaintiff.

3. Joinder of Claims and Remedies. The plaintiff, in his complaint or in reply setting forth a counterclaim, and the defendant in an answer setting forth a counterclaim, may join either as independent or as alternative claims as many claims, either legal or equitable, or both, as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties and/or there may be a like joinder of cross claims or third-party claims if all the requirements of this chapter are met. Whenever a claim is one recognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action. The Court, however, shall grant relief in that action only in accordance with the relative substantive rights of the parties.

4. Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any questions of law or fact common to all of them will arise in the actions. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

5. Joinder Not Feasible. When persons who are not indispensable, but who ought to be parties if complete relief is to be granted between those already parties, have not

been made parties and are subject to the jurisdiction of the Court as to both service of process and venue, the Court shall order them summoned to appear in the action. The Court, in its discretion, may proceed in the action without making such persons parties if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance, but the judgment rendered therein does not affect the rights or liabilities of absent persons.

6. Misjoinder. Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by the order of the Court on motion of any party, or of the Court's own initiative, at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

7. Interpleader. Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not grounds for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical, but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross claim or counterclaim. The provisions of this section supplement and do not in any way limit the joinder of parties permitted under other sections.

8. Intervention. A person desiring to intervene shall serve a motion to intervene upon all parties affected. The motion shall state the grounds for intervention and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The Colony may intervene in any case where the interpretation of the Colony's Constitution and Bylaws, Ordinances, Resolutions, common law, or custom and tradition is a central issue.

a. Intervention of Right. Upon timely application, anyone shall be permitted to intervene in an action when:

- i. An ordinance confers an unconditional right to intervene; or
- ii. When an applicant claims an interest that may not be adequately protected by the existing parties and the applicant is or may be bound by a judgment in the action; or
- iii. The applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the Court.

b. Permissive Intervention. Upon timely application, anyone may be permitted to intervene in an action when:

- i. An ordinance confers a conditional right to intervene; or
- ii. An applicant's claim or defense and the main action share a question of law or fact in common.

In exercising its discretion, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

1-100-070 Substitution of parties

1. Death. If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party, and together with the Notice of Hearing shall be served on the parties as provided for service of notices, and upon persons not parties, in the manner provided by this chapter for the service of a summons and complaint. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

In the event of the death of one or more of the plaintiffs or one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The fact of death shall be noted in the docket, and the action shall proceed in favor of or against the surviving parties.

2. Incompetency. If a party becomes incompetent, the Court, upon motion served as provided in 1-10-060(1), may allow the action to be continued by or against his representative.

3. Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party unless the Court, upon motion, directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subsection (1) of this Section.

1-100-080 General rules of pleading

There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complain, if the Court allows a person who was not an original party to be summoned; and a third party answer, if a third-party complain is served. No other pleading shall be allowed.

1. Form. Every pleading submitted to the Court shall be written and shall contain a caption setting forth the name of the Court, the title of the action, and the Court file number for the case if known to the person signing it. In a complaint, the title of the action shall include the names of all parties, but in other written pleadings it is sufficient to state the name of the first party with an appropriate indication of other parties. When the plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended.

2. Signature. All pleadings, motions, and legal memoranda of a party represented by an attorney shall be dated and signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall date and sign his pleadings, motions, and legal memoranda and state his address. This signature of a party or an attorney constitutes a certificate that he has read the pleadings, motions, and legal memoranda and that, to the best of his knowledge, information, and good faith belief, there exist grounds to support it.

3. Pleading to be concise and direct. Pleadings and motions shall be stated so as to enable a person of common understanding to know what is intended. A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defense. When two or more statements

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are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds or on both. All pleadings shall be so construed as to do substantial justice.

4. Adoption by Reference – Exhibits. Statements in a pleading may be adoption by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part of that pleading for all purposes.

5. Filing with the Court. The filing of pleadings and other papers shall be made by filing them with the Clerk. The filing date shall be noted at the time of filing.

6. Time Computation. The time within which an act is to be done shall be computed by excluding the first day and including the last, unless the last day is a holiday or Sunday, and then it is also excluded.

1-100-090 Response

A defendant shall serve his answer on or before the time he is required to answer the complaint as stated in the summons. A party served with a pleading stating a cross claim against him shall answer on the return date fixed in a notice which shall accompany the pleading. The plaintiff shall reply to a counterclaim not less than twenty (20) days prior to trial.

1. Timing of Response. A summons served within the Colony's territorial jurisdiction shall require the defendant to respond within twenty (20) days from the date of service. A summons served upon a party outside the Colony's territorial jurisdiction shall require the defendant to respond within thirty (30) days from the date of service if made in the State of Nevada, or sixty (60) days from the date of service if made outside the State of Nevada.

2. Form. The answer shall be written and shall state defenses, denials, and objections to each claim asserted in the complaint in any form which will enable a person of common understanding to know what is intended. If the defendant is without knowledge or information sufficient to form a belief as to the truth of a complaint or petition, he shall so state, and this has the effect of denial.

3. Content. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted by the responsive pleading, except that the following defenses may, at the option of the pleader, be made by motion:

- a. Lack of jurisdiction over the subject matter;
- b. Lack of jurisdiction over the person;
- c. Insufficiency of process;
- d. Failure to state a claim upon which relief can be granted, and;
- e. Failure to join an indispensable party.

A motion making any of these defenses shall be made before pleading is permitted, except that lack of subject matter jurisdiction can be raised by any party or by the Court at any time. No defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to the claim upon which relief can be granted, matters outside the pleading are

presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of provided in 1-10-100(5), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

4. Affirmative Defenses. In a written answer to a complaint or cross-claim and in a written to a counterclaim, a party shall set forth affirmatively the following; accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppels, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court shall treat the pleading as if there had been a proper designation if justice so requires.
5. Waiver of Defenses. A party waives all defenses and objections which he does not present in an answer or reply or by motion, except:
 - a. The defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading if one is permitted, by motion for judgment on the pleadings, or at the trial on the merits; and
 - b. Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.
6. Effect of Failure to Deny. Any statements in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied by responsive pleading.

1-100-100 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 in such form as 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.
2. Timing. A written motion, other than the one which may be heard ex parte, and notice of the hearing shall be served no later than seven (7) days before the time specified for the hearing set by the Court. When a motion is supported by affidavit or other documentary evidence, it must be filed and served fourteen (14) days before the time specified for the hearing. Any written response shall be served not later than three (3) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the Court. Such an order may, for cause shown, be made on ex parte application.
3. Motion for more Definite Statement. If a pleading to which a responsive pleading is permitted (for example, the complaint) is so vague or ambiguous that a person of common understanding cannot know what is intended, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within ten (10) days after the order or within such other time as

the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

4. Motion to Strike. A party may make a motion to strike for good cause.
5. Motion for Summary Judgment.
 - a. For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim may, at any time after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part of the claim, counterclaim, or cross-claim.
 - b. For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part of the claim, counterclaim, or cross-claim.
 - c. Motion and Proceedings. The motion and supporting affidavits, memoranda of law, and any other supporting documentation shall be filed and served at least twenty-eight (28) days before the time fixed for the hearing as set by the Court. Any opposing affidavits shall be filed and served no later than fourteen (14) days prior to the hearing. Any counter response shall be filed and served no later than three (3) days prior to the hearing. The judgment sought shall be rendered if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.
 - d. Case not fully Adjudicated on Motion. If on motion under the rule judgment is not rendered upon the whole case or for all relief asking and a trial is necessary, the Court, at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall then make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the actions, the fact so specified shall be deemed established, and the trial shall be conducted accordingly.
 - e. Form of Affidavits – Further Testimony – Defense Required. Supporting and opposing affidavit shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated. Sworn or certified copies of all papers or parts referred to in an affidavit shall be attached or served along with the affidavit. The Court may permit affidavits to be supplemented or opposed by depositions, summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.
 - f. Affidavits made in bad faith. Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the Court shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including

reasonable attorneys' fees and any offending party or attorney may be adjudged guilty of contempt.

g. Form of order. The order granting or denying the motion for summary judgment shall include the grounds for the ruling, including any documents and other evidence called to the attention of the Court before the order on summary judgment was entered.

6. Motion for shortening time. The time for notice and hearing of a motion may be shortened only for good cause upon written application to the Court in conformance with this rule. A motion for order shortening time may not be incorporated into any other pleading. The Court may deny or grant the motion and impose such conditions as the Court deems reasonable. All other rules pertaining to confirmation, notice and working papers for the hearing on the motion for which time was shortened remain in effect, except to the extent that they are specifically dispensed with by the Court.

a. Notice. As soon as the moving party is aware that he or she will be seeking an order shortening time, that party must contract the opposing party to give notice in the form most likely to result in actual notice of the pending motion to shorten time. The declaration in support of the motion must indicate what efforts have been made to notify the other side.

b. Time of Ruling. Except for emergency situations, the Court will not rule on a motion to shorten time until the close of the next judicial day following filing the motion (and service of the motion on the opposing party) to permit the opposing party to file a response. If the moving party asserts that exigent circumstances make it impossible to comply with this requirement, the moving party shall contact the Bailiff of the Judge assigned the case for trial to arrange for a conference call, so that the opposing party may respond orally and the Court can make an immediate decision.

c. Proposed agreed orders to shorten time. If the parties agree to a briefing schedule on motion to be heard on shortened time, the order may be presented by way of a proposed stipulated order, which may be granted, denied or modified at the discretion of the Court.

7. Motion for Reconsideration. A motion for reconsideration shall be plainly labeled as such. The motion shall be filed within ten (10) judicial days after the order to which it related 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.

1-100-110 Cross Claims and Counterclaims

1. Mandatory. A pleading shall state any counterclaim the pleader has against any opposing party at the time of serving the pleading if:
 - a. It arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and
 - b. Does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. The pleader need not state the claim if:
 - i. At the time the action was commenced, the claim was the subject of another pending action; or
 - ii. The opposing party brought suit upon his claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this section.
2. Permissive. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.
3. Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.
4. Counterclaim Maturing or Acquired after Pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.
5. Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may, by leave of Court, set up the counterclaim by amendment.
6. Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-complainant.
7. Set-Offs. To entitle a defendant to a set-off, he must set forth the same in his answer.
 - a. Against Assignee. The defendant in a civil action upon a contract express or implied other than upon a negotiable promissory note or bill of exchange, negotiated in good faith and without notice before due which has been assigned to the plaintiff, of such contract, provided such demand existed at the time of the assignment, and was such a demand as might have been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him.
 - b. Against Beneficiary. If the plaintiff be a trustee or any other, or if the action be in a name of a plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents or for whose benefit the action is brought may be set off as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

8. Counterclaims against Tribal Entity – Recoupment. Counterclaims in recoupment only may be brought against the Winnemucca Indian Colony, or any entity or corporation of the Colony, only when such counterclaims satisfy all of the following conditions:

- a. The counterclaim must arise from the same transaction or occurrence as the Colony's (or entity's) suit; and
- b. The relief sought by the counterclaim must be of the same kind or nature as the Colony's (or entity's) requested relief; and
- c. Any damages sought cannot exceed the amount sought by the Colony (or entity's) claim.

1-100-120 Amended and supplemental pleadings

1. Prior to Trial. A party may amend a complaint, counterclaim, cross claim, or third-party complaint once as a matter of course at any time before a responsive pleading is made, or if the pleading is an answer or a reply to a counterclaim, he may so amend it at any time within twenty (20) days after it is served; provided, that it is amended prior to trial. Otherwise, a party may amend his pleading only by leave of Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service or notice of the amended pleading, whichever period may be longer, unless the Court otherwise orders.

2. During or After Trial. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to do amend does not affect the result of the trial of these issues.

If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be advanced thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his actions or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

3. Relating Back. Whenever the claim of defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment related back to the date of the original pleading.

4. Supplemental Pleadings. Upon motion of a party, the Court may, upon reasonable notice and upon such terms as are just, permit the moving party to serve or make a supplemental pleading setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented.

5. Interlineations. No interlineations, corrections, or deletions shall be made in any paper after it is filed with the Clerk. Any such mark made prior to filing shall be initialed and dated by all persons signing the document.

1-100-130 Preliminary injunctions and temporary restraining orders.

Within the contract of any existing civil action, a temporary and/or ex parte order may be issued by the Court upon application by a party if the Court determines that justice so requires.

1. Preliminary Injunctions
 - a. Grounds. Following a motion and opportunity for hearing, either one affidavits or on sworn testimony, the Court may enter a preliminary injunction restraining a party from taking certain action or requiring a party to take certain action, during the pendency of the lawsuit. A preliminary injunction may be entered only after an appropriate motion by a party after notice and an opportunity to be heard by the opposing party or parties. A preliminary injunction will only be issued on a showing that:
 - i. From the specific facts proven, that immediate and irreparable damage, loss, or injury will result to the party requesting the relief during the pendency of the lawsuit;
 - ii. From the specific facts proven, on balance, the party requesting relief will be more likely to suffer a more serious and irreparable harm than the party opposing the injunction; and
 - iii. The party requesting relief has raised serious legal questions and demonstrated a likelihood of prevailing on the merits of his claims.
 - b. Bond. The Court, may, in its discretion, require the party seeking preliminary relief to post a bond to protect the party to be restrained, in the event that such relief is ultimately determined to be unjustified. No bond will be required of the Winnemucca Indian Colony unless specifically allowed by ordinance or resolution of the Council of the Winnemucca Indian Colony.
2. Temporary Restraining Orders. A temporary restraining order may be granted without written or oral notice to the adverse party or his or her counsel only if:
 - i. It clearly appears from specific facts shown by affidavit or verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his or her counsel can be heard in opposition; and
 - ii. The applicant or his or her counsel certified to the Court in writing the efforts, if any, that have been made to give notice or the reasons supporting the claim that notice should not be required.Every temporary restraining order granted without notice shall be endorsed with the date and shall expire by its terms within ten (10) days, or as the Court fixes.
3. Restraining Orders. Domestic violence restraining orders and civil anti-harassment restraining orders are governed by the criminal code section of the law and order code of the Winnemucca Indian Colony.

1-100-140 Pretrial procedures

1. Pretrial Scheduling Conference. The Court on its own motion, or by motion of either party, may call a pretrial scheduling conference after all the pleadings are complete. At that time, the Court may issue orders or set additional hearings to further the expeditious resolution of the case. Any defenses, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination be deferred until the trial.

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2. Discovery. The Court shall have the absolute discretion to decide whether to permit any discovery procedures. In exercising such discretion, the Court shall consider whether all parties are represented by counsel, whether unreasonable delay in bringing the case to trial will result, and whether the interests of justice will be promoted. The taking of depositions or the requesting of admissions, the propounding of interrogatories and other discovery procedures may be available to a party only upon obtaining prior permission of the Court.
3. Subpoenas. The Court shall issue subpoenas for the attendance of witnesses and the production of documents, either on its own motion or by the request of a party or Tribal Police. Subpoenas shall bear the signature of the issue Judge, unless otherwise authorized by the Court.
4. Pretrial Offer of Judgment. At any time more than five (5) days before trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him from the money or property or the effect specified in his offer, with costs then accrued. If within five (5) days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service and the Court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence of the unaccepted offer is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the cost and attorney's fees incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.
5. Work Product Exception. The following documents and information shall not be subjected to discovery in any case in the Winnemucca Indian Colony Tribal Courts or in any proceeding applying the law of the Winnemucca Indian Colony:
 - a. Trial Preparation Materials. A party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). Notwithstanding the above, such work product materials may be discovered if:
 - i. They are otherwise discoverable under subsection (2) of this section; and
 - ii. The party seeking such documents shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.
 - b. Protection against Disclosure. If the court orders discovery of those materials, it must protect disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

1-100-150 Trial

1. Trial by Jury. There shall be no trial by jury in a civil case.
2. Consolidation. When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial on any or all of the matters in issue. The Court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any matter raised by the pleadings.
3. 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 the Judge. Parties may stipulate to factual issues and submit them for acceptance by the Court.

4. 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.
 - i. If a party refuses to attend or testify at the trial after proper service of a subpoena, the complaint, answer or reply of the party may be stricken and judgment taken against the party. The party may also be subject to contempt of Court.
 - ii. If a witness refuses to attend or testify at the trial after proper service of subpoena, a bench warrant may be issued by the 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.
5. Default.
 - a. Default Order. An order of default will enter against the defendant in the event of failure to respond to the summons in the manner or at the time specified by the summons. An order of default will also enter against any party who fails to appear at the time set for trial. If a party fails to respond to a motion filed with the Court and properly served, the motion may be granted.
 - b. Default Judgment. Upon proper service and proof satisfactory to the Court, default judgment may be granted upon motion by a party. A judgment by default shall not be different in kind from or exceed in amount that which was prayed for in the demand for judgment. Default judgments may include reasonable attorney's fees and costs if permitted by law or written contract between the parties. The prevailing party shall notify the defendant of the entry of judgment by mailing a copy of the order and judgment to the defendant at his last known address within five (5) days after entry of the judgment and filing proof of service.
 - c. Setting aside a Default. For good cause shown and upon such terms as the Court deems is just, the Court may set aside an order of default or a default judgment, at any time, where the Court lacked jurisdiction to enter the judgment.
6. Dismissal of Action. The provisions of this section apply to the dismissal of any original action, counterclaim, set-off, cross claim, or third-party claim.
 - a. Voluntary Dismissal.
 - i. Mandatory. An action may be dismissed when all parties who have appeared so stipulate in writing. An action may also be dismissed upon motion of the plaintiff at any time before the plaintiff rests at the conclusion of his or her opening case.
 - ii. Permissive. After plaintiff rests following his or her opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the Court deems proper.
 - iii. Counterclaim. If a counterclaim has been pleaded by a defendant proper to receiving service of plaintiff's motion for dismissal, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court.
 - iv. Effect. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice.
 - v. Costs. The Court may impose costs, in its discretion.
 - b. Dismissal on Clerk's Motion.
 - i. Notice. In all civil cases in which no action of record has occurred during the previous twelve (12) months, the Clerk of the Court may notify

counsel by mail that the Court will dismiss the case for want of prosecution unless, within thirty (30) days following the mailing of such notice, a party takes action of record or files a status report with the Court indicating the reason for inactivity and projecting future activity and a case completion date. If the Court does not receive such a status report, it may, on motion of the Clerk, dismiss the case without prejudice and without cost to any party.

- ii. Other Grounds for Dismissal and Reinstatement. This rule is not a limitation upon any other power that the Court may have to dismiss or reinstate any action upon motion or otherwise.
- c. Motion to Dismiss. If the Court determines that the lawsuit was filed frivolously and without good faith, the Court may dismiss the matter and make any other rulings as appropriate.
- d. Imposition of costs and Attorneys' Fees. When a motion to dismiss is granted based on the frivolous nature of the pleadings, the Court shall impose costs against the appellant. Attorneys' fees may be imposed, when provided by contract or, in the discretion of the Court.

1-100-160 Judgment

Judgment includes a decree and any final order. Judgments shall be in writing, signed by the Court.

1. Entry of Judgment. Upon the verdict of a jury, the Judge shall render judgment in accordance with the verdict. If the trial is by Judge, the Judge may make findings of fact and conclusions of law and shall enter judgments after the close of trial.
2. Multiple Claims. When more than one claim for relief is presented in an action, the Court may direct the entry of a final judgment upon one or more, but less than all, of the claims.
3. Cross Claim – Counterclaim. If an original complaint is dismissed and a counterclaim or cross claim has been alleged, trial and judgment may be had on the counterclaim or cross claim, even if the original complaint has been dismissed or otherwise disposed of.
4. Stay of proceeding to enforce judgment. When the Court has ordered a final judgment on some but not all of the claims presented in the action, the Court may stay enforcement of the judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit to the party in whose favor the judgment is entered.
5. Fixing and collection of costs. Upon judgment, costs will be assessed as established by the Court. Parties may request additional costs. In an exceptional case, the Court may waive costs. Costs may include: witness fees; cost of service of Court papers; and any other costs sustained by the parties in connection with the matter.
6. Attorneys' Fees. Attorneys' fees may only be awarded in accordance with the provisions of Chapter 1.05.
7. Effect of collateral benefits.
 - a. In a civil action, when a party is awarded damages for bodily injury or death of a person which are to be paid by another party to the action, and the party awarded damages or person injured or deceased received benefits for the injury or death other than from the party who is to pay the damages, the Court may

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deduct from the amount of damages awarded, before the entry of a judgment, the total amount of those collateral benefits other than:

- i. Benefits which the party awarded damages, the person injured or that person's estate is obligated to repay;
 - ii. Life insurance or other death benefits; and
 - iii. Retirement, disability and pension plan benefits, and Federal Social Security benefits.
- b. Evidence of the benefit described in subsection (7)(a) of this section and the cost of obtaining it is not admissible at trial, but shall be received by the Court by affidavit submitted after the verdict by any party to the action.

1-100-170 Relief from judgment or order.

1. Clerical Error. Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party after such notice as the Court may order.
2. Mistake, Inadvertence, Excusable Neglect, or New Evidence. On motion and upon such terms as are judge, but no later than one year after the judgment or order at issue has been entered, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
 - a. Mistakes, inadvertence, surprise, excusable neglect, or irregularity in obtaining a judgment or order;
 - b. Erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record; or
 - c. Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial.
3. Void Judgment, Fraud, or Death. On motion and upon such terms as are judge, and within a reasonable time after the judgment or order at issue has been entered, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
 - a. The judgment is void;
 - b. The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated;
 - c. Unavoidable casualty or misfortune preventing the party from prosecuting or defending;
 - d. Fraud;
 - e. Death of one of the parties before judgment in the action; or
 - f. Any other reason justifying relief from the operation of the judgment.

1-100-180 Foreign judgments

1. Registration Procedure. Recognition, implementation, and enforcement of orders, judgments and/or decrees from courts other than the Winnemucca Indian Colony Tribal Court shall be allowed in accordance with this chapter. The party shall register the order, judgment and/or decree with the Winnemucca Indian Colony Tribal Court by filing a certified copy with the Tribal Court Clerk, and paying any necessary filing fee established by the Council and the Tribal Court. The registering party shall issue and serve a thirty (30) day summons. Upon obtaining service on the judgment debtor or non-prevailing party in accordance with the provisions of this chapter and after the judgment debtor or

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non-prevailing party has failed to respond, the recognition, implantation, and enforcement of orders, judgment and/or decree shall be allowed. Enforcement of foreign orders, judgments, and/or decrees, when so ordered by the Winnemucca Indian Colony Tribal Court, shall only be permitted as provided under the Law & Order Code of the Colony.

2. Hearing. Any party to such a foreign order, judgment, and/or decree registered with the Tribal Court may, within thirty (30) days of the service of such order, judgment, and/or decree upon the other party, apply for hearing on the order, judgment, and/or decree before the Tribal Court. Upon such application, the Tribal Court shall hold a hearing to determine the validity of such order, judgment, and/or decree, and shall consider issues raised by the other party, including, but not limited to, the jurisdiction of the foreign court and whether such order, judgment, and/or decree is contrary to laws, both written and customary, of the Winnemucca Indian Colony.
3. Immunity. The provisions of this section shall not be construed to waive the immunity of the Winnemucca Indian Colony, its Council, its agencies, enterprises, chartered organizations, corporations, or entities of any kind, and its officers, employees, agents, contractors and attorneys shall be immune from suit in the performance of their duties; except where the immunity of the Winnemucca Indian Colony, a federally recognized Tribe, or its officers and employees is expressly, specifically, and unequivocally waived by and in the Law & Order Code of the Winnemucca Indian Colony or Federal statute, a duly executed contract approved by the Winnemucca Indian Colony Council, or a duly enacted ordinance or resolution of the Winnemucca Indian Colony.

1-100-190 Fee Schedule

A petition, complaint or any other initial filing shall require the party initiating the action to pay a civil filing fee to the Clerk of the Court in the amount of One Hundred Dollars (\$100.00).

Any filing after that shall not require a fee unless the Court imposes a bond for injunction or other lien.

The Winnemucca Indian Colony and its political subdivisions shall not be charged a fee for any initial filing.

Any attorney or advocate, in order to practice before the Tribal Court of the Winnemucca Indian Colony, shall make application as provided in Section 1-10-191 and shall pay an admittance fee of One Hundred Dollars (\$100.00). If the attorney is denied admittance by the Tribal Court, the fee shall be refunded to the attorney or advocate.

1-100-191 Admission of attorneys to appear before the Tribal Court.

Requirements:

Attorneys. Attorneys must make application to be admitted to practice in the Winnemucca Indian Colony Tribal Court by submitting an application with the full fee. The application must include a certificate of good standing from the Nevada Bar in which the attorney is admitted and an affirmative statement that the attorney will make him/herself familiar with the Law & Order Code

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of the Winnemucca Indian Colony prior to appearance before the Tribal Court. These documents must be submitted to the Tribal Court for approval and admittance prior to the first appearance before the Court.

None of these requirements apply to the Counsel appearing on behalf of the Winnemucca Indian Colony or any political subdivision of the Colony.

No attorney or advocate will be granted admission if that person has been previously banished from the Colony lands by the Council.

TITLE 4

CRIMINAL PROCEDURE AS AMENDED

THE WINNEMUCCA COLONY
Title 4 – Criminal Procedures- As Amended

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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 defendant, or any other Indian suspected of the commission of an offense.
 - b. Arrest – The taking into custody of a person so that he may be charged with an offense.
 - 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.

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- 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.
- f. Challenged –
 - i. Is any person adjudicated as incompetent
 - 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 harm.
- g. Defendant – Anyone charged with the commission of an offense, at any stage of the proceedings after a judge has issued a summons or warrant upon a sworn complaint.
- h. Evidence – Any thing, statement, technical recording or replication, or forensic recovery that tends to show that an offense was or was not committed, or tending to prove or disprove some fact relevant to the commission of an offense.
- i. 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 cohabitating with the offender at any time during the year immediately preceding the commission of any alleged abuse.
- j. Frisk – Means an external patting of a person's outer clothing.
- k. Fruit of the Offense – Anything the possession of which relates to an offense, such as stolen goods, or items purchased with stolen money.
- l. Instrumentality – Anything used to commit or aid in the commission of an offense
- m. 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, resident detention or GPS monitoring.
- n. 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.
- o. Mental Disorder – Means any organics, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormally manifested only by repeated criminal or other antisocial behavior.
- p. Offender – Means a person who has been convicted of an offense under any Tribal, State or Federal law.
- q. 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.
- r. Personal Recognizance – Means the release from lawful custody of a defendant upon his or her promise to appear in Court at all appropriate times.
- s. Probable Cause – Shall be interpreted first by Tribal code and common law, 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.
- t. 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 another Court by 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.

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- u. Prosecutor – Means the person who presents the case against the defendant. The prosecutor may be any attorney appointed by the Council or the Chief 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 prosecutor.
- v. Summons – Means a written document issued by the Court that commands a person to appear before the Court at a stated time and place.
- w. Supervised Offender – Means an offender who is either:
 - i. Sentenced to probation; or
 - ii. Who is subjected 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 and is, therefore, subject to the supervision of the Court and Tribal police.
- x. 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.
- y. 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.

4-10-030 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:
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

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- 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 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;

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- 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.

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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.
9. 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

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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:
 1. Fleeing the jurisdiction or concealing himself or herself to avoid arrest;
 2. Destroying or concealing evidence of the commission of an offense;
 3. Injuring another person; or
 4. 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 an offense against the person 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:

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- 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:
 - 1. 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;
 - 2. 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:
 - 1. Relating to striking an unattended car or other property;
 - 2. Relating to a case of injury to or death of a person or damage to an attended vehicle;
 - 3. Relating to reckless driving or racing of vehicles;
 - 4. Relating to persons under the influence of intoxicating liquor or drugs;
 - 5. 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;
 - 6. 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.

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- 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.
8. Summons instead of arrest warrants
 - a. Power to issue summons – Whenever authorized to issue a warrant for the arrest of an accused who has been identified, a Tribal Judge instead, may issue a summons commanding the accused to appear before the Tribal Court at a stated time and place to answer the charge. In determining whether to issue a summons, the Judge may consider the following factors concerning the accused:
 1. Whether detention appears reasonably necessary to prevent injury to property, a breach of the peace, or imminent bodily harm to the accused or another.
 2. His employment, residence, family ties and other relationships to the community.
 3. The nature of the crime charged and his previous criminal record, including the record of prior release on recognizance of bail.
 4. Any other factors bearing on the risk to appear.

4-01-050 Citations

1. Power of Judge – In addition to offenses for which this code specified that citations may be issued, the Chief Tribal Judge may prepare a list of those offenses for which citations may be issued.
2. Issuing citations
 - a. Any Tribal Police officer who apprehends a resident of the Reservation for an offense for which a citation may be issued shall issue a citation to the Indian and release the Indian. The officer shall file the citation instead of a complaint.

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- b. Any non-resident of the Reservation apprehended for an offense for which a citation may be issued shall be released after he has posted bail with the Court Clerk or other authorized official. The amount of bail posted shall be determined by the bail schedule established pursuant to Section 4-50-030.
3. Content of citation – The citation shall contain the same information as an arrest warrant, the signature of the issuing officer, and such further information as may be required by other Titles of this Code, and shall command the asked person to either appear before the Tribal Court at a stated time and place to answer to the charge or to post and forfeit bail as provided.
4. Bail for citation – All criminal offenses for which citations may be issued shall be listed on the bail schedule described. Persons issued citations shall be allowed to pay and forfeit the listed bail rather than appear and answer to the charge as directed by the citation.
5. Failure to either pay and forfeit bail or appear –
 - a. If bail has been posted and the defendant does not appear, the Judge shall enter a judgment of conviction, impose a fine equal to the bail and treat the bail as payment for the fine.
 - b. If a person to whom a citation was issued neither pays and forfeits bail nor appears, a warrant shall be issued for his arrest.

4-01-060 Extradition

1. Requirement of Tribal arrest warrant – Except as otherwise provided by Federal law or this Code, no person shall be arrested within the jurisdiction of the Tribe for an offense committed outside that jurisdiction, unless a Tribal arrest warrant has been obtained. Law enforcement officers of another jurisdiction who seek to arrest shall apply for a Tribal arrest warrant in accord with this Title
2. Application for Tribal arrest warrant
 - a. An application by law enforcement officers of another jurisdiction for a warrant to arrest a person within the Tribal jurisdiction shall be made in a form substantially complying with Title
 - b. If the application and accompanying documents give the Tribal Judge probable cause to believe that a felony has been committed, and the Court seeking arrest of the person has jurisdiction over the crime, then the Judge shall issue a Tribal arrest warrant to be executed and returned as are other Tribal arrest warrants.
3. Other Tribal jurisdiction requests – Notwithstanding the provisions of subsection (b), applications for extradition by other Tribal jurisdiction may be made under this section for any crime that would be an offense under this Code.
4. Rights of extradition defendant – A person arrested under this Section shall have all the rights of a defendant provided by Section 4-01-030.

4-01-070 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.

4-01-080 Commencing prosecution

1. Complaint. All criminal prosecutions shall be initiated by complaint.
2. Complaint defined – A complaint is a written statement, sworn by the complaining witness as required by this Title, stating that a named described person or persons have committed a particular offense.
 - 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.

3. 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.
4. 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.
5. 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.
6. 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.

4-01-090 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 and tried for an offense which is defined as a Felony or Class A Misdemeanor under Title 5, Section 5-010-001, Winnemucca Indian Colony Law and Order Code, shall have a right to a trial by jury of six jurors, which juror pool may include persons both on Colony and off Colony, may be members or non-members of the Colony and must be eighteen years of age or older. A defendant may waive the right to a jury trial in open court or in a written statement to the Court. For all other crimes charged wherein the penalty for the offense is six (6) months or less, the defendant will be tried before the Trial Judge only. If all charges in a single complaint, each of which carries a penalty of six (6) months or less, the defendant will be tried before the Tribal Judge only.

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. The reasons the holding or restraining of liberty is felt to be unlawful, including, if possible references to sections of this Code alleged to be violated.

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- 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

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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:

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- 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.

4-01-100 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:

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- 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; if allowed by the Tribal Court;
 - 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 considered 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.

4-01-110 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;

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- 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.

4-01-120 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.

4-01-130 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

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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.

4-01-140 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 voice-printed;
 - 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,

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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. Requests for evidence outside the jurisdiction
 - i. When a subpoena would be proper under subsections (a) and (b), above, except that the persons or items desired are outside the jurisdiction of the Court, then upon the request of any party or upon the Tribal Court's own initiative, the Judge may issue a signed request for evidence.
 - ii. A request for evidence shall be in substantially the same form as a subpoena and shall be served and returned in the same manner, except that a request for evidence shall state on its face that it is a request only and there are no sanctions for failure to comply with the request.

- e. 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.

4-01-150 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.

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- 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

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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.

4-01-160 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

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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 the Trial.
 - a. Preliminary Instructions. In a jury trial, after selecting and empaneling 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.

4-01-170 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.

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- 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. he 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.

4-01-180 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 requests 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.

4-01-190 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.

TITLE 5

CRIMINAL OFFENSES

THE WINNEMUCCA COLONY
Title 5 – CRIMINAL OFFENSES

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SECTION 1 OFFENSES AGAINST THE PERSON

5-01-010 Maximum fines and sentences of imprisonment.

A person convicted of any criminal offense found in Section 5-010 may be sentenced as follows:
Type of offense maximum allowable sentence.

- A. Felony up to three (3) years in prison, or a fine of up to \$15,000, or both, if the defendant has been previously convicted of the same or a comparable offense by a jurisdiction in the United States; or is being prosecuted for an offense comparable to an offense that would be punishable by more than one (1) year of imprisonment if prosecuted by the United States or any of the States. The authority to impose such a sentence is found in 25 U.S.C §§ 1302 (b) (1) or (2) and 1304.
- B. Class A Misdemeanor up to one (1) year in prison, or a fine of up to \$5,000.00 or both. The authority to impose such a sentence is found in 25 U.S.C. §§ 1302 (b) and 1304.
- C. Class B Misdemeanor up to six (6) months in prison, or a fine of up to \$2,500.00, or both. The authority to impose such a sentence is found in 25 U.S.C. §§ 1302 (b) and 1304.
- D. Class D Misdemeanor unless stated in the specific violation, up to three (3) months in prison, or a fine of up to \$1,000.00, or both. The authority to impose such a sentence is found in 25 U.S.C §§ 1302 (b) and 1304.

5-01-020 Assault

- A. A person commits the offense of assault if said person
 - 1. With the intent to commit any felony listed in 18 U.S.C §1153 (a), assaults another person by striking; or
 - 2. With the intent to do bodily injury, assaults another person with a dangerous weapon;
 - 3. With the intent to do bodily harm, assaults by striking a spouse, intimate partner, a dating partner; or
 - 4. Knowingly or recklessly causes bodily injury to another person by striking; or
 - 5. Knowingly or recklessly strikes another person without causing bodily injury; or
- B. As used in this section
 - 1. “Striking” shall mean any act of making bodily contact with the person of another including, but not limited to, hitting, beating, wounding, strangling or suffocating.
 - 2. “Bodily injury” means a cut, abrasion, bruise, burn, disfigurement, physical pain, impairment or the function of a bodily member or organ, or any other injury to the body, no matter how temporary.
 - 3. “Dangerous weapon” shall mean an instrument capable of inflicting death or serious bodily injury.
- C. Assault is a felony if committed in violation of paragraph (A) (1), (2) and (3) of this Section or any assault committed in violation of this section is a felony if committed against a police officer. Assault is a Class A misdemeanor if committed in violation of paragraph (A) (4) of this section. Assault is a Class B misdemeanor if committed in violation of paragraph (A) (5) of this section. If a defendant has been previously convicted of a violation of paragraphs (A) (4), (A) (5), or (A) (6) or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-030 Reckless Endangerment

- A. A person commits the offense of reckless endangerment by recklessly engaging in conduct which places or may place another person in danger of death or serious bodily injury.
- B. Recklessness and danger shall be presumed where a person knowingly points a firearm at or in the direction of another person, whether or not the actor believed the firearm to be loaded.
- C. Reckless endangerment is a Class A misdemeanor. If a defendant has been previously convicted of reckless endangerment or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-040 Terroristic Threats

- A. A person commits the offense of terroristic threats by threatening to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly or facility of public transportation, or otherwise to cause serious public inconvenience.
- B. Commission of a terroristic threat is a Class B misdemeanor.

5-01-050 Unlawful Restraint

- A. A person commits the offense of unlawful restraint by knowingly:
 - 1. Restraining another unlawfully in circumstances exposing the other person to risk of serious bodily injury; or
 - 2. Holds another in a condition of involuntary servitude.
- B. Recklessness and danger shall be presumed where a person knowingly points a firearm at or in the direction of another person, whether or not the actor believed the firearm to be loaded.
- C. Reckless endangerment is a Class A misdemeanor. If a defendant has been previously convicted of reckless endangerment or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-060 False Imprisonment

- A. A person commits the offense of false imprisonment by knowingly restraining another unlawfully so as to interfere substantially with the other person's liberty.
- B. False imprisonment is a Class B misdemeanor.

5-01-070 Interference with Custody

- A. A person commits the offense of interference with custody knowingly or recklessly taking or enticing any child under the age of eighteen (18) from the custody of the child's parent, guardian or other lawful custodian, when the person has no privilege or legal right to do so.
- B. A person commits the offense of interference with custody of a committed person by knowingly or recklessly taking or enticing any committed person away from lawful custody when the person does not have the privilege or legal right to do so.
- C. "Committed person" shall mean, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other

dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

- D. Interference with either the custody of a child or committed person is a Class A misdemeanor.

5-01-080 Enticing a Child

A person commits the offense of enticing a child if, with the intent to interfere with the lawful custody of a child younger than eighteen (18) years, he knowingly entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.

5-01-090 Criminal Coercion

- A. A person commits the offense of criminal coercion by, with purpose to unlawfully restrict another's freedom of action to the other person's detriment, threatens to:
1. Commit any criminal offense; or
 2. Accuse anyone of a criminal offense; or
 3. Take or withhold action as an official, or cause an official to take or withhold action.
- B. Criminal coercion is a Class A misdemeanor. If a defendant has been previously convicted of interference with criminal coercion, or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-100 Sexual Assault

- A. A person commits the offense of sexual assault by having sexual contact with another person , if:
1. Said person knows that the conduct is offensive to the other person; or
 2. Said person knows that the other person suffers from a mental disease or defect which renders the other person incapable of appraising the nature or the other person's conduct; or
 3. Said person knows that the other person is unaware that a sexual act is being committed; or
 4. Said person has substantially impaired the other person's power to appraise or control the other person's conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or
 5. The other person is less than seventeen (17) years old and the actor is at least three (3) years older than the other person; or
 6. The other person is in custody of law or detained in a hospital or other institute and the actor has supervisory or disciplinary authority over the other person.
- B. Sexual conduct means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the defendant for the purposes of arousing or gratifying sexual desire, or for the purpose of abusing, humiliating, harassing, or degrading the victim.
- C. Sexual or intimate parts mean the sexual organ, anus, breast, groin or buttocks of any person.
- D. It is an exception to a violation of (A) (5) of this Section if the sexual contact is consensual and the minor is between the ages of fifteen (15) and seventeen (17) and

the defendant is no more than three (3) years older than the minor when the sexual contact occurs.

E. Sexual assault is a felony.

5-01-110 Indecent Exposure

- A. A person commits the offense of indecent exposure by exposing his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his/her act.
- B. If the other person present is sixteen (16) years or older, the violation is a Class B misdemeanor.
- C. If the other person present is fifteen (15) years or younger, the violation is a felony.
- D. An offense under this Section is a Class B misdemeanor.

5-01-120 Criminal Mischief

- A. A person commits the offense of criminal mischief by:
 - 1. Damaging tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means; or
 - 2. Purposely or recklessly tampers with tangible property of another so as to endanger person or property; or
 - 3. Purposely or recklessly causes another to suffer pecuniary loss by deception or threat; or
 - 4. Purposely or recklessly destroys public or governmental property.
- B. Criminal mischief is a Class A misdemeanor if the defendant purposely causes pecuniary loss in excess of \$500, or a Class B misdemeanor if defendant purposely or recklessly causes pecuniary loss in excess of \$100. Otherwise, criminal mischief is a Class C misdemeanor. If a defendant has been previously convicted of criminal mischief involving pecuniary loss in excess of \$500 or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony

OFFENSES AGAINST PROPERTY

5-01-130 Arson

- A. A person is guilty of arson if he starts a fire or causes an explosion with the purpose of destroying a building or occupied structure of another. The term “occupied structure” includes but is not limited to a ship, boat, trailer, mobile home, vehicle, building, structure or place adapted for overnight accommodation of persons or for carrying on business, whether or not a person is actually present.
- B. A person is guilty of arson if he starts a fire or causes an explosion with the purpose of destroying or damaging his own property or the property of another.
- C. If there is bodily injury or death cause by the arson, it is a Class A offense.

5-01-140 Reckless burning

- A. A person is guilty of reckless burning if he recklessly starts a fire or causes an explosion that endangers human life or damages the property of another; or having started a fire, whether recklessly or not, and knowing that it is spreading and may endanger the life or property of another, fails to take responsible measures to put out the fire or make a prompt alarm to the fire department or police.
- B. Reckless burning is a Class B offense.

5-01-150 Criminal Trespass

- A. A person commits the offense of criminal trespass if, knowing that said person is not licensed or privileged to do so, said person enters or surreptitiously remains in any building or occupied structure.
- B. A person commits the offense of criminal trespass if, knowing that said person is not licensed or privileged to do so, said person enters or remains in any place as to which notice against trespass is given by:
 - 1. Actual communication to the actor; or
 - 2. Posting in a manner prescribed by law or reasonable likely to come to the attention of intruders; or
 - 3. Fencing or other enclosure manifestly designed to exclude intruders.
- C. An offense under paragraph (A) of this Section constitutes a Class A misdemeanor if it is committed at night. Otherwise, it is a Class B misdemeanor. An offense under paragraph (B) of this section is a Class B misdemeanor if the offender defies an order to leave personally communicated to the offender by the owner of the premises or other authorized person. Otherwise, it is a Class C misdemeanor. If a defendant has been previously convicted of a violation of paragraph (A) of this Section or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-160 Theft

- A. A person who, without permission of the owner, commits the offense of theft by possessing or exercising unlawful control over property not said person's own or under said person's control with the purpose to deprive the owner thereof or who unlawfully transfers property to another or any interest therein with the purpose to benefit said person or another not entitled thereto.
- B. Theft is a Class A misdemeanor if the value of the property involved is in excess of \$500, or a Class B misdemeanor if the value of the property is in excess of \$100. Otherwise, theft is a Class C misdemeanor. If a defendant has been previously convicted of theft by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-170 Robbery

- A. A person commits the offense of robbery if, in the course of committing theft under Section 5-010-140 and with intent to obtain or maintain control of the property he;
 - 1. Intentionally, knowingly, or recklessly causes bodily injury to another, or
 - 2. Intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

- B. A violation of this section is a Class A misdemeanor.

5-01-180 Aggravated Robbery

- A. A person commits the offense of aggravated robbery if he commits robbery as defined in Section 5-01-150 and he:
1. Causes serious bodily injury to another;
 2. Uses or exhibits a deadly weapon; or
 3. Causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is fifty-five (55) years of age or is a vulnerable adult as defined by this Title;
- B. An offense under this section is a felony.

5-01-190 Burglary

- A. A person commits the offense of burglary if, without the effective consent of the owner, the person:
1. Enter a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault; or
 2. Remains concealed, with intent to commit a felony, theft or an assault, in a building or habitation; or
 3. Enters a building or habitation and commits or attempts to commit a felony, theft or an assault.
- B. For purposes of this section, “enter” means to intrude:
1. Any part of the body; or
 2. Any physical object connected with the body.
- C. An offense under this section is a felony.

5-01-200 Burglary of Vehicles

- A. A person commits the offense of burglary of vehicles if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.
- B. For purposes of this section, “enter” means to introduce:
1. Any part of the body; or
 2. Any physical object connected with the body.
- C. A violation of this Section is a Class B misdemeanor.

5-01-210 Receiving Stolen Property

- A. A person commits the offense of receiving stolen property by purposely receiving, retaining, or disposing of property of another knowing that it has been stolen, or believing that it has probably been stolen. It is an exception if the property is received, retained, or disposed with purpose to restore it to the owner.
- B. Receiving means acquiring possession, control or title, or lending on the security of the property.
- C. Receiving stolen property is a Class A misdemeanor if the value of the property involved is in excess of \$500, or a Class B misdemeanor if the value of the property involved is in excess of \$100. Otherwise receiving stolen property is a Class C misdemeanor. If the defendant has been previously convicted of receiving stolen property valued in excess of

\$500 or a comparable offense by another jurisdiction in the United States, than a defendant may be charged with a felony.

5-01-220 Embezzlement

- A. A person commits the offense of embezzlement by having lawful custody of property not said person's own, appropriates the property to said person's own use, with intent to deprive the owner thereof.
- B. If the actor is a public official, acting within their official capacity, violation of subsection (A) is a felony.
- C. Embezzlement is a Class A misdemeanor if the value of the property involved is in excess of \$500 or is Tribal funds in any value. Embezzlement is a Class B misdemeanor if the value of the property is in excess of \$100. Otherwise, embezzlement is a Class C misdemeanor. If a defendant has been previously convicted of embezzlement involving either property in excess of \$500 or Tribal funds or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-230 Fraud

- A. A person commits the offense of fraud by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measure as a result obtains any money or other property.
- B. Fraud is a Class A misdemeanor if the value of the property involved is in excess of \$500, or a Class B misdemeanor if the value of the property involved is in excess of \$100. Otherwise fraud is a Class C misdemeanor. If the defendant has been previously convicted of fraud valued in excess of \$500 or a comparable offense by another jurisdiction in the United States, than a defendant may be charged with a felony.

5-01-240 Forgery

- A. A person commits the offense of forgery by, with purpose to defraud or injure anyone, or with knowledge that said person is facilitating fraud or injury to be perpetrated by anyone, said person:
 - 1. Alters, makes, completes, authenticates, issues or transfers any writing of another without the other's authority; or
 - 2. Utters or transfers any writing which said person knows to be forged in a manner above specified.
- B. "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification whether through paper or the like or electronic media.
- D. Forgery is a felony if committed by a public official acting in their official capacity. Forgery Class A misdemeanor if the forged writing purports to be an official Tribal document or is presented to any Tribal department of Court. Otherwise forgery is a Class B misdemeanor. If a defendant has been previously convicted of forgery involving a forged writing purporting to be an official Tribal document or which was presented to a Tribal department or Court or a comparable offense by another jurisdiction in the United States, than a defendant may be charged with a felony.

5-01-250 Extortion

- A. A person commits the offense of extortion by willfully making false charges against another person or by any other means whatsoever, extorts or attempts to extort any monies, goods, property, or anything else of any value from another.
- B. Extortion is a felony if committed by a public official acting in their official capacity. Extortion is Class A misdemeanor if the money, goods, property or item involved is in excess of \$500, or a Class B misdemeanor if the value of money, goods, property or item is in excess of \$100. Otherwise, extortion is a Class C misdemeanor. If a defendant has been previously convicted of extortion involving money, goods, property or item valued in excess of \$500 or a comparable offense by another jurisdiction in the United States, than a defendant may be charged with a felony.

5-01-260 Unauthorized use of Automobiles and other vehicles

- A. A person commits the offense of unauthorized use of automobiles and other vehicles by operating another person's automobile, airplane, motorcycle, motorboat, other motor-propelled vehicle without consent of the owner.
- B. It is an affirmative defense to prosecution under this section that the actor reasonable believed that the owner had previously consented to the operation.
- C. Unauthorized use of an automobile or other vehicle is a Class B misdemeanor.

5-01-270 Tampering with Records

- A. A person commits the offense of tampering with records by, knowing that said person has no privilege to do so, said person falsifies, destroys, removes or conceals any writing or record including a writing or recording that is contained on electronic media, with purpose to deceive or injure anyone or to conceal any wrongdoing.
- B. Tampering with records by a Tribal official acting in their official capacity is a felony. Otherwise, tampering with records is a Class B misdemeanor.

5-01-280 Bad Checks

- A. A person commits the offense of bad checks by issuing or passing a check or similar sight order either on paper or other hard medium or by electronic media for the payment of money, knowing that it will not be honored by the drawee.
- B. For the purposes of this section, an issuer is presumed to know that the check or order would not be honored, if:
 - 1. The issuer had no account with the drawee at the time of the check or order was issued; or
 - 2. Payment was refused by the drawee for lack of funds, on presentation within thirty (30) days after issue, and the issuer failed to make good within ten (10) days after receiving notice of that refusal.
- C. Issuing bad checks is a Class C misdemeanor.

5-01-290 Unauthorized use of credit cards

- A. A person commits the offense of unauthorized use of credit cards by using a credit card for the purpose of obtaining property or services with knowledge that:
 - 1. The card is stolen or forged; or
 - 2. The card has been revoked or cancelled; or

3. For any other reason said person's use of the card is unauthorized by the issuer.
- B. "Credit card" shall mean a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer whether virtual or real.
- C. Unauthorized use of a credit card is a Class C misdemeanor.

5-01-300 Defrauding Secured Creditors.

- A. A person commits the offense of defrauding secured creditors by destroying, concealing, and encumbering, transferring or otherwise dealing with property subject to a security interest with purpose to hinder interest.
- B. Defrauding secured creditors is a Class C misdemeanor.

PROTECTION OF PERSONS

5-01-310 Neglect of Children

- A. A person commits the offense of neglect of children if:
 1. A parent, guardian, or other person supervising the welfare of a child under eighteen (18) knowingly endangers the child's welfare by violating a duty of care, protection or support.
 2. A parent, guardian, or other person supervising the welfare of a child under eighteen (18) neglects or refuses to send the child to school.
- B. Neglect of children in violation of paragraph (A) (1) of this Section is a Class A misdemeanor. Neglect of children in violation of paragraph (A) (2) of this Section is a Class B misdemeanor. If a defendant has been previously convicted of a violation of paragraph (A) (1) of this Section or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-320 Domestic Violence

- A. A person commits the offense of domestic violence by inflicting physical harm, strangulation, bodily injury, or sexual assault, or inflicting the fear of imminent physical harm, bodily injury, or sexual assault on a family member.
- B. For purposes of this section, a family member is any of the following:
 1. A spouse;
 2. A former spouse;
 3. A person related by blood;
 4. A person related by existing or prior marriage;
 5. A person who resides or resided with the defendant;
 6. A person with whom the defendant has a child in common;
 7. A person with whom the defendant is or was in a dating or intimate relationship.
- C. "Sexual Assault" means the sexual exploitation, forcible penetration, or an act of sexual contact on the body of another person, male or female, without his or her consent.
- D. "Strangulation" means intentionally and knowingly or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.
- E. If the defendant inflicts actual physical hard, bodily injury or sexual assault on the victim, then domestic violence is a felony. If there is no actual physical hard, bodily injury or sexual assault on the victim, then domestic violence is a Class A misdemeanor, except

where the defendant has been previously convicted of domestic violence or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-330 Interference with Emergency Telephone

- A. A person commits the offense of interference with emergency telephone if the said person knowingly prevents or interferes with another individual's ability to place an emergency telephone call or to request assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide the safety of individuals.
- B. A violation of this section includes any phone call reporting a false emergency when the caller knows that an emergency does not exist for him/her to report.

5-01-340 Child or vulnerable adult abuse

- A. A person commits the offense of child or vulnerable adult abuse by:
 - 1. Intentionally or knowingly causing a child or vulnerable adult to suffer physical injury; or
 - 2. Having the care or custody of a child or vulnerable adult, causes or permits the person or health of the child or vulnerable adult to suffer physical injury or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered.
- B. For the purposes of this Section, "abuse" shall mean intentional infliction of physical harm, injury caused by neglect acts or omissions, unlawful imprisonment, sexual abuse, or sexual assault.
- C. "Child" shall mean an individual who is under eighteen (18) years of age.
- D. "Physical injury" shall mean the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any integral organ or any physical condition that imperils health or welfare.
- E. "Vulnerable adult" shall mean an individual who is eighteen (18) years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment.
- F. "Endanger" shall mean placing a child or vulnerable adult in a potentially harmful situation, either through intentional actions or negligence.
- G. Child or vulnerable adult abuse is a Class A misdemeanor. If a defendant has been previously convicted of child or vulnerable adult abuse or a comparable offense by another jurisdiction in the United States, then the defendant may be charged with a felony.

5-01-350 Failure to report child or vulnerable adult abuse or neglect

- A. Any person having cause to suspect that either an individual as defined in Section 5-01-340 (C), (E) or elderly, defined as fifty-five (55) years of age or older, has been abused or neglected shall immediately report the suspected abuse or neglect to either the Tribal police department or other valid social services agency within the jurisdiction of the Winnemucca Indian Colony.

- B. Any person who in good faith makes a report pursuant to this Section or who testifies in any judicial proceeding arising from such report shall be immune from any civil or criminal liability because of such report or testimony.
- C. In addition to the obligation to report suspected abuse or neglect of a child or vulnerable adult, a professional shall also have an obligation to report any reasonable suspicion that a child or vulnerable adult may be abused or neglected in the future. A professional may not delegate to or rely on another person to make the report.
- D. “Professional” shall mean any of the following persons:
 - 1. Physician;
 - 2. Nurse;
 - 3. Dentist;
 - 4. Optometrist;
 - 5. Any other medical worker;
 - 6. Any mental health professional;
 - 7. School principal;
 - 8. School teacher;
 - 9. Other school official;
 - 10. Social worker;
 - 11. Head start worker;
 - 12. Child day care worker;
 - 13. Recreational worker;
 - 14. Youth programs;
 - 15. Law enforcement official or peace officer;
 - 16. Judge;
 - 17. Court staff;
 - 18. Peacemaker if one has been so designated and is service in that capacity with the Winnemucca Indian Colony; and
 - 19. Attorneys, but only when doing so does not violate the attorney-client privilege.
- E. Failure to report suspected abuse or neglect of a child or a vulnerable adult is a Class B misdemeanor. The failure of a professional to make a report under paragraphs (A) (C) of this Section is a Class A misdemeanor. If a defendant is a professional and has been previously convicted of a violation of paragraphs (A) or (C) of this Section or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-360 Persistent non-support

- A. A person commits the offense of persistent non-support by persistently failing to provide support which said person can provide and which said person knows said person is legally obligated by an Order of the Tribal Court, or other Court but is within the jurisdiction of the Winnemucca Indian Colony, to provide to a spouse, child or other dependent.
- B. Persistent non-support is a Class B misdemeanor. If a defendant has been previously convicted of persistent non-support or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-370 Bribery

- A. A person commits the offense of bribery by offering, conferring, or agreeing to confer upon another, or solicits, accepts or agrees to accept from another any of the following:
 - 1. Any pecuniary benefit as consideration for the recipients decision, opinion, recommendation, vote or other exercise of discretion as a public servant of the Tribe or voter; or
 - 2. Any benefit as consideration for the recipient's decisions, vote, recommendation or other exercise of official discretion in a judicial or administrative proceedings;
 - 3. Any benefit as consideration for a violation of a known legal duty as a public servant of the Tribe.
- B. It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because the other person had not yet assumed office, or lacked jurisdiction, or for any other reason.
- C. Bribery in violation of paragraph (1) or (2) of this Section is a Class B misdemeanor. Bribery in violation of paragraph (3) of this Section is a Class A misdemeanor. If a defendant has been previously convicted of bribery or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

A person of the Government and its elected and appointed officials

5-01-380 Threats and other improper influence in official or political matters

- A. A person commits the offense of threats and other improper influence in official or political matters by:
 - 1. Threatening unlawful harm to any person with purpose to influence the other person's decision, vote or other exercise of discretion as an elected or appointed position of the Winnemucca Indian Colony or voter; or
 - 2. Threatening harm to any Colony elected or appointed official with purpose to influence the official's decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or
 - 3. Threatening harm to any elected or appointed official with purpose to influence the official's decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding;
- B. It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because the other person had not yet assumed office, lacked jurisdiction, or for any other reason.
- C. Threatening and other improper influence toward an official, elected or appointed, is a Class A misdemeanor. If a defendant has been previously convicted of threats and other improper influence in official matters or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-390 Retaliation for past official action

- A. A person commits the offense of retaliation for past official action by harming another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of an elected or appointed official of the Colony.
- B. Retaliation for past official action is a Class A misdemeanor. If a defendant has been previously convicted of retaliation for past official action or a comparable offense by another jurisdiction in the United States, then a defendant may be charged with a felony.

5-01-400 Perjury

- A. A person commits the offense of perjury by making a false statement under oath or equivalent affirmation to the Council, Court or police officer of the Winnemucca Indian Colony, or swears or affirms the truth of a statement previously made, when the statement is material and said person does not believe it to be true.
- B. No person shall be guilty of an offense under this section if said person retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification substantially affected the proceeding.
- C. No person shall be convicted of an offense under this section where proof of falsity rests solely on contradiction by testimony of a single person other than the defendant.
- D. Perjury is a Class B misdemeanor.

5-01-410 False Alarms

- A. A person commits the offense of reporting false alarms by knowingly causing a false alarm of fire or other emergency to be transmitted to, or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property.
- B. Committing a false alarm is a Class B misdemeanor.

5-01-420 False Reporting

- A. A person commits the offense of false reporting by:
 - 1. Knowingly giving false information to any law enforcement office with the purpose to implicate another; or
 - 2. Reporting to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or
 - 3. Pretending to furnish such authorities with information relating to an offense or incident when said person knows that person has no information relating to such offense or incident.
- B. False reporting is a Class B misdemeanor. If a defendant has been previously convicted of false reporting or a comparable offense by another jurisdiction in the United States, then the defendant may be charged with a felony.

5-01-430 Impersonating a Colony officer whether elected or appointed.

- A. A person commits the offense of impersonating a public official by falsely pretending to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance on that pretense to the other person's prejudice.
- B. Impersonating an official, elected or appointed, is a Class B misdemeanor.

5-01-440 Disobedience to lawful order of court

- A. A person commits the offense of disobedience to lawful order of a court by willfully disobeying any order, subpoena, summons, warrant or command duly issued, made or given by either the trial or appellate divisions of the Tribal Court or any officer thereof.
- B. Disobedience to lawful order of a court is a Class C misdemeanor.

5-01-450 Resisting arrest or interfering with a police officer

- A. A person commits the offense of resisting arrest if, for the purpose of preventing a public servant from effecting a lawful arrest or discharging another other duty, said person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.
- B. A person commits the offense of interfering with a police officer it, for the purpose of interfering with the police officer's lawful duty, the person interferes without authority or permission.
- C. Resisting arrest is a Class B misdemeanor. Interfering with a policy officer's lawful duty is a Class B misdemeanor. If a defendant has been previously convicted of resisting arrest, interfering with a police officer's lawful duty or a comparable offense by another jurisdiction in the United States, then the defendant may be charged with a felony.

5-01-460 Obstructing justice

- A. A person commits the offense of obstruction of justice when he, knowingly hinders the apprehension, prosecution, conviction or punishment of another for a crime, said person harbors or conceals another person, provides a weapon, transportation, disguise or other means of escape, warns the other of impending discovery, or volunteers false information to a law enforcement officer.
- B. Obstruction of justice is a Class A misdemeanor. If a defendant has been previously convicted of obstruction of justice or a comparable offense by another jurisdiction in the United States, then the defendant may be charged with a felony.

5-01-470 Escape or evasion

- A. A person commits the offense of escape if he intentionally flees from a person he knows is a police officer attempting lawfully to arrest or detain him. A violation of this subsection is a Class B misdemeanor.
- B. Escape is a Class A misdemeanor if the actor uses a vehicle while the actor is in flight. Escape is a felony if another suffers physical injury as a result of the person's attempt to evade. If a defendant has been previously convicted of escape or a comparable offense by another jurisdiction in the United States, then the defendant may be charged with a felony.

5-01-480 Flight to avoid prosecution or judicial process

- A. A person commits the offense of flight to avoid prosecution or judicial process by absenting the territory over which the Tribal Court exercises jurisdiction for the purpose of avoiding arrest, prosecution or other judicial process shall be guilty of a felony.
- B. Flight to avoid prosecution or judicial process is a Class C misdemeanor.

5-01-490 Witness Tampering

- A. A person commits the offense of witness tampering if, believing that an official proceeding or investigation is pending or about to be instituted, said person attempts to include or otherwise cause a witness or information to:
 - 1. Testify to inform falsely; or
 - 2. Withhold any testimony, information, document or thing; or
 - 3. Elude legal process summoning the witness to supply evidence; or

4. Absent the witness from any proceeding or investigation to which the witness has been legally summoned.
- B. Witness tampering is a Class A misdemeanor. If a defendant has been previously convicted of witness tampering or a comparable offense by another jurisdiction in the United States, then the defendant may be charged with a felony.

5-01-500 Tampering with or fabricating physical evidence

- A. A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, said person:
 1. Alters, destroys, conceals, or removes any record, document or thing whether in hard form or electronic media, with purpose to impair its verity or availability in such proceeding or investigation, or
 2. Makes, presents or uses any record, document or thing in hard form or electronic media, knowing it to be false and with the purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.
- B. Tampering with or fabricating physical evidence is a Class B misdemeanor. If defendant is an official of the Winnemucca Indian Colony, whether elected or appointed, tampering with or fabricating physical evidence is a felony.

Miscellaneous Offenses

5-01-510 Cruelty to Animals

- A. A person commits the offense of cruelty to animals if said person purposely or recklessly;
 1. Subjects any animal in said person's custody to cruel neglect; or
 2. Subjects any animal to cruel mistreatment; or
 3. Kills or injures any animal belonging to another without legal privilege or consent of the owner; or
 4. Causes one animal to fight with another.
- B. Cruelty to animals is a Class B misdemeanor.

5-01-520 Abuse of public office

- A. An official of the Winnemucca Indian Colony abuses public office if the individual intentionally and with knowledge that the act is unlawful: subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights;
- B. Abuse of office is a Class A misdemeanor. If a defendant has been previously convicted of abuse of office or a comparable offense by another jurisdiction in the United States, then the defendant may be charged with a felony.

Offenses against the public

5-01-530 Possession of a controlled substance

- A. A person commits the offense of possession of a controlled substance by knowingly or intentionally possessing any controlled substance listed in 21 CFR Part 1308, as amended unless:
 - 1. The Controlled Substances Act or Drug Enforcement Agency regulations specifically authorizes possession of the substance or the State of Nevada and the Law & Order Code of the Winnemucca Indian Colony authorizes possession of the substance;
 - 2. The substance or preparation is excluded or exempted by 21 CFR 1308.21 through 1308.35, as amended; or
 - 3. The provisions of 42 U.S.C. 1996a (regarding traditional Indian religious use of peyote, Hopi Tobacco, or other such traditional Indian religious uses) apply.
- B. Possession of a controlled substance is a Class A misdemeanor. If a defendant has been previously convicted of possession of a controlled substance or a comparable offense by another jurisdiction in the United States, then the defendant may be charged with a felony.
- C. Any controlled substance involved in violation of this section is declared to be contraband. On proof of a violation of this section, the controlled substance must be forfeited to the Federal Government by order of the Court, after public notice and an opportunity for any person claiming an interest in the substance to be heard.
- D. Any personal property used to transport, conceal, manufacture, cultivate, or distribute a controlled substance in violation of this section is subject to forfeiture to the Winnemucca Indian Colony by order of the Tribal Court on proof of this use, following public notice and opportunity for any person claiming an interest in the property to be heard.

5-01-540 Contempt of Court

- A. A person commits the offense of contempt of Court, if said person:
 - 1. Intentionally fails to maintain the respect due the Tribal Court; or
 - 2. Intentionally engages in any offensive conduct in the Tribal Court.
- B. Contempt of Court is a Class C misdemeanor.

5-01-550 Aiding and Abetting

- A. A person commits the offense of aiding and abetting, if, with the intent to promote or facilitate the act or conduct constituting the commission of the offense, said person aids abets or advises another person in planning or committing the offense.
- B. A person shall not be convicted of aiding and abetting if the principal offender is not found guilty of the underlying crime.
- C. A person convicted of the offense of aiding and abetting shall be subject to the same sentence as provided for the underlying crime.

5-01-560 Conspiracy

- A. A person commits the offense of criminal conspiracy, if with the intent to promote or facilitate the commission of an offense, said person:
 - 1. Agrees with another person or persons that they, or one or more of them, will engage in conduct which constitutes such other offense or an attempt to commit such other offense; or
 - 2. Agrees to aid such other person or persons in planning and commission or such other offense or of an attempt to commit such other offense.
- B. Factual or legal impossibility of committing the other offense is not a defense to a charge of criminal attempt, if the other offense would have been committed had the attendant circumstances been as the actor believed them to be
- C. A person convicted of conspiracy shall be subject to the same punishments specified for the offense which was the subject of the conspiracy. However, the penalty shall not exceed the maximum specified for the offense which was the subject of the conspiracy, whether or not such other offense was committed.

5-01-570 Solicitation

- A. Except for acts of persons authorized by law to investigate the commission of offenses by others, a person commits the offense of solicitation, if said person commands, induces, entreats or otherwise attempts to persuade another person to commit an offense, whether as principal or accomplice, with the intent to promote or facilitate the commission of that crime.
- B. It is no defense to a prosecution under this section that the person solicited could not commit or could not be guilty of the offense because of lack of responsibility, culpability or other incapacity.
- C. A person convicted of solicitation shall be subject to the same punishment as that for the completed offense. However, the penalty for solicitation shall not exceed the maximum penalty specified for the offense which was the subject of the solicitation whether or not the offense was committed.

5-01-580 Criminal Attempt

- A. A person commits the offense of criminal attempt if said person attempts to commit an offense prohibited by law, and in such attempt shall do any act toward the commission of such offense, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the offense.
- B. A person convicted of criminal attempt shall be subject up to one-half the maximum of imprisonment or up to one-half the maximum fine specified for the intended offense, or both.

5-20 CRIMINAL VIOLATIONS AFFECTING THE PUBLIC SAFETY

5-20-010 Malicious Mischief

- A. A person commits the violation of malicious mischief if said person causes pecuniary loss or damage in an amount under \$1,000.00 by:
 - 1. Damaging tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means; or
 - 2. Purposely or recklessly tampers with tangible property of another so as to endanger person or property; or
 - 3. Purposely or recklessly causes another to suffer pecuniary loss by deception or threat.
- B. A violation of this section may be punishable by up to a \$250.00 fine for the first offense or up to \$500.00 for each subsequent offense.

5-20-020 Disorderly Conduct

- A. A person commits the violation of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm or recklessly creating a risk thereof, said person:
 - 1. Engages in fighting or threatening, or in violent or tumultuous behavior;
 - 2. Makes unreasonable noise or an offensively coarse utterance, gesture or display, or addresses abusive language to any person present or in a public place;
 - 3. Creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor;
 - 4. Discharges a firearm on or across a public roadway or Colony building; or
 - 5. Appears in a public place while intoxicated or with altered consciousness to the degree that the person may endanger himself or another.
- B. Public means affecting or likely to affect persons in a place to which the public has access; among the places included are highways, schools, prisons, apartments, places of business or amusement or governmental or community activities or any neighborhood.
- C. A violation of this section may be punishable by up to a \$250.00 fine for the first offense or up to \$500.00 for each subsequent offense.

5-20-030 Maintaining a public nuisance

- A. A person commits the violation of maintaining a public nuisance who permits said person's property to fall into such condition as to injure or endanger the safety, health, comfort or property of said person's neighbor or the surrounding community.
- B. A violation of this section may be punishable by up to a \$250.00 fine for the first offense or up to \$500.00 for each subsequent offense.
- C. The Colony Council may issue a resolution or declaration that a condition of property is a public nuisance and then, the Colony Council may remedy the public nuisance condition by conducting reasonable removal, repair, rehabilitation or demolition of the condition causing the violation. All costs incurred by the Colony in conducting these reasonable removals, repairs, rehabilitations, or demolitions may be chargeable against the maintainer of the Public Nuisance.
- D. Absent an imminent health or safety concern, a person found liable under this section shall have fourteen (14) days after being found liable to abate the public nuisance before the Colony may bring forth another action under this section or before the Colony itself

may undertake abatement measures. The fourteen (14) day time period may be enlarged at the time of judgment if it is deemed by the Court that more than fourteen (14) days is reasonably necessary to abate the public nuisance.

- E. Where an imminent health or safety concern exists, the Court shall take all necessary steps in its discretion to protect the health and safety of the Colony's community residents and members. This includes the discretion to authorize the Colony to immediately conduct reasonable removal, repair, rehabilitation or demolition of the declared public nuisance at the time it finds any person liable for maintaining said nuisance.

The Tribal Court of the Council has the authority to mandate that all persons and animals vacate the premises while the removal, repair, rehabilitation or demolition is pending and while the removal, repair, rehabilitation or demolition is accomplished.

5-20-040 Littering

A person commits the violation of littering if the person:

- A. Knowingly deposits in any manner litter on any public or private property or in any public or private waters, having no permissions to do so; or
- B. Negligently deposits in any manner glass or other dangerously pointed or edged objects on or adjacent to water to which the public has lawful access for bathing, swimming, or fishing, or upon a public highway, or within the right of way, thereof; or
- C. Discharges sewage, oil products or litter upon the lands of the Colony; or
- D. Drops or permits to be dropped or thrown upon any roadway any destructive or injurious material and does not immediately remove the same or cause it to be removed.
- E. "Litter" means rubbish, refuse, waste material, garbage, dead animals or fowl, offal, paper, glass, cans, bottles, trash, scrap metal, debris or any foreign substance of whatever kind and description, and whether or not it has value.
- F. This section shall only apply to litter totaling less than one (1) gallon.
- G. A violation of this section may be punishable by up to a \$250.00 fine for the first offense or up to \$500.00 for each subsequent offense.
- H. The Colony may abate litter by conducting timely reasonable removal of the condition causing the violation. All costs incurred by the Colony in conducting these reasonable removals may be chargeable against the person found to be in violation under this section.

5-20-050 Possession of drug paraphernalia.

A person commits the violation of possession of drug paraphernalia if the person:

- A. Knowingly or intentionally uses or possess with intent to use drug paraphernalia or instruments to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance absent the required permit or license from the Tribal, state or federal agency responsible for regulating the controlled substance.
- B. A violation of this section may be punishable by up to a \$250.00 fine for the first offense or up to \$500.00 for each subsequent offense.

5-20-060 Failure to appear or pay fine

- A. A person commits the violation of failure to appear to pay a fine if said person intentionally or knowingly fails to appear for a Court date after being served with such notice, or willfully disobeys any order, subpoena, summons, warrant or command duly issued, including the timely paying of fines, fees, restitution, or the completion of community service or other ordered requirements of sentencing, made or given by either the trial or appellate divisions of the Winnemucca Indian Colony Tribal Court or any officer thereof;
- B. A violation of this section may be punishable by up to a \$250.00 fine for the first offense or up to \$500.00 for each subsequent offense;
- C. The Tribal Court may in its discretion excuse a failure to appear for good cause shown or extend the deadline for payment of fines where the person with good cause shown requests said extension before the payment is due.

5-20-070 Prevented execution of civil process

- A. A person commits the violation of prevention of the execution of civil process by intentionally or knowingly, through words or physical action, prevents the execution of any process in a civil cause.
- B. It is an exception to the application of this section that the actor evaded service of process by avoiding detection.
- C. A violation of this section may be punishable by up to a \$250.00 fine for the first offense or up to \$500.00 for each subsequent offense.

5-20-080 Minor in possession of alcoholic beverage

- A. Except as provided in Subsection (B) of this section, a person under the age of twenty-one (21) commits the violation of minor in possession of an alcoholic beverage if said person possesses an alcoholic beverage.
- B. A minor may possess an alcoholic beverage:
 - 1. While in the course and scope of the minor's employment if the minor is an employee of a licensee or permittee and the employment is not prohibited by this code;
 - 2. If the minor is in the visible presence of his adult parent, guardian, or spouse, or other adult to whom the minor has been committed by a court; or
 - 3. If the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.
- C. Subsection (A) does not apply to a minor who:
 - 1. Requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;
 - 2. Was the first person to make a request for medical assistance under Subdivision (1); and
 - 3. If the minor requested emergency medical assistance for the possible alcohol overdose of another person:
 - a. Remained on the scene until the medical assistance arrived; and
 - b. Cooperated with medical assistance and law enforcement personnel.

- D. A violation of this section may be punishable by up to a \$250.00 fine for the first offense and up to \$500.00 for any subsequent offenses.

5-020-090 Minor in possession of tobacco product

- A. A person commits the violation of minor in possession of tobacco product if he:
 - 1. Possesses, purchased, consumed, or accepted a cigarette or tobacco product; or
 - 2. Falsely represents himself or herself to be eighteen (18) years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.
- B. It is an exception to the application of this section that the individual possessed the product in the presence of:
 - 1. An adult parent, a guardian; or
 - 2. An employer of the individual, if possession or receipt of the product is required in the performance of the employee's duties as an employee.
- C. A violation of this section may be punishable by up to a \$250.00 fine for the first offense and up to \$500.00 for any subsequent offenses.

5-020-100 Failure to appear or pay fine

- A. A person commits the violation of failure to appear to pay a fine if said person intentionally or knowingly fails to appear for a Court date after being served with such notice, or willfully disobeys any order, subpoena, summons, warrant or command duly issued, including the timely paying of fines, fees, restitution or the completion of community service or other ordered requirements of sentencing, made or given by either the trial or appellate divisions of the Winnemucca Indian Colony Tribal Court or any officer thereof;
- B. A violation of this section may be punishable by up to a \$250.00 fine for the first offense or up to \$500.00 for each subsequent offense;
- C. The Tribal Court may in its discretion excuse a failure to appear for good cause shown or extend the deadline for payment of fines where the person with good cause shown requests said extension before the payment is due.

5-20-110 Prevented execution of civil process

- A. A person commits the violation of prevention of the execution of civil process by intentionally or knowingly, through words or physical action, prevents the execution of any process in a civil case.
- B. It is an exception of the application of this section that the actor evaded service of process by avoiding detection.
- C. A violation of this section may be punishable by up to a \$250.00 fine for the first offense or up to a \$500.00 fine for each subsequent offense.
- A. A violation of this section may be punishable by up to a \$250.00 fine for the first offense and up to a \$500.00 fine for any subsequent offense.

TITLE 5

TRAFFIC CODE

TITLE V. TRAFFIC CODE

PART I - GENERAL PROVISIONS

Section 5-030-001. The purpose of this Traffic Code is to establish laws by which traffic-related activities may be controlled in order to protect the health, safety and welfare of the members and residents of the Colony and to maintain law and order on Colony Lands.

Sec. 5-030-002. Jurisdiction (1) This Traffic Code shall apply to all persons subject to the jurisdiction of the Winnemucca Indian Tribal Court who operate any motorized vehicles, motorcycles, all-terrain vehicles, and bicycles, including e-bicycles, within the Winnemucca Indian Colony lands, including all hard surfaced or all-weather roads, undeveloped lands, and rights-of-way. (2) All matters arising under this Traffic Code shall be heard in the Winnemucca Indian Colony Tribal Court, either sitting as the Court or as Juvenile Court. (3) The Colony shall not have criminal jurisdiction over non-Indians except as provided by federal law, but may arrest non-Indians under the circumstances set forth in NRS 171.1255 for prosecution by State or Local officials for violations of traffic violations under State or Local laws.

Sec. 5-030-003. Powers of Tribal Police. Tribal Police shall generally be authorized to carry out acts and duties required to enforce the provisions of this Traffic Code including, but not limited to, the following powers and duties:

- (a) To arrest any person who commits a criminal offense under this Traffic Code when the violation is committed in their presence;
- (b) To issue citations for violations of the Traffic Code as allowed under this Code;
- (c) To direct traffic at the scene of an accident or when traffic needs to be directed because of a blockage of the roadway;
- (d) To require the driver of any vehicle, who upon reasonable belief of the on-duty police officer is operating a vehicle in violation of any provision of this Traffic Code, to stop, step out of his vehicle, if necessary, and exhibit his driver's license and the registration evidence issued for the vehicle. The officer may inspect the vehicle, the registration plates, and registration evidence thereon or inspect and test the equipment of such vehicle (e.g. lights, brakes, tires etc.);
- (e) To inspect any vehicle of a type required to be registered under this Traffic Code found in any place where vehicles are parked or held for

sale, wrecking or storage for the purpose of locating stolen vehicles and investigating the title and registration thereof;

- (f) To investigate and prepare a written accident report on any accident occurring on the street, highway or road of Colony Lands and involving a vehicle that results in property damage or personal injury, and to file such report with the Council of the Winnemucca Indian Colony within 24 hours after completing an investigation; and,
- (g) To have a badge indicating his official authority conspicuously displayed upon his person while on duty or while exercising his/her duty.

Sec. 5-030-004. Duties of Drivers and Owners.

- (a) It is the duty of all drivers and owners of vehicles to comply with this Traffic Code.
- (b) It is the duty of all drivers to exercise due care in operating any vehicle with Colony Lands in order to avoid injury to or interference with person, property and the peace and quiet of the Colony.
- (c) If a driver or owner fails to fulfill his duty under this Traffic Code, civil or criminal action may be brought against the person in Tribal Court or other appropriate court, and a civil suit may also be brought by

persons injured or for property damage resulting from such failure in accordance with the laws of the Winnemucca Indian Colony.

Sec. 5-030-005. Report of Stolen and Recovered Motor Vehicles. Upon receiving reliable information that any vehicle has been stolen, the Tribal Police shall immediately, but no later than one week after receiving such information, report the theft to the Humboldt County Sheriff's Department or the Nevada State Highway Patrol, unless prior information has been received of the recovery of this vehicle. Upon receiving information that any vehicle has been recovered which had been reported as stolen, the Tribal Police shall immediately report the fact of such recover to the Humboldt County Sheriff's Office or the Nevada State Highway Patrol.

Section 5-030-006. Violation Not a Misdemeanor. Any violation of this Traffic Code is not a misdemeanor, except for reckless driving and driving while under the influence of intoxicating beverages or drugs, and driving in violation of court order.

Section 5-030-007. Fines, Costs and Payable Sentences All monies collected under this Law and Order Code shall be paid into the Winnemucca Indian Colony Tribal Court Account. Costs of \$25.00 shall be imposed for each separate violation of the Traffic Code by the court in addition to the fines assessed.

Sec. 5-030-008. Enforcement Procedures. Persons violating a criminal Traffic Code Provision of the Colony over which the Colony has criminal jurisdiction shall be subject to the following enforcement procedures:

(a) Citations.

(1) Initiating Proceedings. Proceedings may be initiated by issuing a citation to the accused. Issuing of a citation constitutes arrest. A copy of the citation shall be filed with the Clerk of the Tribal Court and a second copy shall be retained by the citing officer. When filed with the Clerk of Court, the Citation shall serve as a criminal complaint.

(2) Issuance. The citation shall be issued to the accused personally, except that if the offense is a non-moving violation, then issuance may be made by affixing the citation to a visible location on the offending vehicle.

(3) Contents. The citation shall contain at least the following:

- (A) The name and the driver's license number of the accused, if available,
- (B) The license number of the vehicle involved;
- (C) The date and time of the alleged offense;

- (D) The particular section of this code alleged to have been violated;
- (E) The notice requiring the accused to appear in Tribal Court on a stated date and at a stated time;
- (F) An agreement that in lieu of posting bail for his release, the accused may sign the citation and thereby promise to appear in Tribal Court, unless the accused is required to be taken into immediate custody pursuant to this Code; and,
- (G) A statement of the maximum penalty for each violation alleged.

(b) Immediate arrest.

- (1) Standards. An accused may be taken into custody and brought before the Tribal Court without unreasonable delay, if:
 - (A) The accused refuses to sign the citation promising to appear in Court;
 - (B) The accused does not reside within the exterior boundaries of the Winnemucca Indian Colony; or
 - (C) The alleged violation is a serious offense against the safety of persons or property.

(2)Setting of Trial. Trial of the accused held in custody shall be held within ten (10) days. If an accused is released from custody upon posting of bond or other order of the Tribal Court, a date for trial may be set no more than thirty days after the arrest.

(c)Bail.

(1)Posting Bail. The Tribal Court may release an accused who has been taken into custody upon the posting of cash bail in an amount determined by the Court.

(2)Bail Schedule. The bail schedule approved by the Tribal Court shall set forth cash bail amounts for specified offenses.

(d) Procedure. The Criminal Procedure Code, Title 4 of the Tribal Law & Order Code shall apply to all prosecutions of persons in Tribal Court for violation of criminal provisions of the Traffic Code.

Section 5-030-009. Consent to Chemical Test of Blood, Breath or Urine

Implied; Suspension of License for Refusal to Take Test; When

Suspension Effective (1) Any person who operates a motor vehicle upon a

public street or highway is deemed to have given consent, subject to the

provisions herein, to a chemical test of his blood, breath, or urine for the

purpose of determining the alcoholic content of his blood if arrested and

officially charged for an offense as defined by the Tribal Traffic Code 5-030-

Driving While Under the Influence of Intoxicating Liquors or Drugs. The test or tests shall be incidental to a lawful arrest and shall be given as promptly as possible after the arrest and be administered at the direction of a law enforcement officer having probable cause to believe the person to have been driving or in actual physical control of a motor vehicle upon a street or highway while under the influence of intoxicating liquor to a degree which renders him incapable of safely driving the vehicle. The arrested person shall be told that his failure to submit to a chemical test may result in the suspension of his privilege to operate a motor vehicle on the Winnemucca Indian Colony or any other jurisdiction that recognizes the arrest. The law enforcement officer shall further advise the arrested person that he may go to the nearest hospital or clinic and secure a test at his own expense or he shall have the test administered by a person at a place and in a manner prescribed by the law enforcement agency and at the expense of the arresting agency. If the arrested person elects to secure a test at his own expense, the results of the test shall be made available to the arresting officer and to the arrested person. Disclosure of the test results by the person administering it shall not be a violation of the doctor/patient relationship. (2) Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal is deemed not to have

withdrawn his consent provided by subsection (1) of this section, and the test or tests may be administered by a physician or a qualified medical technician in a clinical facility. (3) If a person under arrest refuses upon request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency as provided in subsection (1) of this section, none shall be given, but upon the receipt of the law enforcement officer' sworn report or statement that he had probable cause to believe the arrested person was driving or was in actual physical control of a motor vehicle upon a public street or highway while under the influence of intoxicating liquor to a degree which rendered him incapable of safely driving such vehicle, and that the person refused to submit to the test upon the request of the law enforcement officer, the Nevada Motor Vehicle Division shall suspend his operator's license for a period of six (6) months subject to review as hereinafter provided. (4) No such suspension is effective until twenty (20) days after receipt by the arrested person of written notice thereof submitted by certified mail to the last known address furnished the Nevada Motor Vehicle Division or a personal service. Failure to demand a hearing within the twenty (20) day period is a waiver of the right of hearing, and the Nevada Motor Vehicle Division shall continue the suspension without further hearing. If demand for hearing is made, the

Nevada Motor Vehicle Division shall establish a time and place for the hearing within forty-five (45) days in the county where the arrested person resides, unless the Nevada Motor Vehicle Division and the arrested person agree that the hearing be held in some other county. The prosecuting attorney shall give at least ten (10) days' notice of the hearing to the arrested person. Any hearing shall be conducted by a judge, hearing examiner or justice of the peace of the county. It is the duty of the prosecuting attorney wherein the hearing is conducted to represent the Nevada Motor Vehicle Division in all proceedings and hearings in the matter.

Part II – OFFENSES.

BICYCLES, including E-BYCYCLES, ALL-TERRAIN VEHICLES, AND MOTORCYCLES

Section 5 – 030 – 010 Bicycle Violations (1) Definition: “Bicycle” means every device propelled solely by human power upon which any person may ride having two tandem wheels including e-bicycles. (2) Every person riding a bicycle upon a roadway is granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle except to those provisions which by their nature can have no application.

(3) Riding on a Bicycle: a) A person propelling a bicycle may not ride other than upon or astride a permanent and regular seat attached thereto. b) No bicycle may be used to carry more persons at one time than the number for which it is designed and equipped. (4) No person riding upon any bicycle, coaster, skates, sled, scooter or toy vehicle may attach the same or him or herself to any vehicle upon the roadway. (5) Riding on Roadway: a) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction. b) Persons riding bicycles upon a roadway may not ride more than two abreast, except on areas within the jurisdiction not considered as roadways. (6) No person operating a bicycle may carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handlebars. (7) Lamps and Other Equipment on Bicycles: a) Every bicycle when in use during the hours of darkness must be equipped with a lamp on the front which emits a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector. Every bicycle must be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean

pavement. (8) Any violation of any of the foregoing provisions by any person shall be deemed an offense, and upon conviction thereof, the guilty person shall be assessed a fine not less than \$50 and not to exceed \$250.00. In the case of a violation of any of the foregoing provisions by any minor, the adults or adults responsible for the care and custody of the minor may be subject to the fine.

Section 5-030-011. Motorcycle Violations (1) Definition: "Motorcycles" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels. (2) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto and shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride upon another seat firmly attached to the motorcycle at the rear or side of the operator. (3) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward. (4) No person shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handle-bars, or obstructs his vision or interferes with safe operation of the motorcycle. (5) No operator shall carry any person, nor shall any person ride in a position that will interfere with the safe operation

or control of the motorcycle or the view of the operator. (6) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two (2) abreast in a single lane. (7) The operator of a motorcycle shall not overtake and pass any vehicle except a single motorcycle in the same lane occupied by the vehicle being overtaken. (8) No person shall operate a motorcycle between lanes of traffic, or between adjacent lines or rows of vehicles. (9) Paragraphs (6) and (7) shall not apply to police officers in the performance of their official duties. Motorcycles shall not be operated more than two (2) abreast in a single lane. (11) No person riding upon a motorcycle shall attach himself or the motorcycle to any other moving vehicle on a roadway. (12) Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for the passenger. (13) No person shall operate any motorcycle with handlebars more than fifteen inches (15") in height above that portion of the seat occupied by the operator. (14) No person shall operate or ride nor shall the operator permit a person to ride upon a motorcycle unless he is wearing protective headgear securely fastened on his head and of a type which complies with standards established by the American National Standard Institute. This

subsection shall not apply to persons riding within an enclosed cab. (15)

Any person operating a motorcycle shall have the headlamps of the motorcycle activated at all times, including daylight hours. (16) The standard for protective headgear shall meet or exceed the Z90.1-1971 standard of the American National Standards Institute or as required on the highways of the State of Nevada. However, all existing equipment meeting the Z90.1-1966 standard of the American National Standards Institute shall be accepted or as required on the highways of the State of Nevada; (17)

No person shall drive a motorcycle upon any road on the Winnemucca Indian Colony unless such person has a valid driver's license issued by a State of the United States; (18) Violation of any of the provisions of this ordinance shall be punishable by a fine of not less than \$100.00 and not to exceed \$500.00

Section 5-030-012 All-Terrain Vehicles Violations:

(1) Definitions: a) "All Terrain Vehicle" (ATV) - means any motorized off-roadway vehicle, traveling on three or more tires, designed for operator use with or without passengers.

b) "Operate" - means to ride in or on and control of the ATV.

c) "Operator" - means a person who operates and is in actual physical control of an ATV.

d) "Owner" - means a person other than a lien holder, having the property ownership in or title to an ATV and entitled to its use.

(2) Operation of All Terrain Vehicles: a) A person may not operate an ATV upon any roadway, roadway shoulder in this jurisdiction unless the ATV is registered with the State of Nevada and operated by a person who is a licensed operator and who has the required liability insurance. Exceptions apply for the purposes of animal husbandry, and usage as farming equipment as determined by Resolution of the Winnemucca Indian Colony Council; b) Any operator of an ATV may make a direct crossing of a roadway but such operator shall: i) First bring the ATV to a complete stop before crossing any roadway. ii) Yield the right of way to any motor-vehicle or pedestrian. iii) Cross the roadway only when such crossing can be made in safety. c) A person may not operate an ATV in the following ways which are declared to be unsafe and a public nuisance. i) In any area which prohibits the use of ATV's. ii) In a careless, reckless or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property. iii) Carrying more persons at one time than the number for which it is designed and equipped. iv) Persons of the

age of 18 may not operate or ride nor shall the operator permit a person to ride unless wearing protective headgear securely fastened on his/her head.

v) While under the influence of intoxicating liquor or a controlled substance.

vi) In any school area, business area or area not owned by the operator or his or her family (if a minor).

(3) Any violation of any of the foregoing provisions by any person shall be deemed an offense, and upon conviction thereof, the guilty person shall be assessed a fine not less than \$100 and not to exceed \$500.00 and the ATV may be impounded and held until impoundment fee in the amount of \$100.00 is paid. In the case of a violation of any of the foregoing provisions by any minor, the adults or adults responsible for the care and custody of the minor may be subject to the fine.

PART III - TRAFFIC OFFENSES

Section 5-030-013. Driving Without a License (1) No person shall drive a motor vehicle on the public highways without a valid driver's or chauffeur's license in his possession. (2) Any person convicted of violating this section shall be fined not less than \$100.00 and not more than \$500.00

Section 5-030-014. Permitting an Unauthorized Minor to Drive (1) No person shall permit a child or ward to drive a motor vehicle on the public

highways, unless such minor is licensed to drive. (2) Any person convicted of violating this section shall be fined not less than \$100.00 and not more than \$500.00

Section 5-030-015. Driving Without Required Registration or With Vehicle in Unsafe Condition No person shall operate a motor vehicle on the roadways within the reservation unless such vehicle is in good working order and adjustment as required by the laws of the State of Nevada and is in safe mechanical condition and complies with the registration and licensing laws of the State of Nevada.

Section 5-030-016. Driving Without Insurance (1) A person may not operate a motor vehicle without a valid insurance policy with minimum liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance or use of that motor vehicle in the amount required by laws of the State of Nevada for the minimum amount of liability insurance required. Any person convicted of violating this section shall be fined an amount not less than \$100.00 and not more than \$500.00 and any motor vehicle not covered by the minimum amount of liability required may be impounded and held until proof of financial responsibility is furnished.

Section 5-030-017. Starting, Turning and Stopping Without Regard to Safety

(1) No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety.

(2) No person shall turn a vehicle at an intersection unless the vehicle is in such position on the roadway that such movement can be made with reasonable safety and signal of intention to turn right or left, when required, has been given continuously during not less than the last one hundred feet (100') traveled by the vehicle before turning.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(4) The signals herein required shall be given either by means of the standard hand and arm signals or by mechanical or electrical signal device.

(5) Every driver of a vehicle approaching an intersection shall not proceed until the intersection is clear.

Section 5-030-018 Speeding (1) Every person operating or driving a vehicle of any character on a highway shall drive in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the

conditions existing and having regard for the actual and potential hazards then existing. In any event, speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(2) Where no special hazard exists that requires lower speed for compliance with paragraph (1), any speed not in excess of the speed limit of 25 m.p.h. shall be lawful; but, it is illegal for any person to drive at any speed in excess of 20 m.p.h. on the roadways of the Colony lands.

(3) The posted speed limit shall not apply to vehicles when operated with due regard for safety under the direction of the police or fire department or other emergency vehicles when the vehicles are operated for emergency purposes. This exemption shall not, however, protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

(4) Any person who drives a number of miles per hour ("mph") in excess of the maximum speed limit as posted as provided in this section, or at a speed greater than is reasonable and proper under conditions then existing is guilty of speeding and upon conviction thereof shall be sentenced to

court costs and a fine associated with the mph over the posted speed limit as follows: a) Scale MPH Over Posted Speed Limit Fine 1-5 \$60.00 6-9 \$85.00 10-16 \$60.00 + \$4.00/each mile over limit 10 \$100.00 11 \$104.00 12 \$108.00 13 \$112.00 14 \$116.00 15 \$120.00 16 \$124.00 17-21 \$60.00 + \$6.00/each mile over limit 17 \$162.00 18 \$168.00 19 \$174.00 20 \$180.00 21 \$186.00 22 & above \$250.00

(5) The court may impose up to \$250.00 in additional fines against any person who commits a third and subsequent offense within one year of their first offense.

Section 5-030-019. Reckless Driving (1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. (2) Every person convicted of reckless driving shall be punished by fine not less than \$250.00 and not to exceed \$1000.00, with costs, and may be deprived of the right to operate a motor vehicle for a period not to exceed one (1) year.

Section 5-030-020. Aggravated Reckless Driving (1) A person who commits aggravated reckless driving if he or she drives a vehicle in violation of the above section 5-030-013 reckless driving and causes and/or inflicts injury upon the person of another. (2) Any person who is found guilty

of an offense under this section may be punished by imprisonment for a period of not more than ninety (90) days and shall be fined not less than \$500.00 nor to exceed a sum of \$2000.00 and his or her privilege to operate a motor vehicle in this jurisdiction shall be suspended for a period of not less than one year.

Section 5-030-021. Safety Belt (1) Each driver and front seat passenger of a motor vehicle operated upon a roadway or other place open to the general public or generally accessible to motor vehicles shall wear a properly adjusted and fastened safety belt, except that a child less than four (4) years of age shall be protected by a child restraint system as required by the State law of Nevada. (2) Each driver of a motor vehicle transporting a child four (4) years of age or more but less than sixteen (16) years of age in a motor vehicle shall secure the child in a properly adjusted and fastened safety belt. b) This Section does not apply if the motor vehicle being driven is a bus, school bus, motorcycle, or other motor vehicle not required to be equipped with safety belts under federal or Nevada State law or regulation. (4) Any person who violates this Section shall be sentenced to a fine not less than \$50.00 and not to exceed \$250.00.

Section 5-030-022 Failure to Drive on Right Side of Roadway (1) Upon all highways of sufficient width, the driver of a vehicle shall drive upon the right

half of the highway, except when the right half of the roadway is closed to traffic while under construction or repair or sign posted for one-way traffic or other conditions.

Section 5-030-023. Following Too Closely The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon and the condition of the highway.

Section 5-030-024. Failure to Give Right-of-Way (1) The driver of a vehicle about to enter or cross a roadway from a private drive or road shall yield the right-of-way to all vehicles approaching on the roadway. (2) When two vehicles from different roadways enter an intersection at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. (3) The driver of a vehicle within an intersection intending to turn left shall yield the right-of-way to any vehicle approaching from the opposite direction which is so close as to constitute an immediate hazard. (4) The driver of a vehicle approaching, but not having entered, an intersection, shall yield the right-of-way to a vehicle already within such intersection and making a left turn, provided the driver of the vehicle turning left has given a plainly visible signal of intention to turn. (5) Upon the immediate approach of an authorized emergency vehicle making use of

audible or flashing light signals, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position as close as possible to the right-hand edge of the road and stop until the emergency vehicle has passed. This provision shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

Section 5-030-025 Stopping, Standing or Parking on Roadway shall not apply if under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire departments when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies. This exemption shall not, however, protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others.

Section 5-030-026. Driving While Under the Influence of Intoxicating Liquors or Drugs (1) It is unlawful and punishable for any person who is under the influence of intoxicating liquor, to a degree which renders him/her incapable of safely driving a motor vehicle, motorcycle, all-terrain vehicle, to drive or have actual physical control of any vehicle within the lands of the Winnemucca Indian Colony (2) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any

person while driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions: a) If there was at the time .03% or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor, to a degree which renders him incapable of safely driving a motor vehicle; b) Any person previously convicted of driving under the influence of intoxicating liquors or drugs shall not operate a motor vehicle with any bodily alcohol content (Blood Alcohol Content of .01%). c) Any person less than 21 years of age, whether licensed or not, shall not operate a motor vehicle, if the person has any bodily alcohol content (Blood Alcohol Content of .01%). d) The foregoing provisions of subsection (2) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor. (3) It is unlawful and punishable as provided in subsection (4) of this section for any person who is under the influence of any controlled substance or under the combined influence of alcohol and any controlled substance, to a degree which renders him incapable of

safely driving a vehicle, to drive a vehicle on the Winnemucca Indian Colony Lands. (4) A controlled substance shall include:

(A) Amphetamine, 500 n/m for urine and 100 n/m for blood

(B) Cocaine, 150 n/m for urine and 50 n/m for blood

(C) Cocaine metabolite, 150 n/m for urine and 50 n/m for blood

(D) Heroin, 2000 n/m for urine, 50 n/m for blood

(E) Heroin metabolite:

Morphine, 2000 n/m for urine, 50 n/m for blood

6-monoacetyl morphine, 10 n/m for urine, 10 n/m for blood

(F) Lysergic Acid Diethylamide, 25 n/m for urine, 10 n/m for blood

(G) Methamphetamine, 500 n/m for urine, 100 n/m for blood

(H) Phencyclidine, 25 n/m for urine, 10 n/m for blood

(I) Opioids or derivatives or substitutes

(J) Marijuana or Marihuana metabolite

(5) The fact that any person charged with a violation of this section is or has been entitled to use a controlled or prohibited substance under the laws of the Colony does not constitute a defense against any charge of violating this section.

(6) Every person convicted of their first (1st) violation of subsections (1) or

(3) shall be punished by: a) Imprisonment for not less than seven (7) days

and not more than 90 days; b) A fine of not less than five hundred dollars (\$500.00) and not more than one thousand (\$1000.00), c) Community service with a minimum of forty-eight (48) hours and not more than ninety-six (96) hours, d) Loss of the right to operate a motor vehicle for not less than ninety (90) days and not more than one (1) year. (5) Every person previously punished under subsection 4 and who is convicted of any subsequent violation of subsections (1) or (3) shall be punished by: a) Imprisonment for period not less than thirty (30) days and not more than one (1) year, b) A fine not less than seven hundred fifty dollars (\$750.00) and not more than two thousand dollars (\$2,000.00); c) Community service with a minimum of seventy-two (72) hours and not more than one hundred eighty (180) hours; d) Loss of the right to operate a motor vehicle for a minimum one (1) year and not more than five (5) years.

(7) The imprisonment sentence of any person convicted pursuant to subsection (1) or (3) and previously pursuant to subsection (4) may be suspended if the convicted person: a) Completes a court-approved alcohol and drug safety, education, or treatment program; b) Abstains from alcohol use for a minimum of one (1) year; c) Submits to random drug-testing; and d) Successfully completes a minimum period of probation of not less than one (1) year, but no more than three (3) years. e) In the event the person

convicted and punished pursuant to subsection (5) who fails to successfully complete any of the subsections (6) (a)-(d) in lieu of imprisonment shall have imprisonment sentence re-imposed, and immediately spend the remainder of their sentence imprisoned.

MISCELLANEOUS TRAFFIC OFFENSES INVOLVING A VEHICLE

Section 5-030-027 Riding on Fenders, Bumpers or Running Boards No driver shall permit passengers to ride on the fenders, bumpers or running boards nor shall any passenger ride on the fenders, bumpers or running boards of a vehicle.

Section 5-030-028 Pedestrians on Roadways Without Regard for Safety
(1) Every pedestrian crossing a roadway at any point shall yield the right-of-way to all vehicles upon the roadway. (2) a pedestrian walking along a roadway shall, when practical, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction. (3) No person shall stand in a roadway for the purpose of soliciting a ride, employment or business from the occupant of any vehicle. (4) No person shall walk upon or along the roadway while under the influence of intoxicating liquor.

Section 5-030-029 Putting Glass, Etc., on roadway (1) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such highway. (2) Any person who drops, or permits to be dropped or thrown, upon any highway, any destructive or injurious material shall immediately remove the same or cause it to be removed. (3) Any person removing a wrecked or damaged vehicle from a roadway shall remove any glass or other injurious substance dropped upon the roadway from such vehicle.

5-030-030 Driving in Violation of an Order of the Court or While License is Suspended (1) Any person whose right to operate a motor vehicle has been suspended and who within the period fixed by any court's order drives or attempts to drive a motor vehicle upon a Colony roadway is guilty of an offense. (2) Any person who is convicted of driving in violation of an order of any court shall be sentenced to imprisonment not to exceed 7 days or to a fine not less than \$500.00 and not to exceed \$1000.00, or both such imprisonment and fine, with costs, and within the discretion of the court may be further deprived of the right to operate a motor vehicle for an additional period of one (1) year.

Section 5-030-031. Duties in the Event of Accident (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall give his name, address, and the registration number of the vehicle he is driving and shall upon request, and if available, exhibit his driver's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including arrangements for hospital or medical attention. (2) The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. (3) The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of the

accident and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his operator's or chauffeur's license. (4) The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to another or others to an apparent extent of \$50.00 or more shall, as soon as practicable thereafter, give notice of such accident to the chief of police. If more than \$500.00, the driver must notify the Winnemucca Indian Colony Council within ten (10) days, (5) Violation of any of the requirements of this section shall be an offense. Section 5-030-032. Law Officers to Report Accidents Every Colony law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident either at the time of and at the scene of the accident or thereafter by interviewing the participants of witnesses shall, within twenty-four (24) hours after completing such investigation, forward a written report of such accident to the Council of the Winnemucca Indian Colony.

Section 5-030-033. Penalties Not Otherwise Prescribed Any person who is convicted of an offense enumerated in this code for which the penalty is not otherwise prescribed shall be sentenced under this section to a fine not less than \$100.00 and not to exceed \$1000.00 for each such offense.

Section 5-030-034. Statute of Limitations No prosecution shall be maintained under this code unless the action shall have been commenced within twelve (12) months after the commission of the offense.

Sec. 5-030-035. Duty to Give Information and Render Aid.

- (a) The driver of any vehicle involved in an accident resulting in injury or death of any person or damage to any vehicle or property, shall give his name, address, phone number and the registration number of the vehicle he is driving and upon request, exhibit his driver's license to any other persons involved in the accident. The driver shall render to any person injured in such accident reasonable assistance, including the transport or making of arrangements for the transport of such person to a physician, hospital or medical treatment if it is apparent that such treatment is necessary or if the injured person requests such transport. The penalty for leaving the scene of an accident can be a minimum of \$250.00 and a maximum of three months imprisonment.
- (b) Any member of a voluntary ambulance, fire or search and rescue service or any other person, who in good faith renders emergency care or assistance without compensation at the scene of an emergency or an accident on Colony Lands, or otherwise within

the jurisdiction of the Colony, shall not be liable for any civil damages for acts or omissions in rendering such negligence or willful misconduct.

TITLE 6

MOBILE HOME ORDINANCE

Mobile Home Ordinance

SECTION 6.010.01 PURPOSE

The purpose of this Ordinance is to promote the health, safety, and the general welfare of the Winnemucca Indian Colony while at the same time providing for the orderly accommodation of mobile homes within the Winnemucca Indian Colony and to provide certain minimum standards in order to ensure and provide a suitable environment for the residents and families of mobile home dwellings. The provisions of this Ordinance shall govern as written until such time this Ordinance may be amended to impose other regulations, requirements, or limitations as may be required.

SECTION 6.010.002 DEFINITIONS

- a. Mobile Home. "Mobile home" means a vehicular structure which is built on a chassis or frame, is designed to be used with or without a permanent foundation, is capable of being drawn by a motor vehicle and is used as a dwelling when connected to utilities.
- b. Mobile Home Zone. "Mobile Home Zone" (MHZ) means a parcel or tract of land having as its principal use the rental, leasing, or occupancy of a designated space as directed by the Winnemucca Indian Colony, including the mobile home site, accessory buildings, or uses incidental thereto.
- c. Travel Trailer. "travel trailer" means a vehicular portable structure built on a chassis and designated as a temporary dwelling for travel, recreational and vacation use.

SECTION 6.010.003 CREATION OF MHZ, MOBILE HOME ZONE

- a. Uses Permitted:
 1. Parking of residential mobile homes or trailers for living purposes, however, not for the purpose of accommodating travel trailers.
 2. Incidental uses related to the convenience and recreational needs of the mobile home residents; provided, however, only those uses relative to a residential area, i/e/ laundry facility, grocery store, or such like uses, as approved by the Council of the Winnemucca Indian Colony.
 3. Permanent living quarters for the sole use of the operator or management of the mobile home zone.
- b. Establishment of Mobile Home Zone:
 1. It shall be unlawful for any person to establish, enlarge, convert, construct, or maintain a mobile home upon any land or lands except that mobile home site so designated by the Council of the Colony in the "MHZ".
 2. The Council of the Colony shall maintain a site plan which shall show all details of the "MHZ" including the pattern of internal circulation; the location of all buildings and structures; the location and dimensions of all mobile homes sites and parking facilities; and other such information and engineering data as may be necessary to properly maintain the "MHZ" for health and safety factors and may establish reasonable conditions which shall assure compliance with the intent, spirit, and purpose of this Ordinance.
- c. Standards for Mobile Home Zone (MHZ):
 1. Development Standards: The standards as herein set forth are supplemental to the minimum standards for all construction and sanitation facilities and other necessary facilities for the safety, health and welfare of the occupants.

2. Area Requirements:

- a. The mobile home shall have a fifteen (15) foot setback adjoining all existing Colony street lines.
- b. No structure or mobile home shall be located within the required setback area. Said yard area shall be landscaped and maintained in a manner comparable to a residential front yard.
- c. A wall or screen fence not less than three (3) feet nor more than four (4) feet high may be constructed and maintained as a screen adjoining all Colony streets, and on all property lines adjoining all other zones.
- d. The person assigned that mobile home site in the "MHZ" will be responsible for the upkeep and maintenance of the above requirements.

3. Mobile Home Sites:

- a. The minimum areas per mobile home site shall be twenty four hundred (2400) square feet for those trailers classified as "single wide", (less than fourteen (14) foot total width).
- b. The minimum area per mobile home site shall be forty eight hundred (4800) square feet for those trailers classified as "double wide", i.e. (any mobile home which is hauled by two separate towing vehicles and joined together at the site).
- c. The minimum width of a mobile home site shall be not less than thirty (30) feet for a "single wide" and not less than sixty (60) feet for a "double wide" trailer.
- d. No mobile home shall be closer than fifteen (15) feet to any building or other mobile home.
- e. No mobile home shall be placed closer than five (5) feet to the boundaries of the mobile home site.
- f. Each mobile home site shall have one (1) suitable surfaced and maintained off-street parking space of a minimum area of one hundred eighty (180) square feet.
- g. Each mobile home shall have solid skirting around the entire structure. Said skirting shall be of an approved material which shall enhance the trailer and the "MHZ", rather than distract from either of them.
- h. On each mobile home site shall be two (2) concrete runways of appropriate thickness and width with appropriate anchors placed in each runway to accommodate a trailer and meeting the above requirements, and within the purview of the manufacture's "anchoring" suggestions.

4. Yard Requirements:

- a. Front yard – Front yard of not less than fifteen (15) feet is required.
- b. Rear yard – Rear yard shall be not less than either (8) feet.
- c. Side Yard – each mobile home site shall have two (2) side yards; one shall not be less than five (5) feet; the other shall not be less than ten (10) feet.
- d. Any tool shed or like outbuilding on any site must first be approved by the Western Band Council.

Title 6, Section 1

- e. The person assigned that mobile home site is the "MHZ" will be responsible for the proper upkeep of said yard.

SECTION 6.010.004: RESIDENT REQUIREMENTS:

- a. All residents of the Mobile Home Zone will make every effort to live in harmony with others residing in the MHZ and adjoining lands under the jurisdiction of the Winnemucca Indian Colony, and make every effort to comply with the spirit, intent, and purpose of this Ordinance.
- b. Failure to abide by these rules and regulations, or those changes and/or amendments which may occur, may be cause for eviction and they shall include but are not necessarily limited to:
 - 1. Any manner, method, or mode of harassment as defined in the Sixth Edition of Black's Law Dictionary.
 - 2. Child neglect or abuse.
 - 3. Intemperate use of alcohol.
 - 4. Drug use.
 - 5. Physical violence.
 - 6. Any action which can be described as felonious or in the classification of gross misdemeanor.
 - 7. Any action which may adversely affect the health and safety of residents.
- c. The Council is empowered to issue Notice to Quit orders. Each case will be decided on an individual basis, after the Council has notified the other party by, FIRST, a verbal warning, SECOND, a written request to the other party to comply with the provisions of this Ordinance, or THIRD, the Council will issue Notice to Quit orders. The Council shall state:
 - 1. The reason
 - 2. The time all personal property has to be removed.
 - 3. Any and all property not removed in a timely manner shall become property of the Colony.
 - 4. Any damage to property of the Western Band will be billed to the person who received the Notice to Quit order and will be collected through the usual and established methods of recovery.

SECTION 6.010.005 SPECIAL USE PERMITS OUTSIDE THE "MHZ"

- a. Except as herein provided, it shall be unlawful within the lands of the Western Band, for any person to park any mobile home on any street, alley, or other place, or on any tract of land assigned to any person, occupied or unoccupied.
- b. The Council may allow any trailer or modified mobile home a site, not in the MHZ, provided that trailer or modified mobile home is for commercial purposes and the proceeds and/or profits are used for the general welfare, betterment, or improvement towards the lands of the Winnemucca Indian Colony.
- c. Upon approval by the Council, a mobile home may be allowed to be utilized as a residential or other construction site for a non-renewable period of up to one hundred and twenty (120) days.
- d. Emergency or temporary stopping or parking of a mobile home will be permitted on any street, alley, or other place for not longer than twenty four (24) hours.

Title 6, Section 1

- e. Mobile homes now established on any lot, tract, or parcel of land under the jurisdiction of the Council and not assigned by the Council, under the provisions of this Ordinance are hereby declared a non-conforming use. At the time these mobile homes are moved from their present location, they must conform, to the provisions of this Ordinance. When a mobile home is moved from a lot of such non-conforming use, no further occupation may be made of such lot by a mobile home unless in conformance with this Ordinance.
- f. Nothing contained herein shall be deemed to prohibit the storage of a recreational vehicle on the premises of its owner when not used for dwelling or sleeping purposes; however, such storage will not be allowed in the required yard area.

SECTION 6.010.006 PENALTY FOR VIOLATION AND EMERGENCIES

- a. Any person or persons violating any of the provisions of this Ordinance, upon conviction of any such violation, shall be punished by a fine of not more than \$300.00. Every day shall be considered a separate violation of this Ordinance. In addition to prosecuting any such action as described above, the Council shall have the right by appropriate proceedings in any Court of competent jurisdiction to prevent the violation of this Ordinance.
- b. In the event a situation should arise which will cause immediate harm to or threaten the safety of the residents of the MHZ or adjoining lands the Council or a Council member is empowered to:
 - 1. Respond with immediate action to save life and property.
 - 2. The immediate eviction of the person(s) when evidence is beyond a doubt, showing that person's action(s) are causing harm or threatening the safety of the other residents of the MHZ and/or lands under the jurisdiction of the Colony.

TITLE 6

RESIDENCY ORDINANCE

Residency Ordinance

SECTION 6.020.001 EXCEPTION

Any person who is a present holder of an approved written and unexpired assignment on the Colony or has entered into an agreement with the Colony Council to continue to reside on the Colony lands immediately prior to the adoption of this Ordinance by the Tribal Council need not apply for another Residency Permit until the Residency Permit they hold expires.

SECTION 6.020.002 RESIDENCY PERMITS

A “Residency Permit” may be issued to any person who satisfies the requirements set forth in the following subsections and shall be written and executed by the Council and the resident.

SECTION 6.020.003 QUALIFICATIONS

A person is qualified to receive a Residency Permit if:

1. That person is a lineal descendent of any person who is a part or present holder of an approved assignment on the Colony;
2. That person is a person of Indian blood quantum sufficient to be a member of a federally recognized Tribe and meets the requirements of the Residency Permit;
3. That person is a member of the Winnemucca Indian Colony and meets the requirements of the Residency Permit;
4. That person has applied for membership in the Colony and the application has been approved by not yet granted;
5. That person was married to a Resident and the Resident is now deceased;
6. That person was a child, step child or foster child of a Resident and the Resident is now deceased.

SECTION 6.020.004 APPLICATION FOR RESIDENCY

The Council shall provide an application for residency to persons who request residency. The application shall set forth all requirements of compliance for residents on the Colony lands.

SECTION 6.020.005 TERM

A residency permit shall

1. Remain in effect until it is revoked or the person moves off the Colony for more than sixty (60) days without first obtaining approval from the Colony Council.
2. A residency permit may be issued for a term of one (1) year or less with terms.
3. A residency permit may be granted for the life of the resident.

SECTION 6.020.006 RESIDENCY PERMIT NOT AN INTEREST IN LAND

The issuance of a Residency Permit does not grant the holder any property interest in Colony lands or improvements on the land, but merely affords the person permission to reside on Colony lands and use community facilities.

SECTION 6.020.007 NON-MEMBER RESIDENCY PERMIT

A non-member may seek a Residency Permit. Different requirements for the right to reside on the Colony as a non-resident will be on a case by case basis. Members shall have priority in applying for Residency Permits, however, once a non-member has applied for and received a non-member residency permit, that person becomes a member for purposes of priority in renewal and use.

SECTION 6.020.008 ENFORCEMENT

The failure of any person to obtain a non-member Residency Permit when required to do so by the Colony Council may result in civil fines up to \$100.00/day and potential prosecution under federal or Colony laws prohibiting trespass.

SECTION 6.020.009 REVOCATION OF PERMIT

Any person who obtains any type of residency permit on the Colony must then obey all the rules and regulations of a resident as set out in the adopted Law & Order Code of the Winnemucca Indian Colony. Violations or disregard of the Law & Order Code of the Winnemucca Indian Colony will result in the revocation or suspension of the Residency Permit.

SECTION 6.020.010 CONFLICT OF LAWS

Any other Colony Ordinance or Resolution in conflict with this Section is hereby repealed and the provisions of this Section shall supersede the provisions of any ordinance, law or resolution in conflict with this Section.

SECTION 6.020.030 EFFECTIVE DATE

This Residency Section of the Law & Order Code shall become effective upon the date of its final approval and adoption by the Winnemucca Indian Colony Council.

SECTION 12 SAVINGS CLAUSE

If any word, phrase, sentence, paragraph, section or part of this, Ordinance is determined unconstitutional or invalid for any reason by a Court with competent jurisdiction, only such

Title 6 – Section 2

invalid word, phrase, sentence, paragraph, section or part shall be stricken from the Ordinance and the remainder of the Ordinance shall remain in full force and effect.

TITLE 6

HOUSING ORDINANCE

SECTION 1 GENERAL PROVISIONS

6-030-01 Applicability

- A. The following Title shall hereinafter be referred to as the “Winnemucca Indian Colony Housing Ordinance”. It shall apply to any and all arrangements, formal or informal, written or oral, in selling, buying, renting, leasing, occupying or using any and all housing, dwellings or accommodations for human occupation and residence on the Winnemucca Indian Colony. It shall also apply to any and all mortgages, leasehold mortgages and agreements to secure an interest in a building or real property within Winnemucca Country.
- B. This ordinance along with the Mobile Home Ordinance and amendment, the Residency Ordinance 601 and 601(A) adopted October 21, 2017 shall comprise Title 6 of the Law & Order Code of the Winnemucca Indian Colony and any Ordinances adopted after this date shall be included within this Title 6, hereinafter referred to as the Housing Title.
- C. The following arrangements are not governed by this Title:
 - 1. Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service; or
 - 2. Occupancy in a hotel, motel, RV lot rental, or other commercial lodging.

6-030-02 Jurisdiction

- A. Jurisdiction is extended over all buildings and lands intended for human dwelling, occupancy or residence which may lie within:
 - 1. The boundaries of the Winnemucca Indian Colony;
 - 2. Lands owned by, held in trust for, leased or used by the Colony, its members, its Housing Program, or any other entity of the Colony; or
 - 3. The Indian Country of the Colony, as may be defined from time to time by the laws of the Colony and of the United States.
- B. Jurisdiction is extended over all persons or entities within the jurisdiction of the Colony who sell, rent, lease or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling, occupancy or residence, and all persons who buy, rent, lease or occupy such structures. Jurisdiction is also extended to any person or entity who mortgages or otherwise secures an interest in a structure or building on Colony land. Such jurisdiction is extended over all persons and entities, whether or not they are members of the Winnemucca Indian Colony or have a place of business on the Winnemucca Indian Colony. Any act on the Colony by a person or entity pertaining to the subject matter of this Title shall be subject to jurisdiction of the Colony.
- C. Jurisdiction over all matters which arise under this Title shall be exercised by the Winnemucca Indian Colony Tribal Court. The Winnemucca Indian Colony does not waive its sovereign immunity under this Title.

6-030-03 Purposes and Interpretation – This Ordinance shall be interpreted and construed to fulfill the following purposes:

- A. To simplify the law governing the occupation of dwelling units and to protect the rights of landlords and tenants.

- B. To preserve the peace, harmony, safety, health and general welfare for the people of the Colony, the Winnemucca Indian Colony members, and those permitted to enter or reside on the Colony.
- C. To provide eviction procedures and to require landlords to use those procedures when evicting tenants.
- D. To encourage landlords and tenants to maintain and improve dwellings on the Colony in order to improve the quality of housing as a Colony resource. The Colony may establish minimum health and safety standards for residences, as well as compatibility standards to Colony standards.
- E. To simplify the law governing the rights, obligations and remedies of the members, non-members, owners, sellers, buyers, lessors, and lessees of the building.
- F. To avail the Colony, Colony entities, and Colony members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Colony by prescribing procedures for the recording, priority and foreclosure of mortgages given to secure loans made by or through any government agency or lending institution.
- G. To establish laws and procedures which are necessary in order to obtain government or private funding for Colony housing programs or loan guarantees for private or Colony housing construction, purchases or renovation.

6-030-04 Relation to Other Laws

- A. Applicable Law – Unless affected or displaced by this Title 6, principles of law found in the core documents of the Winnemucca Indian Colony and, only if those documents do not address a particular instance, will any customs and traditions be considered to resolve a conflict. The general principles of law and any other Tribe or any other State or federal law may be used as guidance to supplement and interpret this Title.
- B. Other Applicable Laws – Additional Tribal and federal laws may apply with regard to Colony housing program and governmental housing laws and regulation according to the source of funds for the housing.
- C. Conflicts with Other Laws –
 - 1. Colony Laws: To the extent that this Ordinance may conflict with Winnemucca Indian Colony laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such Colony laws or ordinances shall govern over the provisions of this Ordinance if the source of funds requires certain laws or ordinances to be enforced because of the source of those funds.
 - 2. Notes for suggested interpretations: (Federal Laws: Where a conflict may appear between this Ordinance and any statute, regulation or agreement of the United States, the federal law shall govern if it has specific applicability in that the source of funds required certain laws to be enforced or enacted and if it is clearly in conflict with the provisions of this Ordinance.) (State Laws: To the extent that the laws of any State may be applicable to the subject matter of this Ordinance, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.)

6-030-05 Computation of Time – In computing any period of time prescribed or allowed by this Ordinance the day of the act, event, or default from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When the period of time is eleven (11) days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall also be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

6-030-06 Definitions – As used in this Ordinance, the following words will have the meanings given them in this Section unless the context plainly requires otherwise:

- A. Action, suit or lawsuit, claim, complaint, or defense shall include any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings or accommodations, damages to such units, condition of such units or the relationships between owners and occupiers of such units, including the right to occupy them.
- B. Adult person is any person eighteen (18) years of age or older.
- C. Borrower/Mortgagor is the Winnemucca Indian Colony, the Winnemucca Indian Housing Program, or any individual Indian (s) or any heirs (s), successor (s), executor (s), administrator (s) or assign (s) of the Colony or such Indian (s) or non-Indian (s) who has executed a Mortgage as defined in this Ordinance or a Leasehold Mortgage as defined in this Ordinance.
- D. Building is a structure and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.
- E. Building or housing codes are any law, ordinance or governmental regulation of the Colony or an agency of the United States which deals with fitness for habitation, health conditions or the safety, construction maintenance, operation, occupancy, use or appearance of any dwelling unit.
- F. Dwelling unit is a house or building or portion thereof which is rented or leased as a home or residence by any person, not including public transient accommodation, such as hotel rooms.
- G. Guest is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- H. He/His: The use of he/his means he or she, his or her and singular includes the plural.
- I. Housing Authority: The Winnemucca Indian Colony Council serves as the Housing Authority through its Winnemucca Indian Colony Housing Program for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Colony. The Housing Program may be managed by a Housing Program Manager or Program Director under the direct supervision of the Colony Council or a Council Member designated by the Colony Council.
- J. Indian is any person recognized as being an Indian or Alaska Native by any Tribe or by the government of the United States.
- K. Indian Country, the territorial jurisdiction or the jurisdiction of the Colony shall include all lands owned by, held in trust for, leased, occupied or otherwise controlled by the Colony, as well as any such ownership or use by an entity of the Colony and these terms shall

include any and all areas which may constitute the Indian Country of the Colony under applicable provisions of its laws or laws of the United States.

- L. Landlord can be the Winnemucca Indian Colony Council, the Winnemucca Indian Colony Housing Program, a person, entity or federal government agency which is the owner, lessor or sublessor of a dwelling unit intended for the use of tenants.
- M. Lease is an agreement, written or oral, as well as valid rules and regulations regarding the terms and conditions of the use and occupancy of real property, a dwelling unit, a building or premises including a lease-to-purchase agreement.
- N. Leasehold Mortgage is the mortgage of a lease or property given to secure a loan and may be created pursuant to any federal agency home buyer program or any other agreement entered between a Borrower/Mortgager and a Lender/Mortgagee.
- O. Lender Designated Assignee. Any lender as defined in this Ordinance may assign or transfer its interest in a Mortgage or Lease and/or Lease and/or Leasehold Mortgage falls under a federal agency home buyer program or federal agency loan guarantee program, the Lender must seek written approval from the Colony Council of a proposed Designated Assignee any time prior to such assignment, transfer or assumption, except where the U.S. government and federal agencies guarantee or insure the Mortgage or Leasehold Mortgage.
- P. Lender/Mortgagee is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Winnemucca Indian Colony Council, the Winnemucca Indian Colony Housing Program, or a U.S. government agency which loans money, or rehabilitation of a home. It is also any lender designated assignee (s) or successor (s) of such Lender/Mortgagee. A Lender/Mortgagee must have a license or permit or approval from the Council of the Colony in order to loan funds for any purpose for property to be used, situated, built or constructed on the Winnemucca Indian Colony.
- Q. Lessee is a tenant of a dwelling unit, user and/or occupier of real property or the home buyer under any governmental or private mortgage program.
- R. Lessor is the legal, beneficial or equitable owner of property under a Lease. Lessor may also include the heir (s), successor (s), executor (s), administrator (s) or assign (s) of a lessor, as defined and approved by the Colony Council in the lease document. Any person or entity must have a permit, license or other approval of the Colony Council in order to lease property that is located within the boundaries of the Winnemucca Indian Colony.
- S. Mobile Home is a structure designed for human habitation and for being moved on a street or highway. Mobile home includes pre-fab, modular and manufactured homes. Mobile home does not include a recreational vehicle or a commercial coach. Mobile homes must comply with the Colony's Mobile Home Ordinance.
- T. Mortgage is a lien as commonly given to secure advances on, or the unpaid purchase of a building or land, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.
- U. Mortgage Foreclosure Proceeding is a proceeding to foreclose the interest of the Borrower (s)/Mortgagor (s), and each person or entity claiming through the Borrower (s)/Mortgagor (s), in real property, a building, or in the case of a Leasehold Mortgage, a Lease for which a Mortgage has been given under any governmental or private home purchase program.
- V. Mortgagee/Lender – See Lender/Mortgagee.

- W. Mortgagor/Borrower – See Borrower/Mortgagor.
- X. Nuisance is the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health and safety of the public or neighboring land users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property or interferes with the Colony's designated use of the surrounding or neighboring property.
- Y. Owner is any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.
- Z. Person includes the Winnemucca Indian Colony Housing Program, an individual or organization and where the meaning of a portion of this Ordinance requires, it means a public agency, corporation, partnership or any other entity.
- AA. Premises is a dwelling unit and the structure of which is a part and of all facilities and areas connected with it, including grounds, common areas and facilities intended for the use of tenants or the use of which is reserved for tenants. Premises does not include any facilities outside the defined Lot boundary.
- BB. Rent is all periodic payments to be made to a landlord or lessor under a lease.
- CC. Rental Agreement – see Lease.
- DD. Reservation is also referred to as the Colony which is the territorial jurisdiction of the Winnemucca Indian Colony in the State of Nevada.
- EE. Shall for the purposes of this Ordinance will be defined as, mandatory or must.
- FF. Subordinate Lienholder is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Ordinance, except the Colony shall not be considered a subordinate lienholder with respect to any claim regarding a Colony tax on real property. When the Colony has a tax or rental lien it is a primary lienholder.
- GG. Tenant is the lessee (s), sublessee (s) or person (s) entitled under a lease to occupy a dwelling unit to the exclusion of others.
- HH. Winnemucca Indian Colony Tribal Court is the Court of jurisdiction for this Title as established by the laws of this Colony or such body as may now or hereafter be authorized in writing by the laws of the Colony to exercise the powers and functions of a Court of law. The appellate body for this Court is the Inter-Tribal Court of Appeals of Nevada as adopted by the Colony Council in 2020.
- II. Colony Recording Clerk is the Clerk of the Winnemucca Indian Colony Court or such other person designated by the Colony to perform the recording functions required by this document or any deputy or designee of such person.
- JJ. Colony or Tribe is the Winnemucca Indian Colony

SECTION 2 LANDLORD/TENANT RESPONSIBILITIES AND REMEDIES

6-040-01 Rental Agreements

- A. Effect of Rental Agreements – The provisions of this Ordinance, establish the minimum rights and responsibilities of any landlord and tenant on the Winnemucca Indian Colony, unless inconsistent rental agreements supplement these minimum rights and responsibilities by a written document adopted by and voted on by a majority of the Council in which such exception is clearly set out therein.
- B. Terms Prohibited in Rental Agreements – No rental agreement shall provide that the tenant agrees:
 - 1. To waive or forfeit his rights or remedies under this Ordinance or any other applicable laws as identified; or
 - 2. To pay a late charge prior to the expiration of the grace period set for in 3-1 (A)
- C. Term of Tenancy – In the absence of a definite term in a rental agreement, the tenancy shall be month-to-month.
- D. Payment of Rent – In the absence of definite terms in the rental agreement, rent is payable at the landlord's office, place of business or residence. In the absence of definite terms, the amount of rent shall be the fair market value of the premises based upon the purpose of the rental.

6-040-02 Rules and Regulations

- A. The landlord may promulgate rules and regulations regarding the use and occupancy of the premises including requiring the tenant to reveal personal information in an application for residential tenancy and requiring the tenant to pledge agreement to recognize the government of the Colony.
- B. Such rules and regulations are enforceable against the tenant only if:
 - 1. Their purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities as is reasonable and in conjunction with the other regulations adopted.
 - 2. The rules and regulations are reasonably related to the purpose for which they are adopted.
 - 3. The rules and regulations to the classification of the tenant and the property being let.
 - 4. The rules and regulations are sufficiently explicit in their prohibition, direction or limitations of the tenant's conduct and fairly inform him of what he shall, or shall not do, to comply; and
 - 5. The tenant has notice of the rules and regulations at the time he enters into the rental agreement or immediately after the regulations are adopted if after the tenancy has begun.

6-040-03 Landlord Responsibilities

Except as otherwise provided in a rental agreement or a mutual help occupancy agreement, each landlord subject to the provisions of this Ordinance shall:

- A. Maintain the premises in a habitable condition in compliance with applicable building and housing codes materially affecting health and safety to the extent required by the Residency Agreement.
- B. Make all necessary repairs and maintain the premises in a habitable condition.
- C. Maintain the common areas.
- D. Ensure tenant access to the premises.
- E. Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, where such matters are not the responsibility of the tenant.
- F. Provide and maintain receptacles for the disposal of ash, garbage, rubbish, and other waste.
- G. Provide running water, hot water, sanitary sewer, and heat in accordance with applicable building and housing codes, except to the extent the tenant is required to provide such services or utilities for himself. The cost of utilities provided by the Colony or public utility companies or others is the responsibility of the Tenant, not the Landlord, except to the specific conditions documented in the Lease or Assignment, or formal documentation of the Colony Council.
- H. Provide the name, address, and telephone number of the person responsible for receiving rent notices and demands under this Ordinance, the person authorized to manage the premises, the owner of the premises or his agent, and the person responsible for making the repairs.

6-040-04 Tenant Responsibilities

Except as otherwise provided in a rental agreement or a mutual help occupancy agreement, each tenant subject to the provisions of this Ordinance shall:

- A. Pay rent without demand or notice at the time and place agreed upon by the parties.
- B. Immediately notify the landlord of any damages to the premises.
- C. Keep the premises reasonably clean and dispose of all ashes, garbage, rubbish, junk and abandoned vehicles in a proper, sanitary and safe manner.
- D. Use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances which are part of the premises and the property of the landlord, in a proper, safe sanitary and reasonable manner. Pay utility costs for water, sewer, electricity, natural gas, telephone, internet, and other services except where specifically stated in the Lease, Rental Agreement, Assignment, or other formal documentation approved by the Colony Council.
- E. Refrain from destroying, defacing, damaging or removing any part of the premises or common areas and to require guests to act in like manner.
- F. Pay reasonable charges and costs for the repair of damages, other than normal wear and tear, to the premises or common areas caused by the tenant or his guests, or to repair such damages as required under the rental agreement, within thirty (30) days of such damage.

- G. Conduct himself, and require his guests to conduct themselves, in a manner which does not disturb the quiet and peaceful enjoyment of other tenants or residents or cause a breach or disturbance of the peace.
- H. Not give up the possession of the premises to others, assign a lease arrangement or sublease the premises or any portion thereof without the prior written consent of the landlord, the Council of the Winnemucca Indian Colony.
- I. Use the premises primarily for residential purposes, and not to use the premises or permit its use for any other purpose, unless that use is approved in writing by the landlord, the Winnemucca Indian Colony Council.
- J. Not use the premises for any illegal conduct or any other activity which may harm the physical or social environment of the premises or area around it.
- K. Provide the landlord access to the premises to perform maintenance and repairs, inspect the premises, supply necessary or agreed services, or show the premises to prospective tenants, provided that such access shall be at reasonable times when the tenant is present, and upon reasonable written or oral notice from the landlord, except in emergency situations where the health, safety or welfare of the tenant or the tenant's neighbors is in immediate danger or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

6-040-05 Tenant Remedies

- A. Except as provided in the Code, if there is material noncompliance by the landlord with the rental agreement, including a material falsification of the written information provided to the tenant, the tenant may deliver actual notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ten (10) days after receipt of such notice if the breach is not remedied in ten (10) days. If there is a noncompliance by the landlord with Section 6-040-03 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than five (5) days. For the purposes of this section, material falsification shall include availability of the unit, except when a holdover tenant is in illegal possession or in violation of the rental agreement, the condition of the premises and any current services as represented by the landlord in writing as well, as any written representation regarding future utility service. The rental agreement shall terminate and the dwelling unit shall be vacated as provided in the notice subject to the following:
 - 1. If the breach is remediable by repairs or the payment of damages or otherwise and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.
 - 2. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family or other person on the premises with the tenant's consent.
- B. Except as provided in this Code, the tenant may obtain injunctive relief for any noncompliance by the landlord with the rental agreement or this Code.
- C. The remedy provided in subsection B of this section is in addition to any right of the tenant arising under subsection A of this section.

6-040-06 Landlord Remedies

Where a tenant has committed serious or repeated violations of his responsibilities as set forth in this Ordinance or in the rental agreement or according to the laws of the Colony or the United States of America, the landlord may institute an action in the Winnemucca Indian Colony Tribal Court or any other Court of competent jurisdiction seeking an order compelling the tenant to comply with his responsibilities as set forth in Section 6-040-04, an award of money damages, attorneys fees and costs and/or such other relief in law or equity as the Court may deem just and proper.

6-040-07 Abandoned Premises

- A. If the premises is abandoned after the time prescribed in the lease of Residential Agreement, the landlord shall send the tenant a notice of abandonment by certified mail or other traceable delivery type of service or return receipt requested, addressed to the tenant's last known address and to any of the tenants alternate addresses known to the landlord. The landlord shall also post a notice of abandonment on the door to the premises or any other conspicuous place on the property for five (5) days.
- B. Five (5) days after notices of abandonment has been both posted, mailed or otherwise served, the landlord may retake the premises and re-rent the premises at a fair rental value if no personal property remains on the premises. After the landlord retakes the premises, money held by the landlord as a security deposit is forfeited and shall be applied to the payment of any accrued rent and other reasonable costs incurred by the landlord by reason of the tenant's abandonment.
- C. If the tenant abandons the premises, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the premises for a term beginning prior to the expiration of the rental agreement, it is deemed to be terminated as of the date the new tenancy begins. If the landlord fails to use reasonable efforts to rent the premises at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose shall be deemed to be a month or a week, as the case may be.
- D. After the landlord has retaken possession of the premises, the landlord may store the tenant's personal possessions in the unoccupied premises that was abandoned by the tenant, in any other available unit or any storage space owned by the landlord or off the premises if the premises or storage space is not available. The landlord shall notify the tenant of the location of the personal property in the same manner prescribed in subsection A of this section.
- E. The landlord shall hold the tenant's personal property for a period of thirty (30) days after the landlord's declaration of abandonment. The landlord shall use reasonable care in holding the tenant's personal property. If the landlord holds the property for this period and the tenant makes no reasonable effort to recover it, the landlord may sell the property, retain the proceeds and apply them toward the tenant's outstanding rent or other costs. Reasonable care shall be interpreted as outdoor storage under a tarp or other temporary cover as is available. A tenant does not have any right of access to that property until the actual removal and storage costs have been paid in full, except that the tenant may obtain clothing and tools, apparatus and books of a trade or profession and

any identification or financial documents, including all those related to the tenant's immigration status, employment status, public assistance or medical care. If provided by a written rental agreement, the landlord may destroy or otherwise dispose of some or all of the property if the landlord reasonably determines that the value of the property is so low that the cost of moving, storage and conducting a public sale exceeds the amount that would be realized from the sale.

- F. For a period of two (2) months after the sale of the tenant's personal property, the landlord shall:
 - 1. Keep adequate records of the outstanding and unpaid rent and the sale of the tenant's personal property.
 - 2. Hold any express proceeds which have been returned as undeliverable for the benefit of the tenant.
- G. If the tenant notifies the landlord in writing on or before the date the landlord sells or otherwise disposes of the personal property that the tenant intends to remove the personal property from the dwelling unit or the place of safekeeping, the tenant have five (5) days to reclaim the personal property. To reclaim the personal property the tenant must pay the landlord the cost of removal and storage for the period the tenant's personal property remained in the landlord's safekeeping.
- H. In this section "abandonment" means either the absence of the tenant from the Premises, without notice to the landlord for at least seven (7) days, if rent for the premises is outstanding and unpaid for ten (10) days and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the residence, or the absence of the tenant for at least five (5) days, if the rent for the premises is outstanding and unpaid for five (5) days and none of the tenant's personal property is in the premises.

6-40-08 Acceptance of Partial Payment

A landlord is not required to accept a partial payment of rent or other charges. A landlord accepting a partial payment of rent or other charges retains the right to proceed against a tenant only if the tenant agrees in a contemporaneous writing to the terms and conditions of the partial payment with regarding to continuation of the tenancy. The written agreement shall contain a date on which the balance of the rent is due. The landlord may proceed as provided in this Code against a tenant in breach of this agreement or any other breach of the original rental agreement.

SECTION 3 GROUNDS FOR EVICTION/NOTICE TO QUIT/PRE-EVICTION OPTIONS

6-050-01 Grounds for Eviction

A tenant may be evicted for the following:

- A. Nonpayment of rent under an agreement for the lease, purchase or occupation of premises when such payments are not made within ten (10) calendar days of the due date, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.
- B. Any arrearage in costs or damage which is thirty (30) calendar days or more past due. The receipt by the landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand within thirty (30) days of partial payment.
- C. Nuisance, damage or destruction to the premises, injury to person, interference with other tenants' peaceful and quiet enjoyment of their premises or damage or destruction to common areas and property as determined by the Council of the Winnemucca Indian Colony.
- D. Serious or repeated violations of the rental agreement or any reasonable rules or regulations adopted by the Colony. For the purposes of this Code repeated violations shall mean a second or an additional violation.
- E. Occupation of any Premises without permission or consent of a landlord following any reasonable demand by a landlord or owner to vacate the premises or occupation of any Premises without a Residency Application being filed with and accepted by the Colony Council and executed by both parties.
- F. Violation of any term or condition in a rental agreement which does not conflict with the provisions of this Ordinance.
- G. The entry of a judgment foreclosing a tenant's interest in a Mortgage of Leasehold Mortgage.

6-050-02 Notice to Quit Requirements

- A. When notice to quit is required. When a landlord desires to obtain possession of a premises for any grounds or reason as set forth in Section 3, the landlord shall give written notice to the tenant to quit possession of such premises, unless the need to reclaim the premises is an emergency as declared by the Colony Council.
- B. Statement of grounds for eviction. The notice to quit shall be addressed to the tenant of the premises and shall state the grounds or reasons for termination of the tenant and the date by which the tenant is required to quit possession of the premises.
- C. Form of notice. The notice shall be in writing substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the premises now occupied by you at (here insert the address or other reasonable description of the location of the premises), on, or before the (here insert the date) for the following reason (here insert the grounds or reasons for the notice to quit possession). Signed, (here insert the signature, name, and address of the landlord, and the date).
- D. Time requirements for notice. The notice must be delivered within the following periods of time:
 - 1. No less than seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the agreement.

2. No less than three (3) calendar days prior to the date to quit specified in the notice for serious nuisance, serious damage, serious health and safety threat or destruction or property or injury to persons. In situations in which there is an emergency, such as a fire or condition making the premises unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health, safety or the serious violation of any law or ordinance, notice to the tenant is not required.
 3. No less than fourteen (14) calendar days in all other situations.
- E. Winnemucca Indian Colony Housing Program Termination Notice. When the landlord is the Winnemucca Indian Colony Housing Program, the termination notice from Winnemucca Indian Colony Housing Program shall qualify as the notice to quit under this section so long as the time requirements of the Winnemucca Indian Colony Housing Program's termination notice are at least as long as the time requirements set forth in this Code or if no notice is required, then no notice.
- F. Right to cure. Upon receipt of a notice to quit, the tenant has the right to cure, repair or rectify the grounds or reasons set forth in a notice to quit prior to the time set forth in this Code. If the tenant timely and adequately cures the grounds or reasons set forth in the notice to quit the rental agreement shall be reinstated with further condition for compliance in light of the breach. The decision of the Colony Council is determined of the adequacy of the cure.

6-050-03 Service of the Notice to Quit

Any notice to quit must be delivered to the tenant in the following manner:

- A. Delivery must be made by an adult person.
- B. Delivery will be effective when it is:
 1. Personally delivered to a tenant with a copy mailed to the tenant by certified mail, return receipt requested, or
 2. Personally delivered to an adult living in the premises with a copy mailed to the tenant by service tracked mail, or
 3. Personally delivered to an adult, agent or employee of the tenant with a copy mailed to the tenant by service tracked mail.
- C. If the notice cannot be given by means of personal delivery, or tenant cannot be found, or delivery in person would endanger the safety of the deliverer of the notice may be delivered by means of:
 1. Securely posting a copy of the notice to the mail entry door, front fence or other easily viewed fixture on the premises in a secure manner, and by posting a copy of the notice in a public place near the premises, including a Colony office, public store, or other commonly-frequented place or by mailing service tracked mail addressed to the tenant at the tenant's last known address.
- D. The person giving notice shall retain a copy of this notice and proof of service.
- E. For the purpose of this Code any notice sent by service tracked mail to a tenant's last known address shall be presumed to be delivered to the tenant.

6-050-04 Pre-Eviction Options

- A. Negotiated Settlement. After a notice to quit is served upon a tenant, the landlord and tenant may engage in discussions to avoid proceedings to evict and to settle the issues

between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights. Such agreement shall be in writing signed by both parties.

- B. Stay of Proceedings. Where the parties mutually agree in good faith to proceed with such discussions, and summary or judicial eviction procedures have been initiated, the Winnemucca Indian Colony Court may, at the option of the Court, stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.
- C. Settlement Options. In discussing and negotiating a settlement, the parties may consider, but are not limited to the following options:
 - 1. The parties may employ the use of attorneys;
 - 2. The parties may employ the use of a mediator approved by the Tribal Court and accepted by both parties;
 - 3. The parties may agree to arbitrate the issues in binding arbitration;
 - 4. The parties may agree to barter for services and goods, or to any other means of securing a fair exchange of rental for the use of the premises;
 - 5. The parties may agree to dismiss the matter;
 - 6. The parties may agree to stipulate to a judgment to be entered by the Court.

SECTION 4 JUDICIAL EVICTION PROCEDURES

6-060-01 Complaint

If, after the date set forth in the notice to quit for the tenant to quit possession of the premises, the tenant who had a valid written rental agreement that has been breached or has expired and the tenant has not quit possession, the landlord may file a complaint in the Winnemucca Indian Colony Court for eviction and such other relief as the Court may deem just and proper. The complaint shall state:

- A. The name of the tenant and adult tenant (s) against whom the suit is brought;
- B. A description of the rental agreement, if any;
- C. The address or reasonable description of the location of the premises;
- D. The grounds for eviction;
- E. A statement showing that the notice to quit and any required termination notices have been served in accordance with this Code or other applicable law; and
- F. A statement of the relief demanded, including any claim (s) for possession of the premises, damages, fees, costs or other special relief.

6-060-02 Action upon Filing Complaint

- A. The summons shall be issued on the day the complaint is filed and shall command the person against whom the complaint is made to appear and answer the complaint at the time and place named which shall be not more than fourteen (14) nor less than seven (7) days from the date of the summons. The tenant is deemed to have received the summons three (3) days after the summons is mailed if personal service is attempted and within one day of issuance of the summons a copy of the summons is conspicuously posted on the main entrance of the tenant's residence and on the same day the summons is sent by service tracked mail, to the tenant's last known address. The summons in an eviction action shall be served at least two (2) days before the day assigned for trial. Service of process in this manner shall be deemed the equivalent of

having served the tenant in person for the purposes of awarding a money judgment for all rent, damages, costs and attorney fees due.

- B. For good cause shown, the trial may be postponed by the Winnemucca Indian Colony Court for not more than five (5) days.
- C. In addition to determining the right to actual possession, the Court may assess damages, attorney fees and costs as prescribed by law.
- D. If a complaint is filed alleging a material and irreparable breach pursuant to Section 3 6-050-020 (d) (2), the summons shall be issued as provided in subsection A of this section, except that the trial date and return date shall be set no later than five (5) days following the filing of the complaint. If after the hearing the Court finds by preponderance of the evidence that the material and irreparable breach did occur, the Court shall order restitution in favor of the landlord not less than twenty-four (24) hours nor more than five (5) days later.
- E. If the tenant is found guilty, the Court shall give judgment for the landlord for restitution of the premises, for any late charges stated in the rental agreement and for attorney fees and costs.
- F. If the tenant is found not guilty, judgment shall be given for the tenant against the landlord for the tenant's attorneys fees and costs.

6-060-03 Defenses

- A. The Court shall grant the landlord the relief authorized in this Code, unless it appears by the evidence that:
 - 1. The premises are uninhabitable to the extent the premises are a serious hazard to human health and safety.
 - 2. The landlord has failed or refused to make repairs without good cause which are his responsibility after a reasonable written demand by a tenant to do so, and the repairs are necessary for the habitability of the premises.
- B. There are monies due and owing to the tenant because he has made repairs to the premises which are the obligation of the landlord, and the landlord failed or refused to make the repairs after no less than thirty (30) days written notice to the landlord. Such sums may be a defense to a complaint for eviction, but only to the extent that such sums set off monies owed by tenant to the landlord. A tenant may be evicted if he fails or refuses to pay the remainder of the rental value after the deduction of any costs or repairs.

6-060-04 Evidence

Evidence in proceedings under this Code shall be according to the following provisions:

- A. All evidence may be admitted which can be shown to be relevant and material to the case.
- B. Fairness will dictate the decision of the judge on challenges to admissibility of evidence.
- C. The Court may avail itself of any recognized and authoritative materials, books or documents as guidance in reaching a decision on the admissibility of evidence.
- D. Evidence of customs and traditions of the Winnemucca Indian Colony may be admitted, if any exists and have been adopted by the Council, but are only persuasive if the Codes, Ordinances or Resolutions of the Colony are not adequate to cover the issue raised in the evidence.

- E. Hearsay objections will not be permitted to procedurally deny the Court access to reasonable reliable information which would aid in reaching a decision. Where a hearsay objection is made, the Court will make an independent determination of the competency of the evidence which is sought to be offered. Objections may be overruled where facts indicate that the evidence is relevant and material and reasonably competent under the circumstances. Hearsay evidence may be freely admitted where all parties to the out of Court statement are present before the Court and qualified to testify as to the statement made.
- F. At the discretion of the Judge, evidence may be excluded if it's probative value is outweighed by the risk that an admission will create a substantial risk of undue prejudice; confusion would mislead a jury or unfairly surprise the opposing party.
- G. Upon request of a party, the Court may take judicial notice, of specific facts which are so certain as not to be subject to reasonable dispute.

6-060-05 Burden of Proof

The burden of proof in all proceedings under this Code shall be preponderance of the evidence.

6-060-06 Judgment

- A. Within five (5) calendar days of the date of lodging a form of Judgment the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:
 - 1. Order the immediate eviction of a tenant and delivery of the Premises to the landlord;
 - 2. Grant actual damages as provided in the agreement of the parties or this Code, including interest;
 - 3. Order the parties to carry out an obligation required by law;
 - 4. Establish a payment plan for the tenant;
 - 5. Establish a Power of Attorney in another person/agency or fulfill rights or obligations of either landlord or tenant;
 - 6. Remediate the action in part or in whole;
 - 7. Order the payment of attorneys' fees and costs as authorized by law or agreement;
 - 8. Order the payment of attorneys' fees and costs as authorized by law or agreement;
 - 9. Order the parties into negotiations as provided in this Code; or
 - 10. Grant any relief provided in this Code or allowed in law or equity.
- B. If a tenant fails to appear in person or in writing on, or before, the date of hearing, the Court shall enter judgment on behalf of the landlord following a summary hearing to determine whether the requested relief should be granted and the relief that should be granted.

6-060-07 Execution of Judgment

Any judgment may be immediately executed, and the judgments and orders of the Court shall be enforced by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such purpose. Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. In the

absence of a Law Enforcement officer being available to enforce an order, the Colony Council may engage private process servers and/or security to enforce such orders.

6-060-08 Appeals

Appeals under this Chapter shall be according to the general Winnemucca Indian Colony appellate provisions.

6-060-09 Miscellaneous Complaints and Claims

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this Code may be made under the general Colony civil procedure code and/or small claims procedure code, or Law & Order Code.

6-060-100 Restitution of the premises by Order of the Court

Unless otherwise specified in a judgment, a tenant shall have five (5) days from the entry of judgment to vacate the premises. If a tenant fails or refuses to vacate the premises within the time prescribed in the judgment or this section, the Winnemucca Indian Colony Court shall issue a writ of restitution directing the Winnemucca Colony Police, or in the absence of Colony Police, the BIA Office of Justice Services Police, to remove the tenant and the tenant's possessions from the premises.

6-060-110 Summary Eviction

The Winnemucca Indian Colony Council, as a sovereign tribal government, may take self-help to compel a person who is in trespass, has no written authority to occupy the premises no matter how long the occupation has existed to cause or effect the evacuation of a premises by giving notice to quit and waiting for the period of time stated on the notice to quit or longer. In no event does the Colony waive its right to evacuate the premises by self-help because the time in the notice to vacate has been exceeded. When compliance with a written lease or trespass or unlawful occupation has occurred, the Colony shall remove the property and persons by summary eviction. Examples of Summary eviction Examples of Summary eviction are: no written lease with the Colony Council, the tenant is a holdover, or not a rightful occupant of the property, such as an heir or successor in interest is not provided for in the lease, without obtaining a court order. All other landlords on the Winnemucca Indian Colony, except by mutual consent of the parties, may compel a tenant to vacate any premises by giving notice to quit and obtaining a court order as provided in Title 6.

6-60-120 Security Deposits

- A. Security Deposit Limits. A landlord may demand a security deposit of an amount equal to five-hundred (\$500) or one month's periodic rent, whichever is greater. Additional security deposits may be allowed for special circumstances such as animals or pets or a tenant's history of prior damages to a premises.
- B. Payment of Security Deposit at Termination of Tenancy. NO later than ten (10) days after obtaining possession of the premises, the landlord shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the landlord less the value of any damages which the landlord incurred as a result of such tenant's failure to comply with the tenant's obligations. Damages shall not include normal wear and tear.

- C. Action to Reclaim Security Deposit. Any tenant may bring a civil action to the Winnemucca Indian Colony Tribal Court or other Court of competent jurisdiction to reclaim any part of this security deposit which may be due and which the landlord refuses to return after seven (7) days written notice.

SECTION 5 MORTGAGE AND FORECLOSURE

6-070-01 Priority

All mortgages shall be filed and recorded with the Bureau of Indian Affairs' Land Titles Records Office in accordance with the recording procedures set forth in this Chapter, including Leasehold Mortgages and loans guaranteed or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim except a lien or claim arising from a Colony leasehold tax assessed after the recording of the mortgage.

6-070-02 Filing and Recording

- A. All mortgages and other necessary associated documents relating to Indian Land shall be filed and recorded with the Bureau of Indian Affairs' Land Titles Records Office in Albuquerque, New Mexico.
- B. In the event Winnemucca Indian Colony Housing Program participates or acts as an agent in the application, processing or recording of a mortgage or other document, Winnemucca Indian Colony Housing Program shall also maintain a log of each mortgage or other document recorded and shall enter:
 - 1. The name (s) of the Borrower/Mortgagor of each Mortgage;
 - 2. The name (s) of the Lender/Mortgagee of each Mortgage;
 - 3. The name (s) of the grantor (s), grantee (s), or other designation of each party named in any other documents filed or recorded;
 - 4. The date and time of receipt of the mortgage or document;
 - 5. The filing number assigned by the Land Titles Records Offices; and
 - 6. The name or the Supervisor, Manager or designee receiving the mortgage or document.
- C. The log maintained by Winnemucca Indian Colony Housing Program shall be made available for public inspection and copying. Rules for the copying shall be established and disseminated by Winnemucca Indian Colony Housing Program prior to the institution of such a mortgage program.

6-070-03 Foreclosure Proceedings

- A. A borrower/Mortgagor shall be considered to be in default under a mortgage when he is thirty-one (31) days delinquent on his mortgage payment (s) to the Lender/Mortgagee.
- B. Upon a mortgage default, the Lender/Mortgagee shall mail by certified mail, return receipt requested a notice to the Borrower/Mortgagor, with a copy to Winnemucca Indian Colony Housing Program, which shall include the following:
 - 1. Advise the Borrower/Mortgagor he or she is more than thirty (30) days delinquent on his mortgage payments to Lender/Mortgagee and the amount necessary to cure the default as of the date of the notice.

2. Advise the Borrower/Mortgagor that information regarding the mortgage default may be given to credit bureaus which may negatively affect a Borrower/Mortgagor's credit rating and ability to obtain future credit;
3. Advise the Borrower/Mortgagor of any home ownership counseling opportunities or programs available through the Lender/Mortgagee;
4. Advise the Borrower/Mortgagor that if the Mortgage default is not paid in full within ninety (90) days the Lender/Mortgagee may file a complaint with the Winnemucca Indian Colony Court to foreclosure the mortgage and obtain possession of the Premises of Dwelling Unit;
5. In addition to the foregoing requirements, the Lender/Mortgagor shall complete the following additional notice requirements when there is a leasehold mortgage:
 - a. Notify the Borrower/Mortgagor that if the leasehold mortgage remains in default for more than ninety (90) days the Lender/Mortgagee may ask the applicable government agency to accept assignment of the leasehold mortgage;
 - b. Notify the Borrower/Mortgagor of the qualifications for any available relief which may be offered by the Lender/Mortgagee and that relief may be available from the applicable governmental agency if the leasehold mortgage is assigned; and
 - c. Provide the Borrower/Mortgagor with the address of the governmental agency to whom further communication shall be addressed, if any.
- C. Ten (10) days prior to the filing of a foreclosure complaint the Lender/Mortgagee shall mail by certified mail, return receipt requested, a notice to the Borrower/Mortgagor, with a copy to Winnemucca Indian Colony Housing Program, in the same form as set for in Section 5 6-070-050 (B) (4) except that the ninety (90) days requirement set forth in Sections 5 070-030 (B) (4) and 5 070-030 (B) (5) (a) shall be replaced with ten (10) days.
- D. If a Borrower/Mortgagor has been in default for ninety (90) days, or more, and the Lender/Mortgagee has complied with the requirements set forth in this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Winnemucca Indian Colony Court by filing a verified complaint as set forth in Section 5 070-040 of this Code.

6-070-04 Foreclosure Complaint and Summons

- A. The verified complaint in a mortgage foreclosure proceeding shall contain the following:
 1. The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage, including each Subordinate Lienholder (except the Colony with respect to a claim for a Colony leasehold tax), as a defendant;
 2. A description of the property subject to the Mortgage;
 3. A concise statement of the facts concerning the execution of the Mortgage or in the case of Leasehold Mortgage the lease. The facts concerning the recording of the Mortgage of the Leasehold Mortgage. The facts concerning the alleged default (s) of the Borrower/Mortgagor and such other facts as may be necessary to constitute a cause of action for foreclosure;
 4. True and correct copies of each promissory note, or if a Leasehold Mortgage a copy of the Lease, the Mortgage, or assignment thereof (attached as exhibits); and

5. Any applicable allegations concerning relevant requirements and conditions prescribed in applicable:
 1. Federal statutes and regulations;
 2. Colony codes, ordinance, regulations, this Code; and/or
 3. Provisions of the Lease of Leasehold Mortgage, or security instrument.
- B. The complaint shall be filed with the Winnemucca Indian Colony Tribal Court Clerk who shall issue a summons specifying a date and time of appearance for the Borrower/Mortgagor and all other parties.
- C. The Lender/Mortgagee shall mail a copy of the foreclosure complaint and summons to Winnemucca Indian Colony Housing Program.

6-070-05 Service of Process and Procedures

Service of the process shall be completed in accordance with the procedures set forth in the Winnemucca Indian Colony Law and Order Code. If the whereabouts of the Lessee (s) or Borrower/Mortgagor cannot be ascertained after reasonable inquiry, three (3) copies of the summons and complaint shall be mailed to the Lessee (s) or Borrower/Mortgagor in case of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

6-070-06 Cure for Default

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor, or a Subordinate Lienholder, may cure the default (s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred by the Lender/Mortgagee in foreclosing on the property. Any Subordinate Lienholder who has a cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default (s), plus interest on such amounts at the rate in the note for the Mortgage.

6-070-07 Judgment and Remedy

This matter shall be heard and decided by the Winnemucca Indian Colony Tribal Court in a prompt time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Winnemucca Indian Colony Tribal Court finds the Lender/Mortgagee, the Colony Court shall enter judgment:

- A. Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including any Subordinate Lienholder, in the Mortgage, and
- B. Assigning the Mortgage to the Lender/Mortgage, or the Lender's Designated Assignee, and if a Leasehold Mortgage, the Lease shall be assigned to the Lender/Mortgage, or Lender's Designated Assignee, subject to the following provisions:
 1. The Lender shall give the Winnemucca Indian Colony and the Winnemucca Indian Colony Housing Program a right of first refusal on any offer to the Lender or Lender's Designated Assignee to purchase to Mortgage, Lease or Leasehold Mortgage, or the collateral secured thereby. The Colony Council or Winnemucca Indian Colony Housing Program shall have thirty (30) days from the receipt of a valid offer to excuse the right of first refusal.

2. The Lender of Lender's Designated Assignee may only transfer, sell or assign the Mortgage, Lease or Leasehold Mortgage or the collateral secured thereby to a Winnemucca Indian Colony member, the Colony Council, or the Colony Council, or the Winnemucca Indian Colony Housing Program.

6-070-08 No Right of Redemption

There shall be no right of redemption in a mortgage foreclosure proceeding.

6-070-09 Foreclosure Evictions

Foreclosure evictions shall be in accordance with the eviction procedures set forth in Sections 020, 030, 040 of this Code.

6-070-100 No Merger of Estates

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or the assumption of the same, including an assignment adjudged by the Winnemucca Indian Colony Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

6-070-110 Notice to Winnemucca Indian Colony Council and the Winnemucca Indian Colony Housing Program

Copies of all foreclosure notices of foreclosure proceedings on a Mortgage, Lease or Leasehold Mortgage shall be mailed to the Winnemucca Indian Colony Council and the Winnemucca Indian Colony Housing Program certified mail, return receipt requested, within five (5) days after the issuance of such to a Borrower/Mortgagee or Lessee.

6-070-120 No Recovery of Deficiency

No action may be maintained against a Lessor or Borrower/Mortgagor to recover any deficiency between the amount obtained from the sale of any property securing a mortgage and the amount of the indebtedness including interest, attorney's fees and costs.

6-070-130 Intervention

The Winnemucca Indian Colony Council and the Winnemucca Indian Colony Housing Program may petition the Colony Court to intervene in any Mortgage, Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Colony Council, nor the granting of such petition by the Colony Court shall operate as a waiver of the sovereign immunity of the Colony, except as may be expressly authorized in writing by the Colony.

6-070-140 Appeals

Appeals under this Chapter shall be handled in accordance with the general Colony Court appellate provisions.

SECTION 6 TRANSFER OF PROPERTY

6-080-01 Transfer of Conveyance

Only by specific written consent of the Colony Council can any interest or permit of any interest in real property, i.e. occupancy, easement, encroachment, etc. be transferred or conveyed affecting Indian land to any Person by a deed, which is notarized, and, if necessary and required by law, an ACT of CONGRESS and the express and written approval of the Bureau of Indian Affairs, when necessary. All lands designated as belonging to the Winnemucca Indian Colony shall remain as the lands of the Winnemucca Indian Colony for all purposes.

6-080-02 Contents of Deed or Written Instrument

A deed, written instrument or will transferring or conveying an Owner's interest in property on Indian Land shall require formal approval of the Winnemucca Indian Colony Council by formally adopted Council Resolution and contain the following information:

1. Name of Owner/Grantor;
2. Name, physical address, mailing address, contact information, phone, email, etc, of grantee;
3. Legal description, address or description of the property and facilities or structures on the property;
4. Date of transfer of conveyance;
5. Description of property to include legal description, description of facilities included as property, square footage, type of construction, etc.
6. Term including starting and ending date, and conditions of termination, reassignment, holdover, etc.
7. Signature or Owner/Grantor in the presence of a notary public.

6-080-03 Filing and Recording

A deed or document transferring or conveying an interest in property on Indian Land shall be filed and recorded with the Bureau of Indian Affairs' Land Titles Records Offices in Albuquerque, New Mexico.

TITLE 9

DOMESTIC RELATIONS

LAW AND ORDER CODE
THE WINNEMUCCA COLONY

Title 9 – Domestic Relations

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9-10-10 MARRIAGE

9-10-010 Scope – This Chapter 9-10 establishes the requirements for a valid marriage and the procedures that must be followed by all persons wishing to enter into a valid marriage.

9-10-020 Consent – The consent of both parties is required before there can be a valid marriage. The parties must have the ability to consent.

9-10-030 Ability to Consent – The following persons are legally incapable of giving a valid consent to the marriage contract, and therefore shall not be issued a license:

- a. A person under eighteen (18) years of age. However, a parent or guardian may give a valid consent for a person under eighteen (18) years of age.
- b. A person who lacks mental capacity because of mental disease or defect of either a temporary or permanent nature. Absent any other factor, a person suffering from epilepsy shall not be considered as lacking mental capacity.
- c. A person whose mental capacity is seriously impaired by drugs or alcohol.

9-10-040 Court Orders –

- a. Availability of Court Orders – In the event that a parent or guardian will not consent to the marriage of a person under eighteen (18) years of age, or if there is no parent or guardian, a Tribal Court order permitting the marriage may be obtained by filing a petition with the Tribal Court Clerk.
- b. Contents of Petition – The petition shall state the names of the parties who wish to be married, their ages, the name of the parent (s) or guardian (s), the reason the consent of the parent (s) or guardian (s) could not be obtained, and the reason the marriage should be permitted.
- c. Procedure – The Clerk shall give the petition to the Tribal Judge immediately after filing. The Judge may schedule a hearing if more information is required. The hearing shall be held within five (5) days from the day the petition is filed and the Judge shall announce his decision within five (5) days from the date of the hearing. The Judge shall order that the marriage be permitted if a sufficient reason is given. Pregnancy, while it is a factor to be considered, is neither determinative nor required.

9-10-050 Marriage Licenses –

- a. Requirement – A marriage license is required before a marriage ceremony may be performed within this jurisdiction.
- b. Procedure – Persons wishing to marry shall request a license from the Tribal Court Clerk. The license shall be on a form approved by the Tribal Council. The Clerk shall issue a license as long as he or she is satisfied as to the parties' ability to consent.
- c. Contents – The license shall state the names of the parties, their ages, and their addresses, and the names of a party's parent (s) or guardian, when necessary. The license shall be signed and dated by the Tribal Court Clerk.
- d. Denial of Licenses – If the Tribal Court Clerk refuses to issue a license because he or she is not satisfied as to the parties' ability to consent, the parties may request a hearing before the Tribal Court. Said hearing shall be held within five (5) days. The Tribal Judge shall resolve all disputes as to marriage licenses.

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- e. Certificate of Marriage – The Tribal Court Clerk shall issue a blank certificate of marriage at the same time the license is issued. The certificate shall be on a form approved by the Tribal Council. The certificate shall contain a space to fill in the names of the parties and their ages, the name and title of the person performing the ceremony, and shall contain a statement that the parties consent to the establishment of the relationship of husband and wife between themselves, such statement to be signed by the parties at the time of the ceremony. The certificate shall also include a space for the signature of the person performing the ceremony and for the date the ceremony was performed, and spaces for the signatures of two (2) persons who witness the marriage ceremony.
- f. Time limit for validity – A license is valid for thirty (30) days. A ceremony performed with a license issued more than thirty (30) days previously is not valid.

9-10-060 Validity of licenses issued outside this jurisdiction – Licenses issued outside this jurisdiction may not be used for ceremonies performed within this jurisdiction.

9-10-070 Marriage Ceremonies –

- a. No particular form of ceremony is required. However, the parties must express their consent to the establishment of the relationship of husband and wife between themselves.
- b. Any religious practitioner or any Tribal Judge may perform a marriage ceremony.
- c. Persons wishing to marry must present their valid license to the person performing the ceremony.
- d. The ceremony shall be witnessed by two (2) adult persons.

9-10-080 Certificates of Marriage –

- a. Persons authorized by Section 9-10-070 to perform marriage ceremonies shall request the marriage certificate from the couple, and shall see that it is properly filled out and signed.
- b. The original of the certificate shall be given to the parties and two (2) copies shall be given to the Tribal Court Clerk. The Clerk shall retain one (1) copy in the Court files and shall file another copy with the count recorder of Humboldt County.

9-10-090 Marriages entered into outside this jurisdiction – Marriages entered into outside this jurisdiction are valid within this jurisdiction if they are valid in the jurisdiction in which they were entered into.

9-10-100 Marriages entered into prior to the adoption of this Title – Marriages entered into on this Colony prior to the adoption of this Title 9, whether by formal ceremony, Indian custom or otherwise, are valid if they were valid when entered into.

9-20 INDIAN CUSTOM MARRIAGE AND DIVORCE

9-20-010 Scope – This Chapter 9-20 codifies Tribal customs pertaining to marriage and divorce.

9-20-020 Validity of Indian custom marriages – Marriages according to Indian custom are valid.

9-20-030 Certificates of Indian custom marriages –

- a. Requirements – Persons who have lived together as husband and wife for one (1) year or more may request a certificate from the Tribal Court or the Tribal Chairperson stating that they are married according to Indian custom.
- b. Procedure – The Court or the Chairperson shall require affidavits from three (3) persons who know the couple before issuing a certificate of Indian custom marriage. The affidavits must state the names of the couple, the name of the affiant, the length of time the affiant has known the couple, and the length of time the affiant has known the couple to be living together as husband and wife. If the affidavits establish that the requirements of subsection (a) have been met, the Court or Chairperson shall issue a certificate of Indian custom marriage to the couple and shall file a copy of the certificate with the Western Nevada Agency of the Bureau of Indian Affairs and with the county recorder of Humboldt County.

9-20-040 Indian Custom Divorce or Dissolution – Indian custom divorce or dissolution is not recognized. Persons who have been married according to Indian Custom, who wish to dissolve their marriage, must request a dissolution from the Tribal Court in accordance with the procedures set forth in Chapter 9-60. However, any Indian Custom divorce which occurred prior to the adoption of this Title 9 is valid if it was valid at the time it occurred.

9-20-050 Property Rights – Persons who have married according to Indian Custom shall have the same property rights as persons who are formally married, as set forth in Chapter 9-30 of this Title. Such rights shall be retroactive to the time the couple first began to live together.

9-30 RIGHTS OF HUSBAND AND WIFE

9-30-010 Scope – This Chapter 9-30 establishes the property rights of each party to a marriage.

9-30-020 Community Property –

- a. Defined – All property acquired after the marriage by either the husband, wife, or both, while they are living together as husband and wife, is community property, with the exception of the property described in Section 9-30-030.
- b. Rights in Community Property
 1. The husband and the wife have present, existing, and equal interests in all community property.
 2. The husband and the wife have an equal right to manage community property.
 3. One spouse may give to the other spouse the right to control a particular community asset. This agreement must be in writing and signed by both of the parties, and shall be filed with the Tribal Court Clerk.
 4. Neither spouse may make a substantial gift of community property without the written consent of the other spouse, or any other gift of community property without the consent of the other spouse. A gift made without the necessary consent is void.
- c. Joint Agreement of spouses required for certain transactions – Notwithstanding any other provision of this Section 9-30-020, neither spouse may sell or encumber in any way community household goods, furnishings, appliances, automobiles, or any real

property, unless the other spouse jointly executes the agreement involved. Any agreement which is not jointly executed is void.

9-30-030 Separate Property –

- a. Defined – All property owned by either the husband or the wife before marriage, or acquired afterwards by gift, by will, or through the laws of inheritance of any jurisdiction, together with the rents, interest or profits therefrom, is the separate property of the owner.
- b. Rights in separate property – The owner has exclusive control and management of his or her separate property.

9-30-040 Community Debts –

- a. Defined – Community debts are those debts jointly undertaken by the husband and wife, debts incurred in the purchase of community property, and debts incurred in the support of the husband and/or the wife and/or their children, which the husband and wife are living together.
- b. Responsibility for community debts – The husband and wife are jointly and equally responsible for community debts. In any action in which both spouses are parties the court may require that the community property, the separate property of the husband and/or the wife, be used to pay community debts.

9-30-050 Separate Debts –

- a. Defined – All debts undertaken by the husband or the wife, individually, except for any debts described in Section 9-30-040 above, are separate debts.
- b. Responsibility for separate debts – The Court shall not require the separate property of the wife to be used to pay the debts of the husband, nor shall it require that the separate property of the husband be required to pay the debts of the wife, unless the owner of the separate property has previously agreed in writing that his or her separate property may be used to pay for the debts of his or her spouse.

9-30-060 Individual property agreements – Spouses may create their own agreements as to property and alter the provisions in this Chapter 9-30. Such property agreements must be in writing, must be signed by the parties, and must specifically itemize the assets to be affected.

9-30-070 Applicability of this Chapter 9-30 to Indian Trust Land and money and to Tribal assignments – The provisions of this Chapter 9-30 are generally not applicable to interests in Indian trust land, to money held in trust for Indian individuals, or to assignments or other interests in Tribal lands. However, if the husband and/or wife acquire an interest in Indian trust land, an interest in money held in trust for Indian individuals, or an assignment or other interest in Tribal lands, and such acquisition is within the definition of community property as set forth in Section 9-30-020, such interests may be treated as community property, as long as such treatment is not in conflict with Federal law or with the Tribe's Constitution.

9-40 VOID MARRIAGES

9-40-010 Definition – A void marriage is a marriage which is not valid for any legal purpose. A void marriage does not create any property rights or obligations, other than to support any children that may be born of the marriage.

9-40-020 Marriages which are void –

- a. Bigamous and incestuous marriages are void.
- b. Definitions -
 1. A bigamous marriage is one that is entered into by any person who is already married, i.e., the person's prior marriage has not been annulled or dissolved, and the prior spouse is still alive.
 2. An incestuous marriage is one between a parent and child, or a brother and sister of the whole or half blood, or an uncle and niece or aunt and nephew of the whole or half blood, or between first cousins.
 3. For purpose of this Chapter 9-40, an aunt is defined as the sister of the person's parent, an uncle is defined as the brother of the person's parent, and a first cousin is the child of the person's aunt or uncle.

9-40-030 Court declaration of voidness – Either party to a void marriage may file a petition with the Clerk requesting that the marriage be declared void. However, the void marriage is of no legal effect whether or not the parties obtain a Court order declaring it void.

9-40-040 Jurisdiction of the Tribal Court to declare marriages void -

- a. The Tribal Court has jurisdiction to declare void any marriages described in Section 9-40-020 which was entered into on this Colony.
- b. The Tribal Court has jurisdiction to declare void any marriage described in Section 9-40-020 which was not entered into on this Colony if either of the parties to the marriage have resided on this Colony for at least six (6) weeks immediately preceding the filing of the petition.

9-40-050 Procedure –

- a. A petition requesting that a marriage be declared void shall be filed with the Clerk. It must conform to the requirements of Section 9-40-060.
- b. A summons shall be issued and served on the other spouse, in accordance with Title 2, Civil Procedure, unless the other spouse joins in the petition.
- c. The Tribal Court shall hold a hearing if the matter is contested, but may grant the order without a hearing if the matter is not contested, and evidence as to the bigamous or incestuous character of the marriage is presented with the petition.
- d. If the matter is contested, the Court shall issue an order declaring the marriage void, if the evidence indicates that it is more likely than not that the marriage is incestuous or bigamous.
- e. Any order as to property, child support and/or custody, or damages shall be made in accordance with Sections 9-40-070, and 9-40-080, and 9-40-090.

9-40-060 Form of petition –

- a. Required contents of petition – A petition requesting the Court to declare a marriage void shall state:
 1. The names, ages, and residences of the parties to the marriage;
 2. The date and place of the marriage;
 3. An allegation as to the Court's jurisdiction; and
 4. The reason the marriage should be declared void.

- b. Additional Contents – The petition may include:
 - 1. Requests as to division of property and debts;
 - 2. Requests as to child custody and/or support; and
 - 3. Allegations as to damages.
- c. Petitions must be signed – The petition must be signed by one or both of the parties to the marriage.

9-40-070 Property and debts of void marriages –

- a. Community property rules do not apply – Because a void marriage is of no legal effect there is no community property. However, the Court shall ordinarily give to each person one-half or the equivalent value of one-half of what would be community property if the marriage were valid.
- b. Division of debts – The Court shall ordinarily divide equally between the parties responsibility for all debts that would be community debts if the marriage were valid.
- c. Discretionary equitable awards – The Court may in its discretion, aware to one party more than one-half of what would be community property if the marriage were valid, if this party also assumes more than one-half of the debts, or if it would be fair and equitable to do so.

9-40-080 Children of void marriages –

- a. Any person who knowingly contracts a bigamous marriage shall pay damages of \$250.00 to the other party to the bigamous marriage, if that other party was without knowledge of the bigamous nature of the marriage.
- b. Any person who knowingly contracts a bigamous marriage shall pay damages of \$250.00 to the spouse from the first marriage, if that spouse has sued or commences to sue for divorce or annulment.
- c. Any party to a void marriage who is injured thereby, shall receive such other damages under (a) above.

9-40-090 Filing of order – Orders obtained pursuant to this Chapter 9-40 shall be filed with the Tribal Court Clerk. The Tribal Court Clerk shall file a copy with the county recorder of Humboldt County.

9-50 ANNULMENT

9-50-010 Reasons for annulment of marriages – The Court may grant an annulment of a marriage for the following reasons:

- a. Lack of ability to consent because of age.
- b. Lack of ability to consent because of mental disease or defect.
- c. Lack of ability to consent because of serious mental impairment due to the use of drugs or alcohol.
- d. Force or fraud in obtaining consent to the marriage.

9-50-020 Jurisdiction of the Tribal Court –

- a. The Tribal Court has jurisdiction to annul any marriage which was entered into on this Colony.

- b. The Tribal Court has jurisdiction to annul any marriage which was not entered into on this Colony if either of the parties to the marriage have resided on this Colony for at least six (6) weeks immediately preceding the filing of the complaint.

9-50-030 Commencement of annulment actions – An action to obtain an annulment must be commenced within the following time periods and by the following persons:

- a. For cause described in Section 9-50-010, subsection (a), by the underage party before reaching the age of twenty (20), or by the parent or guardian of the underage party before the party reaches eighteen (18). However, a parent or guardian may not commence an annulment action if a court order was obtained pursuant to Section 9-10-040 or if he gave his consent to the marriage pursuant to Section 9-10-030, subsection (a).
- b. For cause described in Section 9-50-010, subsection (b), by the party lacking capacity within two years of regaining capacity, or by the guardian of the person lacking capacity within two years of the marriage.
- c. For cause described in Section 9-50-010, subsection (c), by the party not freely consenting within two (2) months of the marriage.
- d. For cause described in Section 9-50-010, subsection (d), by the party not freely consenting within two (2) years of the marriage.

9-50-040 Procedure –

- a. A complaint requesting that a marriage be annulled shall be filed with the Clerk. It must conform to the requirements of Section 9-50-050.
- b. A summons shall be issued and served in accordance with Title 2, Civil Procedure on any party to the marriage not joining in the complaint.
- c. The Court shall hold a hearing whether or not the matter is contested.
- d. If the Court is satisfied that the evidence indicates that it is more likely than not that the allegations in the petition are true and is satisfied as to the Court's jurisdiction, the annulment shall be granted.
- e. Any orders as to child custody and/or support shall be in compliance with Chapter 9-70 of this Title.
- f. Any order as to damages shall be in accordance with Section 9-50-080 below.
- g. Any order as to property and debts shall be in accordance with the standards set forth in Section 9-60-070.
- h. The Court shall restore the wife's former name if requested to do so by the wife or her representative.

9-50-050 Form of complaint –

- a. Required contents of complaint –
 1. The names of the parties to the marriage;
 2. The date of the marriage;
 3. The place of the marriage;
 4. The reason for the requested annulment;
 5. An allegation as to the Tribal Court's jurisdiction; and
 6. If the person filing the complaint is not one of the parties to the marriage, the relationship of that person to the parties.
- b. Additional contents – The complaint may include:
 1. A description of any property or debts to be divided by the Court;
 2. Any requests as to child custody and/or support;
 3. Any allegations as to damages.

9-50-060 Effect of an order of annulment –

- a. After an annulment the parties are restored to the status of single and unmarried persons.
- b. Children of an annulled marriage are legitimate for all purposes.

9-50-070 Alimony not awarded – Neither party to an annulled marriage shall be required to pay alimony.

9-50-080 Damages – Any person who is damaged because of a marriage that is subsequently annulled, may receive such damages as can be proven.

9-50-090 Filing of annulment orders – The order of annulment shall be filed in the Tribal Court Clerk's office. The Tribal Court Clerk shall file a copy with the county recorder of Humboldt County.

9-60 DISSOLUTION OF MARRIAGE

9-60-010 Reasons for dissolution – A dissolution of marriage may be granted if either party to the marriage considers the marriage a failure.

9-60-020 Jurisdiction of the Tribal Court – The Tribal Court shall have jurisdiction to dissolve any marriage described in Section 9-60-010 if:

- a. Either of the parties to the marriage has resided on this Colony for at least six (6) weeks preceding the filing of the complaint, or
- b. This Colony was the last place that the parties lived together as husband and wife, or
- c. This Colony was the place the marriage was entered into.

9-60-030 Procedure –

- a. A complain requesting a dissolution shall be filed with the Clerk. It must conform to the requirements of Section 9-60-040.
- b. A summons shall be issued and served in accordance with Title 2, Civil Procedure on the other party to the marriage.
- c. The Court shall hold a hearing whether or not the matter is contested.

- d. The dissolution shall be granted if the Court is satisfied that it has jurisdiction, and if the complaint substantially satisfied the requirements of Section 9-60-040.
- e. Any order as to child support or custody shall be in accordance with Chapter 9-70 of this Title.
- f. Any order as to property or debts shall be in accordance with Section 9-60-070 below.
- g. The Court shall restore the wife's former name if requested to do so by the wife or her representative.

9-60-040 Form of Complaint –

a. Required

- 1. The names of the parties to the marriage;
- 2. The date of the marriage;
- 3. The place of the marriage;
- 4. An allegation of the Courts jurisdiction; and
- 5. An allegation of the failure of the marriage.
- b. Additional Contents – The complaint may contain;
 - 1. A description of any property or debts to be divided by the Court;
 - 2. Any requests as to child custody and/or support;
 - 3. Any requests for alimony.
- c. Restoration of a Woman's Former Name – The complaint may include a request that the wife's former name be restored.

9-60-050 Evidence Considered –

- a. Fault is irrelevant and no evidence as to fault will be heard by the Court.
- b. Testimony must be given, by a person who is not a party to the marriage, as to the facts required under Section 9-60-020 above.
- c. No evidence as to the failure of the marriage need be presented by the party requesting the dissolution.

9-60-060 Alimony –

- a. Alimony may be awarded to either party as part of the order granting the dissolution.
- b. Alimony may be awarded for a limited time and in a limited amount and is considered on necessity and ability to pay.
- c. Alimony terminates automatically on the remarriage of the party receiving it, or upon the death of either party. It may be terminated at any time by the Court, if the necessity for it no longer exists, upon motion by the person paying alimony.
- d. Alimony does not terminate because of the remarriage of the person paying the alimony.

9-60-070 Division of Property and Debts –

- a. Ordinarily, one-half or the equivalent of one-half of the community property as defined in this Title 9 shall be given to each party. If the community property includes interests described in Section 9-30-070, the Court may order a party to request a transfer of such interests. However, such transfers must conform to the requirements of federal law and the Tribe's Constitution.
- b. All separate property remains the property of its owner.

- c. Ordinarily, community debts shall be divided so that each party is responsible for an equal share.
- d. All separate debts remain the responsibility of the party who incurred them.
- e. The court may, in its discretion, award more than half of the community property to one party, if that party also assumes more than half of the community debts, or if it would be fair and equitable to do so.
- f. In spite of the above provisions, the parties may make their own agreement as to division of property and/or debts, but such agreements are subject to review and approval by the Court.

9-60-080 Effect – The effect of an order of dissolution is to restore the parties to the status of single and unmarried persons.

9-60-090 Filing of Orders – The order granting the dissolution shall be filed in the Tribal Court Clerk's office. The Tribal Court Clerk shall file a copy with the county recorder of Humboldt County.

9-60-100 Tribal Custom Divorces – Tribal custom divorces or dissolutions are not recognized and have no legal effect.

9-70 CUSTODY AND SUPPORT OF CHILDREN

9-70-010 Nature of action – A proceeding for custody and/or support of children may be joined with a proceeding under any other Chapter of this Title 9, or may be commenced as a separate proceeding.

9-70-020 Proper Parties to Commence action – The following persons may bring an action for custody and/or support of a child:

- a. The child.
- b. Either parent.
- c. Any person who provides one-half of the total support of the child. Support means those items necessary and essential to the child's well-being, including such items as food and lodging. However, a social service agency may bring an action only for support, and only to recoup any payments made by the agency on behalf of the child.

9-70-030 Procedure –

- a. A petition concerning child custody and/or support shall be filed with the Clerk. It must conform to the requirements of Section 9-70-040.
- b. A summons shall be issued and served in accordance with Title 2, Civil Procedure on all interested persons, including but not limited to the child's parents, grandparents, and any other person with whom the child resides.
- c. A hearing shall be held whether or not the matter is contested.
- d. At the hearing the Court shall first determine if there is a compliance with Sections 9-70-020 and 9-70-030 above, and then shall make its order based on the standards in Section 9-70-050 and/or Section 9-70-070 below.

9-70-040 Form of Petition – The petition shall state the following information, if known:

- a. The name, age, place of birth and residence of the child;
- b. The name, age, residence and relationship to the child of the person having physical custody;
- c. The name, age, residence and relationship to the child of the person seeking custody, if a custody order is sought.
- d. The name, age, residence and relationship to the child of the person to be charged with the support obligation, if a support order is sought;
- e. The name, age, residence and relationship to the child of the person bringing the petition; and
- f. The reason (s) custody and/or support is sought.

9-70-050 Standards to be Applied and Evidence Considered in Determining Custody –

- a. The Court shall make its decision based on what will be in the best interest of the child.
- b. The wishes of the child, though not decisive, will be given a substantial amount of weight.
- c. No presumptions as to the greater or lesser suitability of one sex or the other as a custodian shall be used.
- d. No presumptions as to the suitability of persons of particular ages shall be used.
- e. Reasons for annulments or dissolutions are irrelevant in custody proceedings.
- f. Custody may be given to a non-parent only if neither parents wants the child and they have both waived their rights in writing, or the child is found to be a dependent child in accordance with Title 10, Juvenile Proceedings.
- g. If custody is to be given to a non-parent, grandparents or other relatives shall be preferred over non-relatives as custodians of the child.
- h. The child shall not be removed from the Colony, unless there is no suitable person on the Colony to act as custodian.
- i. The Judge may request a social services report, which will be admissible in evidence, to aid him in his determination of custody. A copy of such report must be given to every interested party at least forty-eight (48) hours before the hearing.

9-70-060 Visitation Rights – The non-custodial parent, and any other interested relative or non-relative, shall be given reasonable rights of visitation upon a showing to the Court of interest in the child.

9-70-070 Support Obligations –

- a. Nature of obligation – Both parents of a child have a continuing obligation to support their child until the child is eighteen (18) years of age. This obligation is not affected by the parent's remarriage, and is not affected by any award of custody of the child.
- b. Determination of obligation – The Court shall consider the amount of support which is reasonably necessary, and the financial resources of each parent. The Court shall then require each parent to pay a just and reasonable amount for the support of the child.

9-70-080 Modification of Support and Custody Orders – Support and custody orders are modifiable due to changed circumstances upon petition to the Court according to the procedures set out in this Chapter 9-70.

9-70-090 Enforcement of Support Orders – The Court may use its contempt power to enforce a support order.

9-70-100 Filing and Service of Custody and Support Orders – Custody and support orders shall be filed with the Tribal Court Clerk and served upon all parties whose obligations are affected by them.

9-80 DETERMINATION OF PARENTHOOD

9-80-010 Purpose and Applicability –

- a. The purpose of this Chapter 9-80 is to establish the relationship of parent and child.
- b. An action under this Chapter 9-80 is not available if the child has been legally adopted.
- c. A proceeding under this Chapter 9-80 may be joined with a proceeding for custody and/or support under Chapter 9-70.

9-80-020 Proper Parties to Bring Action – The following persons may bring an action under this Chapter 9-80:

- a. The child.
- b. Either parent.
- c. Any person who provides one-half of the total support of the child. Support means those items necessary and essential to the child's well-being, including such items as food and lodging. A social service agency is a proper party to bring an action under this section.

9-80-030 Procedure –

- a. A petition alleging parenthood shall be filed with the Clerk. It must conform to the requirements of Section 9-80-040.
- b. A summons shall be issued and served on any parent who does not join in the Petition in accordance with Title 2, Civil Procedure.
- c. A hearing shall be held whether or not the matter is contested.
- d. The Court shall issue a decree of parenthood if a preponderance of the evidence indicates that a parental relationship exists.

9-80-040 Form of Petition – The petition shall contain the following:

- a. The name, age, place of birth and residence of the child;
- b. The name, age, place of birth and residence of alleged parent;
- c. The name, age, residence and relationship to the child of the person bringing the petition; and
- d. A short statement of the facts on which the allegation of parenthood is based.

9-80-050 Admissible Evidence – The following types of evidence are admissible in an action to determine parenthood;

- a. Medical and scientific evidence, if reliable.
- b. Actions or words on the part of the purported parent that indicate a parental relationship.
- c. Any other evidence that is helpful to the Court and is admissible in a civil action under Title 6, Evidence.

9-80-060 Effect of Decree – The effect of a decree of parenthood is to establish the relationship of parent and child with all the attendant rights and responsibilities, including all inheritance rights.

9-80-070 Filing of Decree – All decrees of parenthood shall be filed with the Tribal Court Clerk and shall be served on all personas affect by them.

9-90 ADOPTION OF MINOR CHILDREN

9-90-010 Scope – This Chapter 9-90 sets forth the procedures for establishing the relationship of parent and child, between a child and an adult other than a natural parent of the child.

9-90-020 Procedure –

- a. A petition requesting an adoption shall be filed with the Clerk. It must comply with the requirements of Section 9-90-030.
- b. A summons shall be issued and served, in accordance with Title 2, Civil Procedure, on the natural parents, the grandparents, any person with whom the child resides, and any other interested person (s), unless they have signed affidavits of consent.
- c. A hearing shall be held whether or not the matter is contested.
- d. The hearing shall be held in closed court.

9-90-030 Form of Petition – The petition shall contain:

- a. The name, age, date and place of birth of the child if known, with documentary proof if possible;
- b. The name (s), age(s) of the person (s) seeking to adopt;
- c. The name (s) and address (es) of the natural parents, if known;
- d. Any affidavits of consent as required by Section 9-90-040;
- e. A statement of any real or personal property owned by the child;
- f. A request that the relationship of parent and child be established; and
- g. A statement describing the home environment of the petitioner (s).

9-90-040 Affidavit of Consent –

- a. The consent (s), by affidavit, of the following person (s) is required when applicable:
 1. Of the child if he or she is twelve (12) years of age or age;
 2. Of each of the natural parents, unless their parental rights have been judicially terminated;
 3. Of the grandparents, or any other relative who wishes to provide a home for the child, unless the Court makes a determination, based on notice and a hearing, that the grandparents or other relatives are unsuitable as custodians;
 4. Of the spouse of the adopting party, unless the spouse joins in the petition.
- b. Any consent obtained prior to the birth of the child or for two weeks thereafter is void.

9-90-050 Standards Applied and Evidence Considered –

- a. A petition for adoption shall be granted if the adoption would be in the best interest of the child.
- b. Single persons of either sex may adopt a child.
- c. Adopting parents who are married must be at least ten (10) years older than the child.

- d. Adopting single persons must be at least fifteen (15) years older than the minor child, unless the minor child is the brother, sister, nephew, niece, or first cousin of the adopting single person.
- e. There is no upper age limit on suitability as an adoptive parent.
- f. Grandparents and other relatives shall be preferred as adoptive parents over non-relatives.
- g. The Court may request a social services report on the adoptive parents, which shall be admitted into evidence, to aid in the determination of whether or not the adoption would be in the best interest of the child. A copy of such report must be given to every interested party at least forty-eight (48) hours before the hearing.

9-90-060 Temporary Decrees of Adoption –

- a. If the Court feels that the best interest of the child would be served, it may issue a temporary decree of adoption.
- b. Such decree is valid for six (6) months, at which time another hearing must be held and a permanent decree granted or denied.

9-90-070 Effect of Entry of Decree –

- a. Establishment of the Relationship of Parent and Child. A temporary or permanent decree of adoption establishes the relationship of parent and child between the parties.
- b. Inheritance Rights – After the entry of a permanent decree of adoption, an adopted child inherits from and through the adoptive parent (s), and adoptive parent (s) inherit from and through the adopted child. The adopted child does not inherit from or through the natural parent (s), and the natural parent (s) do not inherit from or through the adopted child.
- c. Stepparent Adoptions – when a stepparent adopts a child, it does not affect the relationship between the child and the natural parent who is the spouse of the stepparent.

9-90-080 Records of Adoption Proceedings –

- a. After a permanent adoption decree is granted a new birth certificate shall be issued in the name of the adopted parent (s). The certificate shall be filed in the Tribal Court Clerk's office. The Tribal Court Clerk shall file a copy with the county recorder of Humboldt County.
- b. All records of adoption proceedings are to be sealed and shall be released only upon order of the Court.

9-90-090 Right to Tribal Membership – Adoption shall not destroy any rights that a child has to enroll as a Tribal member due to the blood inherited from his natural parents.

9-100 ADOPTION OF ADULTS

9-100-010 Scope – This Chapter 9-100 sets forth the procedures for establishing the relationship of parent and child, between persons eighteen (18) of age or over.

9-100-020 Consents – No consents are required except that of the adopted person and that of the adopting person (s).

9-100-030 Procedure –

- a. A petition requesting an adoption shall be filed with the Clerk. It must comply with the requirements of Section 9-100-040.
- b. Notice shall be given to the natural parents.
- c. The Court shall hold a hearing and shall issue a decree of adoption, unless it finds that one of the parties does not understand the effect of adoption, or if there is evidence of lack of consent.

9-100-040 Form of Petition – The petition shall state:

- a. The name, age, and residence of the person to be adopted;
- b. The name (s), age (s), and residence of the person (s) wishing to adopt; and
- c. A request that the relationship of parent and child be established.

9-100-050 Effect of Entry of Decree –

- a. Establishment of the Relationship of Parent and Child. A decree of adoption establishes the relationship of parent and child between the parties.
- b. Inheritance Rights – Adopted adults inherit from and through their adoptive parent (s) and the adoptive parent (s) inherit from and through the adopted adult. Adopted adults do not inherit from or through their natural parent (s) and the natural parent (s) do not inherit from or through the adopted adult.

9-100-060 Filing of Decrees – All decrees obtained pursuant to this Chapter 9-100 shall be filed with the Tribal Court Clerk. The Tribal Court Clerk shall file a copy with the County recorder of Humboldt County.

9-110 GUARDIANSHIP

9-110-010 Scope – This Chapter 9-110 establishes the procedure for the appointment of guardians for minor persons, or for adults who are unable to manage their property and business affairs and/or physically care for themselves.

9-110-020 Commencement of the Action – Any person may file a petition for a guardianship, including the person to be placed under the guardianship.

9-110-030 Procedure –

- a. A petition requesting a guardianship shall be filed with the Clerk. It shall comply with the requirements of Section 9-110-040.
- b. If the proposed ward is an adult, a summons shall be issued and served in accordance with Title 2, Civil Procedure on all persons who would be intestate heirs of the proposed ward under the provisions of Title 12, Probate.
- c. If the proposed ward is a child, a summons shall be issued and served, in accordance with Title 2, Civil Procedure, on the natural parents, unless they join in the petition.
- d. The Court shall hold a hearing whether or not the matter is contested.

9-110-040 Form of Petition – The petition shall state:

- a. The name, age, and resides of the proposed ward;

- b. Whether the proposed guardianship is of the property and business affairs and/or the physical care of the proposed ward and the reasons thereafter;
- c. The name, age, and relationship to the proposed ward of the person filing the petition;
- d. The name of a proposed guardian, and the relationship of the proposed ward to the proposed guardian;
- e. A description of the proposed ward's income and property.