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# **A GUIDE FOR DEVELOPING TRIBAL CODES FOR PRETRIAL RELEASE DECISION MAKING**

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## INTRODUCTION

According to a 2002 census, 56 percent of tribes operate tribal courts. While felony cases are typically transferred to federal or state courts, about 85 percent of tribes with tribal courts retain jurisdiction over most misdemeanor crimes committed on tribal property.<sup>1</sup> Many of these tribes operate their own jails, and many of these jails are severely overcrowded. In the most recent survey, 13 of 68 tribal jails were operating at over 150 percent capacity at their peak, several of them at over 200 or 300 percent of capacity. Thirteen tribal jails were under court order or consent decree to limit their populations.<sup>2</sup> A 2004 assessment of jails in Indian Country identified several where inmates were sleeping on mats on the floor because the facility was holding two to three times its capacity.<sup>3</sup> At mid-year 2004, 42 percent of all inmates in tribal jails were awaiting adjudication of their charges – most of them on misdemeanor offenses.<sup>4</sup>

Tribal justice systems, like their counterparts in counties, must address the issue of how to assure the appearance of the accused in court and the safety of the community pending adjudication of the charges in a way that recognizes that a jail bed is a scarce and expensive resource. The pretrial release decision is one of the most important in the life of a criminal case. Releasing a defendant who should have been detained may endanger the safety of the community or disrupt the prosecution of the case if the defendant fails to appear. Detaining a defendant who could have been safely released needlessly takes up a jail bed, and causes unnecessary hardship to the detained defendant. The legal framework for deciding who should be released and who should not lies in the codes governing the pretrial release decision making process.

These codes, when comprehensively written, guide the discretion of judicial officers responsible for making the pretrial release decision.<sup>5</sup> They lay out the factors that are to be considered in making the decision, the options that are available to the decision maker, and the actions that may be taken against defendants who fail to comply with release conditions. Many tribes, however, do not have codes addressing the pretrial release decision making process, and in many that do, the codes are far from comprehensive, leaving much to ambiguity.

This document is a guide for tribal jurisdictions seeking to assure that comprehensive procedures are in place governing the pretrial release decision making process. It presents all of the decisions and events that occur as part of that process and presents three separate sets of examples, where appropriate, for fashioning comprehensive codes for each of those decisions and events. First, the document presents the official position of the American Bar Association, as promulgated in its Standards on Pretrial Release, on how the individual decision or event should be approached. Next, it presents for each decision or event examples from tribal codes. These

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<sup>1</sup> Steven W. Perry. 2005. *Census of Tribal Justice Agencies in Indian Country, 2002*. U.S. Department of Justice, Bureau of Justice Statistics.

<sup>2</sup> Todd M. Minton. 2006. *Jails in Indian Country, 2004*. U.S. Department of Justice, Bureau of Justice Statistics.

<sup>3</sup> “Neither Safe Nor Secure:” *An Assessment of Indian Detention Facilities*. 2004. Washington, D.C., U.S. Department of the Interior, Office of Inspector General.

<sup>4</sup> *Supra*, note 2.

<sup>5</sup> It must be pointed out that in some tribes, just as in some state and county systems, pretrial release decision making authority is delegated to such non-judicial officers as department of corrections staff or police officers. Those to whom such authority has been delegated should be able to refer to a code or similar document to guide their decision making.

examples are not meant to reflect the only way of approaching a decision or event. Since each tribe is different, each must develop approaches that not only comport with tribal laws and customs, but that also work best for them. Finally, where appropriate, it presents examples from the codes governing pretrial release decision making in the federal system – the Federal Bail Reform Act of 1984. This is included because it is generally considered one of the most comprehensive code on pretrial release decision making, and has served as a model for several states. Also, when tribal members arrested on tribal property are sent to federal court, this is the code that they are subjected to for the pretrial release decision.

Also, at the end of several sections are Discussion Questions, designed to help tribal leaders focus on the issues that should be addressed to assist in the development of tribal pretrial release decision making codes that are comprehensive and that reflect the traditions and values of individual tribes. While policies regarding the pretrial release process are for each tribe to decide, this document should at least give tribal leaders a good indication of the decisions and events that are part of that process, and that should be addressed in a comprehensive tribal code.

The appendix has three parts. Appendix A includes the codes relating to the pretrial release decision making process from 27 tribes. As this appendix shows, these codes vary significantly in level of detail and extent of coverage. Appendix B presents the Federal Bail Reform Act of 1984. Appendix C is excerpts from the ABA's Standards on Pretrial Release.

## SUMMONS

In many instances, a full custodial arrest is not necessary to bring an individual into court to face criminal charges. One way to bring a person in is by issuing a summons, which directs the person to appear in court on a particular date and time.

The ABA states that "[a]ll judicial officers should be given statutory authority to issue a summons rather than an arrest warrant in all cases in which a complaint, information, or indictment is filed or returned against a person not already in custody. Judicial officers should liberally utilize this authority unless a warrant is necessary to prevent flight, to ensure the safety of the defendant, any other person or the community, to prevent commission of future crimes or to subject a defendant to the jurisdiction of the court when the defendant's whereabouts are unknown." (ABA Standard 10-3.1.)

At least four tribes establish a presumption for the issuance of a summons over an arrest. Note that these codes state very specifically what information is to be included in the summons.

*(b) Issuance of Arrest Warrants or Summons. Unless the Tribal Judge has reasonable grounds to believe that the person will not appear on a summons, or unless the complaint charges an offense which is punishable by banishment, a summons shall be issued instead of an arrest warrant.*

*(d) Contents of Summons. A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before a Tribal Judge within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall issue. Code of the Cheyenne-Arapaho Tribes of Oklahoma – Title 2, Sub-Part C, Section 202.*

### See also:

- **Code of the Absentee Shawnee Tribe of Oklahoma – Chapter Two, Section 202.**
- **Code of the Oneida Indian Nation – Chapter 2, Section 203.**
- **Code of the Pawnee Tribe of Oklahoma – Title V, Chapter 2, Section 202.**

One tribe has a presumption for use of summons when the charge is a Class B or C offense. (**Code of the Rosebud Sioux Tribe – Chapter 1, Section B.**) At least one other tribe mandates that a summons be used if so requested by a prosecutor.

*The Tribal Court may or, upon request of a prosecutor, shall issue a summons instead of an arrest warrant. Code of the Confederated Salish and Kootenai Tribes – Title 2, Chapter 2, Section 2-406.*

Several other tribes leave it to the discretion of the judge, or in some instances law enforcement officers, to issue a summons.

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

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

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

*(d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his usual residence or place of business with a person of suitable age and discretion who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the records of the case. Code of the Chitimacha Tribe of Louisiana – Title II, Chapter 2, Section 204.*

**See also:**

- **Code of the Fort Peck Assiniboine-Sioux – Title VI, Chapter 2, Sec. 204.**
- **Rules of the Mississippi Band of Choctaw Indians – Rule 5.**
- **Rules of the Nez Perce – Title 2, Rule 6.**
- **Code of the Nisqually Indian Tribe – Title 24, Sub-Chapter IV, Section 24.16.10.**
- **Code of the Oglala Sioux – Chapter 8, Section 2-4.**
- **Rules of the Poarch Band of Creek Indians – Section 9-1-2.**
- **Code of the Sault Ste. Marie Tribe of Chippewa Indians – Chapter 70, Section 70-107.**
- **Code of the Sisseton-Wahpeton Sioux Tribe – Chapter 22, Section 22-02-02.**
- **Rules of the Ute Indian Tribe – Title XII, Rule 6.**
- **Code of the Yomba Shoshone Tribe, Title Four, Section 9.**

**Discussion Questions:**

1. What criteria should govern the use of summonses in your tribe?
2. How much discretion should officials have in deciding whether to use a summons in lieu of arrest?

## CITATIONS

An individual can also be brought into court on criminal charges without a full custodial arrest by use of citation release. Rather than taking an individual into custody, the police officer issues the individual a citation, directing the person to appear in court on a future date. It is very similar to a police officer issuing a traffic ticket. In most jurisdictions, it is used for minor offenses when the identity of the individual is confirmed and when there are no warrants outstanding for the person. Citation releases have advantages to both the police and the defendants. The police officer is spared the time and effort of transporting the individual to the jail or court, getting back on duty much more quickly, and the defendant is spared the stress and inconvenience of being taken into custody. In some jurisdictions, citations are referred to as “appearance tickets.”

The ABA has called for the “use of citations to the greatest degree consistent with public safety.” (Standard 10-2.3.) It says that citations should be used where the person is charged with a “minor” offense. According to the ABA, “[i]n determining whether an offense is minor, the police officer should consider whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.” (Standard 10-2.3.) A citation is not appropriate, says the ABA, when the person fails to identify himself or herself, refuses to sign the citation, has no ties to the community, has prior failures to appear in court, is in violation of release conditions in other cases, or “poses a substantial likelihood of continuing the criminal conduct if released.” (Standard 10-2.1.)

Several tribes have established codes governing the citation release process. At least one tribe has a presumption for release on citation for regular misdemeanor cases, while leaving the citation decision to the police officer’s discretion in gross misdemeanor cases.

### ***Subd. 1. Mandatory Issuance of Citation.***

#### *(1) For Misdemeanors.*

*(a) By Arresting Officers. Law enforcement officers acting without a warrant, who have decided to proceed with prosecution, shall issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation. The citation may be issued in lieu of an arrest, or if an arrest has been made, in lieu of continued detention. If the defendant is detained, the officer shall report to the tribal court the reasons for the detention. Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued.*

*(b) At Place of Detention. When a person is arrested without a warrant for a misdemeanor or misdemeanors and is brought to a police station or jail, the officer in charge of the police station or jail shall issue a citation in lieu of continued detention unless it reasonably appears to the officer that detention is necessary to prevent bodily*

*harm to the accused or another or further criminal conduct or that there is a substantial likelihood that the accused will fail to respond to a citation. If the defendant is detained, the officer in charge shall report to the tribal court the reasons for the detention. Provided, however, that for misdemeanors not punishable by incarceration, a citation shall be issued.*

*(2) For Misdemeanors and Gross Misdemeanors When Ordered by Prosecuting Attorney or Judge. An arresting officer acting without a warrant or the officer in charge of a police station or other authorized place of detention to which a person arrested without a warrant has been brought shall issue a citation in lieu of continued detention if so ordered by the prosecuting attorney or by the judge of tribal court or by any person designated by the tribal court to perform that function.*

***Subd. 2. Permissive Authority to Issue Citations for Gross Misdemeanors.*** *When a law enforcement officer acting without a warrant is entitled to make an arrest for a gross misdemeanor or a person arrested without a warrant for a gross misdemeanor is brought to a police station or jail, the officer in charge of the police station or jail may issue a citation in lieu of arrest or in lieu of continued detention if an arrest has been made, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that the accused may fail to appear in response to the citation. Rules of the White Earth Band of Chippewa – Rule 6.01.*

Several other tribes leave it to the discretion of the police officer whether to issue a citation or make a custodial arrest. However, as the example from the code of the Makah Indian Tribe shows, it is important to define the factors that the police officer is to take into consideration in deciding whether to arrest or cite the individual. The code should also describe the information to be contained in the citation, including very clear directions about when and where the defendant is to appear in court. The citation, once signed, constitutes the defendant's written promise to appear in court.

*Whenever a person is arrested for a violation of this Code or any other resolution, ordinance or regulation of this Code or any other resolution, ordinance or regulation of the Makah Tribe, the arresting officer or any other authorized law enforcement officer in the field may serve upon such person a citation and notice to appear in court in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the enforcement officer may consider the following factors:*

*Whether the person has identified himself satisfactorily;*

*Whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property or breach of the peace;*

*Whether the person has ties to the community or is a local resident, so as to provide reasonable assurance of his appearance before the Tribal Court, or whether there is substantial likelihood that he will refuse to respond to the citation; and*

*Whether the person previously has failed to appear in response to a citation issued pursuant to this section or to other lawful processes of the Tribal Court.*

*The citation written to the offender by the officer shall include the name of the person, his address, the date of birth and sex, the date, time, place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person to sign a promise to appear.*

*To secure his release in the field, the person must give his written promise to appear in court as required by the citation.*

*The citation shall also state the time and place at which a person is to appear in Tribal Court to hear the charges against him, be arraigned and post bail, which shall not be less than 72 hours after the date of the citation, not more than 15 days after the date of the citation. Code of the Makah Indian Tribe – Title 5, Chapter 3, Section 2.3.01 and 2.3.02.*

**See also:**

- **Code of the Absentee Shawnee Tribe of Oklahoma – Chapter 2, Section 203.**
- **Code of the Cheyenne-Arapaho Tribe of Oklahoma – Title 2, Sub-Part C, Section 203.**
- **Code of the Confederated Tribe of Siletz Indians of Oregon – Chapter 3.**
- **Code of the Fort McDowell Yavapai Nation – Chapter 5, Article III, Section 5-33(c).**
- **Code of the Oneida Indian Nation – Chapter 2, Section 204.**
- **Code of the Pawnee Tribe of Oklahoma – Title V, Chapter 2, Section 203.**
- **Code of the Yomba Shoshone Tribe – Title Four, Section 10.**

**Discussion Questions:**

1. What criteria should govern the use of citations in your tribe?
2. How much discretion should law enforcement officers have in deciding whether to use a citation in lieu of arrest?

## USE OF A BAIL SCHEDULE

Many jurisdictions, both county and tribal, use bail schedules, which are lists of charges and a corresponding bail amount, typically set by the court, to go along with each charge. Bail schedules are designed to be used in the time period between the arrest of the individual and his or her initial appearance in court. If, for example, an individual is arrested for theft and the proscribed bail amount for theft on the bail schedule is \$500, the individual can be released by posting that bond before seeing a judge.

Bail schedules do have the advantage of possibly saving persons from having to spend what perhaps could be several days in jail pending the initial appearance. There is not consensus, however, over the use of these schedules. The ABA states that bail schedules should never be used. (Standard 10-5.3 (e).) The ABA's rationale for this position is that "bail schedules are arbitrary and inflexible: they exclude consideration of factors other than the charge that may be far more relevant to the likelihood that the defendant will appear for court dates.... They enable the unsupervised release of more affluent defendants who may present real risks of flight or dangerousness, who may be able to post the required amount easily and for whom the posting of bail may be simply the cost of doing "business as usual.'" (Commentary to Standard 10-5.3 (e).)

A number of tribal codes address the use of bail schedules. The following tribal codes leave it up to the court to determine whether to establish a bail schedule.

*The Chief Judge may establish a bail schedule for all offenses under this Code. Any person arrested and taken into custody for violation of this Code may be released upon posting the specified bail with the clerk, or other person authorized by the Court to receive bail, unless release on personal recognizance or detention is ordered by the Court. Code of the Confederated Tribes of Colville Reservation – Title II, Chapter 2, Section 2-1-132.*

\* \* \*

*The Chief Judge may establish a bail schedule for all offenses under this Code and any other regulations, resolutions or ordinances promulgated by the Makah Tribal Council. Any person arrested and taken into custody for violation of such Code or regulations may be released before arraignment upon posting the specified bail with the Clerk or other person authorized by the Court to receive bail, unless release on personal recognizance or detention is ordered by the Court. As a condition to any release under this section, such person shall sign a written promise to appear in court at the time set for arraignment. Failure to appear may result in forfeiture of bail and arrest. Code of the Makah Indian Tribe – Title 5, Chapter 5, Section 2.5.03.*

See also:

- **Code of the Absentee Shawnee Tribe of Oklahoma – Chapter 7, Section 701 (g).**

- **Code of the Confederated Salish and Kootenai Tribes – Title 2, Chapter 2, Section 2-2-605.**
- **Code of the Nisqually Indian Tribe – Title 24, Sub-Chapter 4, Section 4.19.02.**
- **Code of the Oglala Sioux – Chapter 8, Section 4-2 (b).**
- **Code of the Poarch Band of Creek Indians – Section 9-1-4.**
- **Code of the Tulalip Tribe of Washington – Title Two, Part 6, Section 2.6.5.**
- **Code of the Yomba Shoshone Tribe, Title Four, Section 3.**

While the preceding codes leave it to the discretion of the court to establish a bail schedule, at least one tribal code mandates that the court set a bail schedule for certain categories of offenses.

*A bail schedule for Class B and C offenses shall be adopted by the Court and a defendant may obtain release from jail at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged; provided, however, that if the arresting officer or complaining witness shall certify to the jailer, or if the jailer shall certify based on his own observation, that the defendant is at the time he is brought to the jail unconscious or in an intoxicated or apparently intoxicated condition, or for any reason does not appear to be in a conscious and sober condition, such defendant shall not be allowed to post bail according to the bail schedule for 8 hours. The defendant shall be informed by the jailer of his right to make bail at the appropriate time such is available. Bail for Class A offenses may be set only by a judge upon consideration of the relevant factors and must be set or denied within 24 hours following arrest. **Code of the Ute Indian Tribe – Title XII, Rule 34 (2)).***

At least one other tribe prohibits the use of bail schedules for persons charged with domestic violence for the first 24 hours after arrest.

*Law enforcement shall immediately arrest and take into custody any person whom the officer has probable cause to believe has committed an act of domestic violence. The victim of the domestic violence need not sign a complaint. Such person shall be charged with any appropriate crime and held without bail for a period not less than twenty-four (24) hours. No bail schedule shall be set until the "cooling off" period has expired. **Code of the Nisqually Indian Tribe, Title 24, Sub-Chapter IV, Section 24.16.05.***

### **Discussion Questions:**

1. Could a Bail Schedule serve a useful purpose in your tribe?
2. Who should have the authority – tribal council or the court – to develop the Bail Schedule?
3. Should any charge be precluded for release through the Bail Schedule?

## INITIAL COURT APPEARANCE

The initial appearance in court after an arrest, summons, or citation release is called an arraignment in most jurisdictions. Unless the case began as a result of a warrant or summons issued by a court, this hearing is the first opportunity for judicial review of the charges.

Several things happen at this hearing. The defendant is informed of the charges, the defendant enters a plea of guilty or not guilty – typically, at this stage, it would be the latter plea – and the defendant’s pretrial release status is addressed. The ABA says that this hearing “should take place in such physical surroundings as are appropriate to the administration of justice. Each case should receive individual treatment, and decisions should be based on the particular facts of the case and information relevant to the purposes of the pretrial release decision as established by law and court procedure. The proceedings should be conducted in clear and easily understandable language calculated to advise defendants effectively of their rights and the actions to be taken against them. The first appearance should be conducted in such a way that other interested persons may attend or observe the proceedings.” (Standard 10-4.3.)

The Arraignment Sections of the Code of the Absentee Shawnee Tribe of Oklahoma and of the Choctaw Rules of Criminal Procedure set forth good examples of the procedures at this hearing.

- (a) Arraignment Defined. Arraignment is the bringing of an accused person before the Court, informing him of the charge against him and of his rights, receiving his plea and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a Criminal Summons or Citation or, if the accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.*
- (b) Procedure at Arraignment. Arraignments shall be conducted in the following order:*
- (1) The Judge or Magistrate should request the Attorney General to read the charges.*
  - (2) The Attorney General should read the entire complaint, deliver a copy to the defendant unless he has previously received a copy thereof, and state the minimum and maximum authorized penalties.*
  - (3) The Judge or Magistrate should determine that the accused understands the charge against him and explain to the defendant that he has the following rights:
    - (i) the right to remain silent.*
    - (ii) to be tried by a jury upon request.*
    - (iii) to consult with an attorney at his own expense and that if he desires to consult with an attorney the arraignment will be postponed.**
  - (4) The Judge or Magistrate shall ask the defendant if he wishes to obtain counsel and, if the defendant so desires, he will be given a reasonable time to obtain counsel. If the defendant shows his indigency and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea until the date set for his appearance.*
  - (5) The Judge or Magistrate should then ask the defendant whether he wishes to plead*

**"guilty," "nolo contendere," or "not guilty." Code of the Absentee Shawnee Tribe of Oklahoma – Chapter Two, Section 204.**

\* \* \*

- (a) *Upon the first appearance of the defendant before the Choctaw Tribal Court in response to a summons or warrant or following arrest, the judge shall inform the defendant in English or when necessary in the Choctaw language of the following:*
- (1) *the offense(s) charged;*
  - (2) *the maximum penalty and mandatory minimum penalty, if any, provided for the offense charged;*
  - (3) *the right to bail;*
  - (4) *the right, if any, to the assistance of a lay advocate or legal counsel at every stage of the proceedings;*
  - (5) *the right, if any, to representation by an attorney at defendant's own expense;*
  - (6) *the right to remain silent and that any statement made by the defendant may be used against the defendant;*
  - (7) *the right, if any, to a jury trial;*
  - (8) *the right, if the defendant desires reasonable time and opportunity, to consult with counsel.*
- (b) *The judge shall thereafter require the defendant to plead to the complaint as follows:*
- (1) *not guilty;*
  - (2) *guilty;*
  - (3) *not guilty by reason of insanity; or*
  - (4) *no contest.*

*If the defendant refuses to answer, a plea of not guilty must be entered. If the defendant pleads "not guilty by reason of insanity," the action shall be transferred to the Behavioral Health Department or an appropriate state or*

*federal agency for a determination of defendant's competency to stand trial. If the defendant pleads "not guilty," the action shall be set for trial.*

- (c) *If the defendant pleads "guilty," the judge shall accept the plea only after determining that the plea is made voluntarily with a full understanding of the nature of the charge and the consequences of the plea. The judge shall not enter a judgment upon a plea of guilty unless he is satisfied that there is a factual basis for the plea. If a plea of guilty is accepted and judgment entered, the judge shall sentence the defendant immediately or within a reasonable period, giving the defendant an opportunity to inform the court of mitigating facts.*
- (d) *The court may, in its discretion, allow a defendant to withdraw a plea of guilty whenever it appears that the interests of justice and fairness would be served thereby.*
- (e) *An arraignment may be waived, by the defendant filing a written plea of not guilty, signed by defendant and defendant's attorney, no later than forty-eight (48) hours prior to the scheduled arraignment. The waiver must indicate the date and time of arraignment and the name of the arraigning judge. **Rules of the Mississippi Band of Choctaw Indians – Rule 9.***

**See also:**

- **Code of the Cheyenne-Arapaho Tribes of Oklahoma – Title 2, Sub-Part C, Section 204.**
- **Code of the Hopi Tribe – Title II, Chapter 6, Section 2.6.1.**
- **Rules of the Nez Perce – Title 2, Rule 10.**
- **Code of the Oneida Indian Nation – Chapter 2, Section 203.**
- **Code of the Pawnee Tribe of Oklahoma – Title V, Chapter 2, Section 204.**
- **Code of the Tulalip Tribes of Washington – Title 2, Section 2.5.2.**

The Fort Peck Assiniboine-Sioux have a provision in their code specifically allowing for initial appearance by video.

*(b) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication, if available. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing. **Code of the Fort Peck Assiniboine-Sioux – Title VI, Chapter 2, Sec. 205.***

**Discussion Question:**

1. What matters should be handled at initial appearance in your tribal court?

## TIMING OF INITIAL APPEARANCE

For many years, the only rule that governed the timing of the initial judicial review of a warrantless arrest in the federal and state systems was that the review had to be “prompt.”<sup>6</sup> In 1991, the U.S. Supreme Court defined what is meant by “prompt” by ruling that a defendant cannot be held for more than 48 hours, including weekends and holidays, after a warrantless arrest before a judicial determination of probable cause.<sup>7</sup> The 48-hour period was selected because the Court felt that that was sufficient time to complete all administrative steps incident to arrest. Since the probable cause determination typically takes place at the initial appearance in court, many jurisdictions had to adjust to guarantee that hearing within 48 hours. This included, in many jurisdictions, having bail-setting judicial officers on duty 24 hours a day, seven days a week.

Tribal courts can be in a much different situation than their counterparts in federal and state jurisdictions. Many tribes cover vast geographical areas. In many, the tribal courts operate on a part-time basis. Perhaps as a reflection of this, tribes vary in the amount of time that is allowed to lapse before the defendant must be brought before the court for the first time.

At least one tribe establishes a 24-hour limit, inclusive of weekends and holidays, and another a 48-hour limit.

*All persons arrested for a Class A offense shall be brought before a Tribal Judge within twenty-four (24) hours of the arrest excluding holidays and weekends. Rules of the Mississippi Band of Choctaw Indians – Title 2, Rule 8(a)(1)(i).*

\* \* \*

*An arraignment shall be held in open court without unnecessary delay after the accused is taken into custody. In no instance shall arraignment be later than the next regularly scheduled session of court, or within forty-eight (48) hours, whichever occurs first, including Saturdays, Sundays, and legal holidays. Code of the Bay Mills Tribe – Chapter V, Part One, Section 510.*

Another tribe (**Confederated Salish and Kootenai Tribes – Title 2, Chapter 2, Section 2-2-501**) sets the limit at two working days. The following tribal code sets a time limit of 72 hours, exclusive of weekends and holidays, between arrest and the initial judicial review.

*No person shall be detained, jailed or imprisoned under this Code for a period longer than seventy-two (72) hours (exclusive of Saturdays and Sundays and holidays) without a preliminary (arraignment) hearing before the Tribal Court and shall be released from custody after seventy-two (72) hours if no hearing is held and no temporary commitment order is issued. During the period of detention, the person may be taken under protective custody to a treatment center if, in the opinion of the Officer, this procedure is necessary*

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<sup>6</sup> *Gerstein v. Pugh*, 420 U.S. 103.

<sup>7</sup> *Riverside v. McLaughlin*, 500 U.S. 44.

*for the well-being of the arrested or detained party. If a longer time than seventy-two (72) hours is needed before being brought before a Judge, the person shall be released on his own recognizance or bail pending time of arraignment. Code of the Pueblo of San Ildefonso – Title IV, Chapter 8, Section 8.11.*

One tribe (**Yomba Shoshone Tribe – Title Four, Section 4.c**) mandates the release of any person in custody 72 hours after arrest who has not yet been to an initial appearance. Several other tribes do not allow a defendant to remain detained beyond 72 hours without a signature from a judge on a commitment forms, but these codes do not specify that an appearance must be made by the defendant.

*No person shall be detained or jailed for a period longer than seventy-two (72) hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of the Judge has been issued. (Rules of the Oneida Indian Nation – Chapter 2, Rule 206.*

**See also:**

- **Code of the Absentee Shawnee Tribe of Oklahoma – Chapter 2, Section 205.**
- **Code of the Cheyenne-Arapaho Tribes of Oklahoma – Title 2, Sub-Part C, Section 205.**
- **Code of the Pawnee Tribe of Oklahoma – Title V, Chapter 2, Section 205.**

**Discussion Questions:**

1. What is the earliest practical time in your tribe to get defendants before a court for an initial appearance?
2. What factors play a role in determining how much time it takes?
3. What can be done to minimize the amount of time it takes?

## EXCESSIVE BAIL /RIGHT TO BAIL

The Indian Civil Rights Act of 1968 states that no tribe shall “require excessive bail.” The term “excessive bail” has a long history, surrounded by uncertainty as to its meaning. It can be traced to the English Bill of Rights, which was enacted by Parliament in 1689 in response to judges setting very high bonds that defendants could not meet. In Colonial America, the term first appeared in the Virginia Declaration of Rights, written in 1776. Many states then incorporated the term into their state constitutions, and it was included as part of the Eighth Amendment to the U.S. Constitution. None of these documents sought to define what the term meant.

It was not until 1951 that the U.S. Supreme Court defined the term for federal and state courts. The Court stated that: “Bail set at a figure higher than the amount reasonably calculated to (assure the defendant’s presence at trial) is ‘excessive’ under the Eight Amendment.”<sup>8</sup> Later that same term, the Court was called upon to rule whether the “excessive bail” clause conferred a right to bail. In ruling that it did not, the Court noted that “the very language of the Amendment fails to say all arrests must be bailable.”<sup>9</sup>

As to the excessiveness of bail, at least two tribes have sought to define what is meant by “reasonable bail.”

*(3) Reasonable bail reflects an amount which is:*

*(a) sufficient to ensure the presence of the defendant in any pending criminal proceeding;*

*(b) sufficient to assure compliance with the conditions set forth in a bail or release order;  
and*

*(c) not oppressive. Code of the Confederated Salish and Kootenai Tribes – Title 2, Chapter 2, Section 2-2-603.*

**See also:**

- **Code of the Tulalip Tribe of Washington, Title 2, Part 6, Section 2.6.3.**

Several tribes place limits on the amount of bail that the court is allowed to set. For example, the **Confederated Tribes of Colville Reservation (Section 2-1-130)**, the **Confederated Tribes of Siletz Indians of Oregon (Chapter 3)** and the **Ute Indian Tribe (Rule 34 (3))** limit the amount of bail to two times the maximum fine for the offense charged. The **Pueblo of San Ildefonso (Section 8.8 (2))** limit the bail amount to two times the minimum financial penalty, with a cap set at \$500. The **Hopi Tribe (Section 2.54)** sets the limit at four times the maximum fine. The **Nisqually Indian Tribe (Section 24.19.01 (a) (ii))** establishes a limit of \$5,000 per charge

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<sup>8</sup> *Stack v. Boyle*, 342 U.S. 1.

<sup>9</sup> *Carlson v. Landon*, 342 U.S. 524.

Several tribes have adopted language conveying a right to bail in all cases. Here are some examples.

*Every person charged with an offense before the Court may be admitted to bail,...*  
**Code of the Pueblo of San Ildefonso – Title IV, Chapter 8, Section 8.8.**

\* \* \*

*No person charged with an offense before any Fort McDowell Court shall be denied bail.*  
**Code of the Fort McDowell Yavapai Nation – Chapter 5, Article III, Section 5-37.**

\* \* \*

*Every person charged with a criminal offense before the Nisqually Tribal Court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required: ...* **Code of the Nisqually Indian Tribe, Title 24, Sub-Chapter IV, Section 24.19.01.**

\* \* \*

*A person charged with an offense isailable 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.* **Code of the Tulalip Tribe of Washington, Title 2, Part 6, Section 2.61.**

See also:

- **Code of the Bay Mills Tribe – Chapter V, Part One, Section 512.**
- **Code of the Confederated Salish and Kootenai Tribes – Title 2, Chapter 2, Section 2-2-601.**
- **Code of the Sault Ste. Marie Tribe of Chippewa Indians – Chapter 70, Section 70.116.**

At least one tribe has established exceptions to the right to bail.

*The Court may deny release on bail pending trial or appeal when a Class A offense is involved and it appears reasonably certain that the defendant will pose a serious threat to the safety and well being of the Reservation and its residents if released.* **Code of the Ute Indian Tribe – Title 12, Rule 34 (8).**

**Discussion Questions:**

1. The Indian Civil Rights Act prohibits the use of excessive bail, but it leaves it to each tribe to determine what constitutes excessive bail. What factors are important to your tribe in determining what bail amount is excessive?

2. In what circumstances, if any, should a right to bail be denied?

## PRESUMPTION OF RELEASE ON THE LEAST RESTRICTIVE CONDITIONS

The system of bail in the United States underwent a major reform in the 1960s. Up until that time, there was an almost exclusive reliance on money bail as a mechanism for pretrial release. This system obviously favored those with the means to post bail.

In 1966, Congress passed and President Johnson signed the Bail Reform Act. This act, for the first time, established a range of options that would be available to federal courts in setting the most appropriate release. Included were a number of non-financial options, such as release on recognizance – or the defendant’s personal promise to appear, and release with conditions, such as regular reporting in to a court agency, or referral to treatment. The act also established that the court was to select the least restrictive of these options that were necessary to reasonably assure the defendant’s appearance in court. In 1984, Congress amended the Bail Reform Act, requiring that the court consider the defendant’s danger to the community as well as risk of failure to appear. Except for some limited situations, which will be described later in the discussion of detention without bail, the presumption of release on the least restrictive conditions remained.

Most states have also amended their statutes to create a clear presumption for release on the least restrictive conditions, starting with release on recognizance, with financial bail being seen as the most restrictive. As the ABA explained, “[t]he presumption constitutes a policy judgment that restrictions on a defendant’s freedom before trial should be limited to situations where restrictions are clearly needed, and should be tailored to the circumstances of the individual case. Additionally, the presumption reflects a practical recognition that unnecessary detention imposes financial burdens on the community as well as on the defendant. (Commentary to ABA Standard 10-1.2.)

Several codes clearly establish a presumption for release on the least restrictive conditions.

*Any person charged with an offense shall be released without bail pending the first court appearance when ordered by the prosecuting attorney, the judge of tribal court, or by any person designated by the tribal court to perform that function. Upon appearance before a judge, judicial officer, or the tribal court, a person so charged shall be ordered released pending trial or hearing on personal recognizance or on order to appear or upon the execution of an unsecured appearance bond in a specified amount, unless the tribal court, judge or judicial officer determines, in the exercise of discretion, that such a release will be inimical of public safety or will not reasonably assure the appearance of the person as required. **Rules of the White Earth Band of Chippewa – Rule 6.02***

This code, and others like it, then goes on to list the conditions that can be imposed if release on personal recognizance or unsecured appearance bond will not reasonably assure the defendant’s appearance. The language of this provision is very similar to that found in federal and state laws.

*When such a determination is made, the tribal court, judge or judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or hearing, or when otherwise required, or, if no single condition gives that assurance, any combination of the following conditions:*

*(a) place the person in the care and supervision of a designated person or organization agreeing to supervise the person;*

*(b) place restrictions on the travel, association or place of abode during the period of release;*

*(c) require the execution of an appearance bond in an amount set by the tribal court with sufficient solvent sureties, or the deposit of cash or other sufficient security in lieu thereof; or*

*(d) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.* **Rules of the White Earth Band of Chippewa – Rule 6.02**

**See also:**

- **Code of the Absentee Shawnee Tribe of Oklahoma – Chapter 7, Section 701.**
- **Code of the Confederated Salish and Kootenai Tribes – Title 2, Chapter 2, Section 2-2-604.**
- **Code of the Mississippi Band of Choctaw Indians – Title II, Rule 8(a)(1)(ii).**
- **Code of the Poarch Band of Creek Indians – Section 9-1-4.**
- **Code of the Sault Ste. Marie Tribe of Chippewa Indians – Chapter 70, Section 70-116.**
- **Code of the Tulalip Tribes of Washington – Title 2, Part 5, Section 2.6.4.**

At least one tribe has designed separate pretrial release decision making procedures for defendants charged with domestic violence offenses.

*a) In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the court shall review the facts of the arrest and detention of the person and determine whether the person:*

*(1) is a threat to the alleged victim;*

*(2) is a threat to public safety; and*

*(3) is reasonably likely to appear in court.*

*(b) Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the court shall make findings on the record if possible concerning the determination made in accordance with subsection 1 and may impose conditions of release and/or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:*

*(1) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim;*

*(2) An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, whether directly or indirectly;*

*(3) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;*

*(4) An order prohibiting the person from using or possessing a firearm or other weapon as specified by the court.*

*(5) An order suspending or revoking a person's privilege to hunt with a firearm. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements;*

*(6) An order prohibiting the person from possession or consumption of alcohol or controlled substances.*

*(7) Any other order required to protect the safety of the alleged victim and to assure the appearance of the person in court.*

*(c) The bond for the crimes of domestic violence and violation of a domestic protection order shall be a cash bond in an amount set by the court in the bond schedule.*

*(d) The court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.*

*(e) If conditions of release are imposed without a hearing, the arrested or charged person may request a hearing before the court to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions. **Rules of the Nez Perce – Title 2, Rule 10a.***

Below is an excerpt from the Federal Bail Reform Act of 1984, setting forth the presumption for release on the least restrictive conditions in the federal system.

*(b) Release on personal recognizance or unsecured appearance bond. The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.*

*(c) Release on conditions.*

*(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person*

*(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release; and (B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person*

*(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;*

*(ii) maintain employment, or, if unemployed, actively seek employment;*

*(iii) maintain or commence an educational program;*

*(iv) abide by specified restrictions on personal associations, place of abode, or travel;*

*(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;*

*(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;*

*(vii) comply with a specified curfew;*

*(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;*

*(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act ([21 U.S.C. §802](#)), without a prescription by a licensed medical practitioner;*

*(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;*

*(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial officer may require;*

*(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required*

*and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;*  
*(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and*  
*(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.*  
***Federal Bail Reform Act – Section 3142.***

**Discussion Questions:**

1. Should your tribal code establish a presumption for release on least restrictive conditions?
2. Setting any non-financial conditions of pretrial release requires having the resources to monitor those conditions. What resources currently exist within your tribe to provide that monitoring? What other resources would have to become available?

## IMPOSITION OF FINANCIAL BAIL

Financial bail is meant to be a condition of release, not a means to keep a defendant detained. Yet data from state felony courts shows that half of defendants who have a money bond set remain detained throughout the pretrial period.<sup>10</sup>

The American Bar Association makes clear that release with financial conditions should be used only as a last resort. “Release on financial conditions should be used only when no other conditions will ensure appearance. When financial conditions are imposed, the court should first consider releasing the defendant on an unsecured bond. If unsecured bond is not deemed a sufficient condition of release, and the court still seeks to impose monetary conditions, bail should be set at the lowest level necessary to ensure the defendant’s appearance and with regard to a defendant’s financial ability to post bond.” (ABA Standard 10-1.4 (c).) The ABA also states that “[f]inancial conditions should not be employed to respond to concerns for public safety.” (ABA Standard 10-1-4 (d).) Finally, the ABA says that judges “should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant’s inability to pay.” (ABA Standard 10-1-4 (e).) This language is echoed in the Federal Bail Reform Act of 1984: “The judicial officer may not impose a financial condition that results in the pretrial detention of the person” (Bail Reform Act, Section 3142 (c) (2).)

At least one tribe has established restrictions on holding defendants unable to post the bail.

*A person for whom conditions of release are imposed and who after seventy-two hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. Code of the Absentee Shawnee Tribe of Oklahoma – Chapter 7, Section 701 (d).*

### Discussion Questions:

1. What role should money bail play in your tribe?
2. How should the tribal court respond when a defendant cannot post a money bail?

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<sup>10</sup> Thomas H. Cohen and Brian A. Reaves, *Felony Defendants in Large Urban Counties*, U.S. Department of Justice, Bureau of Justice Statistics (2006).

## FACTORS THE COURT IS TO CONSIDER IN THE RELEASE DECISION

In setting pretrial release conditions, courts are to consider the risks each individual defendant poses of being a danger to the community or of failing to appear in court. According to the ABA, the factors that the court should consider include: the nature and circumstances of the charge; the person's, mental and physical condition, family ties, employment, length of residence in the community, prior criminal history, and prior appearance in court; and whether the person was on probation, parole, or pretrial release at the time of the arrest. (ABA Standard 10-4.2 (g).)

Below are two examples of how tribal codes have defined the factors that the court is to take into consideration.

*In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at Court proceedings or of flight to avoid prosecution or failure to appear at Court proceedings. Code of the Absentee Shawnee Tribe of Oklahoma – Chapter Seven, Section 701(b).*

\* \* \*

*In determining whether to grant PR, the judge may consider the following factors:*  
(a) *whether the person has identified himself satisfactorily;*  
(b) *whether detention appears necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace;*  
(c) *whether the person has ties to the Tribes or is a local resident, so as to provide reasonable assurance of his appearance before the Court, or whether there is substantial likelihood that he will refuse to appear for trial; and*  
(d) *in any case, to secure his release, the person must give written promise to appear in Court. Code of the Confederated Tribes of Colville Reservation – Title II, Chapter 2, 2-1-131.*

See also:

- **Code of the Confederated Salish and Kootenai Tribes – Title 2, Chapter 2, Section 2-2-602.**
- **Code of the Tulalip Tribes of Washington – Title 2, Part 6, Section 2.6.2.(2).**
- **Rules of the White Earth Band of Chippewa – Rule 6.02.2.**
- **Code of the Yomba Shoshone Tribe – Title Four, Section 5(c).**

One tribe specifies in its Court Rules that probation or some other qualified entity should conduct an investigation into these factors in each individual case.

*In order to acquire the information required for determining the conditions of release, an investigation into the accused's background may be made prior to or contemporaneously with the defendant's appearance before the tribal court, judge or judicial officer. The tribal court's probation service or other qualified facility available to the court may be directed to conduct the investigation. Any information obtained from the defendant in response to the inquiry during the course of the investigation and any evidence derived from such information shall not be used against the defendant at trial. This shall not preclude the use of evidence obtained by other independent investigation.*

**Rules of the White Earth Band of Chippewa – Rule 6.02.3.**

The Federal Bail Reform Act also lists the factors to guide the judicial officer in making the pretrial release decision.

*(g) Factors to be considered. The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning*

*(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;*

*(2) the weight of the evidence against the person;*

*(3) the history and characteristics of the person, including*

*(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and*

*(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and*

*(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required. **Federal Bail Reform Act of 1984 – Section 1342 (g).***

### **Discussion Questions:**

1. Pretrial release decisions require a balance between the interests of the community in assuring the appearance of the defendant and the safety of the public, and the interests of the defendant to be at liberty while charges are being resolved. What factors should be considered in your tribe to best strike that balance?
2. Is the information available at the initial court appearance so that the court can consider each identified factor?
3. If not, what resources would be required to get that information to the court?

## THE RELEASE ORDER

In order for defendants to understand and courts to enforce conditions of pretrial release those conditions should be in writing, as part of a court order. The ABA Standards state that the order “should serve as a guide for the defendant’s conduct,” and should include the consequences for violating the conditions. (Standard 10-5.4) Below are two examples of codes describing the release order, one from a tribe and the other from the Federal Bail Reform Act.

*A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation. **Code of the Absentee Shawnee Tribe of Oklahoma – Chapter Seven, Section 701 (c).***

\* \* \*

*Contents of release order. In a release order issued under subsection (b) or (c) of this section, the judicial officer shall*

*(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person’s conduct; and*

*(2) advise the person of*

*(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;*

*(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person’s arrest; and*

*(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant). **Federal Bail Reform Act of 1984 – Section 3142 (h).***

## AMENDING THE RELEASE ORDER

Courts have the authority to amend their release orders whenever circumstances merit. This includes both increasing and decreasing the restrictiveness of the conditions. The ABA states that whenever circumstances change and upon motions by the prosecution or defense, the court “should promptly reexamine its release decision including any conditions placed upon release or its decision authorizing pretrial detention....The judicial officer may, after notice and hearing when appropriate, at any time add or remove restrictive conditions of release, short of ordering pretrial detention, to ensure court attendance and prevent criminal law violation by the defendant.” (ABA Standard 10-5.12 (a).)

Below are several examples of language in tribal codes on amending release orders. In these examples, a motion by the prosecution or defense is not required.

*Upon good cause shown, the Court may increase or decrease the bail originally set (but not over \$500.00). Code of the Pueblo of San Ildefonso – Title IV, Chapter 8, Section 8.9.*

\* \* \*

*The Court may revoke release of any defendant and order the defendant committed at any time if it determines that the conditions of release will not reasonably assure the appearance of the defendant or if any conditions of release have been violated. Code of the Chitimacha Tribe of Louisiana – Title II, Chapter 2, Section 402 (c).*

\* \* \*

*When proof is made to the Court having authority to commit on criminal charges that a person previously admitted to bail on any such charge is about to abscond, or that his bail is insufficient, the Court may increase the amount of required bail or, in default thereof, cause him to be committed in jail. Upon good cause shown, the Trial Court may reduce the bail originally set. Code of the Hopi Tribe – Title II, Section 2.56.*

\* \* \*

*The court may revoke its release of the defendant and order him committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated. Code of the Oglala Sioux – Chapter 8, Section 4-2 (d).*

The Federal Bail Reform Act has provisions allowing the prosecutor and the defendant to file motions asking that the court amend the conditions of release.

*(a) Review of a release order. If a person is ordered released by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court*

*(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and*

*(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.*

*The motion shall be determined promptly. **Federal Bail Reform Act of 1984, Section 3145 (a).***

## APPEAL OF RELEASE DECISION

At least one tribal code outlines the procedures for a defendant appealing a pretrial release decision, starting with a magistrate, then going to the trial court, and finally appealing to the tribal Supreme Court.

*(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to Section 701(d) or Section 701(e) by a Magistrate of the Court, may move the Court to amend the order and have such motion determined by a Judge of the Court. Said motion will be determined promptly.*

*(b) In any case in which a person is detained after (1) a Judge of the Tribal Court denies a motion, under subsection (a) above, to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a Judge of the Tribal District Court, an appeal may be taken to the Supreme Court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is not so supported, the Supreme Court may remand the case for further hearing, or may, with or without additional evidence, order the person released pursuant to Section 701 upon such conditions as the Supreme Court determines to be proper. This appeal shall be determined promptly. **Code of the Absentee Shawnee Tribe of Oklahoma – Chapter Seven, Section 702.***

### Discussion Questions:

1. Should a defendant have a right to appeal the pretrial release decision of the court in your tribe?
2. Should the prosecution have a right of appeal?
3. If so, what is the appropriate venue for the appeal?

## SANCTIONS FOR VIOLATIONS OF RELEASE CONDITIONS

The ABA states that defendants who violate their conditions of release “should be subject to modification of release conditions, revocation of release, or an order of detention.” (ABA Standard 10-5.6.) The Federal Bail Reform Act provides for revocation of release, an order of detention, and prosecution for contempt of court. (Section 3148.) In the examples below, two approaches, roughly similar, to responding to violations are spelled out.

*A person who has been released under this Rule, and who has violated a condition of his release, is subject to a revocation of release and an Order of Detention. An attorney of the Prosecution Office may initiate the proceeding for the revocation of an order for release by filing a motion with the court. A judge may issue a warrant for the arrest of the person charged with violating a condition of release, and the person shall be brought before a judge for a hearing to determine if the person has violated a condition of release. The judge shall enter an Order of Revocation and Detention if, after hearing, the judge finds there is probable cause to believe that the person has committed a federal, state or Tribal crime while on release and may enter such an order if there is probable cause that the person has violated any other conditions of release. **Rules of the Mississippi Band of Choctaw Indians – Title II, Rule 8(a)(6).***

\* \* \*

*(1) 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 re-determine 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. Such time shall not be credited as time served under Section 2-2-1210 or 2-2-1211.*

*(2) 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.*

*(3) Neither a cash bond nor a commercial bond may be forfeit for violation of release conditions, except for failing to appear for court proceedings without a lawful excuse.*  
**Code of the Confederated Salish and Kootenai Tribes – Title 2, Chapter 2, Section 2-2-610.**

**See also:**

- **Code of the Tulalip Tribes of Washington, Title 2, Part 6, Section 2.6.10.**
- **Rules of the White Earth Band of Chippewa – Rule 6.0.3.**

**Discussion Question:**

1. Are there traditional responses to misconduct within your tribe that might be appropriate for use for defendants fail to comply with pretrial release conditions?

## **PENALTIES FOR FAILURE TO APPEAR**

The ABA recommends that when a defendant willfully fails to appear in court, the court should hold the defendant in contempt. The ABA also recommends that the defendant be charged with a separate bail jumping offense, and notes that the court may wish to reconsider the defendant's release status. (Standard 10-5.5 and accompanying Commentary.)

At least three tribes, the Hopi, Nisqually and Ute, have codes that simply call for forfeiture of the bail bond. The language in the three codes is very similar. The Hopi provision is presented below.

*If the defendant fails to appear for trial judgment or when his personal appearance in Court is lawfully required, the Court may direct an entry of such failure to be made in the record, and the surety bond, or the money deposited instead of the bond, may be forfeited without further proceedings, or the Court may thereafter issue a warrant for the arrest of the defendant. Code of the Hopi Tribe – Title II, Section 2.5.8.*

**See also:**

- **Code of the Nisqually Indian Tribe – Section 24.19.03;**
- **Code of the Ute Indian Tribe – Rule 34 (6).**

The Code of the Absentee Shawnee also addresses bond forfeiture, but also incorporates provisions for a jail term and fines to be imposed.

*Whoever, having been released pursuant to this Chapter willfully fails to appear before the Court or a judicial officer as required, shall incur a forfeiture of any security which was given or pledged for his release, and in addition, shall, (1) if he was released in connection with a charge having banishment as a possible punishment, or while awaiting sentence or pending appeal after conviction of any offense having had banishment imposed as a part of the sentence, be subject to a fine of \$500.00 and imprisonment for a term of six months, and if banishment is imposed, one year shall be added to the term of banishment otherwise imposed, or (2) if he was released in connection with a charge other than as described, in (1) above, he shall be fined not more than the maximum provided for the offense charged or imprisoned for not more than six (6) months or both, or (3) if he was released for appearance as a material witness, shall be fined not more than Two Hundred Fifty Dollars (\$250.00) or imprisoned for not more than three (3) months or both. Code of the Absentee Shawnee Tribe of Oklahoma – Chapter Seven, Section 704.*

**See also:**

- **Mississippi Band of Choctaw Indians – Title II, Rule 8(a)(5).**

The Federal Bail Reform Act provides for forfeiture of bail and additional penalties for failure to appear. This code also addresses a definition of willful failure to appear by presenting the criteria for an affirmative defense for having missed a court appearance.

*Penalty for failure to appear*

*(a) Offense. Whoever, having been released under this chapter knowingly*

*(1) fails to appear before a court as required by the conditions of release; or*

*(2) fails to surrender for service of sentence pursuant to a court order; shall be punished as provided in subsection (b) of this section.*

*(b) Punishment.*

*(1) The punishment for an offense under this section is*

*(A) if the person was released in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction for*

*(i) an offense punishable by death, life imprisonment, or imprisonment for a term of 15 years or more, a fine under this title or imprisonment for not more than ten years, or both;*

*(ii) an offense punishable by imprisonment for a term of five years or more, a fine under this title or imprisonment for not more than five years, or both;*

*(iii) any other felony, a fine under this title or imprisonment for not more than two years, or both; or (iv) a misdemeanor, a fine under this chapter or imprisonment for not more than one year, or both; and*

*(B) if the person was released for appearance as a material witness, a fine under this chapter or imprisonment for not more than one year, or both.*

*(2) A term of imprisonment imposed under this section shall be consecutive to the sentence of imprisonment for any other offense.*

*(c) Affirmative defense. It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.*

*(d) Declaration of forfeiture. If a person fails to appear before a court as required, and the person executed an appearance bond pursuant to section 3142(b) of this title or is subject to the release condition set forth in clause (xi) or (xii) of section 3142 (c)(1)(B) of this title, the judicial officer may, regardless of whether the person has been charged with an offense under this section, declare any property designated pursuant to that section to be forfeited to the United States. **Federal Bail Reform Act of 1984 – Section 3146.***

**Discussion Question:**

1. Are there traditional responses to misconduct within your tribe that might be appropriate for use for defendants fail to appear in court?

## DETENTION WITHOUT BAIL

The federal system and several states allow for detention without bail in very carefully defined circumstances. Detention without bail is only appropriate, says the ABA, when it has been shown by clear and convincing evidence that there are no conditions or combination of conditions that can reasonably assure the safety of the community or the appearance of the defendant in court. (Standard 10-5.8.) Prior to making the decision to detain, the court should hold a hearing at which the defendant would be able to present witnesses on his or her own behalf and cross-examine prosecution witnesses. (Standard 10-5.10.) Defendants who are ordered detained without bail should receive an accelerated trial. (Standard 10-5.11.)

The Nisqually Tribal Code describes specific criteria for ordering a defendant to be held without bail pending trial.

**24.19.05 No Bail.** *The protection of individuals and the community demands that certain persons be held without bail or bond in exceptional circumstances. The Tribal Court, in its discretion, may refuse to provide release but only in the following situations: (a) The person has been charged with a crime of violence; and (i) The person has been recently convicted of another crime of violence; or (ii) The person has committed this offense while on probation or other release for another crime of violence; or (b) The person has been charged with obstructing justice by having threatened, injured or intimidated a Tribal Judge, witness or juror, or has attempted such threat, injury or intimidation; or (c) There is strong likelihood of flight to escape trial. Such a finding requires a documented history of such flight, or evidence or circumstances indicating that such flight is likely; or (d) The person represents a significant danger to the community. Such a finding requires a pattern of behavior evidenced by past and present conduct and a determination that no conditions for release are available which would reasonably assure the safety of the community.*

**24.19.06 No-Bail Hearings.** *(a) Denial of a right to bail or bond shall occur only after such request is made by the Tribal Prosecutor, and the Tribal Court has immediately held a pretrial detention hearing and determined by clear and convincing evidence that there is a substantial probability that the accused committed the offense. (i) Where the Tribal Court finds that denial of bail or bond is proper, an order for detention shall be issued with the Tribal Court's findings of fact. (ii) Where a person is held without bail or bond, his or her case shall be put on an expedited calendar and the trial shall be given priority over other pending cases. If a conviction results, the defendant shall be credited with the time served pending trial. Code of the Nisqually Indian Tribe – Title 24, Sub-Chapter IV, Sections 24.19.05 and 24.19.06.*

See also:

- **Confederated Tribe of the Siletz Indians of Oregon, Chapter 3, Bail and Bonds, Section 4.**

The Federal Bail Reform Act of 1984 contains provisions for detention without bail in carefully defined circumstances. The constitutionality of these provisions was raised shortly after passage of the law. In 1987, the U.S. Supreme Court ruled that, given the procedural safeguards written into the law, the detention provisions satisfied constitutional due process requirements.<sup>11</sup> Below are those provisions.

*(e) Detention. If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial. In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that (1) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;*

*(2) the offense described in paragraph (1) of this subsection was committed while the person was on release pending trial for a Federal, State, or local offense; and (3) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in paragraph (1) of this subsection, whichever is later.*

*Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. §801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. §951 et seq.), the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), or an offense under section 924 (c) of title 18 of the United States Code.*

*(f) Detention hearing. The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of the person as required and the safety of any other person and the community*

*(1) upon motion of the attorney for the Government, in a case that involves*

*(A) a crime of violence;*

*(B) an offense for which the maximum sentence is life imprisonment or death;*

*(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. §801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. §951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.); or*

*(D) any felony if the person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this*

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<sup>11</sup> U.S. v. Salerno, 481 U.S. 739.

*paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or*

*(2) upon motion of the attorney for the Government or upon the judicial officer's own motion, in a case that involves*

*(A) a serious risk that the person will flee; or*

*(B) a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.*

*The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed five days, and a continuance on motion of the attorney for the Government may not exceed three days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community. **Federal Bail Reform Act of 1984 – Section 3142.***

### **Discussion Questions:**

1. Are there occasions when detention without bail would be appropriate in your tribe?
2. If so, what are those occasions?
3. What procedural protections (i.e., accelerated processing of the case) should be put in place for defendants held without bail?

## **BOND PENDING APPEAL**

At least three tribal codes address the availability of bond while appealing a conviction. In each of the three examples below, the presumption is for the court to release the individual unless the court finds that the person poses a threat to the community or is likely to fail to appear.

*Every person who has been convicted of a tribal offense and who has filed an appeal or a petition for a writ of habeas corpus shall be treated in accordance with the provisions of this Section, unless the Trial Judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a significant danger to the community, to the accused or to any other person. If the Trial Tribal Judge finds such to be the case, the detention of the accused may be ordered. Code of the Nisqually Indian Tribe – Title 24, Sub-Chapter IV, Section 24.19.07.*

\* \* \*

*A convicted person may be released from custody pending appeal on such conditions as the Judge determines will reasonably assure all appearances of the accused unless the Judge determines that the release of the accused is likely to pose a danger to the community, to himself, or to any other person. Code of the Oglala Sioux – Chapter 8, Section 4-2(c).*

\* \* \*

*A person who has been convicted of an offense punishable by banishment or who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be treated in accordance with the provisions of Section 701 unless the Court or Judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of Section 702 shall not apply to persons described in this Section. Code of the Absentee Shawnee Tribe of Oklahoma – Chapter Seven, Section 703.*

## REVIEW OF THE PRETRIAL DETAINEE POPULATION

From a good government perspective, a jail bed is a scarce and expensive resource in any community, and thus, every effort should be made to assure that available beds are being used as efficiently as possible. From a defendant's perspective, fundamental fairness requires that persons not be detained unnecessarily. Yet, jails are full of people who were initially held due to incomplete information or with the expectation that they would quickly bail out. Because of this, the ABA recommends that a neutral entity "review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate." (ABA Standard 10-1-10 (h)).

At least one tribe has addressed this issue in its Court Rules.

*The tribal court shall exercise supervision over the detention of defendants within the tribal court's jurisdiction for the purpose of eliminating all unnecessary detention. The officer in charge of a detention facility shall make at least biweekly reports to the prosecuting attorney and to the tribal court listing each defendant who has been held in custody pending criminal charges, arraignment, trial, sentencing, or revocation of probation for a period in excess of ten (10) days in gross misdemeanor cases, and in excess of two (2) days in misdemeanor cases. Rules of the White Earth Band of Chippewa – Rule 6.05.*

## CONCLUSION

Having a comprehensive code relating to pretrial release decision making can better assure that decisions are not arbitrary, but are based on a set of rules. Adoption of provisions, such as for the criteria the court is to consider in making the release decision, will help make sure that bail is not set solely on the name of the charge. Having comprehensive codes also helps both the community and the defendants understand the decisions of the court.

While the Federal Bail Reform Act serves as a model for many states, no two state bail laws are the same. In fact, a review of state pretrial release codes would find that structurally they are quite different from one another and from the federal code. Also, the policies and procedures enunciated by these codes vary. For example, some states allow for pretrial detention without bail in certain circumstances, and others do not. Even in those states that do allow detention there is significant variation in the circumstances in which it can be used and the procedural protections afforded the detained defendant. Some states provide a clear presumption for release on the least restrictive conditions while others are silent on any presumptions. Some do not include bail bonding for profit as an option, while others do. But all these codes do have provisions addressing each of the decisions and events described here.

Appendix A includes the complete texts of the pretrial release decision making codes of 27 tribes. Just as the states vary significantly in their bail laws and how they are structured, there is also great variation in tribal approaches. On the other hand, several tribes have codes that are nearly identical with one another. Adopting a code from another tribe – or even from a state or the federal system – in part or in full, should only be considered if the code is compatible with and enhances the traditions, values and culture of the tribe.

The process undertaken to develop a code for pretrial release decision making, or for any other decision or event for that matter, is for each tribe to decide. The tribal constitution may set forth a specific process that must be followed. If not, the tradition of one tribe may be to leave it to the tribal council or tribal court. Another tribe might seek input from tribal elders. Others may wish to involve the entire community. Whatever process is used to develop the code every effort should be made to assure that the language of the code is clear so that judges who must interpret the code fully understand the intent of its drafters.

Another consideration in the development of a tribal pretrial release decision making code is the availability of resources so that the dictates of the code can be realized. The enactment of comprehensive tribal codes pertaining to the pretrial process, while crucial, is only the beginning of efforts to improve pretrial release decision making within tribes. The codes provide a framework for decision making, but assume that the information and options they describe are available to the court. For example, it does little good for the code to tell the court to consider the defendant's prior criminal history, record of appearance in court, and current ties to the community, if that information is not available. Likewise, the court will just be frustrated if the pretrial release options set forth in the code are unavailable within the tribe. The codes also assume that judges will have the training to effectively use the information and the options they are provided.

Thus, there are resource issues that must be addressed as part of any discussion of developing or enhancing tribal codes related to bail and pretrial release. But these issues must be weighed against the resources used to needlessly detain defendants who could be safely released, or to deal with problems caused by defendants who should have been held or released with greater restrictions.

**APPENDIX A**  
**SAMPLING OF TRIBAL CODES**  
**RELATING TO BAIL AND PRETRIAL RELEASE**

# ABSENTEE SHAWNEE TRIBE OF OKLAHOMA

## CRIMINAL PROCEDURE

### CHAPTER TWO: PROCEEDINGS BEFORE TRIAL

#### **Section 202. Arrest Warrant or Summons to Appear**

(a) If it appears from the complaint that an offense has been charged against the defendant, a judge of the Tribal Court shall issue a summons to the defendant to bring him before the court. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Tribe supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

(b) **Issuance of Arrest Warrants or Summons.** Unless the Tribal Judge has reasonable grounds to believe that the person will not appear on a summons, or unless the complaint charges an offense which is punishable by banishment, a summons shall be issued instead of an arrest warrant.

(c) **Contents of Arrest Warrants.** The warrant of arrest shall be signed by the Judge issuing it, and shall contain the name and address of the Court; the name of the defendant, or if the correct name is unknown, any name by which the defendant is known and the defendant's description; and, a description of the offense charged with a reference to the Section of the Tribal Code alleged to have been violated. It shall order and command the defendant be arrested and brought before a Judge of the Tribal Court to enter a plea. When two or more charges are made against the same person only one warrant shall be necessary to commit him to trial.

(d) **Contents of Summons.** A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before a Tribal Judge within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall issue.

#### **Section 203. Criminal Citations**

(a) Whenever a law enforcement officer would be empowered to make an arrest without a warrant for an offense not punishable by banishment but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he may, in his discretion, issue the defendant a citation instead of taking said person into custody. Such citation, signed by the law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, unless the Court orders that a formal complaint be filed.

(b) Contents of Citation.

(1) The citation shall contain the name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.

(2) The citation shall contain an agreement by the defendant to appear before a Tribal Judge within five (5) days or on a day certain to answer to the charge, and the signature of the defendant.

(3) The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court.

(4) One (1) copy of the citation shall be given to the defendant and two (2) copies shall be delivered to the Attorney General.

#### **Section 204. Arrestment**

(a) Arrestment Defined. Arrestment is the bringing of an accused person before the Court, informing him of the charge against him and of his rights, receiving his plea and setting bail. Arrestment shall be held in open court upon the appearance of an accused in response to a Criminal Summons or Citation or, if the accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.

(b) Procedure at Arrestment. Arrestments shall be conducted in the following order:

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

(2) The Attorney General should read the entire complaint, deliver a copy to the defendant unless he has previously received a copy thereof, and state the minimum and maximum authorized penalties.

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

(i) the right to remain silent.

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

(iii) to consult with an attorney at his own expense and that if he desires to consult with an attorney the arrestment will be postponed.

(4) The Judge or Magistrate shall ask the defendant if he wishes to obtain counsel and, if the defendant so desires, he will be given a reasonable time to obtain counsel. If the defendant shows his indigency and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea until the date set for his appearance.

(5) The Judge or Magistrate should then ask the defendant whether he wishes to plead "guilty", "nolo contendere," or "not guilty."

### **Section 205. Commitments**

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

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

(b) A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the Tribal Court.

## **CHAPTER SEVEN: BAIL**

### **Section 701. Release in Nonbanishment Cases Prior to Trial**

(a) Any person charged with an offense, other than an offense punishable by banishment shall, at his appearance before a Judge or Magistrate of the Court, be ordered released pending trial on his personal recognizance or upon execution of an unsecured appearance bond in an amount specified by such judicial officer subject to the condition that such person shall not attempt to influence, injure, tamper with or retaliate against an officer, juror, witness, informant, or victim or violate any other law, unless the judicial officer determines in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required.

When such determination is made, the judicial officer shall, either in lieu of or in addition to release on personal recognizance or execution of an unsecured appearance bond, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed 10 percentum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hour.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at Court proceedings or of flight to avoid prosecution or failure to appear at Court proceedings.

(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(d) A person for whom conditions of release are imposed and who after seventy-two hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer of the Court may review such conditions.

(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: Provided, that, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the Court by rule from authorizing and establishing a Policeman's Bail Schedule for certain offenses or classes of offenses through which a person arrested may post bail with the Chief of the Tribal Police for transmittal to the Court Clerk and obtain his release prior to his appearance before a Judicial officer.

## **Section 702. Appeal From Conditions of Release**

(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to Section 701(d) or Section 701(e) by a Magistrate of the Court, may move the Court to amend the order and have such motion determined by a Judge of the Court. Said motion will be determined promptly.

(b) In any case in which a person is detained after (1) a Judge of the Tribal Court denies a motion, under subsection (a) above, to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a Judge of the Tribal District Court, an appeal may be taken to the Supreme Court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is not so supported, the Supreme Court may remand the case for further hearing, or may, with or without additional evidence, order the person released pursuant to Section 701 upon such conditions as the Supreme Court determines to be proper. This appeal shall be determined promptly.

## **Section 703. Release in Banishment Cases or After Conviction**

A person who has been convicted of an offense punishable by banishment or (2) who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be treated in accordance with the provisions of Section 701 unless the Court or Judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of Section 702 shall not apply to persons described in this Section.

## **Section 704. Penalties for Failure to Appear**

Whoever, having been released pursuant to this Chapter willfully fails to appear before the Court or a judicial officer as required, shall incur a forfeiture of any security which was given or pledged for his release, and in addition, shall, (1) if he was released in connection with a charge having banishment as a possible punishment, or while awaiting sentence or pending appeal after conviction of any offense having had banishment imposed as a part of the sentence, be subject to a fine of \$500.00 and imprisonment for a term of six months, and if banishment is imposed, one year shall be added to the term of banishment otherwise imposed, or (2) if he was released in connection with a charge other than as described, in (1) above, he shall be fined not more than the maximum provided for the offense charged or imprisoned for not more than six (6) months or both, or (3) if he was released for appearance as a material witness, shall be fined not more than Two Hundred Fifty Dollars (\$250.00) or imprisoned for not more than three (3) months or both.

## **Section 705. Persons or Classes Prohibited as Bondsmen**

The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond; jailers, police officers,

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

**Section 706. Authority to Act as Bail Bondsmen**

Any person authorized to act as bail bondsmen or runners in the federal or state courts shall be qualified to act as bondsmen and runners in the Tribal Court, and shall be liable to the same obligations as in their licensing jurisdiction and comply with all orders and rules of the Supreme Court and District Court.

# BAY MILLS TRIBE

## CHAPTER V - RULES FOR CRIMINAL CASES

### PART ONE - PRELIMINARY PROCEEDINGS

#### **505. SUMMONS IN LIEU OF WARRANT.**

A. When issued. When otherwise authorized to arrest a suspect a tribal police officer of authorizing judge may, in place of a warrant, issue a summons commanding the suspect to appear before the Tribal Court at a stated time and place to answer the charge.

B. Contents. The summons shall contain the same information as a warrant, except that it may be signed by an authorized police officer.

C. Fails to appear. If a person fails to appear in response to a summons, a warrant for his/her arrest shall be issued.

#### **510. ARRAIGNMENT.**

A. Definition. Arraignment is the bringing of an accused before the court, informing him/her of his/her rights and the charges against him/her, receiving his/her plea and setting bail as appropriate in accordance with Section 513 of this Chapter.

B. Procedure. An arraignment shall be held in open court without unnecessary delay after the accused is taken into custody. In no instance shall arraignment be later than the next regularly scheduled session of court, or within forty-eight (48) hours, whichever occurs first, including Saturdays, Sundays, and legal holidays.

C. Rights of accused. Before an accused is required to plead to any criminal charge the judge shall:

1. Read to the accused the section of the Tribal Code which he/ she is charged with violating, including the maximum authorized penalty and to determine the he/she understands the complaint; and

2. Advise the accused that he/she has the right to remain silent, to be tried by a jury; and to be represented by counsel at his/her own expense and that arraignment will be postponed should he I she desire to consult with counsel.

**512. BAIL; RELEASE PRIOR TO TRIAL.** Every person charged with a criminal offense before the court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the accused at any time lawfully required:

A. Release on personal recognizance. A person can be released on his/her own personal recognizance by a written promise to appear at trial or any and all other lawfully required times.

B. Release to designated person. A person can be released to the custody of a designated person or organization agreeing to assure the accused's appearance.

C. Release after bond money posted. Release after the deposit of a bond by the accused or a bondsman in an amount specified by the judge. The judge may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.

D. Other. Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

**513. BAIL; RELEASE BY POLICE OFFICER.** Any tribal police officer may admit an arrested person to bail at a cash bond of ten (10) per cent of the maximum fine for the offense charged when authorized to do so by the court or when arraignment will not be held within twenty-four hours of the arrest. Any bail requirement set by a tribal police officer is subject to review by the tribal court.

# CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA

## TITLE 2

### SUB-PART C

#### **Section 202. Arrest Warrant or Summons to Appear**

(a) If it appears from the complaint that an offense has been charged against the defendant, a judge of the Tribal Court shall issue a summons to the defendant to bring him before the court. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Tribes supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

(b) **Issuance of Arrest Warrants or Summons.** Unless the Tribal Judge has reasonable grounds to believe that the person will not appear on a summons, or unless the complaint charges an offense which is punishable by banishment, a summons shall be issued instead of an arrest warrant.

(c) **Contents of Arrest Warrants.** The warrant of arrest shall be signed by the Judge issuing it, and shall contain the name and address of the Court; the name of the defendant, or if the correct name is unknown, any name by which the defendant is known and the defendant's description; and, a description of the offense charged with a reference to the Section of the Tribal Code alleged to have been violated. It shall order and command the defendant be arrested and brought before a Judge of the Tribal Court to enter a plea. When two or more charges are made against the same person only one warrant shall be necessary to commit him to trial.

(d) **Contents of Summons.** A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before a Tribal Judge within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall issue.

(e) **Service of Arrest Warrants and Summons.**

(1) Warrants for Arrest and Criminal Summons may be served by any Tribal or Federal law enforcement officer or any adult person authorized in writing by the Tribal Judge. Service may be made at any place within the jurisdiction of the Tribes.

(2) Warrants of Arrest and Summons are to be served at a person's home only between the hours of 7:00 am and 9:00 pm, unless an authorization to serve such process at night is placed on the face thereof by a Tribal Judge.

(3) The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the Court. A copy, so signed, shall be given to the person served or arrested at the time of arrest if reasonably possible, or as soon thereafter as is reasonable possible.

(4) An officer need not have the warrant in his possession at the time of arrest, but if not, he shall inform the defendant of the charge, that a warrant of arrest has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment.

### **Section 203. Criminal Citations**

(a) Whenever a law enforcement officer would be empowered to make an arrest without a warrant for an offense not punishable by banishment but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he may, in his discretion, issue the defendant a citation instead of taking said person into custody. Such citation, signed by the law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, unless the Court orders that a formal complaint be filed.

(b) Contents of Citation.

(1) The citation shall contain the name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.

(2) The citation shall contain an agreement by the defendant to appear before a Tribal Judge within five (5) days or on a day certain to answer to the charge, and the signature of the defendant.

(3) The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court.

(4) One (1) copy of the citation shall be given to the defendant and two (2) copies shall be delivered to the Attorney General.

### **Section 204. Arraignment**

(a) **Arraignment Defined.** Arraignment is the bringing of an accused person before the Court, informing him of the charge against him and of his rights, receiving his plea and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a Criminal Summons or Citation or, if the accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.

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

- (1) The Judge or Magistrate should request the Attorney General to read the charges.
- (2) The Attorney General should read the entire complaint, deliver a copy to the defendant unless he has previously received a copy thereof, and state the minimum and maximum authorized penalties.
- (3) The Judge or Magistrate should determine that the accused understands the charge against him and explain to the defendant that he has the following rights:
  - (i) the right to remain silent.
  - (ii) to be tried by a jury upon request.
  - (iii) to consult with an attorney at his own expense and that if he desires to consult with an attorney the arraignment will be postponed.
- (4) The Judge or Magistrate shall ask the defendant if he wishes to obtain counsel and, if the defendant so desires, he will be given a reasonable time to obtain counsel. If the defendant shows his indigency and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter an plea until the date set for his appearance.
- (5) The Judge or Magistrate should then ask the defendant whether he wishes to plead "guilty", "nolo contendere," or "not guilty."

**(c) Receipt of Plea at Arraignment.** The defendant shall plead "guilty, "nolo contendere," or "not guilty" to the offense charged.

- (1) If the defendant refuses to plead, the Judge shall enter a plea of "not guilty" for him.
- (2) If the defendant pleads "not guilty," the Judge shall set a trial date and conditions for bail prior to trial.
- (3) If the defendant pleads "nolo contendere" or "guilty" the Judge shall question the defendant personally to determine that he understands the nature of his action, the rights that he is waiving, and that his action is voluntary. The Judge may refuse to accept a guilty plea and enter a plea of "not guilty" for him. If the guilty plea is accepted, the Judge may immediately sentence the defendant or order a sentencing hearing.

### **Section 205. Commitments**

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

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

(b) A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the Tribal Court.

# CHITIMACHA TRIBE OF LOUISIANA

## TITLE II: CRIMINAL PROCEDURE

### CHAPTER 2: ARRESTS

#### Sec. 204. Summons in Lieu of Arrest Warrant.

- (a) A law enforcement officer or a judge may, in lieu of an arrest warrant, issue a summons commanding the accused to appear before the Court at a stated time and place and answer to the charge.
- (b) The summons shall contain the same information as an arrest warrant, except that it may be signed by a police officer.
- (c) The summons shall state that if a defendant fails to appear in response to the summons, a warrant for his or her arrest shall be issued.
- (d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his usual residence or place of business with a person of suitable age and discretion who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the records of the case.

### CHAPTER 4: ARRAIGNMENT AND RELEASE

#### Sec. 402. Release Before Final Judgment of Conviction.

- (a) At arraignment, the Judge shall decide whether to release the defendant from custody pending sentencing or trial. As conditions of release, the Judge may, to assure the accused's appearance at all times lawfully required, order any or all of the following:
  - (1) that the accused deposit cash or other sufficient collateral, in an amount specified by the Judge;
  - (2) that the accused, and/or any other designated person or organization satisfactory to the Judge, execute a written promise to appear or to deliver the accused at all required times;
  - (3) reasonable restrictions on the travel, association or place of residence of the accused;
  - (4) any other condition reasonably necessary to assure the appearance of the accused as required.
- (b) Any police officer authorized to do so by the Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared and approved by the Court.

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

# CONFEDERATED SALISH AND KOOTENAI TRIBES

## TITLE 2

### CHAPTER 2

**2-2-301. Citation.** Prosecution for all Class A offenses shall be initiated by citation issued by a law enforcement officer upon Probable cause where the officer has attested to the truth of the allegations contained in the citation under oath.

**2-406. Summons.** (1) The Tribal Court may or, upon request of a prosecutor, shall issue a summons instead of an arrest warrant.

(2) The summons may be served personally or by first-class mail.

(3) A summons 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) set the date issued;

(e) command the person to appear in Tribal Court at a specified date and time; and

(f) be signed by a judge.

**2-2-501. Initial appearance.** (1) A person arrested, whether with or without a warrant, must be taken before a judge of the Tribal Court for an initial appearance within two working days following the arrest.

(2) A person not arrested shall appear for an initial appearance at the time and place designated in the citation or summons. (*Rev. 1-27-00.*)

**2-2-502. Duty of court at initial appearance.** (1) 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 provided by the Tribal Defender's Office pursuant to Section 2-2-504 or to obtain private counsel at her or his own expense.

- (d) the right to call any witness on her or his behalf;
  - (e) the right to request a jury trial;
  - (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 general circumstances under which the defendant may obtain pretrial release;
  - (h) the right to cross-examine the Tribes' witnesses; and
  - (i) the right to have up to 10 working days before arraignment.
- (2) The judge shall admit the defendant to bail as provided by Section 2-2-602 of this Code.

**2-2-503. Presence of 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.

**2-2-504. Right to counsel.** (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel, and must be asked if the aid of counsel is desired.

(2) If the defendant desires counsel and is indigent as defined in Section 1-2-402, and if the court desires to retain imprisonment as a sentencing option or if the interests of justice so require, the court shall assign the Tribal Defender's Office to provide counsel to the defendant.

(3) If the defendant wishes to obtain private counsel, the court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause.

(4) A defendant may waive the right to counsel when the court ascertains that the waiver is made knowingly, voluntarily, and intelligently in writing.

**2-2-601. Release prior to criminal proceedings.** 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.

**2-2-602. Release or detention.** (1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.

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

(a) defendant's employment status and work history;

(b) defendant's financial condition;

(c) the nature and extent of defendant's family relationships and ties to the Reservation community;

(d) defendant's past and present residences;

(e) names of individuals personally agreeing to assure defendant's court appearance;

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

(g) 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;

(h) the defendant's record of appearance at court proceedings; and

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

(3) The Court may in its discretion grant temporary release from custody under any conditions the Court deems appropriate.

**2-2-603. Release on own recognizance and reasonable bail.** (1) Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required.

(2) In all cases, the amount set for bail must be reasonable.

(3) Reasonable bail reflects an amount which is:

(a) sufficient to ensure the presence of the defendant in any pending criminal proceeding;

(b) sufficient to assure compliance with the conditions set forth in a bail or release order; and

(c) not oppressive.

**2-2-604. Conditions upon defendant's release.** (1)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:

(a) 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;

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

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

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

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

(f) the defendant shall comply with a specified curfew;

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

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

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

(j) the defendant shall furnish bail; or

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

(2) 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.

**2-2-605. Bail schedule.** (1) The Chief Judge of the Tribal Court shall establish and post a schedule of bail for offenses to be used by law enforcement officers.

(2) A law enforcement officer may accept bail on behalf of the Tribal Court whenever the amount of bail is specified in the warrant of arrest or in accordance with the posted bail schedule.

(3) When a law enforcement officer accepts bail, based on an arrest warrant or current bail schedule, the officer shall give a signed receipt to the offender setting forth the bail received and the name of the person posting the bail. At the earliest time practicable, the law enforcement officer shall deliver the bail and duplicate copy of the bail receipt to the Tribal Court, obtaining a receipt for the bail delivered from a Clerk of Court.

(4) The Chief Judge of the Tribal Court shall replace any existing bail schedule with a revised bail schedule by January 31 of each year.

(5) Bail may be specifically set by a judge for any offense not listed on the posted bail schedule.

**2-2-606. Changing bail or conditions of release.** (1) Upon application by the Tribes or the defendant, the Tribal Court may increase or reduce the amount of bail, alter the conditions in the bail or release order, or revoke bail.

(2) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

**2-2-607. Forms of bail.** (1) 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 Reservation with an unencumbered equity, not exempt, owned in fee simple by the defendant or sureties at a value double the amount of the required bail;

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

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

(2) 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.

(3) Nothing in this part prohibits a surety from surrendering the defendant in a case in which the surety feels insecure in accepting liability for the defendant.

**2-2-608. Property and surety bonds.** (1) 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.

(2) If the property is real estate the defendant or sureties shall file a sworn schedule that must contain a legal description of the property, a description of any encumbrance on the property, including the amount of each encumbrance and its holder, and the market value of the unencumbered equity owned by the defendant or sureties;

(3) If the property is a written undertaking with sureties, each surety must be a Reservation resident and worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court may allow more than two sureties to justify severally and in amounts less than that expressed in the undertaking if the whole justification is equivalent to the amount required.

(4) 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 Montana. The undertaking must state the following:

(a) the name and address of the surety company that issued the bond;

(b) 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

(c) a provision that the surety company may not revoke the undertaking without good cause.

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

**2-2-609. Release 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.

**2-2-610. Violation of a release order.** (1) 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 re-determine 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. Such time shall not be credited as time served under Section 2-2-1210 or 2-2-1211.

(2) 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.

(3) Neither a cash bond nor a commercial bond may be forfeit for violation of release conditions, except for failing to appear for court proceedings without a lawful excuse.

**2-2-611. Forfeiture order.** (1) If within 90 days of the 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 Tribal Court may direct the forfeiture of the bail to be discharged upon such terms as are just.

(2) If the forfeiture order is not discharged by the Tribal 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 Tribal Executive Treasurer; or

(b) 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 Tribal Executive Treasurer.

(3) 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. *(Rev. 1-27-00.)*

**2-2-612. Surrender of defendant.** (1) At any time before the forfeiture of bail:

(a) the defendant may surrender to the court or any Tribal law enforcement officer; or

(b) the surety company may arrest the defendant and surrender the defendant to the court or to any Tribal law enforcement officer.

(2) The law enforcement officer will detain the defendant in the officer's custody and shall file a certificate, acknowledging the surrender, in court. The court may then order the bail exonerated.

**2-2-702. Procedure on arraignment.** (1) 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 waived the reading, and supplying a copy of it to the defendant and calling on the defendant to plead to the charge.

(2) If a defendant waives his or her right to counsel in writing, the court may arraign the defendant at the initial appearance.

(3) 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;

(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; and

(c) allow a reasonable time, not less than 1 day, if the defendant requires it, to answer or plead to the complaint by incorporating appropriate pretrial motions into the answer, or otherwise.

# CONFEDERATED TRIBES OF COLVILLE RESERVATION

## TITLE II: RULES OF PROCEDURE

### CHAPTER 2: BAIL, BONDS AND FINES

#### 2-1-130 Bail and Bonds - Generally

Except as provided herein, every person charged with any offense before the Court may be admitted to bail. Bail shall be by cash deposit or by assurance of two reliable members of the Tribes resident within the boundaries of the Reservation who shall execute an agreement in compliance with the form provided therefore to the effect that they will pay any bail forfeited. In no case shall the bail specified in the agreement exceed twice the maximum penalty set by the section of this Code for the offense for which the accused has been charged. The cash or bond agreement shall be executed before the clerk or any bonded employee authorized by the Court to accept bail. All such bonds shall be promptly filed with the clerk.

#### 2-1-131 Bail: Personal Recognizance

In lieu of bail, a person charged with any offense may be released on his personal recognizance (PR) without posting bail or bond, pursuant to the discretion of the judge. In determining whether to grant PR, the judge may consider the following factors:

- (a) whether the person has identified himself satisfactorily;
- (b) whether detention appears necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace;
- (c) whether the person has ties to the Tribes or is a local resident, so as to provide reasonable assurance of his appearance before the Court, or whether there is substantial likelihood that he will refuse to appear for trial; and
- (d) in any case, to secure his release, the person must give written promise to appear in Court as required by the citation.

#### 2-1-132 Bail Schedule

The Chief Judge may establish a bail schedule for all offenses under this Code. Any person arrested and taken into custody for violation of this Code may be released upon posting the specified bail with the clerk, or other person authorized by the Court to receive bail, unless release on personal recognizance or detention is ordered by the Court.

#### 2-1-133 Denial of Bail, Detention

The judge may deny a person release on bail if it appears reasonably certain that the person will pose a serious threat to the safety and well-being of himself, the Reservation, or its residents, if released, or if there is a substantial likelihood that the person will not appear for trial.

# CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON

## CHAPTER 3

### Warrant or Summons.

- (1) Except when a citation is issued under these rules, upon the issuance of a complaint, a warrant of arrest or a summons shall issue to bring the named defendant before a Judge of the Siletz Tribal Court.
- (2) When a summons shall issue, it shall name the defendant, the offense charged, and order the defendant to appear before a Tribal Court Judge within ten (10) days from the date of service or within such other time as is provided on the summons to enter a plea to the charge. If a defendant fails to appear in response to the summons, a warrant of arrest shall issue.
- (3) Warrants and summons may be served by any Tribal Police officer or any person over the age of eighteen (18) years designated to perform that function by the Chief of Police or a Tribal Court Judge.
  - (A). Service may be made anywhere within the geographical jurisdiction of the Siletz Tribe.
  - (B). The date, time, and place of service or arrest shall be endorsed on the warrant or summons along with true name of the person serving it. A copy will be left, with the person served and a copy shall be returned to the Court.
  - (C). In the event a person is arrested pursuant to a warrant issued under this section, the officer need not have the warrant in his possession at the time of arrest, but if he doesn't he shall notify the defendant that a warrant has been issued and the nature of the charge, and shall provide the defendant with a copy of the warrant and complaint no later than the time of arraignment.
  - (D). If a defendant refuses service of a summons or if the defendant's whereabouts remains unknown after a reasonable search an arrest warrant shall issue.

### Citations, Contents, Effects, Procedures

- (1) Whenever a person is arrested for a violation of Siletz Tribal law, the arresting officer, or any other officer, may serve upon the arrested person a citation and notice to appear in Court, in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the officer may consider the following factors:
  - (A). whether the person has identified himself satisfactorily;
  - (B). whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace;
  - (C). whether the person has ties to the Tribes or is a local resident, so as to provide reasonable assurance of his appearance before the Court, or whether there is substantial likelihood that he will refuse to respond to the citation; and
  - (D). whether the person previously has failed to appear in response to a citation issued pursuant to this section or to other lawful process of the Court.

(2) The citation written to the offender by the officer shall include the name of the person, his address, the date of birth and sex, the date, time and place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person to sign a promise to appear.

(3) The citation shall also state the time and place at which the person is to appear in Court to hear the charges against him and post bail, which shall be not less than 72 hours after the date of the citation, nor more than 15 days after the date of citation.

(4) If a defendant fails to appear, the judge may issue a warrant of arrest and may order any bail deposited by the defendant as hereinafter set forth forfeited.

#### Arrest.

(1) As soon as reasonably possible after arrest but not more than twenty four (24) hours thereafter excluding Saturdays, Sundays and holidays or within the period designated on a summons, the defendant shall appear or be brought before a Tribal Court Judge, and the defendant shall be advised of his right to counsel, and his rights under the Indian Civil Rights Act of 1968, USCA 25-1302. If the defendant desires but does not presently have counsel, he will be given a reasonable time to secure counsel at his own expense, before entering his plea.

(2) At that time, the complaint will be read to the defendant and the defendant will be asked to enter a plea.

(3) The defendant will enter a plea or the Court will enter one for him, then he will be advised regarding bail or sentencing; whichever is appropriate.

(4) If the defendant has not received a copy of the complaint, one will be given him.

#### Commitment Orders.

(1) No person shall be detained or jailed under this code for a period longer than 36 hours, exclusive of Saturdays, Sundays and holidays, unless a commitment order signed by a judge has been issued.

(2) A temporary commitment order may be issued pending trial or investigation of charges.

(3) A final commitment order shall be issued for persons jailed as a result of a sentence by the Court.

#### Bail and Bonds

(1) Except as provided herein, every person charged with any offense before the Court may be admitted to bail. Bail shall be by cash deposit or by assurance of two reliable members of the Siletz Tribe who reside within the boundaries of the Tribe's geographical jurisdiction who shall execute an agreement in compliance with the form provided therefor to the effect that they will pay any bail forfeited. In no case shall the bail specified in the agreement exceed twice the maximum penalty set by the section of the Siletz Tribal ordinance for the offense for which the accused has been charged. The cash or bond agreement shall be executed before the clerk or any bonded employee authorized by the Court to accept bail. All such bonds shall be promptly filed with the clerk.

(2) In lieu of bail, a person charged with any offense may be released on his personal

recognizance (PR) without posting bail or bond, pursuant to the discretion of the judge. In determining whether to grant PR, the judge may consider the following factors:

- (A). whether such person has identified himself satisfactorily;
- (B). whether detention appears necessary to prevent imminent bodily harm to such person or to another, injury to property, or breach of the peace;
- (C). whether the person has ties to the Tribe or is a local resident, so as to provide reasonable assurance of his appearance before the Court, or whether there is substantial likelihood that he will refuse to appear for trial; and
- (D). in any case, to secure his release, the person must give written promise to appear in Court as required by the citation.

(3) The Chief Judge may establish a bail schedule for all offenses under Siletz Tribal Law. Any person arrested and taken into custody for violation of such code may be released upon posting the specified bail with the clerk, or other person authorized by the Court to receive bail, unless released on personal recognizance or detention is ordered by the Court.

(4) The judge may deny a person release on bail if it appears reasonably certain that the person will pose a serious threat to the safety and well-being of himself, the Tribe, or the public, if released, or if there is a substantial likelihood that the person will not appear for trial.

**FORT MCDERMITT PAIUTE-SHOSHONE TRIBE**  
**OF OREGON AND NEVADA**

**CHAPTER 3**

**Sec. 6. Citation in Lieu of Arrest.**

All police officers or other law enforcement officials of the Fort McDermitt Tribe or Bureau of Indian Affairs may, in their discretion, when circumstances warrant it, issue a citation, approved by the Tribal Council, in lieu of incarcerating such person. The person offered the opportunity to sign an approved citation shall sign their name agreeing to appear in Tribal Court at the time and date so stated without pleading guilty by affixing their signature.

**Sec. 9. Bail or Bond; Form; Requirements.**

(a) Right to Bail or Bond. Every person charged with an offense before the Fort McDermitt Tribal Court, except in the case of Murder, Rape, or Robbery with a deadly weapon, shall be admitted to bail or bond.

(b) Method of Bail or Bond. Bail shall be by either cash bond or by the signing of an agreement by two reliable members of any Indian tribe who shall appear before a judge of the Tribal Court where the complaint has been filed and there execute an agreement in an acceptable form.

(c) Form; Requirements. The form utilized by any judge of the Fort McDermitt Tribal Court to allow two Indians to be responsible for the person arrested shall require the persons to be responsible for the actions of the person arrested until such time that they notify the court that they no longer wish to be responsible. The form shall also specify that the penalty for violating conditions of release shall not exceed twice the maximum penalty set by the violation in Chapter 7 of the Law & Order Code with which the accused is charged.

# FORT MCDOWELL YAVAPAI NATION

## CHAPTER 5: CIVIL AND CRIMINAL PROCEDURE

### ARTICLE III: CRIMINAL PROCEDURE

#### SECTION 5-33: ARRESTS

*c. Noncustodial arrest; notice to appear.*

1. In any situation not governed by subsection (b) hereof, the arresting officer may make a noncustodial arrest by use of the procedures set out in this subsection.
2. When a person is arrested for any violation of the criminal code of the Fort McDowell Yavapai Indian Community and that person is not immediately taken into custody, the arresting officer shall prepare in quadruplicate written notice to appear in court, containing the name and address of the person, the offense charged and the time and place when and where the person shall appear in court. Traffic citation forms may be used as such notice.
3. The time specified in the notice to appear shall be at least five (5) days after the arrest unless the person arrested demands an earlier hearing.
4. The place specified in the notice to appear shall be before a judge of the Fort McDowell Tribal Court.
5. The arrested person, in order to secure release as provided in this section, shall give his written promise so to appear in court by signing at least one copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of the notice to the person promising to appear. Thereupon, the officer shall forthwith release the person arrested from custody.

*d. Violation of promise to appear, counsel.*

- a. Any person willfully violating his written promise to appear in court, given as provided for in this section, is guilty of the charge upon which he was originally arrested and upon conviction shall be sentenced to imprisonment for a period not to exceed six (6) months or a fine not to exceed five hundred dollars (\$500.00), or to both such imprisonment and fine with costs.
- b. A written promise to appear in court may be complied with by an appearance by counsel.

#### SECTION 5-37: BAIL OR BOND

No person charged with an offense before any Fort McDowell Court shall be denied bail. Two (2) reliable members of the Fort McDowell Yavapai Indian Community may appear before a

judge of the Fort McDowell Tribal Court where complaint has been filed and there execute an agreement to guarantee the appearance of the defendant at trial by posting a security bond. The defendant may deposit with the court cash or property to secure his appearance at trial. In no case shall the penalty or deposit specified in the agreement exceed twice the maximum penalty set by these ordinances for violation of the offense with which the accused is charged. A judge may, in his discretion, release a defendant on his own recognizance.

# FORT PECK ASSINIBOINE-SIOUX

## TITLE VI: CRIMINAL PROCEDURES

### CHAPTER 2: ARRESTS

#### **Sec. 204. Summons in lieu of arrest warrant.**

- (a) A law enforcement officer or a judge may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court at a stated time and place and answer to the charge.
- (b) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.
- (c) The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his/her arrest shall be issued.
- (d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his/her usual residence or place of business with a person of suitable age and discretion who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the records of the case.

#### **Sec. 205. Appearance of arrested person - use of two-way electronic audio-video communication.**

- (a) A person arrested, with or without a warrant, must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance.
- (b) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication, if available. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing.

### CHAPTER 4: ARRAIGNMENT AND RELEASE

#### **Sec. 401. Arraignment.**

- (a) Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charge against him/her, receiving his/her plea, and setting conditions of pre-trial release as appropriate in accordance with this Code.
- (b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of Court.
- (c) Before an accused is required to plead to any criminal charges the judge shall:

- (1) Read the complaint to the accused and determine that he/she understands the complaint and the Section of the Tribal Code which he/she is charged with violating, including the maximum authorized penalty; and
- (2) Advise the accused that he/she has the right
  - (a) to remain silent,
  - (b) to have a speedy and public trial where he/she will be confronted with witnesses against him/her after he/she has had sufficient time to prepare his/her defense if he/she pleads "not guilty,"
  - (c) to be tried by a jury if the offense charged is punishable by imprisonment, and
  - (d) to be represented by counsel at his/her own expense, before he/she pleads to the charge.
- (d) If the arrest was without a warrant, and the defendant is to be continued in custody, the judge shall also determine during arraignment whether there is probable cause to believe that an offense against Tribal law has been committed by the named accused.
- (e) The judge shall call upon the defendant to plead to the charge:
  - (1) If the accused pleads "not guilty" to the charge, the judge shall then set a trial date and consider conditions for release prior to trial as provided in Section 402.
  - (2) If the accused pleads "guilty" to the charge, the judge shall accept the plea only if he/she is satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights which he/she is waiving by the plea. The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he/she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing.
  - (3) If the accused refuses to plead, the judge shall enter a plea of "not guilty" on his/her behalf.

**Sec. 402. Release before final judgment of conviction.**

- (a) Prior to trial. At arraignment, the judge shall decide whether to release the defendant from custody pending trial. As conditions of release, the judge may, to assure the accused's appearance at all times lawfully:
  - (1) require the accused to deposit cash or other sufficient collateral, in an amount specified by the judge;
  - (2) require the accused, and/or any other designated person or organization satisfactory to the judge, to execute a written promise to appear or to deliver the accused at all required times;
  - (3) impose reasonable restrictions on the travel, association or place of residence of the accused;
  - (4) impose any other condition deemed reasonably necessary to assure the appearance of the accused as required.
- (b) By police officer. Any law enforcement officer authorized to do so by the Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the Court.
- (c) Pending appeal. A convicted person may be released from custody pending appeal on such conditions as the judge determines will reasonably assure the appearance of the

accused unless the judge determines that release of the accused is likely to pose a danger to the community, to himself/herself or to any other person.

(d) The Court may revoke its release of the defendant and order him/her committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

# HOPI TRIBE

## TITLE II: COURT PROCEDURES

**2.3.7 PROMPT APPEARANCE OF DEFENDANT BEFORE A TRIAL COURT JUDGE.** An officer making an arrest shall take such Indian defendant without undue delay before a Trial Court judge of the Hopi Tribe for arraignment as provided herein. When an Indian defendant arrested without a warrant is brought before the Court, a complaint shall be filed forthwith. The Indian defendant arrested shall be arraigned at the next regularly scheduled session of the Court. Any person brought before the Court at the session immediately following the arrest shall be considered to have been presented before the Court without undue delay.

**2.6.1 ARRAIGNMENT** - Defined. The arraignment must be made by the Court, and consists in reading the complaint to the defendant, and delivering to him a true copy thereof and of the endorsements thereon, and asking him whether he pleads guilty or . not guilty to the offense charged in the complaint.’

**2.6.2 PROCEDURE AT ARRAIGNMENT.** Arraignment shall be conducted in open Court, and shall consist of the following:

- a. Reading the complaint to the accused.
- b. Stating to him the substance of the charges and the language of the law establishing the offense and fixing the penalty.
- c. Advising him of his rights to counsel at his own expense, if he so desires.
- d. Calling on him to plead to the charges.

## CHAPTER 5: BAIL

**2.5.1 BAIL** - Defined. To set at liberty an Indian person arrested or imprisoned on security being taken for his appearance. His sureties shall be regarded as custodians of the principal’s person. This provision is applicable only to offenses over which the Tribe has jurisdiction.

**2.5.2 BAILABLE OFFENSES.** All Indian defendants, as a matter of right, are bailable before conviction, by sufficient cash or surety bail bond, and after conviction if an appeal be pending. If bail is not met, the Indian defendant shall be committed until his case is heard.

**2.5.3 TAKING OF BAIL DEFINED; ENTERED BY CLERK.** The taking of bail consists in the acceptance by the Trial Court of sufficient cash or surety bond for the appearance of the defendant. Upon filing, the Clerk shall enter in the register of actions the date and amounts of the bond or name or names of the surety or sureties thereon and the amount of the bond.

**2.5.4 BAIL SET; MAXIMUM AMOUNT.** Bail shall be set by the judge upon the showing of probable cause by the prosecutor or complainant. Bail shall be fixed in such amount and in such form as, in the judgment of the Court, will insure the presence of the defendant in Court at the time of trial, having due regard for the nature and circumstances of the offense charged the character and reputation of the defendant and the previous criminal record of the defendant. In no case shall the bail exceed four times the maximum cash penalty for each offense for which the defendant has been charged.

**2.5.5 DISCHARGE OF DEFENDANT; BAIL FURNISHED; ORDER.** Upon the execution of the requisite recognizance or bail bond to the Tribe, the Court must, if the defendant is in custody, issue a written order for his discharge, upon the delivery of which to ‘the proper officer the defendant must be discharged.

**2.5.6 INCREASE OR DECREASE OF BAIL BOND; COMMITMENT ON DEFAULT.** When proof is made to the Court having authority to commit on criminal charges that a person previously admitted to bail on any such charge is about to abscond, or that his bail is insufficient, the Court may increase the amount of required bail or, in default thereof, cause him to be committed in jail. Upon good cause shown, the Trial Court may reduce the bail originally set.

**2.5.7 ARREST OF DEFENDANT BY SURETY.** For the purpose of surrendering the defendant, the surety, at any time before the defendant is required to appear and at any place within the Reservation, may himself arrest the defendant, or, by written authority endorsed on a certified copy of the bond, may empower any person of suitable age and discretion to do so and cause the delivery of the defendant before the Court forthwith, whereupon said bond shall be released.

**2.5.8 FORFEITURE OF BAIL.** If the defendant fails to appear for trial judgment or when his personal appearance in Court is lawfully required, the Court may direct an entry of such failure to be made in the record, and the surety bond, or the money deposited instead of the bond, may be forfeited without further proceedings, or the Court may thereafter issue a warrant for the arrest of the defendant.

**2.5.9 RETURN OF CASH OR SURETY BOND.** Any security given by surety or the defendant must be returned upon the return of a not guilty verdict or upon the execution of the sentence.

**2.5.10 RELEASE ON RECOGNIZANCE.** At arraignment, the Court, in its discretion, may release a defendant upon the defendant’s own recognizance.

**2.5.11 BAIL FOR JUVENILE PERSONS.** No bail shall be required of any person who has not reached his sixteenth birthday. A person who has not reached his sixteenth birthday shall be released, pending trial, under the custody of a parent, guardian, or adult friend as may be determined by the Tribal Juvenile Court; provided, that such person shall guarantee in writing the appearance of the juvenile before the next regular session of the Tribal Juvenile Court; and provided further, that if no adult person as named above will accept the responsibility for the juvenile person, the Tribal Juvenile judge shall determine and order a proper disposition of the juvenile.

# **MAKAH INDIAN TRIBE**

## **TITLE 5: CRIMINAL CODE**

### **CHAPTER 3: CITATIONS**

#### **§2.3.01 Citation In Lieu of Detention**

Whenever a person is arrested for a violation of this Code or any other resolution, ordinance or regulation of this Code or any other resolution, ordinance or regulation of the Makah Tribe, the arresting officer or any other authorized law enforcement officer in the field may serve upon such person a citation and notice to appear in court in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the enforcement officer may consider the following factors:

- a. Whether the person has identified himself satisfactorily;
- b. Whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property or breach of the peace;
- c. Whether the person has ties to the community or is a local resident, so as to provide reasonable assurance of his appearance before the Tribal Court, or whether there is substantial likelihood that he will refuse to respond to the citation; and
- d. Whether the person previously has failed to appear in response to a citation issued pursuant to this section or to other lawful processes of the Tribal Court.

#### **§2.3.02 Citation In Lieu of Detention: Contents**

- a. The citation written to the offender by the officer shall include the name of the person, his address, the date of birth and sex, the date, time, place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person to sign a promise to appear.
- b. To secure his release in the field, the person must give his written promise to appear in court as required by the citation.
- c. The citation shall also state the time and place at which a person is to appear in Tribal Court to hear the charges against him, be arraigned and post bail, which shall not be less than 72 hours after the date of the citation, not more than 15 days after the date of the citation.

#### **§2.3.03 Citation inn Lieu of Detention: Effect, Procedure**

- a. The citation, when completed by the officer, shall serve as the complaint for the purposes of prosecution in Tribal Court.

- b. If a defendant fails to appear for arraignment, the Judge may issue a warrant of arrest, and the defendant may be charged with an offense.

## **CHAPTER 5: BAIL, BONDS AND FINES**

### **§2.5.01 Bail and Bonds - Generally**

Except as provided herein, every person charged with any offense before the Tribal Court may be admitted to bail. Bail shall be by cash deposit or by assurance of two reliable members of the community resident within the boundaries of the Reservation who shall execute an agreement in compliance with the form provided therefor to the effect that they will pay any bail forfeited. In no case shall the bail specified in the agreement exceed twice the maximum fine set by the section of this Code for the offense for which the accused has been charged. The cash or bond agreement shall be executed before the Court Clerk, or any bonded employee authorized by the Tribal Council to accept bail. All such bonds shall be promptly filed with the Clerk of the Court.

### **§2.5.02 Bail: Personal Recognizance**

In lieu of bail, a person charged with any offense may be released on his personal recognizance (PR) without posting bail or bond, pursuant to the discretion of the Court. In determining whether to grant PR, the Court may consider the following factors:

- a. Whether the person has identified himself satisfactorily;
- b. Whether detention appears necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace;
- c. Whether the person has ties to the community or is a local resident, so as to provide reasonable assurance of his appearance before a Tribal Court, or whether there is substantial likelihood that he will refuse to appear for trial; and
- d. In any case, to secure his release, the person must give his written promise to appear in Court as required by this citation.

### **§2.5.03 Bail Schedule**

The Chief Judge may establish a bail schedule for all offenses under this Code and any other regulations, resolutions or ordinances promulgated by the Makah Tribal Council. Any person arrested and taken into custody for violation of such Code or regulations may be released before arraignment upon posting the specified bail with the Clerk or other person authorized by the Court to receive bail, unless release on personal recognizance or detention is ordered by the Court. As a condition to any release under this section, such person shall sign a written promise to appear in court at the time set for arraignment. Failure to appear may result in forfeiture of bail and arrest.

### **§2.5.04 Denial of Bail, Detention**

The Court may deny a person release on bail if it appears reasonably certain that the person will pose a serious threat to the safety and well-being of himself, the Reservation or its residents if released or if there is a substantial likelihood that the person will not appear for trial.

# MISSISSIPPI BAND OF CHOCTAW INDIANS

## TITLE II: RULES OF CRIMINAL PROCEDURES

### Rule 5: Arrest – Warrant or Summons

- (a) After a complaint has been filed and if the judge finds that there is probable cause to conclude that an offense has been committed and that the defendant may have committed it, the judge may issue a summons or an arrest warrant. A summons shall contain an order directing the defendant to appear in court at a specific date and time. An arrest warrant shall direct a Tribal Law Enforcement Officer to arrest the defendant and bring him before the court. Each summons or arrest warrant shall be signed by the judge and shall state:
- (1) the name of the defendant or, if the name is unknown a description by which the defendant can be identified with reasonable certainty;
  - (2) the offense(s) charged in the complaint; and,
  - (3) the date of the issuance.
- (b) Upon service of an arrest warrant the Law Enforcement Officer shall endorse and return it to the Clerk of the Choctaw Tribal Court. When the defendant cannot be found or served, an arrest warrant shall remain valid. No arrest warrant shall be issued more than two years following the date of the offense charged.

### Rule 8: Bail and Release from Custody

- (a) Release and Detention Pending Trial
- (1) Class A Offenses
    - (i) All persons arrested for a Class A offense shall be brought before a Tribal Judge within twenty-four (24) hours of the arrest excluding holidays and weekends. The tribal judge shall determine if the person should be detained or released pending trial. The judge shall not order the person released pending trial when the Judge feels that such release will not reasonably assure the appearance of the person as required or that such release will endanger the safety of another person in the community. At the appearance, both the person arrested and the prosecutor's office may present witnesses and cross-examine witnesses with regard to these two issues. If the judge finds that release is appropriate, the Judge shall require the person to tender a cash bond or surety bond executed by two or more reliable persons subject to the jurisdiction of the Court before such person is released; provided, however, such reliable person may not be the Chief, the Vice-Chief, the Secretary-Treasurer, a member of the Tribal Council, an employee of tribal law enforcement, a Judge, a member of the Court staff or attorneys or other persons licensed to practice before the Choctaw

Tribal Court. The amount of the bond required shall be a five hundred dollar (\$500.00) cash or surety bond for all Class A offenses.

- (ii) In addition to the bond, the Tribal Judge may place other conditions upon the release of a person arrested for a Class A offense if the Judge finds that such conditions are necessary to assure the appearance of a person arrested or are necessary to protect the safety of another person in the community. These conditions may include, but are not necessarily limited to:
  - (A) that the person not commit a federal, state or Tribal crime during the period of release;
  - (B) that the person remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judicial officer that the person will appear as required and will not impose a danger to the safety of any other person in the community;
  - (C) that the person maintain employment, or, if unemployed, actively seek employment;
  - (D) that the person maintain or continue an educational program;
  - (E) that the person abide by specified restrictions on personal association, place of abode or travel;
  - (F) that the person avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense;
  - (G) that the person report on a regular basis to a designated law enforcement agency or other agency of the Choctaw Government;
  - (H) that the person comply with a specified curfew;
  - (I) that the person refrain from possessing a firearm, destructive device or other dangerous weapon;
  - (J) that the person refrain from the use of alcohol, or any other use of a narcotic drug or a controlled substance without a prescription by a licensed medical practitioner;
  - (K) that the person undergo available medical, psychological or psychiatric treatment, including treatment for drug or alcohol

dependency; and remain in a specified institution if required for that purpose; and

- (L) that the person satisfy any other condition that is reasonably necessary to assure the appearance of the person that is required and to assure the safety of any other person in the community.
- (iii) At the conclusion of the appearance, the judge shall execute an order stating whether the person is to be detained or released, and if released, the amount of the bond, the date of trial and stating that the defendant shall notify the court within fifteen (15) days from the court arraignment whether the defendant will be represented by counsel at trial and any conditions upon such release in addition to the bond. In the case of detention, the judge shall execute an order stating the reasons for the detention and directing that the person be committed to the custody of Choctaw Law Enforcement for confinement separate, to the extent practical, from persons serving sentences after conviction.
- (2) Class B or Class C Offenses: If a person is arrested for a Class B or Class C offense and is not also arrested for a Class A offense, such person shall not have to appear before a judge in order to obtain release. Such person may obtain release at any time prior to arraignment without appearing before a judge on personal recognizance or if required, by posting a cash or surety bond executed by two or more reliable persons subject to the jurisdiction of the Court before such person is released; provided, however, such reliable person may not be the Chief, the Vice-Chief, the Secretary-Treasurer, a member of the Tribal Council, an employee of tribal law enforcement, a Judge, a member of the Court staff or attorneys or other persons licensed to practice before the Choctaw Tribal Court. Notwithstanding the foregoing, if the arresting officer or complaining witness shall certify to the jailer or if the jailer shall certify based upon his own observation, that the person arrested, was at the time he was brought to the jail, unconscious or in an intoxicated or apparently intoxicated condition, or for any reason does not appear to be conscious or sober, then such person shall not be released until eight (8) hours after arrival at the jail. The person shall be informed by the jailer of his right to post cash or surety bond when the person is brought to the jail. Persons who reside outside the state of Mississippi or off the tribal lands of the Mississippi Band of Choctaw Indians shall post cash bonds. The amount of bond required for persons arrested for a Class B offense shall be a two hundred fifty (\$250.00) appearance bond or a two hundred fifty (\$250.00) cash or surety bond. The amount of bond for a Class C offense shall be a one hundred dollar (\$100.00) cash or surety bond except for the following Class C offenses for which no bond is required and persons may be released on personal recognizance: Criminal Defamation §(3-2-10), Harassment §(3-2-14), Malicious Mischief §(3-3-6), and Littering §(3-5-5).

- (3) Presumption of Innocence Prior to Trial: Nothing in this Rule shall be construed as modifying or limiting the presumption of innocence prior to trial.
- (4) Release or Detention Pending Appeal: A judge of the Choctaw Tribal Court exercising jurisdiction over an offense or a judge of the Choctaw Tribal Appellate Court exercising appellate jurisdiction, shall order that, pending imposition or execution of sentence, or pending appeal of conviction or sentence, a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal, be detained, unless the judge finds, after petition by the person, by clear and convincing evidence:
  - (i) that the person is not likely to flee or pose a danger to the safety of any other person or the community if released during the pendency of the person's appeal; and
  - (ii) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in a reversal, an order for a new trial or a sentence that does not include a term of imprisonment of less than the total amount of time already served plus the expected duration of the appeals process.

In those situations where release is found appropriate for persons convicted of a Class A offense, bond shall be set in accordance with the amounts set forth in Rule 8(a)(1)(i). In addition, the judge may also impose conditions in accordance with the provisions of Rule 8(a)(1)(ii). In those situations where release is found appropriate for persons convicted of a Class B or Class C offense, bond shall be set in accordance with the amounts set forth in Rule 8(a)(2).

- (5) Penalty for Failure to Appear or Violation of Condition of Release: Whoever, having been released pending trial or pending appeal, fails to appear before court as required or fails to surrender for service of sentence pursuant to a Court Order, shall be guilty of a Class A offense, which shall be punishable by up to six (6) months imprisonment, five hundred (\$500.00) fine or both. As an affirmative defense to a prosecution under this provision, a person may assert that uncontrollable circumstances which the person did not create prevented the person from appearing or surrendering, and that the person appeared and surrendered as soon as such circumstances ceased to exist. A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment.
- (6) Sanctions for Violations of a Release Condition: A person who has been released under this Rule, and who has violated a condition of his release, is subject to a revocation of release and an Order of Detention. An attorney of the Prosecution Office may initiate the proceeding for the revocation of an order for release by filing a motion with the court. A judge may issue a warrant for the arrest of the person charged with violating a condition of release, and the person shall be

brought before a judge for a hearing to determine if the person has violated a condition of release. The judge shall enter an Order of Revocation and Detention if, after hearing, the judge finds there is probable cause to believe that the person has committed a federal, state or Tribal crime while on release and may enter such an order if there is probable cause that the person has violated any other conditions of release.

(7) Return of Bond

Provided a person has complied with all orders of the court issued pursuant to this Rule, any cash bond shall be returned to the person providing the bond upon the entry of a not guilty verdict or the sentence of the court in the case of a pretrial bond and upon the rendering of a decision on the appeal in the case of an appeal bond.

**Rule 9 Arraignment, First Appearance**

- (a) Upon the first appearance of the defendant before the Choctaw Tribal Court in response to a summons or warrant or following arrest, the judge shall inform the defendant in English or when necessary in the Choctaw language of the following:
- (1) the offense(s) charged;
  - (2) the maximum penalty and mandatory minimum penalty, if any, provided for the offense charged;
  - (3) the right to bail;
  - (4) the right, if any, to the assistance of a lay advocate or legal counsel at every stage of the proceedings;
  - (5) the right, if any, to representation by an attorney at defendant's own expense;
  - (6) the right to remain silent and that any statement made by the defendant may be used against the defendant;
  - (7) the right, if any, to a jury trial;
  - (8) the right, if the defendant desires reasonable time and opportunity, to consult with counsel.
- (b) The judge shall thereafter require the defendant to plead to the complaint as follows:
- (1) not guilty;
  - (2) guilty;

- (3) not guilty by reason of insanity; or
- (4) no contest.

If the defendant refuses to answer, a plea of not guilty must be entered. If the defendant pleads “not guilty by reason of insanity,” the action shall be transferred to the Behavioral Health Department or an appropriate state or federal agency for a determination of defendant’s competency to stand trial. If the defendant pleads “not guilty,” the action shall be set for trial.

- (c) If the defendant pleads “guilty,” the judge shall accept the plea only after determining that the plea is made voluntarily with a full understanding of the nature of the charge and the consequences of the plea. The judge shall not enter a judgment upon a plea of guilty unless he is satisfied that there is a factual basis for the plea. If a plea of guilty is accepted and judgment entered, the judge shall sentence the defendant immediately or within a reasonable period, giving the defendant an opportunity to inform the court of mitigating facts.
- (d) The court may, in its discretion, allow a defendant to withdraw a plea of guilty whenever it appears that the interests of justice and fairness would be served thereby.
- (e) An arraignment may be waived, by the defendant filing a written plea of not guilty, signed by defendant and defendant’s attorney, no later than forty-eight (48) hours prior to the scheduled arraignment. The waiver must indicate the date and time of arraignment and the name of the arraigning judge.

## NEZ PERCE TRIBE

### TITLE 2

#### Rule 6. Summons

(a) In lieu of an arrest, and upon a finding that it appears probable cause exists to believe an offense has been committed and that the defendant committed it, the Tribal Court or a tribal police officer may issue a summons directing the person accused to appear before a tribal judge at a stated date, time and place. A citation shall require the defendant to appear in Tribal Court not less than five (5) nor more than fifteen (15) business days after the date of the citation. The summons will also inform the defendant that a warrant of arrest will be issued if he fails to appear as directed. Issuance of a summons will initiate prosecution of an action under this chapter.

(b) If the summons is issued by the Tribal Court it shall be served on the defendant as provided by this chapter. Should a defendant refuse service of a summons or should a defendant's whereabouts be unknown after a reasonable search, an arrest warrant shall issue.

(c) If the summons is issued by a tribal police officer he shall serve a copy on the defendant by personal delivery to him when the defendant is present. Certification of service of the summons shall be indicated on the face of the summons by the issuing officer. The original summons shall be filed with the Tribal Court and a copy delivered to the tribal prosecutor within one (1) business day of serving.

#### Rule 10. Arraignment

(a) Arrested persons shall be taken without unnecessary delay, but in no case later than three (3) business days, before a tribal judge for arraignment. In the event a summons has been issued, the defendant shall appear at the time designated in the summons. The schedule for arraignments shall be determined by the Tribal Court. If the defendant does not have counsel and desires to be represented, he shall be given a reasonable time to secure counsel before entering his plea or making any statement.

(b) During arraignment, the defendant shall be provided with a copy of the complaint if he has not received one. The complaint shall be read to the defendant and he will be asked to plead guilty or not guilty to the offense charged.

(c) Before accepting a plea of guilty, the court must:

(1) determine that the defendant understands that the plea is voluntary and is not the result of any force, threats, or promises apart from any plea agreement between the tribal prosecutor and the defendant;

(2) inform the defendant:

(A) of the nature of the charge to which the plea is offered;

(B) of the maximum penalty;

(C) if the defendant is not represented by an attorney, that the defendant has the right to be so represented at every stage of the proceedings at the defendant's expense; and

(D) that the defendant has the right to:

(i) confront and cross-examine all of the witnesses against him in person or by counsel;

(ii) have witnesses compelled by subpoena to appear and testify for him;

(iii) testify regarding the charges against him or to testify in his own behalf provided that once he takes the stand to testify he shall have waived the right to refuse to testify in any matter relevant to the immediate proceeding; and (iv) an impartial trial by an impartial judge or jury.

(d) Upon a plea of guilty the court may sentence the defendant or set a future date for sentencing. If a future date for sentencing is established, the court may release the defendant on bail, have the defendant committed or released without bail.

(e) If the defendant is silent or if the defendant pleads guilty and the judge determines that the plea is made involuntarily or that the defendant does not understand the nature of the charge he shall enter a plea of not guilty for the defendant.

**Rule 10a. Pre-Trial Release** (revised 6/22/99)

(a) In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the court shall review the facts of the arrest and detention of the person and determine whether the person:

(1) is a threat to the alleged victim;

(2) is a threat to public safety; and

(3) is reasonably likely to appear in court.

(b) Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the court shall make findings on the record if possible concerning the determination made in accordance with subsection 1 and may impose conditions of release and/or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

- (1) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim;
  - (2) An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, whether directly or indirectly;
  - (3) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
  - (4) An order prohibiting the person from using or possessing a firearm or other weapon as specified by the court.
  - (5) An order suspending or revoking a person's privilege to hunt with a firearm. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements;
  - (6) An order prohibiting the person from possession or consumption of alcohol or controlled substances.
  - (7) Any other order required to protect the safety of the alleged victim and to assure the appearance of the person in court.
- (c) The bond for the crimes of domestic violence and violation of a domestic protection order shall be a cash bond in an amount set by the court in the bond schedule.
- (d) The court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
- (e) If conditions of release are imposed without a hearing, the arrested or charged person may request a hearing before the court to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.

# **NISQUALLY INDIAN TRIBE**

## **TITLE 24: JUDICIARY AND JUDICIAL PROCEDURES**

### **SUBCHAPTER IV: RULES OF CRIMINAL PROCEDURE**

#### **24.16.05 Domestic Violence**

(a) Law enforcement shall immediately arrest and take into custody any person whom the officer has probable cause to believe has committed an act of domestic violence. The victim of the domestic violence need not sign a complaint. Such person shall be charged with any appropriate crime and held without bail for a period not less than twenty-four (24) hours. No bail schedule shall be set until the "cooling off" period has expired.

#### **24.16.10 Summons in Lieu of Warrant**

(a) When otherwise authorized to arrest a suspect, a Tribal Judge or Judicial Officer may, in lieu of a warrant, issue a summons commanding the accused to appear before the Tribal Court at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by the Tribal Court Clerk.

(c) If an accused fails to appear in response to a summons, a warrant for the arrest of the accused shall be issued.

### **Section 24.19 - Bail**

#### **24.19.01 Bail - Release Prior to Trial**

(a) Every person charged with a criminal offense before the Nisqually Tribal Court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

(i) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times. The Tribal Court shall establish a list of factors to be considered when determining whether an accused in custody shall be granted release on personal recognizance.

(ii) Release after deposit into the Tribal Court of bond in either cash or other sufficient collateral by the accused, his family, a friend or a bondsman licensed by the State of Washington. The amount of bail shall be specified by the Tribal Judge, Tribal Judicial Officer, or bail schedule but in no case shall bail be set for more than five thousand dollars (\$5,000.00) per offense.

(iii) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required. Possible conditions include, but are not limited to, reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.

(b) Tribal law enforcement officers may release persons from custody prior to arraignment when the requirements for release set forth in subparagraph (1) have been met.

#### **24.19.02 Bail Schedule**

The Tribal Court judiciary may, at his or her discretion, set a bail schedule for the use of Tribal police.

#### **24.19.03 Forfeiture of Bail**

If the defendant fails to appear before the court as ordered by the court, the court may direct an entry of such failure to be made in the record, order the forfeiture of the bond or cash deposit and issue a warrant for the arrest of the defendant.

#### **24.19.04 Return of Surety**

Any cash or other property given as security by the surety or defendant shall be returned by the court upon the entry of a not guilty verdict or the execution of sentence.

#### **24.19.05 No Bail**

The protection of individuals and the community demands that certain persons be held without bail or bond in exceptional circumstances. The Tribal Court, in its discretion, may refuse to provide release but only in the following situations:

- (a) The person has been charged with a crime of violence; and
  - (i) The person has been recently convicted of another crime of violence; or
  - (ii) The person has committed this offense while on probation or other release for another crime of violence; or
- (b) The person has been charged with obstructing justice by having threatened, injured or intimidated a Tribal Judge, witness or juror, or has attempted such threat, injury or intimidation; or
- (c) There is strong likelihood of flight to escape trial. Such a finding requires a documented history of such flight, or evidence or circumstances indicating that such flight is likely; or

(d) The person represents a significant danger to the community. Such a finding requires a pattern of behavior evidenced by past and present conduct and a determination that no conditions for release are available which would reasonably assure the safety of the community.

#### **24.19.06 No-Bail Hearings**

(a) Denial of a right to bail or bond shall occur only after such request is made by the Tribal Prosecutor, and the Tribal Court has immediately held a pretrial detention hearing and determined by clear and convincing evidence that there is a substantial probability that the accused committed the offense.

(i) Where the Tribal Court finds that denial of bail or bond is proper, an order for detention shall be issued with the Tribal Court's findings of fact.

(ii) Where a person is held without bail or bond, his or her case shall be put on an expedited calendar and the trial shall be given priority over other pending cases. If a conviction results, the defendant shall be credited with the time served pending trial.

#### **24.19.07 Bail -Release Pending Appeal**

Every person who has been convicted of a tribal offense and who has filed an appeal or a petition for a writ of habeas corpus shall be treated in accordance with the provisions of this Section, unless the Trial Judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a significant danger to the community, to the accused or to any other person. If the Trial Tribal Judge finds such to be the case, the detention of the accused may be ordered.

# OGLALA SIOUX

## CHAPTER 8: CRIMINAL PROCEDURES

### SECTION 2: ARRESTS

Section 2-4. Summons in lieu of warrant.

- a. A judge may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court at a stated time and place and answer to the charge.
- b. The summons shall contain the same information as a warrant.
- c. The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.
- d. The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally. Service shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the records of the case.

### SECTION 4: ARRAIGNMENT AND RELEASE

Section 4-2. Release before final judgment of conviction.

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

1. require the accused to deposit cash or other sufficient collateral, in an amount specified by the Judge;
2. require the accused, and/or any other designated person or organization satisfactory to the Judge, to execute written promise to appear or to deliver the accused at all required times;
3. impose reasonable restrictions on the travel, association or place of residence of the accused;
4. impose any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(b) By Police Officer. Any law enforcement officer authorized to do so by the Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the Court. The Court may order the release of any person for good cause notwithstanding any prescribed bail schedules and conditions.

(c) Pending Appeal. A convicted person may be released from custody pending appeal on such conditions as the Judge determines will reasonably assure all appearances of the accused unless the Judge determines that the release of the accused is likely to pose a danger to the community, to himself, or to any other person.

(d) The court may revoke its release of the defendant and order him committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

# ONEIDA INDIAN NATION

## CHAPTER 2 -

### 203. ARREST WARRANT OR SUMMONS TO APPEAR

#### Rule 203. ARREST WARRANT OR SUMMONS TO APPEAR

- a. If it appears from the complaint that an offense has been charged against the defendant, the judge shall issue a summons to the defendant to bring him before the court. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Nation supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.
- b. Issuance of Arrest Warrants or Summons. Unless the judge has reasonable grounds to believe that the person will not appear on a summons, a summons shall be issued instead of an arrest warrant.
- d. Contents of Summons. A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before the Court within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall issue.
- e. Execution of Arrest Warrants and Service of Summons.
  2. Criminal Summons may be served by any Nation police officer or any adult person authorized in writing by the Court. Service may be made at any place within the territorial jurisdiction of the Nation.
  3. Criminal Summons are to be served at a person's home only between the hours of 7:00 am and 9:00 p.m., unless an authorization to serve such process after 9:00 p.m. is placed on the face thereof by the Judge.
  4. The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such and returned to the Court.

### 204. APPEARANCE TICKETS

#### Rule 204. APPEARANCE TICKETS

a. Whenever a law enforcement officer would be empowered to make an arrest without a warrant for an offense but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he may, in his discretion, issue the defendant an appearance ticket instead of taking the person into custody. Such appearance ticket, signed by the law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, unless the Court orders that a formal complaint be filed.

b. Contents of Appearance Ticket.

1. The ticket shall contain the name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the appearance ticket.

2. The ticket shall contain an agreement by the defendant to appear before the court on a day certain to answer to the charge, and the signature of the defendant.

3. The ticket shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court.

4. One (1) copy of the ticket shall be given to the defendant and two (2) copies shall be delivered to the Nation prosecutor.

c. Posting of Cash Bail.

1. Issuance and service of an appearance ticket by a police officer may be made conditional upon the posting of bail. In such case, the bail becomes forfeit upon failure of such person to comply with the directions of the appearance ticket. The person posting such bail must complete and sign a form which states (a) the name, residential address and occupation of each person posting cash bail; and (b) the title of the criminal action or proceeding involved; and (c) the offense or offenses which are the subjects of the action or proceeding involved, and the status of such action or proceeding; and (d) the name of the principal and the nature of his involvement in or connection with such action or proceeding; and (e) the date of the principal's next appearance in court; and (f) an acknowledgment that the cash bail will be forfeited if the principal does not comply with the directions of the appearance ticket; and (g) the amount of money posted as cash bail. The bail may be posted as provided in subdivision two.

2. A desk officer in charge at the Nation police station, or any of his superior officers may, in an amount prescribed in subdivision, and upon the posting must issue and serve an appearance ticket upon the person, give a receipt for the bail, and release such person from custody. Such bail may be fixed in the following amounts:

(i) For a felony, any amount not exceeding seven hundred fifty dollars.

(ii) For a misdemeanor, any amount not exceeding five hundred dollars.

(iii) For a violation, any amount not exceeding two hundred fifty dollars.

## **205. ARRAIGNMENT**

### Rule 205. ARRAIGNMENT

a. Arraignment Defined. Arraignment is the bringing of an accused person before the court, informing him of the charge against him and of his rights, receiving his plea and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a criminal summons or appearance ticket or, if the accused was arrested and confined, within seventy- two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.

b. Procedure at Arraignment. Arraignments shall be conducted in the following order:

1. The Judge shall request the prosecutor to read the charges.
2. The prosecutor shall read the entire complaint, deliver a copy to the defendant unless he has previously received a copy thereof, and state the minimum and maximum authorized penalties.
3. The Judge should determine that the accused understands the charge against him and explain to the defendant that he has the following rights:

(i) the right to remain silent.

(ii) to be tried by a jury upon written request filed with the clerk two days after arraignment with a \$10.00 jury fee, which fee may be waived by the Court upon a showing of hardship.

(iii) to consult with an attorney and that if he desires to consult with an attorney the arraignment will be postponed.

4. The Judge shall ask the defendant if he wishes to obtain counsel and, if the defendant so desires, he will be given a reasonable time to obtain counsel. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea until the date set for his appearance.

5. If the Defendant cannot afford counsel, the court will appoint counsel for him. The defendant must complete an in forma pauperis application.

6. The Judge should then ask the defendant whether he wishes to plead "guilty", "nolo contendere", or "not guilty".

## **206. COMMITMENTS**

### Rule 206. COMMITMENTS

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

- a. A temporary commitment shall be issued pending investigation of charges or trial.
- b. A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the Court.

# PAWNEE TRIBE OF OKLAHOMA

## TITLE V

### CHAPTER 2

#### Section 202. Arrest Warrant or Summons to Appear

(a) If it appears from the complaint that an offense has been charged against the defendant, a judge of the Tribal Court, or the court clerk, shall issue a summons to the defendant to bring him before the court. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Tribe supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

(b) Issuance of Arrest Warrants or Summons. Unless the Tribal Judge has reasonable grounds to believe that the person will not appear on a summons, or unless the complaint charges an offense which is punishable by banishment, a summons shall be issued instead of an arrest warrant.

(d) Contents of Summons. A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before a Tribal Judge within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall issue.

(e) Service of Arrest Warrants and Summons.

(1) Warrants for Arrest and Criminal Summons may be served by any Tribal or Federal law enforcement officer or any adult person authorized in writing by the Tribal Judge. Service may be made at any place within the jurisdiction of the Tribe.

(2) Warrants of Arrest and Summons are to be served at a person's home only between the hours of 7:00 a.m. and 9:00 p.m., unless an authorization to serve such process at night is placed on the face thereof by a Tribal Judge.

(3) The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the Court. A copy, so signed, shall be given to the person served or arrested at the time of arrest if reasonably possible, or as soon thereafter as is reasonable possible.

(4) An officer need not have the warrant in his possession at the time of arrest, but if not, he shall inform the defendant of the charge, that a warrant of arrest has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment.

## **Section 203. Criminal Citations**

(a) Whenever a law enforcement officer would be empowered to make an arrest without a warrant for an offense not punishable by banishment but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he may, in his discretion, issue the defendant a citation instead of taking said person into custody. Such citation, signed by the law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, unless the Court orders that a formal complaint be filed.

(b) Contents of Citation.

(1) The citation shall contain the name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.

(2) The citation shall contain an agreement by the defendant to appear before a Tribal Judge within five (5) days or on a day certain to answer to the charge, and the signature of the defendant.

(3) The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court.

(4) One (1) copy of the citation shall be given to the defendant and two (2) copies shall be delivered to the Attorney General.

## **Section 204. Arraignment**

(a) Arraignment Defined. Arraignment is the bringing of an accused person before the Court, informing him of the charge against him and of his rights, receiving his plea and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a Criminal Summons or Citation or, if the accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.

(b) At Arraignment. Arraignments shall be conducted in the following order:

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

(2) The Attorney General should read the entire complaint, deliver a copy to the defendant unless he has previously received a copy thereof, and state the minimum and maximum authorized penalties.

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

(i) the right to remain silent.

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

(iii) to consult with an attorney at his own expense and that if he desires to consult with an attorney the arraignment will be postponed.

(4) The Judge or Magistrate shall ask the defendant if he wishes to obtain counsel and, if the defendant so desires, he will be given a reasonable time to obtain counsel. If the defendant shows his indigency and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea until the date set for his appearance.

(5) The Judge or Magistrate should then ask the defendant whether he wishes to plead "guilty", "nolo contendere," or "not guilty."

### **Section 205. Commitments**

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

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

(b) A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the Tribal Court

# POARCH BAND OF CREEK INDIANS TRIBAL CODE

## SECTION 9

### § 9-1-2 Summons

#### Issuance

The Court may issue a summons instead of a warrant of arrest where the Court in its discretion deems that arrest is not essential. The summons shall direct the defendant to appear before the Court at a stated time and place to plead in response to the complaint. All summons shall contain the following information:

- 1) the name and/or alias of the defendant;
- 2) the code section with which the defendant is charged or a paraphrased version of the same which shall be sufficient to apprise the defendant of the offense with which he is being charged;
- 3) the date of issuance of the summons;
- 4) the signature of the Tribal Court Clerk.

#### Execution

The summons, together with a copy of the complaint, shall be served by an authorized Tribal Police Officer by delivering a copy to the defendant or sent certified mail by the Tribal Court Clerk, return receipt requested.

### §9-1-4 Release

#### Prior to Trial

Every person charge with a criminal offense before the Court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

- 1) release on personal recognizance upon execution by the defendant of a written promise (appearance bond) to appear at trial and all other lawfully required times.
- 2) release after deposit by the defendant or a bail bondsman bond in either cash or other sufficient collateral in an amount specified by the Judge or a bail schedule.
- 3) release after execution of appearance bond by two responsible members of the community.
- 4) release upon any other condition deemed reasonably necessary to assure the appearance of the defendant as required.

### **By Tribal Police Officer**

Any Tribal Police Officer authorized to do so by the Court may admit an arrested person to bail pursuant to the bail schedule or release upon personal recognizance. Tribal Police officers shall have available a bail schedule prepared by the Court which shall be used for setting money bond where such condition of release is deemed necessary. Any person arrested who is unable to be released under the above provisions shall be brought before the Tribal Judge within seventy-two (72) hours, excluding weekends and holidays.

### **§9-1-5 Arraignment**

During arraignment proceedings, the Tribal Judge shall read the complaint to the defendant and determine that he understands the complaint and the section of the Code which he is charged with violating, including the maximum authorized penalty and advise him of his rights as set out in Section 9-1-3 hereof and calling on him to plead to the charge(s).

# **PUEBLO OF SAN ILDEFONSO**

## **TITLE IV: RULES OF CRIMINAL PROCEDURE**

### **CHAPTER 8: BAIL**

#### **Sec. 8.8 - Bail.**

Every person charged with an offense before the Court may be admitted to bail, after photographing and fingerprinting, before conviction (or after conviction if an appeal is pending) as provided under these conditions.

(1)Acceptance by the Tribal Court of a cash surety bond or undertaking as will in the opinion of the Judge ensure the appearance of the defendant on the date set for trial, giving consideration to the nature and circumstances of the offenses and the character, reputation, and previous criminal record of the defendant and his residence.

(2)The amount of the bail shall not exceed twice the minimum fine for each offense charged, but in no event shall the bail be set for more than \$500.00.

(3)The defendant also may be released by the Judge on or before the arraignment before the Court upon the defendant's own recognizance.

#### **Sec. 8.9 - Forfeiture.**

Upon good cause shown, the Court may increase or decrease the bail originally set (but not over \$500.00). If the defendant fails to appear before the Court as lawfully required, the Court may direct on entry of such failure to be made in the record, order the forfeiture of the bond or cash deposit and issue a warrant for the arrest of the defendant.

#### **Sec. 8.10 - Return of Surety.**

Any cash or other property given as security by the surety or defendant shall be returned by the Court upon the entry of a not guilty verdict or the issuance of a commitment order unless the case is appealed in which cash bail or surety may be extended.

#### **Sec. 8.11 - Detention.**

No person shall be detained, jailed or imprisoned under this Code for a period longer than seventy-two (72) hours (exclusive of Saturdays and Sundays and holidays) without a preliminary (arraignment) hearing before the Tribal Court and shall be released from custody after seventy-two (72) hours if no hearing is held and no temporary commitment order is issued. During the period of detention, the person may be taken under protective custody to a treatment center if, in the opinion of the Officer, this procedure is necessary for the well-being of the arrested or detained party. If a longer time than seventy-two (72) hours is needed before being brought

before a Judge, the person shall be released on his own recognizance or bail pending time of arraignment.

# ROSEBUD SIOUX TRIBE

## CHAPTER 1

### B. Arrest - Warrant or Summons

1. Upon the issuance of the complaint, a warrant of arrest or a summons shall be issued to bring the defendant in the complaint before a Judge or Magistrate of the Tribal Court. The warrant or summons shall specify the Court before which the defendant is to appear.

2. Whenever it is provided that a warrant may be issued for the arrest, of a person charged with the commission of a Class B or C offense, the Judge or Magistrate shall issue or cause to be issued a summons instead of a warrant, unless he has reasonable grounds to believe that the person will not appear upon a summons, in which case he shall issue a warrant of arrest. A warrant of arrest shall be issued in all cases in which a Class A offense is charged.

3. The warrant of arrest shall be signed by the Judge or Magistrate issuing such and shall contain the name of the defendant, or; if such is not known, some other name plus a reasonable description of the defendant, if known. It shall describe the offense charged and it shall command that the defendant be arrested and brought before the Judge or Magistrate to enter a plea.

4. When a summons is issued, it shall name the defendant, specify the offense charged and order the defendant to appear before a specified Judge or Magistrate and set the time and place of such appearance. In the event the defendant fails to appear as directed by the summons, a warrant shall be issued for his arrest.

5. Warrants and summonses shall be served by any officer authorized to make arrests on the Rosebud Reservation, or by any other person designated by the Tribal Courts or by the Judiciary Committee to perform such functions.

a. The service of warrants and summons may be accomplished anywhere within the exterior boundaries of the Rosebud Indian Reservation and the time and place of such service or arrest and the name of the person serving the same shall be endorsed thereon and the original returned to the Court and a copy containing said endorsement shall be left with the person served.

b. An officer need not have the warrant in his possession at the time of arrest, but if he does not, he shall inform the defendant that a warrant has been issued, the nature of the charge, and shall provide the defendant with a copy of the arrest warrant and complaint not later than at the time of appearance before the Court. If reasonably possible, a properly endorsed copy of the summons or warrant plus a copy of the complaint shall be given to the defendant at the time of service or arrest.

c. In the event a defendant refuses service of a summons or a defendant can not be located after a reasonable search, a warrant shall be issued for his arrest.

6. Any officer authorized to make arrests on the Rosebud Reservation may, without a warrant, arrest a person for any offense committed in the presence of the officer or may, upon probable cause that a Class A crime has been committed and that the person arrested committed it, arrest that person although the offense was not committed in the presence of the officer.

7. Any arresting officer:

a. Must inform the person to be arrested of his intentions to arrest him, of the cause or reason for the arrest, and his authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to commit, an offense, or is pursued immediately after its commission, or an escape, if such is not reasonable possible under the circumstances;

b. Must show the warrant of arrest if such exists and is demanded as soon as practicable;

c. May use only that force which is reasonably necessary to effect an arrest;

d. May break open a door or window of a building in which the person to be arrested is, or is reasonably believe to be, after demanding admittance and explaining the purpose for which admittance is desired;

e. May search the person arrested and take from him and put into evidence all weapons he may have about his person;

f. Shall, as soon as possible, do as commanded by the arrest warrant or deliver the person to jail and obtain a complaint,

g. May, if in fresh pursuit, continue such pursuit, and arrest upon capture the person pursued even if arrest would occur outside the exterior boundaries of the Reservation. All persons so arrested may be returned to the Reservation by the arresting officer if the arresting occurs in the State of South Dakota. Otherwise, the arresting person will be turned over to local police officials pending extradition proceedings.

### C. ARRAIGNMENT

1. As soon as reasonably possible, but not more than 72 hours after arrest on a warrant, a defendant shall be brought before a Judge or Magistrate of the Tribal Court. In the event a summons has been issued the defendant shall appear at the time designated in the summons.

2. If the defendant does not have counsel and desires to be represented, he shall be given a reasonable time to secure counsel before entering his plea.

3. The defendant shall be provided with a copy of the complaint if he has not received one; it shall be read to him and he will be advised of his rights as follows:

a. The defendant has the right to appear and defend himself in person or by counsel.

- b. In the event a defendant is determined to be indigent by the Court and wishes to be represented by counsel, the Court shall appoint counsel for the defendant with the exception that no defendant shall have the right to have appointed professional counsel at the tribe's expense.
  - c. The defendant shall have the right to confront and cross-examine all of the witnesses against him in person or by counsel.
  - d. The defendant shall have the right to have witnesses compelled by subpoena to appear and testify for him.
  - e. The defendant shall have the right to refuse to testify regarding the charge against him or to testify in his own behalf provided that once he takes the stand to testify he shall have waived the right to refuse to testify in any matter relevant to the immediate proceeding.
  - f. The defendant shall have the right to have a speedy trial by an impartial judge or jury.
4. The defendant shall enter a plea of guilty to the offense charged or not guilty and the Court shall then advise the defendant of the sentence or bail as is appropriate.

# SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

## CHAPTER 70

### **70.107 Summons in Lieu of Warrant.**

- (1) When otherwise authorized to arrest a suspect, a Tribal police officer or a judge may, in lieu of a warrant, issue a summons commanding the accused to appear before the Tribal Court at a stated time and place and answer to the charge.
- (2) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.
- (3) If a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.

### **70.113 Arraignment.**

- (1) Arraignment is the bringing of the accused before the Tribal Court, informing him of his rights and of the charge against him, receiving his plea, and setting bail as appropriate in accordance with Section 70.116.
- (2) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regularly scheduled session of court.

### **70.114 Rights of Accused at Arraignment.**

Before an accused is required to plead to any criminal charge the Judge shall:

- (1) read the accused the complaint and determine that he understands the complaint and the section of the Tribal Code which he is charged with violating, including the maximum authorized penalty; and
- (2) advise the accused that he has the right:
  - (a) to remain silent; and
  - (b) to be tried by a jury; and
  - (c) to be represented by counsel at his own expense, and that the arraignment will be postponed should he desire to consult with counsel.

### **70.116 Bail - Release Prior to Trial.**

Every person charged with a criminal offense before the Tribal Court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

- (1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.
- (2) Release to the custody of a designated person or organization agreeing to assure the appearance of the person charged.
- (3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.
- (4) Release after deposit by the accused of a bondsman of bond in either cash or other sufficient collateral in an amount specified by the Judge or a bail schedule. The Judge, in his discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.
- (5) Release after execution of a bail agreement by two responsible members of the community.
- (6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

**70.117 Release by Police Officer.**

Any Tribal police officer authorized to do so by the Tribal Court may admit an arrested person to bail pursuant to the bail schedule of release upon personal recognizance. Police officers shall have available a bail schedule prepared by the Tribal Court or Tribal Board of Directors which shall be used for setting money bond where such condition of release is deemed necessary. Any police officer who refuses to release an accused on bail or who specifies a bail condition which the accused is unable to satisfy shall bring the accused before a Tribal Judge for review of the release conditions at the first available opportunity and without unnecessary delay.

**70.118 Bail - Release Pending Appeal.**

Every person who has been convicted of a Tribal offense and who has filed an appeal or a petition of a writ of habeas corpus shall be treated in accordance with the provisions of '70.116 unless the Judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a danger to the community, to the accused or to any other person. If the Judge finds such to be the case, he may order detention of the accused.

# SISSETON-WAHPETON SIOUX TRIBE

## CHAPTER 22

### 22-02-01 SUMMONS TO APPEAR

#### 22-02-02 Issuance of Summons

The Court may issue a summons instead of a warrant where the Court, in its discretion, deems that arrest is not essential. The summons shall direct the defendant to appear before the Court at a stated time and place, to plead in response to the complaint. The summons shall notify the defendant that a warrant for his arrest will be issued in the event he fails to appear.

#### 22-02-03 Service of Summons

The summons, together with a copy of the complaint, shall be served by an authorized law officer; by delivering a copy to the defendant personally, or by leaving it at his dwelling place with a person of suitable age, residing there at the time of service. The Officer shall make a return of service which shall be filed with the records of the case.

### 22-05-01 ARRAIGNMENT

#### 22-05-02 Arrest Mandatory

Any person arrested for an offense by the Tribal Police shall be arraigned at the next regular court session.

#### 22-05-03 Procedure at Arraignment

Arrest shall be conducted in open Court, and shall consist of:

1. Reading the complaint to the accused;
2. State to him in Dakota or English, as may be required, the substance of the charges and the language of the law establishing the offense and fixing the penalty;
3. Advising him of his rights as set forth in section 2205-04 hereof; and
4. Calling on him to plead to the charges.

### 22-06-01 RELEASE PRIOR TO ARRAIGNMENT

Prior to arraignment and only when the Court is not in session, Tribal Police shall be authorized to release a defendant in the following manner:

1. Traffic Violations - In all traffic violations where no jail time is imposed, the defendant can waive his appearance in court by signing a waive which will allow the Court to enter a plea of guilty on his behalf and the fine and Court costs may be paid in the following manner:

a. Nonresidents: at the time of arrest, non residents can pay their fine and court costs at the Tribal Jail by depositing the fine and courts costs in an envelope. Tribal Police shall give the defendant a receipt for their payment.

b. Residents: any resident of the Lake Traverse Reservation may pay their fine and court costs any time prior to the set court date on the traffic ticket, thereby waiving their appearance in Court.

2. Penal Code Violations - All defendants may be released on a cash bail bond only in accordance with the prescribed cash bail bond schedule.

3. Cash Bail Agreement - A cash bail agreement is an agreement whereby a defendant agrees to pay the Court a specified amount if he fails to appear at the required time for arraignment.

4. Upon a Defendant's Release - Tribal Police shall serve a summons upon the defendant stating the date and time that said defendant is to appear in court.

**22-06-02** Failure to pay the fine and court costs as required or to appear in Court at the prescribed time shall be grounds for the Court to issue a bench warrant or arrest for the defendant.

#### **22-07-01 RELEASE AFTER ARRAIGNMENT**

At arraignment, the court, in its discretion may release a defendant under the following conditions:

1. Personal Recognizance - To insure the presence of the defendant in Court at the time of trial, a defendant may be released without posting any monetary amount and the following factors may be considered in order for a defendant to be released on a P.R. Bond: nature and circumstances of offense charged, weight of the evidence against the defendant, employment, ties to the reservation, financial resources, character and mental condition, record of convictions, length of residence in the community, record of appearances in court proceedings, flight to avoid prosecution, failure to, appear at previous court proceedings.

2. Cash Bail Bond - To insure the presence of the defendant in all subsequent court proceedings, a cash monetary amount may be required of a defendant prior to his release. Bail shall be fixed in such an amount and in such form as, in the judgement of the court will insure presence of the defendant but in no case shall bail exceed the maximum cash penalty for each offense which the defendant has been charged.

3. Bail Pending Appeal - Pending appeal, bail may be continued or allowed by the Court to run until the final determination of the case.

4. Revocation of Bail - The Court, for good cause shown, may revoke bail at any time and order the defendant committed to custody. The defendant may request a hearing on the issue of whether there was good cause for the revocation.

# TULALIP TRIBES OF WASHINGTON

## TITLE 2

### Part 5 - Initial Appearance, Presence of Defendant, and Right to Counsel

#### 2.5.1 Initial appearance.

1. A person arrested, whether with or without a warrant, must be taken before a judge of the Tribal Court for an initial appearance within two working days following the arrest.
2. A person not arrested shall appear for an initial appearance at the time and place designated in the citation or summons.
3. 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, the person shall be released immediately without conditions.

#### 2.5.2 Duty of court at initial appearance.

1. 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;
  - d. the right to call any witness on her or his behalf;
  - e. the right to request a jury trial where the crime charged carries a possible jail sentence, unless the prosecutor, prior to plea, informs the defendant that there shall no jail time imposed in the event of a successful prosecution;
  - 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 general circumstances under which the defendant may obtain pretrial release;
  - h. the right to cross-examine the Tribes' witnesses; and
  - i. the right to have up to 5 working days before arraignment.
2. The judge shall admit the defendant to bail as provided by Section 2-6-2 of this Code.

**2.5.3 Presence of 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.

**2.5.4 Right to counsel.**

1. During the initial appearance before the court, every defendant must be informed of the right to have counsel at his or her own expense.
2. If the defendant wishes to obtain counsel, the court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause.

**Part 6 - Bail**

**2.6.1 Release prior to criminal proceedings.** 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.

**2.6.2 Release or detention.**

1. The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.
2. The criteria for determining the conditions of release include, but are not limited to the following:
  - a. defendant's employment status and work history;
  - b. defendant's financial condition;
  - c. the nature and extent of defendant's family relationships and ties to the Reservation community;
  - d. defendant's past and present residences;
  - e. names of individuals personally agreeing to assure defendant's court appearance;
  - f. the nature and circumstances of the current charge, including whether the offense involved the use of force or violence;

g. 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;

h. the defendant's record of appearance at court proceedings; and

i. the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

3. The Court may in its discretion grant temporary release from custody under any conditions the Court deems appropriate.

### **2.6.3 Release on own recognizance and reasonable bail.**

1. Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required.

2. In all cases, the amount set for bail must be reasonable.

3. Reasonable bail reflects an amount which is:

a. sufficient to ensure the presence of the defendant in any pending criminal proceeding;

b. sufficient to assure compliance with the conditions set forth in a bail or release order; and

c. not oppressive.

### **2.6.4 Conditions upon defendant's release.**

1. 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:

a. 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;

b. the defendant may not commit an offense during the period of release;

c. the defendant shall maintain employment or, if unemployed, actively seek employment;

- d. the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;
- e. the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;
- f. the defendant shall comply with a specified curfew;
- g. the defendant may not possess a firearm, destructive device, or other dangerous weapon;
- h. the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;
- i. the defendant shall report on a regular basis to a designated agency or individual, or both;
- j. the defendant shall furnish bail; or
- k. the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

2. 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.

### **2.6.5 Bail schedule.**

1. The Chief Judge of the Tribal Court shall establish and post a schedule of bail for offenses to be used by law enforcement officers.
2. A law enforcement officer may accept bail on behalf of the Tribal Court whenever the amount of bail is specified in the warrant of arrest or in accordance with the posted bail schedule.
3. When a law enforcement officer accepts bail, based on an arrest warrant or current bail schedule, the officer shall give a signed receipt to the offender setting forth the bail received and the name of the person posting the bail. At the earliest time practicable, the law enforcement officer shall deliver the bail and duplicate copy of the bail receipt to the Tribal Court; obtaining a receipt for the bail delivered from a Clerk of Court.
4. The Chief Judge of the Tribal Court shall replace any existing bail schedule with a revised bail schedule by January 31 of each year.
5. Bail may be specifically set by a judge for any offense not listed on the posted bail schedule.

### **2.6.6 Changing bail or conditions of release.**

1. Upon application by the Tribes or the defendant, the Tribal Court may increase or reduce the amount of bail, alter the conditions in the bail or release order, or revoke bail.
2. Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

### **2.6.7 Forms of bail.**

1. 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 Reservation with an unencumbered equity, not exempt, owned in fee simple by the defendant or sureties at a value double the amount of the required bail;
  - c. by posting a written undertaking by the defendant and by two sufficient sureties; or
  - d. by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company.
2. 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.
3. Nothing in this part prohibits a surety from surrendering the defendant in a case in which the surety feels insecure in accepting liability for the defendant.

### **2.6.8 Property and surety bonds.**

1. 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.
2. If the property is real estate the defendant or sureties shall file a sworn schedule that must contain a legal description of the property, a description of any encumbrance on the property, including the amount of each encumbrance and its holder, and the market value of the unencumbered equity owned by the defendant or sureties;

3. If the property is a written undertaking with sureties, each surety must be a Reservation resident and worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court may allow more than two sureties to justify severally and in amounts less than that expressed in the undertaking if the whole justification is equivalent to the amount required.

4. 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:

a. the name and address of the surety company that issued the bond;

b. 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

c. a provision that the surety company may not revoke the undertaking without good cause.

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

**2.6.9 Release 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.

#### **2.6.10 Violation of a release order.**

1. 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. Such time shall not be credited as time served under Section 2.11.10 or 2.11.11.

2. 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.
3. Neither a cash bond nor a commercial bond may be forfeit for violation of release conditions, except for failing to appear for court proceedings without a lawful excuse.
4. 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.

#### **2.6.11 Forfeiture order.**

1. If within 90 days of the 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 Tribal Court may direct the forfeiture of the bail to be discharged upon such terms as are just.
2. If the forfeiture order is not discharged by the Tribal 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 Tribal Board Treasurer; or
  - b. 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 Tribal Board Treasurer.
3. 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.

#### **2.6.12 Surrender of defendant.**

1. At any time before the forfeiture of bail:
  - a. the defendant may surrender to the court or any Tribal law enforcement officer; or
  - b. the surety company may arrest the defendant and surrender the defendant to the court or to any Tribal law enforcement officer.
2. The law enforcement officer will detain the defendant in the officer's custody and shall file a certificate, acknowledging the surrender, in court. The court may then order the bail exonerated.

## **Part 7 - Arraignment of the Defendant**

**2.7.1. Joint defendants.** Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

### **2.7.2. Procedure on arraignment.**

1. 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 waived the reading, and supplying a copy of it to the defendant and calling on the defendant to plead to the charge.

2. If a defendant waives his or her right to counsel in writing, the court may arraign the defendant at the initial appearance.

3. 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;

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; and

4. If the defendant is detained in jail or subject to conditions of release, the defendant shall be arraigned not later than 14 days after the date the complaint is filed in Tribal court, or 14 days after the date of initial appearance if no complaint has been filed prior to the initial appearance. If the defendant is not detained in jail or subject to conditions of release, the defendant shall be arraigned not later than 14 days after the appearance in Tribal court which next follows the filing of the complaint. If the defendant is not arraigned within the above time limits, the defendant shall be released without conditions.

# **UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION**

## **TITLE XII: RULES OF CRIMINAL PROCEDURE**

### **RULE 6. ARREST - WARRANT OR SUMMONS**

(1) Upon the issuance of the complaint, a warrant of arrest or a summons shall issue to bring the defendant named in the complaint before a judge of the Ute Tribal Court.

(2) Whenever it is provided that a warrant may issue for the arrest of a person charged with a commission of a Class B or C offense, the judge shall issue, or cause to be issued, a summons instead of a warrant, unless he has reasonable ground to believe that the person will not appear upon a summons, in which case he shall issue a warrant of arrest. A warrant of arrest shall issue in all cases in which a Class A offense is charged.

(3) The warrant of arrest shall be signed by the judge issuing such and shall contain the name of the defendant, or, if such is not known, some other name plus a reasonable description of the defendant, if known. It shall describe the offense charged and it shall command that the defendant be arrested and brought before the judge to enter a plea.

(4) When a summons shall issue, it shall name the defendant, the offense charged, and order the defendant to appear before a Tribal judge within five (5) days from time of service to enter a plea to the charge. If a Defendant fails to appear in response to the summons, a warrant of arrest shall issue.

### **RULE 34. BAIL: RELEASE FROM CUSTODY**

(1) Except as herein provided, all persons arrested for offenses under this Law and Order Code and incarcerated shall be given the opportunity to make bail and be released pending their trial or appeal.

(2) A bail schedule for Class B and C offenses shall be adopted by the Court and a defendant may obtain release from jail at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged; provided, however, that if the arresting officer or complaining witness shall certify to the jailer, or if the jailer shall certify based on his own observation, that the defendant is at the time he is brought to the jail unconscious or in an intoxicated or apparently intoxicated condition, or for any reason does not appear to be in a conscious and sober condition, such defendant shall not be allowed to post bail according to the bail schedule for 8 hours. The defendant shall be informed by the jailer of his right to make bail at the appropriate time such is available. Bail for Class A offenses may be set only by a judge upon consideration of the relevant factors and must be set or denied within 24 hours following arrest.

(3) At the arraignment or other appropriate time, the judge shall set bail at an amount, not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at trial or at such time as his appearance is necessary. A defendant

may at arraignment request that any bail posted under the bail schedule be reduced or that he be released as under (4) below.

(4) The judge may at his discretion release the defendant on his own recognizance, if it appears substantially certain, considering all relevant factors, that the defendant will appear at the appointed time.

(5) The required bail may be tendered in the form of cash, or a bail bond executed by two or more reliable persons as sureties subject to the jurisdiction of the Court in the form which the Court shall by rule direct.

(6) In the event the defendant fails to appear as required, the Court will forfeit any cash deposited or order the sureties of the bail bond to pay the designated amount to the Court. The liability of the sureties may be enforced by order of the Court without the necessity of an independent action or judgment.

(7) The Court may order the forfeiture of bail for non-appearance set aside if it appears that justice does not require the enforcement of the forfeiture.

(8) The Court may deny release on bail pending trial or appeal when a Class A offense is involved and it appears reasonably certain that the defendant will pose a serious threat to the safety and well being of the Reservation and its residents if released.

(9) The right to be released on bail as provided herein shall not accrue until charges under this Law and Order Code shall have been filed. Persons incarcerated in the Tribal jail for violation of federal or state laws shall be subject to be released on bail by the jurisdiction under whose authority the arrest was made according to the provisions of the laws under which their arrest was made. A person arrested for violation of federal law shall not be entitled to be released on bail until the prosecution of such charges has been declined by the U.S. Attorney, plus a reasonable time thereafter, not to exceed 36 hours after receipt of notification of such declination, in which charges for violation of this Law and Order Code, if any, may be filed.

# WHITE EARTH BAND OF CHIPPEWA

## RULE 6. PRE-TRIAL RELEASE

### Rule 6.01 Release on Citation by Law Enforcement Officer Acting Without Warrant

#### **Subd. 1. Mandatory Issuance of Citation.**

*(1) For Misdemeanors.*

(a) By Arresting Officers. Law enforcement officers acting without a warrant, who have decided to proceed with prosecution, shall issue citations to persons subject to lawful arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation. The citation may be issued in lieu of an arrest, or if an arrest has been made, in lieu of continued detention. If the defendant is detained, the officer shall report to the tribal court the reasons for the detention. Ordinarily, for misdemeanors not punishable by incarceration, a citation shall be issued.

(b) At Place of Detention. When a person is arrested without a warrant for a misdemeanor or misdemeanors and is brought to a police station or jail, the officer in charge of the police station or jail shall issue a citation in lieu of continued detention unless it reasonably appears to the officer that detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that there is a substantial likelihood that the accused will fail to respond to a citation. If the defendant is detained, the officer in charge shall report to the tribal court the reasons for the detention. Provided, however, that for misdemeanors not punishable by incarceration, a citation shall be issued.

*(2) For Misdemeanors and Gross Misdemeanors When Ordered by Prosecuting Attorney or Judge.* An arresting officer acting without a warrant or the officer in charge of a police station or other authorized place of detention to which a person arrested without a warrant has been brought shall issue a citation in lieu of continued detention if so ordered by the prosecuting attorney or by the judge of tribal court or by any person designated by the tribal court to perform that function.

**Subd. 2. Permissive Authority to Issue Citations for Gross Misdemeanors.** When a law enforcement officer acting without a warrant is entitled to make an arrest for a gross misdemeanor or a person arrested without a warrant for a gross misdemeanor is brought to a police station or jail, the officer in charge of the police station or jail may issue a citation in lieu of arrest or in lieu of continued detention if an arrest has been made, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct or that the accused may fail to appear in response to the citation.

**Subd. 3. Form of Citation.** A citation shall direct the accused to appear before the tribal court at a specified time and place or contact the court to schedule an appearance. The citation shall state that if the defendant fails to appear at or contact the tribal court as directed in response to the citation, a warrant of arrest may issue. A summons or warrant issued because of a defendant's failure to respond to a citation may be based upon sworn facts establishing probable cause as set forth in or with the citation and attached to the complaint.

**Subd. 4. Lawful Searches.** The issuance of a citation does not affect a law enforcement officer's authority to conduct an otherwise lawful search.

**Subd. 5. Persons in Need of Care.** Notwithstanding the issuance of a citation, a law enforcement officer may take the cited person to an appropriate medical facility if that person appears mentally or physically incapable of self care.

### **Rule 6.02. Release by Judge, Judicial Officer or Court**

**Subd. 1. Conditions of Release.** Any person charged with an offense shall be released without bail pending the first court appearance when ordered by the prosecuting attorney, the judge of tribal court, or by any person designated by the tribal court to perform that function. Upon appearance before a judge, judicial officer, or the tribal court, a person so charged shall be ordered released pending trial or hearing on personal recognizance or on order to appear or upon the execution of an unsecured appearance bond in a specified amount, unless the tribal court, judge or judicial officer determines, in the exercise of discretion, that such a release will be inimical of public safety or will not reasonably assure the appearance of the person as required. When such a determination is made, the tribal court, judge or judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or hearing, or when otherwise required, or, if no single condition gives that assurance, any combination of the following conditions:

- (a) place the person in the care and supervision of a designated person or organization agreeing to supervise the person;
- (b) place restrictions on the travel, association or place of abode during the period of release;
- (c) require the execution of an appearance bond in an amount set by the tribal court with sufficient solvent sureties, or the deposit of cash or other sufficient security in lieu thereof; or
- (d) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

In any event, the tribal court shall also fix the amount of money bail without other conditions upon which the defendant may obtain release.

The defendant's release shall be conditioned on appearance at trial or hearing, including the omnibus hearing, evidentiary hearing and the pretrial conference prescribed by these rules, or at the taking of any deposition that may be ordered by the tribal court.

**Subd. 2. Determining Factors.** In determining which conditions of release will reasonably assure such appearance, the judge, judicial officer or tribal court shall on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, length of residence in the community, record of convictions, record of appearance at court proceedings or flight to avoid prosecution, and the safety of any other person or of the community.

**Subd. 3. Pre-Release Investigation.** In order to acquire the information required for determining the conditions of release, an investigation into the accused's background may be made prior to or contemporaneously with the defendant's appearance before the tribal court, judge or judicial officer. The tribal court's probation service or other qualified facility available to the court may be directed to conduct the investigation. Any information obtained from the defendant in response to the inquiry during the course of the investigation and any evidence derived from such information shall not be used against the defendant at trial. This shall not preclude the use of evidence obtained by other independent investigation.

**Subd. 4. Review of Conditions of Release.** Upon motion, the tribal court shall review the conditions of release.

### **Rule 6.03 Violation of Conditions of Release**

**Subd. 1. Warrant.** Upon an application of the prosecuting attorney alleging that a defendant has violated the conditions of release, the judge or judicial officer of the tribal court may issue a warrant directing that the defendant be arrested and taken forthwith before such judge or judicial officer of the tribal court. A summons directing the defendant to appear before such judge or judicial officer of the tribal court at a specified time shall be issued instead of a warrant unless it reasonably appears that there is a substantial likelihood that the defendant will fail to respond to the summons or when the whereabouts of the defendant is unknown.

**Subd. 2. Arrest Without Warrant.** A law enforcement officer having probable cause to believe that a released defendant has violated the conditions of release may, if it is impracticable to secure a warrant or summons as provided in this rule, arrest the defendant and take the defendant forthwith before such judge or judicial officer of the tribal court. In a misdemeanor case, a citation shall be issued in lieu of an arrest or continued detention unless it reasonably appears that the arrest or detention is necessary to prevent bodily harm to the accused or another or to prevent further criminal conduct, or that there is a substantial likelihood that the defendant will fail to respond to the citation.

**Subd. 3. Hearing.** After hearing and upon finding that the defendant has violated conditions imposed on release, the judge or judicial officer of the tribal court shall continue the release upon

the same conditions or impose different or additional conditions for defendant's possible release as provided for in Rule 6.02, Subd. 1.

**Subd. 4. Commission of Crime.** When it is shown that a complaint has been filed charging a defendant with the commission of a crime while released pending adjudication in tribal court of a prior charge, the tribal court may, after notice and hearing, review and revise the conditions of possible release as provided for in Rule 6.02, Subd. 1.

#### **Rule 6.04 Forfeiture**

The procedure for forfeiture of an appearance bond shall be as follows:

When a person in a criminal prosecution is under bond to appear and answer and fails to perform the conditions of the bond, the law enforcement authorities shall apprehend that person in the manner provided in Rule 6.03 of these rules. After default on a bond, a surety may, with permission of the court, pay to the court administrator the amount for which the surety was bound as surety, with costs as the court may direct. When payment is made, the surety is fully discharged of any obligation under the bond. The court may forgive or reduce the bond forfeiture according to the circumstances of the case and the situation of the party on any terms and conditions it considers just and reasonable.

#### **Rule 6.05 Supervision of Detention**

The tribal court shall exercise supervision over the detention of defendants within the tribal court's jurisdiction for the purpose of eliminating all unnecessary detention. The officer in charge of a detention facility shall make at least biweekly reports to the prosecuting attorney and to the tribal court listing each defendant who has been held in custody pending criminal charges, arraignment, trial, sentencing, or revocation of probation for a period in excess of ten (10) days in gross misdemeanor cases, and in excess of two (2) days in misdemeanor cases.

# YOMBA SHOSHONE TRIBE

## TITLE FOUR

### Sec. 9 Summons Instead of Arrest Warrant

a. Power to Issue Summons - Whenever authorized to issue an arrest warrant for an accused, the Judge may, instead, issue a summons commanding the accused to appear at the stated place, time and location to answer the charge. Factors to consider in issuing a summons are:

(1) Whether detention appears reasonably necessary to prevent injury to property, a breach of the peace, or imminent bodily harm to the accused or to another.

(2) His employment, residence, family ties and other relationships to the community.

(3) The nature of the crime charged and his prior criminal record, including the record of prior release on recognizance or bail.

(4) Any other factors bearing on the risk or willful failure to appear.

b. Contents of Summons - A summons shall contain the same information as a warrant

c. Failure to Answer Summons - If a defendant fails to appear in response to a summons, a Bench Warrant will be issued for his arrest.

d. Routine Issuance of Summons - The Tribal Judge may prepare a list of offenses for which a summons will routinely be issued instead of an arrest warrant.

### Sec. 10 Citations

a. Issuing Citations:

(1) Any Tribal Police Officer who apprehends a Indian resident of the Reservation for an offense for which a citation may be issued, may issue said citation to the person and then release them upon the person signing the citation giving his written promise to appear before the Tribal Court on the date, time and location specified, to answer the charges or alleged violation. The officer will insure the persons understands that their signing of the citation is not an admission of guilt, but strictly their written promise to appear. The officer will file the citation with the Court Clerk, in effect making the citation a Complaint.

(a) If the Indian person receiving the citation refuses to sign the citation after it is explained to him, by the officer, the person may be required to post bail with the Court Clerk or other authorized official, before being released. The receipt number will be written on the line reserved for the person's signature.

(b) If the Indian person receiving the citation can not or refuses to post bail, the officer may arrest the person for the violation and bring the person before the Judge as soon as possible. If the Judge is unable to be contacted, after diligent effort by the officer, the officer may book the person into jail using the same procedures as for any other offense.

(c) If, while in route to the booking facility, the Indian person states he will sign the citation, the officer will advise the person that signing of the citation is no longer an option and that bail will have to be posted. If the person has the means to post bail, the officer will allow the person to post bail, in accordance with the provisions of this Section.

(2) Any Tribal Police Officer may issue a citation to a non-Indian for a offense for which a citation may be issued, under the following conditions:

(a) Because the Tribal Court has no jurisdiction over non-Indians (whether they reside on the Reservation or not), the officer will cite the person into the Nye County Justice Court, using that court's bail schedule, appearance date, etc., And citation forms complying with the requirements of the County and the State (because the current citation forms used by the Yomba Police Department do not conform with the State requirements, citation forms from the Nye County Sheriff's Office may be used by Tribal Police Officer's upon the approval of the Tribal Council and the Nye County Sheriff's Office and issued by the Nye County Sheriff's Office for that purpose, until new forms can be made that will meet the requirements of both the State and the Tribe). The officer will use the Nevada Revised Statute (NRS) appropriate for the violation, as well as NRS 171.1255 as a reference number (NRS 171.1255 is the State statute giving Tribal Police Officers and BIA Officers the authority to cite or arrest a non-Indian on a Reservation or, when in fresh pursuit, off the Reservation; under State law, a citation is a technical form of arrest even though the person is not placed under physical restraint).

(i) The officer will explain the citation to the non-Indian offender with a request that he signify his written promise to appear before the Nye County Justice Court, as specified, by signing the citation. If the non-Indian person refuses to sign the citation, the officer will follow the procedures set forth by the Nye County Justice Court.

(ii) If no procedures have been set forth by the Nye County Justice Court, and no arrangements have been made between the Tribe and Nye County Justice Court for the collecting of bail (such as issuing the officer's Nye County receipt forms so the officer may collect the bail for the County and issue the person a receipt therefrom), and the alleged offense is not one for which the officer would normally physically arrest and book the person into jail, then the officer will write "Refused to Sign" on the person's signature line of the citation, and release the person.

b. Contents for a Citation - The citation shall contain the same information as an arrest warrant and, upon approval of the Tribal Council, shall be formatted in such a manner as to comply with State requirements in order that Tribal Police Officers will be able to use a single citation form for both Indian and non-Indian offenders, as set forth in Subsection "a" of this Section. This shall include, but not necessarily limited to: a place for the issuing officer to sign, a place for the offender to sign, the name of the appropriate Court with the date, time and place to appear to answer the charge, and a statement that if the person posted bail, he may forfeit bail in lieu of

appearing in Court unless the judgment upon conviction may impose a fine and imprisonment, in which case the accused must appear in the appropriate Court. If bail is posted, the receipt number goes on the signature line of the accused, rather than having the accused sign the citation.

c. Bail for a Citation - All criminal offenses for which citations may be issued shall be listed on a bail schedule as set forth by the Tribal Judge or the Nye County Justice Court. For Indian persons issued citations, bail shall be allowed to be posted. For non-Indian person's, the procedures set forth in Subsection "a", Paragraph (2), of this Section, shall be followed.

d. Bail Forfeiture and Failure to Appear (of Indian defendant's):

(1) If bail has been posted and the defendant does not appear, the Judge shall enter a judgment of conviction, imposing a fine equal to the amount of the bail and treating the bail as payment of the fine.

(2) If, however, the offense may include both a fine and imprisonment time upon conviction, the Judge may order the bail forfeited and a Bench Warrant issued for the arrest of the defendant for Failure to Appear. In this instance, a separate monetary fine may be imposed along with imprisonment time by the Court, upon conviction.

(3) If a person to whom a citation was issued with no bail being posted, fails to appear, a Bench Warrant will be issued for his arrest.

### **Sec. 3 Bail Release by Tribal Police Officer**

a. Bail Schedule for Specific Offenses - The Judge may prepare a bail schedule specifying the amount of money to be posted for specific offenses. The accused may post that amount and be released without appearing before the Judge to have bail set.

b. General Bail Schedule - Where no specific bail has been set, the Judge may establish a maximum bail for each class of listed offense, with this amount to be posted in order for the accused to be released.

c. Right to Release - Unless specifically ordered otherwise by the Judge, any person is entitled to be released upon posting bail with the Court Clerk or other designated person.

### **Sec. 4 First Appearance; Bail Hearing**

a. Defined - First Appearance is the bringing of an accused before the Court, informing him of his rights, the charge for which he was arrested, and setting bail.

b. Any person who does not post bail, arrested for an offense for which no bail has been set, or for which the Judge has ordered bail to be set at a first appearance hearing, shall be brought before the Judge for said first appearance hearing and setting of bail by:

(1) physically bringing the accused before the Judge within 72 hours after arrest, or, if no Tribal working day occurs within that time, then on the next Tribal working day; or,

(2) having their first appearance and bail set via telephone or other electronic means.

c. A person denied a hearing under Subsection "a" of this Section, shall be released from custody after the 72 hour time period, if he has not received his first appearance.

### **Sec. 5 Setting Bail and Conditions of Release by the Tribal Judge**

a. Personal Recognizance:

(1) Every Indian defendant who is not issued a citation and summons and is not released under the bail schedule is entitled to a hearing on the issue of release as specified. He may be eligible for release from custody on personal recognizance. That is, upon giving his written promise to appear for trial, unless the Judge determines that such a release would not reasonably assure the appearance of the accused at the required time.

(2) Addition bail review hearings may be held at any time, and persons released on bail may also apply to the Court for a bail hearing under this Section.

b. Maximum Bail - Except for murder for which there is no bail, the maximum bail shall not exceed \$25,000.00.

c. Factors in Setting Bail - In determining the risk of non-appearance and in setting bail, the Judge shall take into account the following factors concerning the accused:

(1) Whether detention appears reasonably necessary to prevent injury to property, a breach of the peace, or bodily harm to the accused or to another.

(2) His employment, residence, family ties, and other relationships to the community.

(3) The nature of the offense charged, and his prior criminal record including the record of prior release on recognizance or bail.

d. Conditions of Release - In addition to or instead of a release on personal recognizance or on money bail, the Judge may release the accused under any one or more of the following conditions as necessary to assure the appearance of the accused at the required time and to assure the behavior of the accused while out on bail:

(1) Release to the custody of a designated person or organization agreeing to assure the appearance of the accused.

(2) Release with reasonable restrictions on the travel, association, place of residence, drinking of intoxicating beverages, etc., Of the accused during the release period.

(3) Release after deposit by the accused of a bond, that is a partial or zero payment of the bail plus a promise to pay the full bail if the accused fails to appear as ordered.

(4) Release after execution of an agreement by two responsible members of the community to pay and forfeit bail of the accused if he fails to appear.

e. Denying Bail - If the Judge has reason to believe that no condition of release will reasonably assure the appearance of the accused or is likely to pose a danger to the community, the accused, or to any other person, the Judge may order detention of the accused.

## **Sec. 6 Arraignment**

a. Defined - Arraignment is the bringing of an accused before the Court, informing him of his rights, the formal charges against him, giving him a copy of the complaint and receiving his plea (answer) to the charge.

b. Time Limits:

(1) Arraignment shall be held:

(a) in open Court within 10 Tribal working days, if the accused is in custody, or, at the next appropriate Court date if the accused is not in custody; or,

(b) by telephonic or other electronic means with the proceedings being recorded (by tape recorder or other electronic means, or by use of a certified shorthand reporter who can hear all of the proceedings), with the defendant's responses being witnessed by a law enforcement officer who is present with the defendant during the telephonic arraignment

(2) A bail hearing to set or review bail may be held at the same time as the arraignment.

(3) A person whose arraignment is delayed past the time limit shall have those rights and remedies as provided for in this Code and in the Indian Civil Rights Act.

c. Rights of Accused at Arraignment - Before an accused is required to plead to any criminal charge, the Judge shall:

(1) Read the complaint and the section of the Tribal Law and Order Code the defendant is charged with violating, including the maximum authorized penalty.

(2) Determine that the defendant understands the charge against him and the penalty which may be imposed.

(3) Provide the defendant with a copy of the complaint.

(4) Advise the defendant that he has the right to remain silent; the right to a jury trial; the right to a representative, at his own expense; and the right to have the arraignment postponed should he desire to consult with a representative prior to entering his plea.

(5) If the case is one in which it is permitted, the Judge must ask the defendant if he wishes a jury trial and record his answer for the record.

## APPENDIX B

### FEDERAL PRETRIAL RELEASE STATUTE

# The Federal Bail Reform Act of 1984

## 18 U.S.C. §§ 3141–3150, 3156

### § 3141. Release and detention authority generally

(a) *Pending trial.* A judicial officer authorized to order the arrest of a person under section 3041 of this title before whom an arrested person is brought shall order that such person be released or detained, pending judicial proceedings, under this chapter.

(b) *Pending sentence or appeal.* A judicial officer of a court of original jurisdiction over an offense, or a judicial officer of a Federal appellate court, shall order that, pending imposition or execution of sentence, or pending appeal of conviction or sentence, a person be released or detained under this chapter.

### § 3142. Release or detention of a defendant pending trial

(a) *In general.* Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be

(1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;

(2) released on a condition or combination of conditions under subsection (c) of this section;

(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or

(4) detained under subsection (e) of this section.

(b) *Release on personal recognizance or unsecured appearance bond.* The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) *Release on conditions.*

(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release; and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

- (iii) maintain or commence an educational program;
  - (iv) abide by specified restrictions on personal associations, place of abode, or travel;
  - (v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;
  - (vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;
  - (vii) comply with a specified curfew;
  - (viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;
  - (ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. §802 ), without a prescription by a licensed medical practitioner;
  - (x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
  - (xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial officer may require;
  - (xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;
  - (xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and
  - (xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.
- (2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.
- (3) The judicial officer may at any time amend the order to impose additional or different conditions of release.
- (d) *Temporary detention to permit revocation of conditional release, deportation, or exclusion.* If the judicial officer determines that
- (1) such person
    - (A) is, and was at the time the offense was committed, on
      - (i) release pending trial for a felony under Federal, State, or local law;
      - (ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or
      - (iii) probation or parole for any offense under Federal, State, or local law; or
    - (B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101 (a)( 20) of the Immigration and Nationality Act (8 U.S.C. §1101 (a)( 20 )); and
  - (2) the person may flee or pose a danger to any other person or the community; such judicial officer shall order the detention of the person, for a period of not more than ten

days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take the person into custody during that period, the person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, the person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e) *Detention.* If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial. In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that (1) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(2) the offense described in paragraph (1) of this subsection was committed while the person was on release pending trial for a Federal, State, or local offense; and  
(3) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in paragraph (1) of this subsection, whichever is later.

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. §801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. §951 et seq.), the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), or an offense under section 924 (c) of title 18 of the United States Code.

(f) *Detention hearing.* The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of the person as required and the safety of any other person and the community

(1) upon motion of the attorney for the Government, in a case that involves

(A) a crime of violence;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. §801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. §951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.); or

(D) any felony if the person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion, in a case that involves

(A) a serious risk that the person will flee; or

(B) a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed five days, and a continuance on motion of the attorney for the Government may not exceed three days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

(g) *Factors to be considered.* The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) *Contents of release order.* In a release order issued under subsection (b) or (c) of this section, the judicial officer shall

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) *Contents of detention order.* In a detention order issued under subsection (e) of this section, the judicial officer shall

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding. The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) *Presumption of innocence.* Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

**§ 3143 . Release or detention of a defendant pending sentence or appeal**

(a) *Release or detention pending sentence.*

(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence, other than a person for whom the applicable guideline promulgated pursuant to [28 U.S.C. §994](#) does not recommend a term of imprisonment, be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142 (b) or (c). If the judicial officer makes such a finding, such judicial officer shall order the release of the person in accordance with section 3142 (b) or (c).

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless

(A)

(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

(b) *Release or detention pending appeal by the defendant.*

(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142 (b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in

(i) reversal,

(ii) an order for a new trial,

(iii) a sentence that does not include a term of imprisonment, or

(iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142 (b) or(c) of this title, except that in the circumstance described in paragraph (b)(2)(D), the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence.

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1 ) of section 3142 and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained.

(c) *Release or detention pending appeal by the government.* The judicial officer shall treat a defendant in a case in which an appeal has been taken by the United States under section 3731 of this title, in accordance with section 3142 of this title, unless the defendant is otherwise subject to a release or detention order. Except as provided in

subsection (b) of this section, the judicial officer, in a case in which an appeal has been taken by the United States under section 3742, shall

(1) if the person has been sentenced to a term of imprisonment, order that person detained; and

(2) in any other circumstance, release or detain the person under section 3142 .

**§ 3144.** Release or detention of a material witness.

If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

**§ 3145 .** Review and appeal of a release or detention order

(a) *Review of a release order.* If a person is ordered released by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court

(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

(b) *Review of a detention order.* If a person is ordered detained by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

(c) *Appeal from a release or detention order.* An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly. A person subject to detention pursuant to section 3143 (a)( 2) or (b)( 2), and who meets the conditions of release set forth in section 3143 (a)( 1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.

**§ 3146 .** Penalty for failure to appear

(a) *Offense.* Whoever, having been released under this chapter knowingly

(1) fails to appear before a court as required by the conditions of release; or

(2) fails to surrender for service of sentence pursuant to a court order; shall be punished as provided in subsection (b) of this section.

(b) *Punishment.*

(1) The punishment for an offense under this section is

(A) if the person was released in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction for

- (i) an offense punishable by death, life imprisonment, or imprisonment for a term of 15 years or more, a fine under this title or imprisonment for not more than ten years, or both;
- (ii) an offense punishable by imprisonment for a term of five years or more, a fine under this title or imprisonment for not more than five years, or both;
- (iii) any other felony, a fine under this title or imprisonment for not more than two years, or both; or (iv) a misdemeanor, a fine under this chapter or imprisonment for not more than one year, or both; and

(B) if the person was released for appearance as a material witness, a fine under this chapter or imprisonment for not more than one year, or both.

(2) A term of imprisonment imposed under this section shall be consecutive to the sentence of imprisonment for any other offense.

(c) *Affirmative defense.* It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the person appeared or surrendered as soon as such circumstances ceased to exist.

(d) *Declaration of forfeiture.* If a person fails to appear before a court as required, and the person executed an appearance bond pursuant to section 3142(b) of this title or is subject to the release condition set forth in clause (xi) or (xii) of section 3142 (c)( 1)(B) of this title, the judicial officer may, regardless of whether the person has been charged with an offense under this section, declare any property designated pursuant to that section to be forfeited to the United States.

**§ 3147.** Penalty for an offense committed while on release

A person convicted of an offense committed while released under this chapter shall be sentenced, in addition to the sentence prescribed for the offense to

- (1) a term of imprisonment of not more than ten years if the offense is a felony; or
- (2) a term of imprisonment of not more than one year if the offense is a misdemeanor.

A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment.

Section applicable to offenses committed prior to November 1, 1987

This section as in effect prior to amendment by Pub. L. No. 98 - 473, read as follows:

**"§ 3147.** Penalty for an offense committed while on release

A person convicted of an offense committed while released under this chapter shall be sentenced, in addition to the sentence prescribed for the offense, to

- (1) a term of imprisonment of not less than two years and not more than ten years if the offense is a felony; or
- (2) a term of imprisonment of not less than ninety days and not more than one year if the offense is a misdemeanor.

A term of imprisonment imposed under this section shall be consecutive to any other sentence of imprisonment. For applicability of sentencing provisions to offenses, see Effective Date and Savings Provisions, etc., note, section 235 of Pub. L. No. 98 - 473 , as amended, set out under section 3551 of this title."

**§ 3148** . Sanctions for violation of a release condition

(a) *Available sanctions*. A person who has been released under section 3142 of this title, and who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court.

(b) *Revocation of release*. The attorney for the Government may initiate a proceeding for revocation of an order of release by filing a motion with the district court. A judicial officer may issue a warrant for the arrest of a person charged with violating a condition of release, and the person shall be brought before a judicial officer in the district in which such person's arrest was ordered for a proceeding in accordance with this section. To the extent practicable, a person charged with violating the condition of release that such person not commit a Federal, State, or local crime during the period of release, shall be brought before the judicial officer who ordered the release and whose order is alleged to have been violated. The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer

(1) finds that there is

(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

(B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that

(A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

(B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community. If the judicial officer finds that there are conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, and that the person will abide by such conditions, the judicial officer shall treat the person in accordance with the provisions of section 3142 of this title and may amend the conditions of release accordingly.

(c) *Prosecution for contempt*. The judicial officer may commence a prosecution for contempt, under section 401 of this title, if the person has violated a condition of release.

**§ 3149** . Surrender of an offender by a surety

A person charged with an offense, who is released upon the execution of an appearance bond with a surety, may be arrested by the surety, and if so arrested, shall be delivered promptly to a United States marshal and brought before a judicial officer. The judicial officer shall determine in accordance with the provisions of section 3148 (b) whether to revoke the release of the person, and may absolve the surety of responsibility to pay all or part of the bond in accordance with the provisions of [Rule 46 of the Federal Rules of Criminal Procedure](#). The person so committed shall be held in official detention until released pursuant to this chapter or another provision of law.

**§ 3150** . Applicability to a case removed from a State court

The provisions of this chapter apply to a criminal case removed to a Federal court from a State court.

**§ 3156 . Definitions**

(a) As used in sections 3141 – 3150 of this chapter

(1) the term “judicial officer” means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to detain or release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court of the District of Columbia;

(2) the term “offense” means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress;

(3) the term “felony” means an offense punishable by a maximum term of imprisonment of more than one year; and

(4) the term “crime of violence” means

(A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the personal property of another may be used in the course of committing the offense.

**APPENDIX C**

**EXCERPTS FROM PRETRIAL RELEASE  
STANDARDS  
OF THE AMERICAN BAR ASSOCIATION**

# ABA CRIMINAL JUSTICE STANDARDS ON PRETRIAL RELEASE

*Third Edition*

*Approved by the ABA House of Delegates, February 2002*

(Excerpts)

## PART I. GENERAL PRINCIPLES

### **Standard 10-1.1 Purposes of the pretrial release decision**

The purposes of the pretrial release decision include providing due process to those accused of crime, maintaining the integrity of the judicial process by securing defendants for trial, and protecting victims, witnesses and the community from threat, danger or interference. The judge or judicial officer decides whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on a condition or combination of conditions, temporarily detain a defendant, or detain a defendant according to procedures outlined in these Standards. The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support. These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings.

### **Standard 10-1.2. Release under least restrictive conditions; diversion and other alternative release options**

In deciding pretrial release, the judicial officer should assign the least restrictive condition(s) of release that will reasonably ensure a defendant's attendance at court proceedings and protect the community, victims, witnesses or any other person. Such conditions may include participation in drug treatment, diversion programs or other pre-adjudication alternatives. The court should have a wide array of programs or options available to promote pretrial release on conditions that ensure appearance and protect the safety of the community, victims and witnesses pending trial and should have the capacity to develop release options appropriate to the risks and special needs posed by defendants, if released to the community. When no conditions of release are sufficient to accomplish the aims of pretrial release, defendants may be detained through specific procedures.

### **Standards 10-1.3. Use of citations and summonses**

The principle of release under least restrictive conditions favors use of citations by police or summons by judicial officers in lieu of arrest at stages prior to first judicial appearance in cases involving minor offenses. In determining whether an offense is minor, consideration should be given to whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.

#### **Standard 10-1.4. Conditions of release**

(a) Consistent with these Standards, each jurisdiction should adopt procedures designed to promote the release of defendants on their own recognizance or, when necessary, unsecured bond. Additional conditions should be imposed on release only when the need is demonstrated by the facts of the individual case reasonably to ensure appearance at court proceedings, to protect the community, victims, witnesses or any other person and to maintain the integrity of the judicial process. Whenever possible, methods for providing the appropriate judicial officer with reliable information relevant to the release decision should be developed, preferably through a pretrial services agency or function, as described in Standard 10-1.9.

(b) When release on personal recognizance is not appropriate reasonably to ensure the defendant's appearance at court and to prevent the commission of criminal offenses that threaten the safety of the community or any person, constitutionally permissible non-financial conditions of release should be employed consistent with Standard 10-5.2.

(c) Release on financial conditions should be used only when no other conditions will ensure appearance. When financial conditions are imposed, the court should first consider releasing the defendant on an unsecured bond. If unsecured bond is not deemed a sufficient condition of release, and the court still seeks to impose monetary conditions, bail should be set at the lowest level necessary to ensure the defendant's appearance and with regard to a defendant's financial ability to post bond.

(d) Financial conditions should not be employed to respond to concerns for public safety.

(e) The judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay.

(f) Consistent with the processes provided in these Standards, compensated sureties should be abolished. When financial bail is imposed, the defendant should be released on the deposit of cash or securities with the court of not more than ten percent of the amount of the bail, to be returned at the conclusion of the case.

#### **Standard 10-1.5. Pretrial release decision may include diversion and other adjudication**

### **alternatives supported by treatment programs**

In addition to employing release conditions outlined in Standard 10-1.4, jurisdictions should develop diversion and alternative adjudication options, including drug, mental health and other treatment courts or other approaches to monitoring defendants during pretrial release.

#### **Standard 10-1.6. Detention as an exception to policy favoring release**

These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings. They establish specific criteria and procedures for effecting the pretrial detention of certain defendants after the court determines that these defendants pose a substantial risk of flight, or threat to the safety of the community, victims or witnesses or to the integrity of the justice process. The status of detained defendants should be monitored and their eligibility for release should be reviewed throughout the adjudication period. The cases of detained defendants should be given priority in scheduling for trial.

#### **Standard 10-1.7. Consideration of the nature of the charge in determining release options**

Although the charge itself may be a predicate to pretrial detention proceedings, the judicial officer should exercise care not to give inordinate weight to the nature of the present charge in evaluating factors for the pretrial release decision except when, coupled with other specified factors, the charge itself may cause the initiation of a pretrial detention hearing pursuant to the provisions of Standard 10-5.9.

#### **Standard 10-1.8. Pretrial release decision should not be influenced by publicity or public opinion**

The judicial officer should not be influenced by publicity surrounding a case or attempt to placate public opinion in making a pretrial release decision.

#### **Standard 10-1.9. Implication of policy favoring release for supervision in the community**

The policy favoring pretrial release and selective use of pretrial detention is inextricably tied to explicit recognition of the need to supervise safely large numbers of defendants in the community pending adjudication of their cases. To be effective, these policies require sufficient informational and supervisory resources.

### **Standard 10-1.10. The role of the pretrial services agency**

Every jurisdiction should establish a pretrial services agency or program to collect and present the necessary information, present risk assessments, and, consistent with court policy, make release recommendations required by the judicial officer in making release decisions, including the defendant's eligibility for diversion, treatment or other alternative adjudication programs, such as drug or other treatment courts. Pretrial services should also monitor, supervise, and assist defendants released prior to trial, and to review the status and release eligibility of detained defendants for the court on an ongoing basis.

The pretrial services agency should:

- (a) conduct pre-first appearance inquiries;
- (b) present accurate information to the judicial officer relating to the risk defendants may pose of failing to appear in court or of threatening the safety of the community or any other person and, consistent with court policy, develop release recommendations responding to risk;
- (c) develop and provide appropriate and effective supervision for all persons released pending adjudication who are assigned supervision as a condition of release;
- (d) develop clear policy for operating or contracting for the operation of appropriate facilities for the custody, care or supervision of persons released and manage a range of release options, including but not limited to, residential half-way houses, addict and alcoholic treatment centers, and counseling services, sufficient to respond to the risks and problems associated with released defendants in coordination with existing court, corrections and community resources;
- (e) monitor the compliance of released defendants with the requirements of assigned release conditions and develop relationships with alternative programs such as drug and domestic violence courts or mental health support systems;
- (f) promptly inform the court of all apparent violations of pretrial release conditions or arrests of persons released pending trial, including those directly supervised by pretrial services as well as those released under other forms of conditional release, and recommend appropriate modifications of release conditions according to approved court policy. The pretrial services agency should avoid supervising defendants who are government informants, when activities of these defendants may place them in conflict with conditions of release or compromise the safety and integrity of the pretrial services professional;
- (g) supervise and coordinate the services of other agencies, individuals or organizations that serve as custodians for released defendants, and advise the court as to their appropriateness, availability, reliability and capacity according to approved court policy relating to pretrial release conditions;

(h) review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate;

(i) develop and operate an accurate information management system to support prompt identification, information collection and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial services agency;

(j) assist persons released prior to trial in securing any necessary employment, medical, drug, mental or other health treatment, legal or other needed social services that would increase the chances of successful compliance with conditions of pretrial release;

(k) remind persons released before trial of their court dates and assist them in attending court; and

(l) have the means to assist persons who cannot communicate in written or spoken English.

## **PART II. Release By Law Enforcement Officer Acting Without An Arrest Warrant**

### **Standard 10-2.1. Policy favoring issuance of citations**

It should be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law. This policy should be implemented by statutes of statewide applicability.

### **Standard 10-2.2. Mandatory issuance of citation for minor offenses**

(a) Except as provided in paragraph (c), a police officer who has grounds to arrest a person for a minor offense should be required to issue a citation in lieu of taking the accused to the police station or to court. In determining whether an offense is minor, the police officer should consider whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.

(b) Except as provided in paragraph (c), when a person in custody has been taken to a police station and a decision has been made to charge the person with a minor offense, the responsible officer should be required to issue a citation in lieu of continued custody.

(c) The defendant may be detained when an otherwise lawful arrest or detention is necessary to ensure the safety of any person or the community, or when the accused:

(i) is subject to lawful arrest and fails to identify himself or herself satisfactorily;

(ii) refuses to sign the citation after the officer explains to the accused that the citation does not constitute an admission of guilt and represents only the accused's promise to appear;

(iii) has no ties to the jurisdiction reasonably sufficient to ensure the accused's appearance in court and there is a substantial likelihood that the accused will refuse to respond to a citation;

(iv) previously has failed to appear in response to a citation, summons, or other legal process for an offense;

(v) is not in compliance with release conditions in another case or subject to a court order or is on probation or parole; or

(vi) poses a substantial likelihood of continuing the criminal conduct if not arrested.

(d) When an officer fails to issue a citation for a minor offense, but instead takes a suspect into custody, the law enforcement agency should be required to indicate the reasons in writing.

(e) Notwithstanding the issuance of a citation, a law enforcement officer should be authorized to transport or arrange transportation for a cited person to an appropriate facility if the person appears mentally or physically unable to care for himself or herself.

### **Standard 10-2.3. Permissive authority to issue citations in all cases**

Each law enforcement agency should promulgate regulations designed to increase the use of citations to the greatest degree consistent with public safety. Except when arrest or continued custody is necessary, the regulations should require such inquiry as is practicable into the accused's place and length of residence, family relationships, references, present and past employment, criminal record, and any other facts relevant to appearance in response to a citation.

### **Standard 10-2.4. Lawful searches**

When an officer makes a lawful arrest, the defendant's subsequent release on citation should not affect the lawfulness of any search incident to the arrest.

### **PART III. Issuance of Summons in Lieu of Arrest**

#### **Standard 10-3.1. Authority to issue summons**

All judicial officers should be given statutory authority to issue a summons rather than an arrest warrant in all cases in which a complaint, information, or indictment is filed or returned against a person not already in custody. Judicial officers should liberally utilize this authority unless a warrant is necessary to prevent flight, to ensure the safety of the defendant, any other person or the community, to prevent commission of future crimes or to subject a defendant to the jurisdiction of the court when the defendant's whereabouts are unknown. If a judicial officer issues a summons rather than an arrest warrant in connection with an offense, absent exigent circumstances, no law enforcement officer may arrest the accused for that offense without obtaining a warrant.

#### **Standard 10-3.2. Mandatory issuance of summons**

A summons rather than an arrest warrant should be mandatory in all cases involving minor offenses unless the judicial officer finds that:

- (a) the accused is subject to lawful arrest and fails to identify himself or herself satisfactorily;
- (b) the whereabouts of the accused are unknown and the issuance of an arrest warrant is necessary to subject the accused to the jurisdiction of the court;
- (c) an otherwise lawful arrest or detention is necessary to ensure the safety of any other person or the community;
- (d) the accused has no ties to the community reasonably sufficient to ensure appearance and there is a substantial likelihood that the accused will refuse to respond to a summons;
- (e) the accused previously has failed to appear without just cause in response to a citation, summons, or other legal process;
- (f) the accused is not in compliance with release conditions in another case or is subject to a court order or is on probation or parole; or
- (g) the accused poses a substantial likelihood of continuing the criminal conduct if not arrested.

### **Standard 10-3.3. Application for an arrest warrant or summons**

(a) Time permitting, in those cases in which the judicial officer has discretion to issue a summons instead of an arrest warrant, the judicial officer should consider:

(i) the accused's ties to the community, including factors such as age, residence, employment and family relationships, reasonably sufficient to ensure appearance;

(ii) the nature of the alleged offense and potential penalty;

(iii) the accused's past history of response to legal process;

(iv) the accused's past criminal record;

(v) whether the case involves a juvenile or adult offense; and

(vi) whether the accused is in compliance with release conditions in another case or subject to a court order or on probation or parole.

(b) The judicial officer ordinarily should issue a summons in lieu of an arrest warrant when the prosecutor so requests.

(c) In any case in which the judicial officer issues a warrant, the judicial officer should state the reasons in writing or on the record for failing to issue a summons.

## **PART IV. Release by Judicial Officer at First Appearance or Arraignment**

### **Standard 10-4.1. Prompt first appearance**

(a) Arrests should not be timed to cause or extend unnecessary pretrial detention.

(b) Unless the defendant is released on citation or in some other lawful manner, the defendant should be taken before a judicial officer without unnecessary delay. The defendant should be presented at the next judicial session within [six hours] after arrest. In jurisdictions where this is not possible, the defendant should in no instance be held by police longer than 24 hours without appearing before a judicial officer. Judicial officers should be readily available to conduct first appearances within the time limits established by this Standard. Where a crime of violence is implicated, an assessment of the risk posed by the defendant to the victim(s) and community should be completed prior to the first appearance; but a defendant's first appearance should not ordinarily be delayed in order to conduct in-custody interrogation or other in-custody investigation. A defendant who is not promptly

presented should be entitled to immediate release under appropriate conditions unless pretrial detention is ordered as provided in Standards 10-5.8 through 10-5.10.

**Standard 10-4.2. Investigation prior to first appearance: development of background information to support release or detention determination**

(a) In all cases in which the defendant is in custody and charged with a criminal offense, an investigation to provide information relating to pretrial release should be conducted by pretrial services or the judicial officer prior to or contemporaneous with a defendant's first appearance.

(b) Pretrial services should advise the defendant that:

(i) the pretrial services interview is voluntary;

(ii) the pretrial services interview is intended solely to assist in determining an appropriate pretrial release option for the defendant;

(iii) any responsive information provided by the defendant during the pretrial services interview will not be used in the current or a substantially-related case either to adjudicate guilt or to arrive at a sentencing decision; but

(iv) the voluntary information provided by the defendant during the pretrial services interview may be used in prosecution for perjury or for purposes of impeachment.

(c) Release may not be denied solely because the defendant has refused the pretrial services interview.

(d) The pretrial services interview should include advising the defendant that penalties may be imposed for providing false information.

(e) The pretrial services interview of the defendant should carefully exclude questions relating to the events or the details of the current charge.

(f) The pretrial services investigation should include factors related to assessing the defendant's risk of flight or of threat to the safety of the community or any person, or to the integrity of the judicial process. Information relating to these factors and the defendant's suitability for release under conditions should be gathered systematically and considered by the judicial officer in making the pretrial release decision at first appearance and at subsequent stages when pretrial release is considered.

(g) The pretrial services investigation should focus on assembling reliable and objective information relevant to determining pretrial release and should be organized according

to an explicit, objective and consistent policy for evaluating risk and identifying appropriate release options. The information gathered in the pre-first appearance investigation should be demonstrably related to the purposes of the pretrial release decision and should include factors shown to be related to risk of flight or of threat to the safety of any person or the community and to selection of appropriate release conditions, and may include such factors as:

(i) the nature and circumstances of the charge when relevant to determining release conditions, consistent with subsection (e) above;

(ii) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(iii) whether at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense;

(iv) the availability of persons who agree to assist the defendant in attending court at the proper time and other information relevant to successful supervision in the community;

(v) any facts justifying a concern that a defendant will fail to attend court or pose a threat to the safety of any person or the community; and

(vi) factors that may make the defendant eligible and an appropriate subject for conditional release and supervision options, including participation in medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(h) The presentation of the pretrial services information to the judicial officer should link assessments of risk of flight and of public safety threat during pretrial release to appropriate release options designed to respond to the specific risk and supervision needs identified. The identification of release options by pretrial services for the consideration of the judicial officer should be based on detailed agency guidelines developed in consultation with the judiciary to assist in pretrial release decisions. Suggested release options should be supported by objective, consistently applied criteria contained in the guidelines. The results of the pretrial services investigation and recommendation of release options should be promptly transmitted to relevant first-appearance participants before the hearing, including information relevant to alternative release options, conditional release treatment and supervision programs, or eligibility for pretrial detention, so that appropriate actions may be taken in a timely fashion.

### **Standard 10-4.3. Nature of first appearance**

(a) The first appearance before a judicial officer should take place in such physical surroundings as are appropriate to the administration of justice. Each case should receive individual treatment, and decisions should be based on the particular facts of the case and information relevant to the purposes of the pretrial release decision as established by law and court procedure. The proceedings should be conducted in clear and easily understandable language calculated to advise defendants effectively of their rights and the actions to be taken against them. The first appearance should be conducted in such a way that other interested persons may attend or observe the proceedings.

(b) At the defendant's first appearance, the judicial officer should provide the defendant with a copy of the charging document and inform the defendant of the charge and the maximum possible penalty on conviction, including any mandatory minimum or enhanced sentence provision that may apply. The judicial officer should advise the defendant that the defendant:

(i) is not required to say anything, and that anything the defendant says may be used against him or her;

(ii) if represented by counsel who is present, may communicate with his or her attorney at the time of the hearing;

(iii) has a right to counsel in future proceedings, and that if the defendant cannot afford a lawyer, one will be appointed;

(iv) if not a citizen, may be adversely affected by collateral consequences of the current charge, such as deportation;

(v) if a juvenile being treated as an adult, has the right, where applicable, to the presence of a parent or guardian;

(vi) if necessary, has the right to an interpreter to be present at proceedings; and

(vii) where applicable, has a right to a preliminary examination or hearing.

(c) Unless the defendant is released at the first appearance, if the defendant is not represented, counsel should be appointed immediately. The next judicial proceeding should occur promptly, but not until the defendant and defense counsel have had an adequate opportunity to confer, unless the defendant has intelligently waived the right to be represented by counsel.

(d) The defendant should be provided an opportunity to communicate with family or friends for the purposes of facilitating pretrial release or representation by counsel.

(e) A record should be made of the proceedings at first appearance. The defendant also should be advised of the nature and approximate schedule of all further proceedings to be taken in the case.

(f) The judicial officer should decide pretrial release in accordance with the general principles identified in these Standards.

(g) If, at the first appearance, the prosecutor requests the pretrial detention of a defendant under Standards 10-5.8 through 10-5.10, a judicial officer should be authorized, after a finding of probable cause to believe that a defendant has committed an offense as alleged in the charging document, to order temporary pretrial detention following procedures under Standard 10-5.7 or to conduct a pretrial detention hearing under Standard 10-5.10.

## **PART V. The Release and Detention Decisions**

### **Standard 10-5.1. Release on defendant's own recognizance**

(a) It should be presumed that defendants are entitled to release on personal recognizance on condition that they attend all required court proceedings and they do not commit any criminal offense. This presumption may be rebutted by evidence that there is a substantial risk of nonappearance or need for additional conditions as provided in Standard 10-5.2, or by evidence that the defendant should be detained under Standards 10-5.8, 10-5.9 and 10-5.10 or conditionally released pending diversion or participation in an alternative adjudication program as permitted under Standard 10-1.5.

(b) In determining whether there is a substantial risk of nonappearance or threat to the community or any person or to the integrity of the judicial process if the defendant is released, the judicial officer should consider the pretrial services assessment of the defendant's risk of willful failure to appear in court or risk of threat to the safety of the community or any person, victim or witness. This may include such factors as:

(i) the nature and circumstances of the offense when relevant to determining release conditions;

(ii) the defendant's character, physical and mental condition, family ties, employment status and history, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(iii) whether at the time of the current offense or arrest, the person was on probation, parole, or other release pending trial, sentencing, appeal, or completion of sentence for an offense;

(iv) availability of persons who agree to assist the defendant in attending

court at the proper time and other information relevant to successful supervision in the community;

(v) any facts justifying a concern that the defendant will violate the law if released without restrictions; and

(vi) factors that may make the defendant eligible and an appropriate subject for conditional release and supervision options, including participation in medical, drug, mental health or other treatment, diversion or alternative adjudication release options.

(c) In the event the judicial officer determines that release on personal recognizance is unwarranted, the officer should include in the record a statement, written or oral, of the reasons for this decision.

#### **Standard 10-5.2. Conditions of release**

(a) If a defendant is not released on personal recognizance or detained pretrial, the court should impose conditional release, including, in all cases, a condition that the defendant attend all court proceedings as ordered and not commit any criminal offense. In addition, the court should impose the least restrictive of release conditions necessary reasonably to ensure the defendant's appearance in court, protect the safety of the community or any person, and to safeguard the integrity of the judicial process. The court may:

(i) release the defendant to the supervision of a pretrial services agency, or require the defendant to report on a regular<sup>10</sup> basis to a designated law enforcement agency, pretrial services agency, or other agency;

(ii) release the defendant into the custody or care of some other qualified organization or person responsible for supervising the defendant and assisting the defendant in making all court appearances. Such supervisor should be expected to maintain close contact with the defendant, to assist the defendant in making arrangements to appear in court, and, when appropriate, accompany the defendant to court. The supervisor should not be required to be financially responsible for the defendant nor to forfeit money in the event the defendant fails to appear in court. The supervisor should promptly report a defendant's failure to comply with release conditions to the pretrial services agency or inform the court;

(iii) impose reasonable restrictions on the activities, movements, associations, and residences of the defendant, including curfew, stay away orders, or prohibitions against the defendant going to certain geographical areas or premises;

(iv) prohibit the defendant from possessing any dangerous weapons and order the defendant to immediately turn over all firearms and other dangerous weapons in defendant's possession or control to an agency or responsible third party designated by the court. Prohibit the defendant from engaging in certain described activities, or using intoxicating liquors or certain drugs;

(v) conditionally release the defendant pending diversion or participation in an alternative adjudication program, such as drug, mental health or other treatment courts;

(vi) require the defendant to be released on electronic monitoring, be evaluated for substance abuse treatment, undergo regular drug testing, be screened for eligibility for drug court or other drug treatment program, undergo mental health or physical health screening for treatment, participate in appropriate treatment or supervision programs, be placed under house arrest or subject to other release options or conditions as may be necessary reasonably to ensure attendance in court, prevent risk of crime and protect the community or any person during the pretrial period;

(vii) require the defendant to post financial conditions as outlined under Standard 10-5.3, execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to ensure the appearance of the defendant, and order the defendant to provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial officer may require;

(viii) require the defendant to return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(ix) impose any other reasonable restriction designed to ensure the defendant's appearance, to protect the safety of the community or any person, and to prevent intimidation of witnesses or interference with the orderly administration of justice.

(b) After reasonable notice to the defendant and a hearing, when requested and appropriate, the judicial officer may at any time amend the order to impose additional or different conditions of release.

### **Standard 10-5.3. Release on financial conditions**

(a) Financial conditions other than unsecured bond should be imposed only when no other less restrictive condition of release will reasonably ensure the defendant's appearance in court. The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay.

(b) Financial conditions of release should not be set to prevent future criminal conduct during the pretrial period or to protect the safety of the community or any person.

(c) Financial conditions should not be set to punish or frighten the defendant or to placate public opinion.

(d) On finding that a financial condition of release should be set, the judicial officer should require the first of the following alternatives thought sufficient to provide reasonable assurance of the defendant's reappearance:

(i) the execution of an unsecured bond in an amount specified by the judicial officer, either signed by other persons or not;

(ii) the execution of an unsecured bond in an amount specified by the judicial officer, accompanied by the deposit of cash or securities equal to ten percent of the face amount of the bond. The full deposit should be returned at the conclusion of the proceedings, provided the defendant has not defaulted in the performance of the conditions of the bond; or

(iii) the execution of a bond secured by the deposit of the full amount in cash or other property or by the obligation of qualified, uncompensated sureties.

(e) Financial conditions should be the result of an individualized decision taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge.

(f) Financial conditions should be distinguished from the practice of allowing a defendant charged with a traffic or other minor offense to post a sum of money to be forfeited in lieu of any court appearance. This is in the nature of a stipulated fine and, where permitted, may be employed according to a predetermined schedule.

(g) In appropriate circumstances when the judicial officer is satisfied that such an arrangement will ensure the appearance of the defendant, third parties should be permitted to fulfill these financial conditions.