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NORTHERN CHEYENNE TRIBE LOGO HERE

TITLE V – RULES OF CRIMINAL PROCEDURE

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CHAPTER 1: SCOPE, PURPOSE AND CONSTRUCTION

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Rule 1. Scope, Purpose and Construction

A. These rules shall govern the procedure in the Trial Court of the Northern Cheyenne Court (hereinafter “Court” or “Tribal Court”) for all cases involving criminal proceedings. [*As amended by Ord. DOI 3(98)*]

B. These rules are intended to provide for a fair trial and the just determination of every criminal proceeding before the Court. All rules shall be interpreted to provide simplicity and fairness in application, while eliminating unjustifiable expense and delay.

C. Federal and State rules may be used as guidelines, where appropriate. When necessary, the Tribal Court will supplement the Rules of Criminal Procedure of this Title with the Federal Rules of Criminal Procedure.

D. The Northern Cheyenne Tribal Council hereby authorizes the Bureau of Indian Affairs to use and enforce this Criminal Procedure Code. [*As amended by Ord. DOI 3(98)*]

E. *Computation of Time.*

1. As used in this Title, *business day* or *working days* means any day that is not a Saturday, Sunday, Tribal or Federal holiday, or a day on which the Court is closed.

2. In computing any period of time set forth in this Title, the day on

which the period is to commence shall not be counted and the last day of the period shall be counted; provided that any time period under seven (7) days will not include the intermediate Saturdays, Sundays, Tribal or Federal holidays or any day on which the Court is closed, and any such period which would otherwise end on a Saturday, Sunday, Tribal or Federal holiday, or any day on which the Court is closed will be deemed to end on the next day that the Court is open.

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Rule 2. Commencement of Criminal Proceedings

A. *Complaint.* A complaint is the written statement of the essential facts charging that a named individual has committed a particular criminal offense. All criminal prosecutions shall be initiated by a complaint filed with the Court signed by the prosecutor and sworn to before a judge. All complaints initiated by the prosecutor shall be based on probable cause that the crime charged happened and that the defendant(s) committed the crime charged. A judge shall have the authority to demand the filing of an information by the prosecutor or to hold a preliminary hearing to determine whether lawful probable cause as to the crime exists, and whether the appropriate defendant(s) exist prior to the issuance of a summons or warrant for the arrest of the defendant(s).

B. A complaint shall contain:

1. A written statement of the violation describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained. Statements or affidavits by persons having personal knowledge may be expressly referenced in and attached to the complaint;
2. The name and description of the person(s) alleged to have committed the offense;
3. A statement describing why the Court has personal jurisdiction over the defendant;
4. A description of the offense(s) charged including the Code sections of the offense(s).

5. A statement of the maximum authorized penalty.

6. The signature of the prosecutor sworn to before a judge.

C. No complaint shall be accepted for filing unless it satisfies the requirements of Rule 2.B. However, minor omissions or errors in the complaint will not be grounds for dismissal of the case unless significant prejudice against the defendant is shown.

D. *Time Limit for Commencing Criminal Prosecution.* Prosecution for any offense must be commenced within the period specified unless otherwise stated in this Code:

1. Class A and B offenses - 2 years.
2. Class C offenses - 1 year
3. Misdemeanor offenses - 1 year

E. Where the complaint alleges violation of Section 7.4.1, 7.4.2 or 7.4.3 (murder, manslaughter, or negligent homicide) of this Code, there is no time limit for filing the complaint.

F. Where the complaint alleges violation of Class A sexual offense under Title 7 of this Code, and the alleged victim is eighteen (18) years of age or less at the time of the offense, a prosecution may be commenced within seven (7) years after the victim reaches the age of eighteen (18) years old.

G. The period of limitations does not run during any period in which the offender is not physically located on the Reservation or when a prosecution is pending in another jurisdiction against the offender for the same

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conduct. The time period does not start until the offender is arrested.

Rule 3. Arrests, Summons and Warrants

A. *Arrest.* Arrest is the taking of a person into police custody in order that he/she may be held to answer for a criminal offense.

1. No law enforcement officer shall arrest any person for a criminal offense except when:

a. A judge has signed a warrant commanding the arrest of such person, and the arresting officer has the warrant in his/her possession or knows for a certainty that such a warrant has been issued; or

b. The offense occurs in the presence of the arresting officer; or

c. The arresting officer shall have probable cause to believe that the person arrested committed the offense.

2. *Probable cause* means such facts and circumstances which would lead a reasonable person to believe that an offense has been committed by the accused.

B. *Summons in Lieu of Arrest Warrant.* 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.

1. The summons shall contain the same information as a warrant.

2. 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.

3. The summons shall be served upon the defendant by delivering a copy to the defendant personally. Service shall be made by an authorized law enforcement officer/court personnel, who shall make a return of service which shall be filed with the records of the case.

C. *Arrest Warrants.* Judges shall have authority to issue warrants to arrest if they find that there is probable cause to believe that an offense against Tribal law has been committed by the named accused, based on sworn written statements or sworn oral testimony, or if a summons cannot be served or is ignored.

1. The arrest warrant shall contain the following information:

a. Name or description and address, if known, of the person to be arrested.

b. Date of issuance of the warrant.

c. Description of the offense charged.

d. Signature of the issuing judge, and a copy of the complaint shall be attached to the arrest warrant.

2. Reservation police officers shall make every effort to execute arrest warrants in a timely manner. The chief law enforcement officer of the Reservation, or designee, shall acknowledge receipt of arrest

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warrants issued by the Court by returning an acknowledged copy to the Court the same day of receipt, and maintain the original warrant in the manner required by Reservation law enforcement policy. The original warrant shall be returned to the Court upon execution. Once every 60 days, the chief law enforcement officer shall provide a list of active warrants to the Court Clerk.

3. The warrant shall be executed by the arrest of the defendant by a law enforcement officer taking the defendant into custody. The officer shall have the warrant, or a facsimile copy, in his possession at the time of arrest, but if this is not possible, arrests can be made, as long as the defendant is informed of the charge(s) against him, and as soon as possible receives a copy of the warrant. A copy of the complaint shall also be served on the defendant with the warrant.

4. A warrant for arrest will be valid only within the jurisdiction of the Court, unless it is used in conformance with the extradition procedures set forth in this Code. [*As amended by Ord. DOI 3(98)*]

5. An arrest may be made at any time of the day or night.

D. *Citations.* The Reservation's chief law enforcement officer and the Judges of the Tribal Court have the authority to develop and implement a citation procedure where arrests made by police officers for some crimes can be processed to conclusion with citations only.

Rule 4. Extradition

A. *Definitions.*

1. *Fugitive from justice* means any Indian who has fled to the Reservation and is charged by a state with a crime committed within the jurisdiction of the state but outside of Indian country, or is charged by an Indian tribe with an offense committed in Indian country.

2. *Demanding jurisdiction* means the state or tribal nation from which the fugitive from justice fled, or the authorized agent of such state or tribe, including prosecutors and court officials.

B. *Tribal Court to issue warrant.* Whenever a demanding jurisdiction requests a fugitive from justice and produces a copy of the indictment found, or complaint and warrant, or other judicial evidence, charging any Indian with having committed a crime within the jurisdiction of the demanding jurisdiction, the Tribal Court may issue an arrest warrant for the apprehension and commitment of the Indian so charged within 72 hours of issuance, to the end that such Indian may be brought before the Tribal Court for hearing and determination of the issues set forth in subsection D.

C. *Notice of hearing; waiver of hearing.* As soon as possible after the apprehension of the accused Indian, and in any event within twenty four (24) hours, the Tribal Court shall fix a date for a removal hearing on the issues defined in Rule 4.D. The hearing date shall be not more than two (2) weeks after the date of apprehension of the accused, unless the accused is in custody at the time the demand

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is received. At the same time, the Tribal Court shall:

1. In open Court and on the record advise the accused Indian of his/her rights to present evidence and testimony at the removal hearing on the issues defined in subsection D, furnish the accused Indian with a copy of this Rule calling particular attention to subsection E defining the issues to be heard, and advise the Indian that the Indian may voluntarily waive the hearing and agree to be delivered to the demanding jurisdiction; and

2. Immediately notify the demanding jurisdiction of the date of the hearing by telephone if necessary, furnish the demanding jurisdiction with a copy of this Rule calling particular attention to subsection D defining the issues to be heard, and advise the demanding jurisdiction of its right to present evidence and testimony.

D. *Removal hearing; issues to be determined.* At the hearing as provided in subsection C the Tribal Court shall hear and determine the following issues:

1. Whether the accused Indian is the person before the court and is the person charged by the demanding jurisdiction with the commission of a crime.

2. Whether there is evidence of criminality. For purposes of this subsection, criminality is established if evidence is found sufficient to justify commitment for trial if the

crime had been committed on the Reservation. Evidence need not be such as is required to convict an accused at a trial. The Tribal Court shall not determine guilt or innocence.

3. Whether, under all the facts and circumstances, justice would best be served by delivering the Indian to the demanding jurisdiction.

E. *Entry of judgment.* If the accused Indian waives in writing the right to a hearing, or if the issues defined in subsection D hereof are resolved against the accused Indian, the Tribal Court shall enter a judgment authorizing the demanding jurisdiction to arrest and remove the accused Indian from the Reservation.

Rule 5. Arrest Procedures

A. *Notification of Rights at Time of Arrest.* Upon arrest the suspect shall be advised immediately of the following rights:

1. That he/she has the right to remain silent.

2. That any statements made by him/her may be used against him/her in court.

3. That he/she has the right to obtain counsel at his/her own expense.

Rule 6. Search and Seizure

A. *Search Warrant.* A search warrant is a written order, signed by a tribal judge, directing a law enforcement officer to conduct a search and seize property specified in the warrant.

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1. A warrant shall describe with particularity the person, property or place to be searched and shall describe the property to be seized.

2. A search warrant shall be issued only by a judge and only upon probable cause that a search will discover:

a. Stolen, embezzled, contraband or otherwise unlawfully possessed property;

b. Property which has been or is being used to commit a criminal offense; or

c. Property which constitutes evidence of the commission of a criminal offense. Such probable cause shall be supported by a sworn written statement or sworn oral testimony.

3. The Chief Judge will designate one Judge to be contacted for search warrants when the Court is not in session. A judge may approve a search warrant via telephone after hearing the officer's sworn testimony of probable cause.

4. Warrants shall be served only by authorized law enforcement officers.

5. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall

be void. The warrant shall be served between 7:00 a.m. and 11:00 p.m., unless the judge, upon a showing of good cause, inserts a direction that it be served at some other time.

6. The officer serving and executing a warrant shall leave a copy of the warrant with every person from whom property is seized. At the same time that the officer returns the executed warrant to the Court under subsection A.5, the officer shall serve an inventory of all property seized with every person from whom property is seized.

B. *Search Without a Warrant.* No law enforcement officer shall conduct any search without a valid warrant except:

1. When he/she is making a lawful arrest; or

2. With the voluntary consent of the person being searched or the person entitled to possession of property being searched; or

3. When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed; or

4. The officer has probable cause to believe that the person has in his possession contraband or fruits of a crime, and taking the time to get a search warrant would endanger the officer's life, or seriously risk the destruction of the evidence.

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C. *Exclusion of Unlawfully Obtained Evidence.* The Court shall prohibit the introduction or use at trial of any evidence seized in a search conducted in violation of subsection B or C and may, in addition, recommend to the chief law enforcement officer of the Reservation any appropriate disciplinary actions against the law enforcement officer conducting the unlawful search.

D. *Disposition of Seized Property.* A hearing shall be held by the Court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless the property is contraband or is to be used as evidence in a pending case. Property seized as evidence may be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court. Currency determined to be contraband shall be deposited into the Court's fund.

Rule 7. Arraignment

A. Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charges 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 day that the Court is in regular session or 96 hours, whichever occurs first.

1. The accused shall not be in custody longer than 96 hours without

a probable-cause determination if arrest occurred without a warrant.

2. The Court may, in its discretion, provide for temporary commitment of persons who, for reasons beyond their control, are unable to appear in Court within the time period provided in Rule 7.B. For persons accused of a Class B or C offense, the Court may, in its discretion, instead issue a citation or summons for the accused's appearance at the next regularly scheduled arraignment session of the Court.

C. Before an accused is required to plead to any criminal charges, the judge shall:

1. Read the complaint to the accused and provide the accused with a copy of the complaint if he/she has not received one;

2. Explain the substance of the charges, 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

3. Advise the accused that he/she has the right:

a. To remain silent, and that any statement he/she makes either to the Judge or anyone else concerning the offense charged, can be used against him/her in that proceeding or in any future prosecution,

b. To have a trial where he/she has had sufficient time to

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prepare his/her defense if he/she pleads “not guilty”, including the right to compel witnesses to testify, and to confront and cross-examine the witnesses against her/him,

c. That he/she has a right to testify or to not testify since he/she has a right not to be compelled to incriminate him/herself;

d. To be tried by a jury if the offense charged is punishable by imprisonment, and

e. To be represented by counsel at his/her expense, before he/she pleads to the charge.

4. If the arrest was without a warrant, and the defendant is to remain 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.

5. If the defendant requests counsel, arraignment will be postponed until he/she has had time to confer with counsel. Postponement shall be until the next scheduled arraignment session, or a date specified by the Judge.

D. 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 pretrial date and may consider conditions for release prior to further court proceedings.

2. If the accused pleads “guilty” to the charge, the judge shall accept the plea only if the judge is satisfied that the plea is made voluntarily and the accused understands the consequences of the plea, including the rights which he/she is waiving by the plea and that if he/she pleads guilty, there will not be a trial. The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information the judge deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Court prior to sentencing. The accused will be eligible for bail if sentencing is deferred to a future date or if no bail, may be credited for time served until sentencing when sentenced.

3. If the accused refuses to plead, the judge shall enter a plea of “not guilty” on his/her behalf.

E. *Use of Two-Way Electronic Audio-Video Communication.* A defendant’s initial appearance for a probable-cause determination or arraignment 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 or arraignment.

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Rule 8. Commitment

A. No person shall be detained or jailed under this Code for a longer period than 96 hours unless a commitment order bearing the signature of a Tribal Court Judge is issued authorizing the commitment. The detention facility shall promptly notify the Court of any person who has been detained at least 72 hours without a commitment order.

1. Pending investigation of charges or pending trial, or under Rule 7.B.2, a temporary commitment order shall be issued.

2. A final commitment order shall be issued for persons jailed as a result of a sentence of the Tribal Court.

B. *Notification of Escape or Release from Confinement.* When a person confined to an institution or jail pursuant to a commitment order issued by the Tribal Court, for a criminal offense involving the use or threat of physical force or violence, escapes or is released, the Reservation's chief law enforcement officer or chief corrections officer, or designee, shall notify a victim of the offense who has requested notification in the event of an escape or a release of the person. The Reservation's chief law enforcement officer or chief corrections officer shall adopt a methodology for notifying law enforcement and a victim who has requested notification. Notification concerning a pending release must be made prior to the release.

Rule 9. Bail; Release from Custody

A. *Right to Bail.* Except as herein provided, all persons arrested for offenses under this Code and incarcerated shall be

given the opportunity to make bail and be released pending their trial or appeal. A defendant may at arraignment request that any bail posted under the bail schedule in this Rule be reduced or that he be released without bail.

B. *Release By Judge Prior to Trial.* At arraignment or other appropriate time, 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:

1. Require the accused to deposit cash or a bail bond executed by two or more reliable persons as sureties subject to the Court's jurisdiction, in an amount specified by the judge not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at trial;

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.

5. The Judge may in his/her discretion release the defendant on their own recognizance, if it appears substantially certain, considering all

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relevant factors, that the defendant will appear at all appointed times.

C. *Bail By Schedule.* Annually, the Chief Judge will establish and post a schedule of bail for offenses when a defendant may obtain release from jail at any time prior to arraignment by posting the amount of bail specified in the bail schedule for the offense charged.

D. *Exceptions to Bail by Schedule.*

1. No defendant may be allowed to post bail per the schedule when the arresting officer, complaining witness(es), or the corrections officer certify that the defendant was, at the time of incarceration, unconscious, under the influence of a controlled or intoxicating substance or apparently so under the influence, or for any reason does not appear to be in a conscious and sober condition. Such defendant shall not be allowed to post bail for at least eight (8) hours after being brought to jail, or until a corrections officer determines that the defendant is in a conscious and sober condition, whichever is later.

2. A person may not be released on bail without first appearing before a judge when the offense is:

- a. Stalking;
- b. Partner and family member assault (domestic abuse);
- c. Violation of a Temporary Restraining Order, Temporary Order of Protection, Order of Protection;

d. Sale of dangerous drugs;

e. Possession of dangerous drugs, except where the charge is a Class C offense;

f. Production or manufacture of dangerous drugs;

g. Unlawful sale of prescription medication;

h. Unlawful discharge of firearms; or

i. Any person detained for violating conditions of release (probation or parole).

E. *Release 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.

F. *Denial or Revocation of Release.* The Court may revoke its release of the defendant or deny release of 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, if release of the accused is likely to pose a danger to the community, to himself/herself or to any other person. or if any conditions of release have been violated.

G. *Violation of Release Condition - Forfeiture.*

1. If a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the Court for revocation of the order of release. A

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judge may issue a warrant for arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with Rule 5.B.1.

2. If a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant, the person posting the cash bail bond for the defendant and the defendant's sureties at their last known address(es).

3. The surety bond must be exonerated upon proof of the defendant's death or incarceration or subjection to court-ordered treatment in a foreign jurisdiction.

4. If the defendant appears and the defendant posted the bond, the Court may order that the bond be converted to pay fines, fees, surcharges, or restitution on the case at hand. The Court does not need the defendant's consent to order the conversion.

5. If the defendant appears, the Court may order the bond be converted to fines, fees, surcharges, or restitution on the case at hand if the person who posted the bond, not the defendant, agrees to the bond conversion.

6. The Court may order the forfeiture of bail for non-appearance set aside if appears that justice does

not require the enforcement of the forfeiture.

Rule 10. Pleas

A. *Ensuring Guilty Plea is Voluntary.* The Judge shall not accept a guilty plea without first talking to the defendant personally in open Court to determine that the plea is voluntary and is not the result of force or threats, or of promises, apart from any plea arrangements entered into between the prosecutor and the defendant. The Judge must explain and determine that the defendant understands the rights, conditions, and waivers described in Rule 7.C. and 7.D.2. If a defendant pleads guilty and the Judge considers the plea to be made involuntarily and/or without full understanding of the charge, the Judge shall reject the plea of "guilty" and enter a plea of "not guilty" for the defendant.

B. *Determining Accuracy of Plea.* The Judge shall not enter judgment on a tendered plea of guilty without first inquiring, to the Judge's satisfaction, that there is a factual basis for the plea.

C. *Withdrawal of Guilty Plea.* The Court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice and fairness would be served by doing so.

D. *Plea Agreement Procedure.*

1. The prosecutor and the defendant (or defendant's counsel, if applicable) may engage in discussions in an attempt to reach an agreement that, upon entering a plea of guilty to a charged offense or to a lesser or related offense, or to assisting in the apprehension of other

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criminals, the Prosecutor will do any of the following:

- a. Move for dismissal of other charges or all charges;
 - b. Make a recommendation, or agree not to oppose defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding on the Judge; or
 - c. Agree that a specific sentence is the appropriate disposition of the case.
2. The Judge shall not participate in any discussions, but if a plea or agreement has been reached, the Judge shall on the record require disclosure of the agreement in open Court or, on a showing of good cause, in chambers at the time the plea is offered. Thereupon the Court may accept or reject the agreement or may defer a decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report if any has been made.
3. If the Judge accepts the plea agreement, the Judge shall, on the record, inform the defendant that the Judge will embody in the judgment and sentence the disposition provided for in the plea agreement.
4. If the Judge rejects the plea agreement, the Judge shall, on the record, inform the defendant and the prosecutor of this fact, advise the defendant personally in open Court or

on showing of good cause, in chambers, that the Court is not bound by the plea agreement, afford the defendant an opportunity to then withdraw the plea and advise the defendant that if he/she persists in the guilty plea, the disposition of the case may be less favorable to the defendant than contemplated by the plea agreement. [*As amended by Ord. DOI 3(98)*]

5. Except for good cause shown, the Judge shall be notified of the plea agreement at the time of arraignment or as soon thereafter as possible, but in all cases prior to trial. [*As amended by Ord. DOI 3(98)*]

6. Any evidence of a plea of guilty, later withdrawn, or of statements made in connection therewith, is not admissible in any other criminal proceeding or in any civil case against the defendant who made the plea or offer. However, evidence of a statement made in connection with or relevant to a plea of guilty, later withdrawn, or a plea of no contest to the offense charged or any other offense is admissible in, a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and on the record, and in the presence of an advocate.

Rule 11: Joinder of Offenses and Defendants

A. *Joinder of Offenses.* Two or more offenses may be charged in the same complaint and tried together if:

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1. The offenses charged are the same;
2. Different offenses are charged but they arise out of the same act or transaction; or
3. All of the offenses charged are connected in a common scheme or plan.

B. *Joinder of Defendants.*

1. Two or more defendants may be charged in the same complaint and tried together if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of such defendants need not be charged on each count.
2. Two or more defendants can be tried together by separate complaint if the defendants were involved in the same series of acts or transactions that constitute the offense(s) charged.

C. *Severance of Trials.* If it appears that a defendant is prejudiced by a joinder of offenses or other defendants for trial together, the Court may order separate complaints and may order separate trials or provides such other relief as justice requires. In ruling on a motion for severance, the Court may order the prosecutor to deliver the Court for inspection in chambers, any statements made by a defendant which the prosecutor intends to introduce in evidence at trial.

Rule 12. Discovery

A. The police or prosecutor shall, upon request, permit the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendants if such are within the possession or control or reasonably obtainable by the police or prosecution. The police and prosecution shall make similarly available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendant.

B. *Notice of Alibi Defense.* The defendant or his counsel shall reveal by written notice to the Court and prosecutor at least five (5) working days before trial the names of any witnesses upon whom the defense intends to rely to provide an alibi defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution resulted, in which case the judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

Rule 13. Motions and Hearings

A. *Timing of Motions and Responses.*

1. An application to the Court for an order shall be by motion. A motion other than one made at trial or hearing shall be in writing unless the Court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit and/or memorandum of points and authorities.

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2. All motions and supporting documents must be served on the other party at the same time they are filed with the Court.

3. The adverse party shall have ten (10) calendar days after receipt of the motion and supporting documents to file and serve a response brief.

4. Upon the filing of the response brief, or upon the eleventh (11th) day after the filing of the motion if no response brief is filed, the motion shall be deemed made and submitted, and taken under advisement by the Court, or the Court may set the motion for a hearing if the Court believes a hearing would be beneficial to resolving the motion.

5. The Court may, in its own discretion, proceed to decide a motion without a hearing and issue a written decision.

6. Failure to file briefs within the prescribed time may subject any motion to summary ruling.

B. Motions raising defenses and objections may be made as follows:

1. Any defense or objections which is capable of determination other than at trial should be raised by motion before the status conference (Rule 18.E).

2. Defenses and objections based on defects in the institution of the prosecution of the complaint, other than lack of jurisdiction or failure to charge an offense under this Code, must be raised on motion prior

to the status conference. Failure to raise these defenses by motion before the status conference shall result in waiver, unless the Court for good cause shown grants relief from such waiver.

3. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own at any stage of proceeding. Motions raising lack of jurisdiction or failure to charge an offense shall be made in writing and filed with the Court so that all briefing will be complete before the day set for the status conference, or per any other schedule ordered by the Court. Such motions will be argued before the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the Judge and not by the jury.

4. Motions filed after the status conference require the Court's leave to be accepted by the Clerk. Leave shall be granted for good cause, such as new evidence or intervening events. Motions filed after the status conference without leave of Court shall be rejected by the Clerk.

5. If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the Judge shall alter the proceedings or enter judgment as is appropriate in light of the decision.

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Rule 14. Dismissal

A. The prosecutor may dismiss a case in the absence of probable cause after a complaint has been initiated.

B. If there is an unreasonable and unnecessary delay in bringing a defendant to trial, then the Court may, on the defendant's motion or its own motion, dismiss the complaint with or without prejudice.

Rule 15. Service and Filing of Papers.

A. Written motions, written notices and similar papers shall be served on each party in the manner provided for in the Rules of Civil Procedure in this Code.

B. All papers required to be served shall also be filed with the Court.

C. All papers presented for filing must include the case number, applicable filing fee, must be typewritten with no visible alterations, must be notarized if not signed in the Clerk's presence, and include the certificate of service to the opposing party.

D. The Court may prescribe other rules for filing and formatting of papers as it deems necessary.

Rule 16. Subpoena

A. *Issuance of Subpoenas.*

1. Upon request of the defendant, the prosecutor or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an

undue burden on the person possessing the evidence.

2. An employee of the Court may act on behalf of the Court and issue subpoenas which are to be served within the territorial jurisdiction of the Court.

3. A subpoena shall bear the signature of a Judge or Clerk of the Court and it shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

B. *Service of Subpoenas.*

1. A subpoena may be served at any place within or without the confines of the Reservation.

2. A subpoena may be served by any law enforcement officer, Court employee, or other person over the age of 18 years who is not a party. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his/her usual place of residence or business with any person of suitable age and discretion who also resides or works there.

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

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person who actually served the subpoena.

C. *Failure to Obey Subpoena.* In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be deemed to be in contempt of court and prosecution thereof may proceed upon order of the Court under Code Section 7.9.12 (criminal contempt) and Rule 43. No contempt shall be prosecuted unless a return of service notice has been filed with the Court under Rule 16.B.3.

Rule 17. Assignment of Cases for Trial

A. The Chief Judge and Court Clerk shall provide for the placing of criminal of criminal proceedings on the Court calendar with as little delay as is reasonably possible.

B. The Court may, for good cause shown by either party, direct that a trial be continued to the next or some succeeding month. However, if the prosecution, for good cause shown, requests and is granted a delay, and if the defendant is incarcerated not having made bail, the defendant shall be released on his own recognizance pending the rescheduled trial unless prohibited by these Rules, this Code or an order of the Court. The Court shall have discretion to order that the defendant's incarceration continue pending the rescheduled as set forth in Rule 9.F.

Rule 18. Pre-Trial Conferences

A. A pre-trial conference shall be held within 45 days after arraignment, or any other time before trial in the Court's discretion, in order to determine the matters necessary for proceeding to trial.

B. The defendant or their counsel, if applicable, and the prosecutor are required to attend. Failure to appear at a scheduled pre-

trial conference may result in a charge of contempt. Other persons may attend with the advance consent of the Judge conducting the pre-trial conference only if their presence will further the purpose in Rule 18.A.

C. No record or transcript of the conference shall be made except for the Order and Memorandum of Pre-Trial Conference. No statements made at the conference by any person shall be used at trial except for voluntary agreements reached between the parties on points of law and facts as recorded in the Order and Memorandum of Pre-Trial Conference. The judge may also set a status conference date, and set deadlines for motions to be filed and argued, for depositions and discovery to be completed, and for delivering a list of witnesses to be subpoenaed.

D. The Order and Memorandum of Pre-Trial Conference shall include:

1. The status conference date.
2. Motions deadline(s), so that all briefing and hearing(s) on motions will be completed before the status conference (Rule 13.B).
3. Whether or not a jury will be called.
4. Deadline to provide a list of witnesses to be subpoenaed.
5. Agreement, orders and deadlines regarding and depositions and discovery.

This Order shall supersede the pleadings for the purpose of framing issues for discovery and trial.

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E. *Status Conference.* The Court shall hold a status conference after discovery and motions are complete for the purpose of setting the trial date and determining the issues to be resolved at trial. The Court may issue written order(s) after the status conference setting forth any points of law, fact and/or procedure that have been resolved by agreement or on motions, and setting forth any issues to be resolved at trial and/or procedures to be observed at trial.

CHAPTER 3: TRIAL PROCEDURES

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Rule 19. Rights of Defendant in Criminal Cases

- A. No person shall
 - 1. twice be put in jeopardy for the same offense, or
 - 2. be compelled in any criminal case to be a witness against himself/herself. The defendant’s refusal or failure to testify shall not be construed against the defendant or commented upon by the prosecution
- B. The accused shall have the right to

- 1. Be present throughout the proceeding and to defend him/herself in person;
- 2. Assistance of counsel at his/her own expense;
- 3. Be informed of the nature and cause of the charge, and to receive a copy of the complaint;
- 4. Compulsory process to obtain the testimony of witnesses and other evidence in his/her defense;
- 5. Be confronted with witnesses against him/her;
- 6. A speedy and public trial; and
- 7. Demand trial by an impartial jury if the offense, or combination of offenses, charged is punishable by imprisonment.

Rule 20. Speedy Trial

- A. *Priorities*
 - 1. The trial of criminal cases shall have priority over the trial of civil cases.
 - 2. The trial of defendants in custody and defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.
 - 3. *Duty of Prosecutor.* The prosecutor shall advise the Court of facts relevant to determining the order of cases on the calendar.
- B. *Time Limits*
 - 1. *All Defendants.* Every person against whom a complaint has been filed should be tried within 220

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calendar days of his or her arraignment, or as soon thereafter as the Court may schedule a trial but in any case no later than 365 calendar days after his or her arraignment.

2. *Defendants in Custody.* If a defendant is in custody, he or she shall be tried within 180 calendar days of his or her arraignment or the date on which defendant entered a “not guilty” plea, or be released on their own recognizance with conditions set by the Court.

3. If a defendant is released from custody within 100 calendar days of his or her arraignment, the speedy trial limit in Rule 20.B.1. shall apply.

4. *New Trial.* A trial ordered after a mistrial, upon a motion for a new trial or upon the reversal of a judgment on appeal, shall begin within 90 calendar days of the entry of the order of the Court of Appeals.

5. *Calculation of Time Limits.* The calculation of the time limits prescribed by this Rule shall not include any delay caused by or on behalf of the defendant, including, but not limited to, continuances requested by the defendant, time required to hear and adjudicate any motions filed by or on behalf of the defendant, delays caused by an examination and hearing to determine competency, the defendant’s failure to attend court hearings, or his or her absence from the Reservation for any reason.

6. *Waiver.* A defendant or his or her counsel shall be deemed to have

waived his or her right to a speedy trial by doing or failing to do any of the following:

- a. Failing to appear at any Court appearance;
- b. Any continuance requested by defendant or defense counsel;
- c. Any motion filed by or on behalf of the defendant, but only for the amount of time required to calendar, hear and adjudicate the motion; and
- d. Agreement by the parties to set a case for trial outside of the speedy trial limits, but only for such time as the trial date set exceeds those limits.

C. *Denial of Speedy Trial; Dismissal.* If the Court determines that a speedy trial time limit established under this Rule has been violated, it may, on motion of the defendant or on its own initiative, dismiss the prosecution without prejudice.

Rule 21. Trial by Jury

A. *Right to Jury Trial.* Nothing in this Title or these Rules shall be construed to obstruct or deny the right of a defendant subject to imprisonment to have a trial by jury, except when the sole charge of the offense of criminal contempt.

1. Unless a trial by jury is specifically requested by a defendant, all criminal actions shall be tried by the Court.
2. If a defendant in a criminal proceeding desires to be tried by a jury, he/she must either request a jury trial at arraignment, or file a written

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request for trial by no later than the pre-trial conference.

3. A defendant waives his/her right to a jury trial if the defendant fails to appear at the scheduled jury trial. Waiver of the jury trial will result, without delay, in a bench trial by the Court in absentia for misdemeanor charges and a scheduled bench trial for Class A, B or C charges.

B. *Jurors.* A jury shall consist of at least 6 members of the Reservation community selected at random from a list of eligible jurors prepared each year by the Court.

1. *Eligible juror* means a Reservation resident regardless of tribal membership who has reached the age of 18 years, is of sound mind and discretion, has not been convicted of a felony or misdemeanor under this Code within the past year, is not a judge or justice, officer or employee of the Court or an employee of the Reservation law enforcement program(s) (uniformed police, dispatch, criminal investigations, corrections or their support staff), and is not otherwise disqualified according to standards established by the Court.

2. Any person receiving a jury subpoena who believes that they are not an eligible juror shall have the burden of presenting documentation to the Clerk demonstrating lack of eligibility.

3. A list of at least 25 resident Indian persons who are eligible for

jury duty shall be prepared and maintained by the Court Clerk.

4. Under the supervision of the presiding judge, a panel of jurors shall be drawn by lot or other means of random selection, from the jury list. A trial jury shall consist of 6 qualified jurors selected from a panel of 12 eligible persons taken from the jury list, none of whom has an interest in the case, or is related as spouse, parent, brother or sister to any of the parties or their counsel. If the jury panel is exhausted before a sufficient number of jurors are selected for the trial jury, additional jurors shall be drawn by lot from the jury list for the panel until a trial jury is selected.

5. The judges of the Court shall have the power to issue subpoenas, through regular mail, to compel the attendance of members of the jury panel and of trial jurors. Subpoenas shall be signed by the judge issuing them or a Court Clerk.

6. The judge assigned to the case shall have the power to excuse persons from jury duty on account of sickness, disability or other good cause.

7. Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury. The Court may itself examine jurors.

8. Either party may challenge a juror for cause. Challenges for cause shall be made against a potential juror on the grounds that he/she is not

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entitled or qualified to be a juror, he/she has formed an opinion regarding the case, or if for any other reason it appears likely or reasonably possible that a juror will not be able to render a fair, impartial verdict. The Judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

9. In criminal cases, in addition to disqualifying jurors for cause as determined by the judge, the prosecution and the defendant, each side shall be entitled to 3 peremptory challenges without assigning any cause. Where there is more than one defendant, they must join in a challenge before it can be made unless the Court, for due cause shown, shall permit otherwise, or shall permit each defendant to exercise 2 peremptory challenges.

10. Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to receive such fees for daily services and/or mileage, if any, as established by a rule of the Court.

11. If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform, the parties may agree to complete the action with the remaining jurors. If no agreement can be reached or if justice otherwise requires, the Judge shall order a temporary delay in trial for such time as is necessary to impanel a new jury.

12. Any time prior to their verdict when the jurors are allowed to leave

the courtroom, the Judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.

13. *Jury Instructions.* The judge shall instruct the jury orally with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law. At the close of evidence, or earlier in the trial as the judge directs, any party may file with the judge written jury instructions on the law that the party wishes to be delivered to the jury by the judge. At the same time copies of such proposed instructions shall be furnished to the opposing party. Prior to closing arguments, the judge shall determine which, if any, proposed instructions shall be orally delivered to the jury at the close of arguments. No party may assign as error any portion of the jury instructions unless he/she makes his/her objection and reasons for it before the jury retires to consider its verdict. Opportunity shall be given to make the objection out of the hearing of the jury.

14. Once the case is submitted to it, the jury shall retire to deliberate in private under the charge of an officer of the Court who will refrain from communicating with them except to inquire whether they have reached a verdict, and he shall prevent others from improperly communicating with the jury.

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15. The jury may take with them when deliberating any of the following:

- a. The Court's instructions
- b. Papers or things received in evidence as exhibits
- c. Notes taken by the jurors themselves.

16. After deliberation in private, the jury in criminal cases shall return to the judge in open court a verdict of "Guilty" or "Not Guilty" with respect to each defendant. A verdict in criminal cases shall be rendered by a majority vote of the jury.

Rule 22. Trial by Judge

A. In cases tried without a jury, the Judge shall make a general finding of "guilty" or "not guilty," and shall, upon request of any party, make specific findings of law and/or fact which may be in the form of a written decision.

B. If a defendant fails to appear at the scheduled bench trial, the Court may issue a bench warrant, revoke any conditions of release, reschedule for the next available bench trial date, or take other steps within the Court's authority and discretion to ensure justice is served.

Rule 23. Affidavit of Bias and Prejudice of a Judge, Judge Disability

Upon the filing of an affidavit of bias and prejudice setting forth satisfactory proof of facts establishing, that by reasons of bias or prejudice of the Judge to whom the case is assigned, the defendant cannot have a fair trial, the Judge shall disqualify him/herself.

Any person who abuses this process by filing such affidavit(s) without basis in fact shall be in contempt of Court.

Rule 24. Proceedings at Trial

A. The time and place of court sessions, the order of proceedings and all other details of trial procedure not prescribed in these Rules may be set out in separate rules or orders of the Court.

B. In any case where a sentence of imprisonment is possible, the defendant shall be present in court at every stage of the trial, including impaneling the jury, return of the verdict, and imposition of sentence.

C. At any time in the trial process, the judge may appoint an interpreter of his/her own selection and may fix the reasonable compensation of such interpreter. An interpreter through whom testimony is communicated shall be put under oath to faithfully and accurately translate and communicate as required by the judge. The judge or Clerk may act as interpreter with the consent of all parties.

D. The Judge shall open proceedings, read the case number and describe the nature of the complaint, and state the defendant's plea.

E. The Court may accept pretrial motions for ruling by the Court provided such motions are not otherwise prohibited or untimely under these Rules, or any rule or order of the Court. All arguments on such motions shall be made outside the hearing of the jury in a trial by jury.

F. Each party, or their counsel if applicable, shall be entitled to make a brief opening statement. The prosecutor shall

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make his/her opening statement first, followed by the defense. The prosecutor may waive an opening statement. The defense may waive an opening statement or reserve the right to make an opening statement after the prosecution has rested its case.

G. Testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court and available to the defendant. Upon motion of the prosecutor, the defense witnesses may be sequestered or excluded until called upon to testify. Testimony can also be given as evidence by properly executed affidavits, depositions or written interrogatories.

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

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

J. The prosecution shall present its case first, followed by the case of the defendant. If redirect or rebuttal is required, the prosecution shall proceed first, followed by the defendant at the Court's discretion.

K. The defendant may make a motion for judgment of not guilty or directed verdict

acquittal at the close of the prosecution's case. If the evidence is not sufficient to support a conviction of the offense charged beyond a reasonable doubt, the Court shall order the entry of judgment of not guilty, or a directed verdict of acquittal of the offense charged.

L. The Court may also enter judgment of not guilty on its own motion after the evidence on either side is closed, and shall do so if the evidence is not sufficient to support a conviction of the offense charged beyond a reasonable doubt.

M. At the conclusion of the evidence, the prosecution and defendant each in turn shall summarize the proof and make final argument, with the prosecution having the right of final rebuttal in the Court's discretion. The parties may offer rebuttal testimony only on matters relating to direct testimony, except that the Court may, in the interest of justice, permit the introduction of newly discovered evidence.

N. The prosecution and the defense may present closing arguments in the case, the prosecution having the right to give the final closing.

O. After closing arguments, the judge shall orally deliver instructions to the jury, including any instructions proposed by parties under Rule 21.B.13.

P. In every case, the judge shall instruct the jury that the defendant is presumed to be innocent, that the burden of proof rests on the prosecution, that the evidence must show beyond a reasonable doubt that the defendant has committed the crime charged, and that if the defendant did not testify, his silence shall

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not be considered as evidence that the defendant is guilty.

Rule 26. Rules of Evidence

The Northern Cheyenne Rules of Evidence set forth in Title 6 of this Code shall be followed in all Tribal Court criminal proceedings.

Rule 27. Expert Witnesses

A. Either party may call expert witnesses of the party's own selection, and the calling party shall bear the cost of their own expert witness(es).

B. Lab technicians of a state or federal Crime Lab may telephonically testify in trial as to their personal findings relevant to the case at hand, in the Court's discretion and for good cause.

Rule 28. Verdict

A. Upon completion of the closing arguments, and after receipt of any instructions, the judge or jury, as the case may be, shall render its verdict.

B. *Verdict by Judge.* The judge shall render a verdict of guilty if he/she believes the defendant to be guilty of the offense(s) charged beyond a reasonable doubt. The judge shall have the option of rendering a verdict immediately after closing arguments or taking the case under advisement and issuing a ruling at a later time.

C. *Verdict by Jury.* A guilty verdict shall be returned in a jury trial only when a majority of the jurors finds that the defendant is guilty of the offense(s) charged beyond a reasonable doubt.

D. *Mistrial.* If, after repeated efforts, the jury is unable to reach a verdict, the judge

shall dismiss the jury and declare a mistrial. If a mistrial is entered, the defendant may be brought up on the same charge(s) again.

E. *Several Defendants.* If there are two or more defendants, the judge or jury may at any time in his/its deliberations, return a verdict or verdicts with respect to a defendant or defendants as to whom he or it has decided. If the jury cannot agree with respect to each defendant, the defendant or defendants as to whom it cannot agree may be tried again, as after a mistrial.

F. *Lesser Included Offense.* The judge or jury may find the defendant(s) guilty of a lesser included offense instead of the offense he/she is formally charged with. The lesser included offense does not have to be formally charged, as long as it is proven with the same proof used to show the charged offense.

G. *Not Guilty Verdict.* If a verdict of not guilty is rendered, judgment shall be entered into the record immediately and the defendant shall be immediately released from custody.

H. *Guilty Verdict.* If a verdict of guilty is rendered, the judge shall so advise the defendant in open Court, either sentence the defendant or set a date for sentencing, and enter a judgment of guilty in the Court's records.

Rule 29. Motions at Trial

A. Either party may make motions throughout the course of the trial, any of which shall be oral unless otherwise directed by the presiding judge. Both parties shall have the opportunity to state their respective positions on any motion made. The motions which can be made shall include but are not limited to those listed in this Rule.

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B. *Motion for Exclusion of Witnesses.* A motion to exclude witnesses who have not yet testified may be made by either party or by the Court on its own initiative prior to the time any witness has testified to ensure that the testimony of the witness is the witness's own independent recollection of the facts. Granting or denying any such motion is committed to the Court's discretion.

C. *Motion to Exclude Evidence.* A motion to exclude evidence may be made during the course of a trial when an opposing party introduces evidence that is inadmissible under these Rules or the applicable Rules of Evidence.

D. *Motion for Judicial Notice.* Either party may, during the presentation of its case, move the Court to take judicial notice of matters which by their nature are not properly the subject of testimony of which are universally regarded as established by common knowledge. Granting or denying any such motion is committed to the Court's discretion.

E. *Motion for Mistrial.* A motion for a mistrial can be made at any time during the trial and can be granted in the Court's discretion. A party may make such motion when any action by any person has the effect of prejudicing the outcome of the trial to the point that such prejudice could only be overcome by holding a new trial.

F. *Motion for a New Trial.* The defendant may make move for a new trial after a guilty verdict has been rendered against the defendant. The motion must specifically allege the errors made by the Court during the trial which form the basis for the motion. The motion shall be granted or denied as justice dictates.

G. *Motion for a Directed Verdict.* At the close of the prosecution's case, the defense may move that the Court direct a verdict of not guilty. Defendant's motion shall be granted only if the prosecution has failed to present a *prima facie* case. Either party may make a motion for a directed verdict at the close of the defendant's case. A directed verdict of not guilty can be made when the prosecution failed to present a *prima facie* case and directed verdict of guilty can be made if the Court finds as a matter of law that no adequate defense was presented.

CHAPTER 4: POST-TRIAL PROCEEDINGS

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Rule 30. Judgments

A judgment of guilty shall set forth the plea, the verdict or findings, the adjudication, and sentence when imposed. If defendant is found guilty or for any other reason is entitled to be discharged, judgment shall be entered immediately, and the defendant released. All judgments shall be signed by the presiding judge and entered into the record by the Court Clerk.

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Rule 31. Sentencing

A. Any person who has been convicted of an offense enumerated in this Code shall be sentenced by the Court without unreasonable delay.

B. Pending sentence, the Court may commit the defendant(s) to jail or continue or alter bail. Before imposing sentence, the Judge shall afford counsel an opportunity to speak on behalf of the defendant and shall ask the defendant if he wishes to speak on his own behalf to present any information which might lessen his/her punishment.

C. A motion to withdraw a plea of guilty shall be made only before the defendant is sentenced. However, to correct manifest injustice, the Judge may set aside the judgment of guilty and permit the defendant to withdraw his plea.

Rule 32. Kinds of Punishments

A. All persons convicted of any offense by the Court may be sentenced to imprisonment, fine, assessment of court costs, or a combination of these punishments as set forth in this Code.

B. *Imprisonment.* On any sentence of imprisonment, credit shall be given for all time spent in custody in an institution as a result of the charge for which the sentence was imposed. Imprisonment may include commitment to an appropriate institution or program, either on or off the Reservation, for care, treatment, evaluation, or rehabilitation of the offender. Jurisdiction over a person sentenced to a program or institution off the Reservation shall be absolutely retained by the Court.

C. *Fines.* A money fine in an amount not to exceed the maximum permitted by this Code provision defining the offense, which shall not exceed \$5,000 per offense.

1. If the Court determines that a convicted offender is unable to pay forthwith a money fine assessed or costs assessed by the Court, the Court shall allow him/her a reasonable period of time to pay the entire sum or allow him/her to make installment payments to the Court Clerk at specified intervals until the entire sum is paid, over a period not to exceed nine (9) months.

2. If the offender defaults on such payments, the Court may find him/her in contempt of court and punish him/her accordingly, but no person shall be held in contempt of court where nonpayment is because of indigency.

3. Methods available for collecting a civil judgment shall be available to the Court Clerk to collect any unpaid money upon order of the Court following a failure to make any required payment.

4. The Court may, by rule or order, allow offenders to serve time in prison or receive credit for time served as a way of paying fines and costs.

D. *Sex Offenders with Children.* Parents, guardians, and custodians of a child who are convicted of rape, sexual assault, sexual exploitation, physical abuse, neglect, or abandonment of that child may be ordered to seek such therapy, treatment, or instruction as

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will assist in preventing recurrence of the conduct that formed the basis of the offense. Such treatment or therapy may be ordered in lieu of incarceration, with the proviso that if the offender fails to seek the therapy or treatment as ordered, the sentence of incarceration shall be reinstated.

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

1. To require restitution and to fix the amount of all damages, the Court shall begin with a presumption that the defendant is responsible for all damages resulting from or occurring during defendant's commission of the offense.

2. The Court shall hold a hearing to receive evidence as to the amount of the damage incurred, and to receive the defendant's rebutting evidence, if any. If the injured party desires, restitution from the defendant shall be rendered to the Court, and then given to the injured party, to avoid contact between the two parties.

F. *Work In Lieu of Sentence.* In its discretion, the Court may commute or suspend some or all of the sentence imposing a fine or imprisonment, or grant probation, on condition that the convicted person does work for the benefit of the Tribe. A person

unable or unwilling to work may be confined in jail or fined as provided above.

G. *Commitment to Rehabilitation Program.* The Court may, as part of a sentence, require a defendant convicted of an offense involving a controlled or intoxicating substance, or a defendant whose use of such substance, in the Court's determination, is of a character and/or duration as to inhibit the defendant's rehabilitation, to a rehabilitation program or facility recognized by the Court.

H. *Forfeiture of Weapons.* Any person owning and using a firearm, or any sharp or dangerous weapon, in the commission of an offense shall forfeit such weapon to the Tribes as part of the sentence as provided in Title 7 of this Code. Upon order of the Court, such weapon shall be destroyed, or sold a public sale after appropriate public notice, pursuant to the direction of the Court.

I. *Factors in Determining Punishments.* In determining the character and duration of the sentence to be imposed, the Court shall take into consideration:

1. Customary punishments for similar offenses under Tribal traditions

2. The previous record and conduct of the defendant

3. The circumstances under which the offense was committed

4. Whether the offense was malicious or willful

5. Whether the defendant has attempted to make amends, restitution and/or paid damages, and shall give due consideration to the extent of the

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defendant's financial resources and the needs of his/her dependents

6. Any other such factor allowable at law that the Judge finds appropriate to consider.

Upon conviction, the Judge may require the prosecution to present evidence as necessary on the above factors in open Court, with the defendant present and allowed to offer rebuttal and to cross-examine all witnesses.

Rule 33. Habitual Offenders

Except as otherwise provided in Title 7 of this Code, any person convicted three (3) times for the same offense in one year, or five (5) times for any Class A or Class B offense in one year, shall be considered a habitual offender. The judgment against such person shall designate him a habitual offender, punishment received shall be the maximum allowable under the offense unless good cause is shown for leniency, and the offender shall not be eligible for suspension of sentence, probation, parole or commutation of sentence.

Rule 34. New Trial

The Court, on motion of a defendant, may grant a new trial to defendant if required in the interest of justice.

A. If trial was by the Court without jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment.

B. A motion for a new trial based on the ground of newly discovered evidence may be made only within thirty (30) days after final judgment, but if an appeal is pending then the

Court may grant the motion only on remand of the case.

C. A motion for a new trial based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within such further time as the Court may fix during the seven-day period.

Rule 35. Suspension of Sentences – Probation

A. *Granting Probation.* After conviction of an offense, the defendant may be placed on probation, under such terms and conditions as the Court deems just, taking into consideration any prior criminal record of the defendant, his/her background and characteristics helpful in determining the advisability of probation. Probation shall be no longer than the statutory penalty.

B. *Exception.* Any person who has been previously convicted of a Class A offense, or classified as a habitual offender, or is otherwise prohibited from receiving probation under this Code, shall not be eligible for probation.

C. *Violations of Conditions of Probation.* If any person violates the terms and conditions of probation, the Court may, after giving him/her notice and the opportunity for a hearing in open court, revoke or alter the terms of his/her probation. A probation violation may come before the Court via motion by the prosecutor or affidavit from the probation officer, and the Court may issue a bench warrant for the probationer upon receiving credible evidence that a probation violation may have occurred. Any person whose probation is revoked may be required to serve the original sentence plus an additional one-half of such original

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sentence, as punishment for probation violation.

D. *Probation Revocation Hearing.* A probationer is entitled to a hearing before the Court prior to revocation of probation, or may waive such hearing and admit to violating a condition of probation. If the probationer is before the court on a bench warrant issued under Rule 35.C. or other warrant issued by the Court, the Court may address the probation violation at arraignment. If the probation violation is admitted, the Court may revoke probation without hearing.

1. If the probationer requests a hearing on the probation violation, the hearing shall be scheduled without undue delay. The subject matter of a probation revocation hearing is limited to alleged knowing violation(s) of probation condition(s). A violation of a condition is deemed to be a knowing violation if the probationer signed and was given a copy of the conditions of probation.

2. No jury shall be afforded for a probation revocation hearing.

3. The probationer has a right to counsel at his or her own expense and may call witnesses or introduce evidence in his or her own behalf and may cross-examine any prosecution witness. Hearsay evidence is admissible, although a decision to revoke probation may not be based solely on hearsay evidence. The prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.

4. The Court may determine the appropriate disposition of the alleged probation violation by balancing the probationer's interest in liberty, employment, family ties, responsibilities, health, or community ties against the Tribe's interest in rehabilitation, public safety, victim(s') rights, and the probationer's duty to comply with each condition of probation.

5. An order revoking probation shall be in writing and shall contain findings of fact and conclusions of law supporting the revocation.

Rule 36. Deferred Sentences

A. Where a sentence has been imposed, the Judge may, in his discretion, defer the imposition of the sentence and impose any reasonable restrictions or conditions during the period of deferred imposition. The Judge may, in his discretion, revoke the suspension after giving the offender a hearing prior to the revocation.

B. Where the Court has deferred the imposition of a sentence and the time period of the deferment has expired, upon motion of the Court, the defendant or the defendant's representative, the Court may commute any remaining sentence.

Rule 37. Parole

A. Any person sentenced by a Judge, who has without misconduct served one-half the sentence imposed by such Judge, shall be eligible for parole, except that any person designated a habitual offender, who is serving a sentence after having probation or a deferred sentence revoked, or is otherwise

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prohibited from receiving parole under this Code is not entitled to parole under this Rule.

B. Anyone desiring parole may apply to any Judge. Such Judge will review the circumstances of the potential parolee, and determine whether he/she has served one-half of his sentence, is not guilty of any misconduct, and is not a habitual offender or serving a sentence after having probation or a deferred sentence revoked. The Court may also consider any other pertinent information before acting on a parole application. If all requirements are met, the prisoner may be released on parole for the remainder of his/her sentence, subject only to the terms and conditions he/she has, in writing, agreed to comply with.

C. *Violations.* Any parolee who violates any provision of his/her parole shall be apprehended and receive a parole revocation hearing, while shall be conducted in the same manner as a probation revocation hearing under Rule 35.D. Upon a determination that parole was violated, the defendant shall be confined to serve the remainder of the original sentence without diminishment for time the person was free on parole.

Rule 38. Commutation of Sentences

If a presiding Judge is satisfied that justice will best be served by reducing a sentence, the Judge may at any time reduce any sentence imposed upon a person, upon a showing of proof that during the period of the sentence the person served without misconduct.

Rule 39. Appeal

A. *Notification of Right to Appeal.* Following the imposition of judgment of guilty, except upon a plea of guilty, the Court

shall inform the defendant that he/she has a right to appeal.

B. *Appealable Orders.*

1. The defendant has the right to appeal from

a. A final judgment of conviction

b. An order made, after judgment, affecting defendant's substantial rights.

2. The prosecution has the right to appeal from

a. A judgment of dismissal in favor of the defendant upon motion to dismiss based on any procedural irregularity occurring before trial

b. An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered

c. An order of the Court directing the jury to find for the defendant

d. An order made after judgment affecting the substantial rights of the prosecution

C. An appeal is taken by filing a Notice of Appeal with the Court within fifteen (15) working days of the date of the final judgment or post-judgment order being appealed.

Rule 40. Stay of Judgment and Relief Pending Review.

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A. A sentence of imprisonment may be stayed if an appeal is taken and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release pending appeal shall have all time spent in incarceration counted towards his/her sentence in the matter under appeal.

B. A sentence to pay a fine or a fine and costs may be stayed pending appeal upon motion of the defendant but the Court may require the defendant to pay such money subject to return if the appeal should favor the defendant and negate the requirements for paying such.

C. An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

D. All other punishment orders rendered pursuant to judgment may be stayed pending appeal, subject only to a cash bond the Judge may require to insure performance and/or the presence of the appellant.

Rule 41. Expungement

A. *Eligibility.*

1. Any person charged with any criminal offense under the jurisdiction of the Tribal Court and has been adjudged not guilty either by judge or jury may petition the Court to have all records (Court and Law Enforcement) of the matter expunged.

2. Any person charged with any criminal offense under the jurisdiction of the Tribal Court that has been dismissed with prejudice may petition the Court to have all

records (Court and Law Enforcement) of the matter expunged.

3. Any person charged with any criminal offense under the jurisdiction of the Tribal Court and has been adjudged guilty either by judge or jury and that qualifies under any of the below-mentioned criteria, may petition the Court to have all records (Court and Law Enforcement) of the matter expunged:

- a. Successful completion of sentence; or
- b. Successful completion of suspension or deferred imposition of sentence; or
- c. Successful completion of probation.

B. *Procedure.*

1. A Petition for Expungement shall contain a request for expungement of records of one cause only, and also shall include:

- a. The date of Petition,
- b. Petitioner's name,
- c. Petitioner's age,
- d. The cause number of the charged offense for which petitioner seeks expungement.
- e. The crime charged,
- f. The disposition of the Court,
- g. The applicable qualification under Rule 41.A, and

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h. A statement provided by the Clerk of Court that any applicable qualification under Rule 41.A was successfully completed.

2. Upon receipt of Petition for Expungement, the Court shall issue an order with 30 days of the filing date of the Petition.

3. Upon receipt of Petition for Expungement, the Court shall review all court and law enforcement documents in consideration of the Petition.

C. The Court shall use its discretion in determination of whether to order expungement of records; however, expungement is presumed to be unavailable for sexual offenses absent exceedingly good cause.

CHAPTER 5. GENERAL PROVISIONS

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Rule 42. Medical Examination and Care

A. At the discretion of a Judge, any person whom the Judge believes to be in need of the care of a medical and/or psychiatric facility, may be referred to such facility for care and treatment. [*As amended by Ord DOI 3(98)*]

B. At the recommendation of any qualified physician of the United States Public Health Service or Indian Health Services, the Judge may order any person to

submit to appropriate medical and/or psychiatric treatment.

Rule 43. Criminal Contempt

A. Criminal contempt may be declared by any judge of the Northern Cheyenne Tribe for:

1. misbehavior of any person in a court proceeding; or
2. disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

B. *Misbehavior* means

1. disorderly or insolent behavior in the presence and view of the Court that disrupts proceedings or impairs respect of the Court's authority;
2. breach of peace, noise or other disturbance interrupting Court proceedings;
3. acting as an officer, spokesperson or other official of the Court without authority;
4. publication of false or grossly inaccurate reports of Court proceedings;
5. any other interference with the process, proceeding or dignity of the Court or a Judge of the Court while performing official duties.

C. A direct contempt is one committed in the presence of the Court, or so near as to be disruptive of Court proceedings and may be summarily adjudged and punished. Any other contempt shall be determined at a

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hearing by the Court in which the accused is given notice and an opportunity to be heard.

D. No jury trial is allowed for contempt proceedings.

E. Criminal contempt is a Class C offense, and is also punishable by up to five (5) days' imprisonment, and a Judge may issue any order necessary to allow the person to purge the contempt in addition to any other sentence.

Rule 44. Clerical Mistakes

Clerical mistakes in judgments, orders, pleadings, or other parts of the record, and errors in the record, arising from oversight or omission, may be corrected by the Court at any time and after such notice, if any, as the Court orders.

Rule 45. Construing Rules of Criminal Procedure

These rules shall be construed together to reach a fair conclusion in all cases. However, if one or more specific sections are found to be invalid for any reason, the remaining rules shall still have the full force of law.