

WYANDOTTE NATION
TITLE 6
CRIMINAL PROCEDURE CODE
(APPROVED BY THE BOARD OF DIRECTORS 6-13-2023)

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**WYANDOTTE NATION
TITLE 6
CRIMINAL PROCEDURE**

INTRODUCTION

Section 1. Scope, Purpose and Construction.

(a) This Title governs the procedure in all criminal proceedings in the Trial Court and all preliminary or subsequent procedures as specified herein.

(b) Every proceeding in which a person is charged with a criminal offense of any degree and brought to trial and punished is a criminal proceeding.

(c) This Title is intended to provide for the just disposition of every criminal proceeding. It shall be construed to secure simplicity in procedure, fairness in administration of justice and the elimination of unjustifiable expense and delay.

(d) In any case wherein no particular procedure is provided herein or in the Rules of the Court, the Court shall follow the Federal Rules of Criminal Procedure, or other Wyandotte Nation law subject always to the rights of the defendant. If no procedure is provided in this Title, the rules of the Court, the Federal Rules of Criminal Procedure or other Wyandotte law, the Court may proceed in any lawful fashion while protecting the rights of the defendant.

Section 2. Definitions.

The following words have the meanings given below when used in this Title, unless a different meaning is obvious from the context.

(a) "Arraignment" is the bringing of an accused person before the Court, informing him or her of the charge against them and of his or her rights, receiving a plea and setting bail.

(b) "Arrest" is the taking of a person into custody in the manner authorized by law.

(c) "Banishment" is the sentence imposed by the Nation for offenders who have been convicted of offenses which violate the basic rights to life, liberty and property of the community and whose violation is a gross violation of the peace and safety of the Nation requiring the person to be totally expelled for the protection of the community.

(d) "Commitment" is a warrant or order by which a court directs an officer to take a person to a facility to be incarcerated. The commitment is either for further hearing or it is final.

(e) "Complaint" is a sworn written statement of the essential facts charging that a named individual has committed a particular offense.

(f) "Criminal Citation" is a notice to appear in court due to the probable commission of a crime in which it is not deemed necessary by law enforcement to immediately arrest an individual to preserve the peace and safety of the community.

(g) "Expert Witnesses" is a person who is a specialist in a subject, often technical, who may present his/her expert opinion without having been a witness to any occurrence relating to the criminal case.

(h) "Joinder" is the act of bringing multiple legal issues together under the same lawsuit.

(i) "Judgment" is the formal decision made by a judge or court after a lawsuit.

(j) "Search Warrant" is an order directed to any Wyandotte Nation, federal, or other law enforcement officer directing him or her to search a particular place for described persons or property and if found to seize them.

(k) "Subpoena" is a court-ordered demand that a person appear in court or other legal proceeding, or that specific documents be produced and presented at a specified date, time, and location.

(l) "Verdict" is the formal decision issued by a jury on the issues of fact that were presented at trial.

CHAPTER ONE PRELIMINARY PROVISIONS

Section 101. Prosecution of Offenses.

(a) No person shall be punished for an offense except upon legal conviction, including a plea of guilt or nolo contendere in open court, by a court of competent jurisdiction; provided, however, that no incarceration or other disposition of a person accused of an offense prior to trial in accordance with this Title shall be deemed punishment.

(b) All criminal proceedings shall be prosecuted in the name of the Wyandotte Nation as the Plaintiff, against the person charged with an offense, referred to as the defendant.

Section 102. Rights of Defendant.

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

(a) To appear and defend in person or by a licensed attorney. If the defendant qualifies as indigent, the Court shall appoint effective counsel to represent the defendant at the expense of the Wyandotte Nation;

(b) To be informed of the nature of the charges against them and to have a written copy thereof;

(c) To testify in his or her own behalf, or to refuse to testify regarding the charge(s) against them; provided however, that once a defendant testifies on a matter relevant to the immediate proceeding against them, he or she shall be deemed to have waived all right to refuse to testify in that immediate proceeding. The defendant shall not, however, be deemed to have waived their right to remain silent in other distinct phases of the criminal process;

(d) To confront and cross-examine all witnesses against them;

(e) To compel by subpoena the attendance of witnesses in his or her own behalf;

(f) To have a speedy public trial by an impartial Judge or jury;

(g) To appear in all cases;

(h) To assert privilege as provided in the Wyandotte Nation Evidence Code, Title 8;

(i) Not to be twice put in jeopardy by the Wyandotte Nation for the same offense;

(j) To have a judge who is licensed to practice law in a jurisdiction of the United States and competent in criminal procedure preside over all proceedings; and

(k) To have a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

Section 103. Limitation of Prosecution.

(a) Every criminal proceeding, except an offense for which banishment is a possible punishment, shall be commenced within three (3) years of the date of commission and diligent discovery of the offense, or prosecution of that offense shall be forever barred. Every criminal offense for which banishment is a possible punishment shall be commenced within seven (7) years of the date of commission and diligent discovery of the offense, or prosecution of that offense shall be forever barred.

(b) If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be complete occurred.

(c) The date of "diligent discovery" is the date at which, in the exercise of reasonable diligence, some person other than the defendant and his or her conspirator know or should have known that an offense had been committed.

(d) Time spent outside the jurisdiction of the Nation for the purpose of avoiding prosecution shall not be counted toward the limitation period to begin prosecution.

CHAPTER TWO PRETRIAL PROCEEDINGS

Section 201. Complaints.

(a) Every criminal proceeding shall be commenced by the filing of a criminal complaint. The complaint is a sworn written statement of the essential facts alleging that a named individual has committed a particular offense.

(b) The complaint shall include:

- (1) The name and address of the Court;
- (2) The name of the defendant if known, and whatever description of the defendant is known;
- (3) The typewritten name and signature of the Prosecuting Officer;
- (4) A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed, including a reference to the date and place;
- (5) The person against whom or against whose property the offense was committed and the names of the witnesses of the Nation, if known;
- (6) The title and the section number of the alleged offense, and range of punishment for the alleged offense;
- (7) If the offense is punishable by banishment, the Prosecuting Officer may state in the complaint or an amendment of the complaint that banishment will be recommended as a punishment if the defendant is convicted. If such statement is not made, banishment may not be imposed;

(c) No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

(d) A complaint may be filed at any time within the period prescribed by this Title; provided, that if an accused has been arrested without a warrant the complaint shall be filed promptly and in no case later than the time of arraignment.

Section 202. Arrest Warrant or Summons to Appear.

(a) Upon the filing of a complaint, the Court Clerk shall issue a summons to the defendant to bring him before the Court. Unless the 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.

(b) An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the Nation which is 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 the defendant committed it.

(c) A warrant of arrest shall be signed by the Judge issuing it, and shall contain:

(1) The name and address of the Court;

(2) The name of the defendant, or if the correct name is unknown, any name by which the defendant is known;

(3) A description of the defendant; and

(4) A description of the offense(s) charged with reference to the section(s) of the Wyandotte Nation Code alleged to have been violated.

The arrest warrant shall order and command the defendant be arrested and brought before a Judge of the District Court to enter a plea.

(d) 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 Judge on a specific court date 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.

(e) Warrants for arrest and criminal summons may be served by any law enforcement officer or adult person authorized in writing by the Court provided the following conditions are met:

(1) Service may be made at any place within the jurisdiction of the Wyandotte Nation;

(2) Warrants for 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 the Court; and

(e) After service of the warrant or summons, the date, time and place of service of arrest shall be written on the warrant or summons along with the signature of the person serving it, and the warrant or summons shall be returned to the Court for filing. A copy, so signed, shall be given

to the person served or arrested at the time of arrest or service if possible or as soon thereafter as is reasonably possible.

(f) It is not a requirement that the officer have the warrant in his possession at the time of arrest, but if not, the defendant shall be informed of the charge(s) and that a warrant of arrest has been issued. A copy of the warrant shall be provided to the defendant at the earliest reasonable time but not later than the time of arraignment.

Section 203. Criminal Citations.

(a) When a law enforcement officer has reasonable grounds to make an arrest without a warrant for an offense not punishable by banishment, but believes an immediate arrest is not necessary to preserve the public peace and safety, he may 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) A criminal citation shall include:

(1) The name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, the Wyandotte Nation Code Title and section number of the alleged offense, and the signature of the law enforcement officer who issued the citation;

(2) An agreement by the defendant to appear before the Court on a specific court date to answer to the charge, and the signature of the defendant; and

(3) 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.

(c) A copy of the citation shall be given to the defendant and one copy shall be delivered to the Prosecuting Officer.

Section 204. Arraignment.

(a) At a date established by the Court, a defendant shall appear before the Court, wherein he or she shall be informed of the charge against him or her and of his or her rights. The Court shall receive and record the defendant's plea and set a bail. Arraignments 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, at the next scheduled court date; however, bond must be set not later than 72 hours, excluding weekends and legal holidays, after the arrest and confinement.

(b) Arraignments shall be conducted in the following manner:

(1) The defendant shall be asked if he or she wishes to have the Court read aloud the complaint in open court;

(2) If requested by the defendant, the Court shall cause the entire complaint to be read aloud and a copy of same to be delivered to the defendant unless he or she has previously received a copy thereof. The defendant shall be advised of the minimum and maximum authorized penalties;

(3) The Court shall determine that the defendant understands the charge(s) against him or her and explain to the defendant that he or she has the rights listed in Section 102 of this Title;

(4) The Court shall inquire of the defendant if he or she wishes to obtain legal counsel, and if the defendant so desires, he or she shall be given a reasonable amount of time to obtain counsel. If the defendant shows his or her indigency, and counsel is available for appointment, counsel may be appointed at the Nation's expense. If the defendant is allowed time to obtain or consult with counsel, he or she shall not be required to enter a plea until the date set for his or her next appearance.

(5) Unless the defendant is allowed time to retain counsel, the Court should inquire of the defendant whether they wish to plead "guilty," "nolo contendere," or "not guilty" the offense(s) charged.

(6) If the defendant refuses to plead, the Court shall enter a plea of "not guilty" for him or her.

(7) If the defendant pleads "not guilty," the Court shall set a pretrial or trial date and conditions for bail prior to trial.

(8) If the defendant pleads "nolo contendere" or "guilty," the Court shall question the defendant personally to determine that he or she understands the nature of his or her actions, the rights that he or she is waiving, and that his or her action is voluntary. The Court may refuse to accept a guilty plea and enter a plea of "not guilty" for him or her. If the guilty plea is accepted, the Judge may immediately sentence the defendant or order a sentencing hearing.

Section 205. Pleas At Arraignment.

(a) A defendant may plead guilty, nolo contendere, or not guilty. If the defendant:

(1) Refuses to plead, the judge shall enter a plea of "not guilty" for the defendant.

(2) Pleads "not guilty", the judge shall set a trial date and conditions for bail prior to trial.

(3) Pleads "nolo contendere" or "guilty" the judge shall question the defendant personally to determine that he or she understands the nature of his or her action, the rights that are being waived, and that such action is voluntary. The judge may refuse to accept a guilty plea and enter a plea of "not guilty" for the defendant. If the guilty plea is accepted, the judge may immediately sentence the defendant or order a sentencing hearing.

Section 206. Commitments.

(a) 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.

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

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

Section 207. Joinder.

(a) Two (2) or more offenses may be charged in one complaint so long as they are set out in separate counts, and:

(1) They are part of a common scheme or plan; or

(2) They arose out of the same transaction.

(b) Two (2) or more defendants may be joined in one complaint if they are alleged to have participated in a common act of scheme, or plan to commit one or more offense. Each defendant need not be charged in each count.

Section 208. Pleas.

(a) A defendant may plead guilty, nolo contendere, or not guilty. The court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the defendant refuses to plead or if the court refuses to accept a plea of guilty, or nolo contendere, the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea.

(b) The defendant, with the consent of the court and of the prosecuting attorney, may plead guilty to any lesser offense than that charged which is included in the offense charged in the complaint or to any lesser degree of the offense charged.

Section 209. Withdrawing Guilty Plea.

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

Section 210. Plea Bargaining.

Whenever the defendant pleads guilty as a result of a plea agreement with the Prosecutor, the full terms of such agreement shall be disclosed to the Judge. The Judge, in his or her discretion, is not required to honor such agreement. In the event that the Judge decides not to honor such agreement, he or she should offer the defendant an opportunity to withdraw his or her plea and proceed to trial.

Section 211. Pleading and Motions Before Trial; Defenses and Objections.

(a) Pleadings in criminal proceedings shall consist of the complaint or citation and the plea of either guilty, nolo contendere or not guilty. All other pleas and motions shall be made in accordance with this Title.

(b) Motions raising defenses and objections may be made as follows:

(1) Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion;

(2) Defenses and objections based on defects in the institution of the prosecution of the complaint other than it fails to show jurisdiction in the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court, for good cause shown, grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as a defense or noticed by the Court on its own motion at any stage of the proceedings;

(3) 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 Court shall alter the proceedings, allow an interlocutory appeal to be taken as provided in the Appellate Rules or enter judgment as is appropriate in light of the decision.

Section 212. Concurrent Trial of Defendants or Charges.

(a) The Court may order two or more defendants tried together if they could have been joined in a single complaint, or may order a single defendant tried on more than one complaint at a single trial.

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

Section 213. Discovery and inspection.

(a) The Law Enforcement Agency or Prosecutor shall, upon request, permit the defendant or his or her attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control of or reasonably obtainable by the

Law Enforcement Agency or Prosecutor. The Law Enforcement Agency and Prosecutor shall make similarly available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendant.

(b) The defendant or his or her attorney shall reveal by written notice to the Court and the Prosecutor per the Court's order, the names and addresses of any witnesses upon whom the defense intends to rely to provide an alibi or insanity defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defendant unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the Court may order the trial delayed or make such orders as tend to assure a just determination of the case.

CHAPTER THREE TRIAL

Section 301. Trial By Jury of By the Court.

(a) All trials of offenses shall be by the Court without a jury unless the defendant files a request for a jury trial and pays a jury fee, as established by the Court's fee schedule, not less than sixty (60) business days prior to the date set for trial. A Judge may in his or her discretion waive the jury fee if the defendant shows that he or she is without sufficient funds to pay the jury fee.

(b) In a case tried without a jury, the Judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be embodied in a written decision.

(c) Juries shall be composed of six (6) members, with two (2) alternates, selected from a list of eligible jurors prepared each year by the Court. An eligible juror shall be at least 18 years of age, shall not have been convicted of a felony, and shall not otherwise be unqualified according to standards established by the Wyandotte Nation Supreme Court under its general rule making authority. Any party may challenge without cause not more than three (3) members of the panel so chosen.

(d) The Court shall instruct the jury with regard to the applicable law, and the jury shall decide all questions of fact on the basis of the law.

(e) The jury shall deliberate in secret and return a verdict of guilty or not guilty. Any verdict of guilty must be unanimous.

(f) Each juror who serves on a jury is entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1), and any of its subsequent revisions, plus mileage not to exceed the maximum rate per mile established by the federal government for jurors and witnesses. Each juror shall receive pay at the minimum wage rate for a full day (eight hours) for any portion of a day served, plus travel allowance.

Section 302. Subpoenas.

(a) Upon request of any party, 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. The Clerk of the Court may act on behalf of the Court and issue subpoenas which have been signed either by the Clerk of the Court or by a Judge or duly appointed judicial officer of the Wyandotte Nation District Court and which are to be served within the territory over which the Wyandotte Nation District Court has jurisdiction.

(b) A subpoena shall bear the signature of the Chief Judge of the Wyandotte Nation District 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.

(c) A subpoena may be served at any place but any subpoena to be served outside of the territory over which the Wyandotte Nation District Court has jurisdiction shall be issued personally by a Judge or duly appointed judicial officer of the Wyandotte Nation District Court.

(d) A subpoena may be served by any law enforcement officer or other person appointed by the Court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person 18 years of age or older who also resides or works there.

(e) Proof of service of the subpoena shall be filed with the Clerk of the Court by noting on the back of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(f) 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 a bench warrant may be issued for his or her arrest.

Section 303. Witness Fees.

(a) Each fact witness answering a subpoena is entitled to a fee of not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each fact witness testifying at a hearing shall receive pay for a full day (eight hours) plus travel allowance.

(b) The Wyandotte Nation District Court may order any party calling a witness to testify without a subpoena to compensate the witness for actual traveling and living expenses incurred in testifying.

(c) If the Wyandotte Nation District Court finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the Court for expenditures incurred under this section, and such order may constitute a judgment upon which execution may levy.

Section 304. Order of Trial.

The trial of all criminal cases shall be conducted in the following manner:

(a) The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its discretion.

(b) If the parties are ready to proceed, and if the case is to be tried by a jury, the Judge should instruct all prospective jurors to decide the case in a fair and impartial manner if selected for jury duty.

(c) If the case is to a jury, the Court should select a potential jury panel as selected under the Civil Procedure Act at random and question them to determine if they have any interest in the case.

(d) When the Court is satisfied that no juror should be dismissed for statutory cause, the prosecution and then the defendant shall be allowed to question the prospective jurors. The Court may delay any examination it wishes to make until after the parties have examined the jury panel.

(e) If it appears that a prospective juror is related to a party in the case or is biased for or against a party, or if the outcome would significantly affect the property, family or other important interest of the prospective juror, the Court shall dismiss him or her for cause and select another person from the jury panel.

(f) Both the Prosecutor and the defendant may alternatively request the Court to dismiss any juror by peremptory challenge. Each party shall have three peremptory challenges and the Court may not refuse to grant them. No reasons need be given for the challenges and alternate jurors shall be examined and selected as the original panel was selected. The final jury panel should then be sworn.

(g) The Court should request the Prosecutor to read the criminal complaint and to make his or her opening statement. Prior to reading the complaint, the Court should explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense(s) charged against the defendant. The Court should also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

(h) The Prosecutor should then read the complaint and briefly present the facts which the Nation intends to prove to show the offense(s). No argument of the facts or law shall be allowed. In reading the complaint, no reference to any recommendation for banishment may be made prior to the verdict of guilty or not guilty.

(i) The defense may then make an opening statement or may reserve their opening statement until the beginning of the presentation of the defense evidence.

(j) The Prosecutor shall present Nation's evidence followed by the defendant's presentation of his or her defense evidence. After the defendant has presented his or her evidence, the Prosecutor may present evidence in rebuttal.

(k) The Prosecutor shall then present his or her closing argument, the defendant his or her closing argument, and the Prosecutor shall be allowed to present evidence in rebuttal.

(l) If trial is to a jury, the Judge should give them his or her instructions and they shall retire to decide their verdict. If the trial is to the Judge, the Judge shall then make a decision or announce the time at which the decision will be presented.

(m) If the verdict is "not guilty," the defendant should be discharged and bail exonerated.

(n) If the verdict is "guilty" the Judge may impose sentence immediately or may hold a hearing at a later time and date to decide on an appropriate sentence. In a case tried before a jury, the Court, after receiving a verdict of "guilty," shall inform the jury if banishment has been recommended as a punishment of the offense(s). The prosecution and the defense shall then be given an opportunity to present any additional evidence they may wish to present on the issue of whether banishment should be imposed, and the prosecution shall be given the final opportunity to rebut any defense evidence. The jury should then be requested to retire and consider whether banishment should be imposed and the maximum term thereof. No banishment shall be imposed in excess of the term recommended by a unanimous vote of the jury, although a recommendation that banishment be imposed is not binding on the Judge.

(o) After sentencing, the Judge may hold a hearing to determine an appeal bond if an appeal is filed.

Section 305. Trial Procedure.

(a) The time and place of court sessions and all other details of judicial procedure shall be set out in rules of court approved by the Chief Justice of the Wyandotte Nation Supreme Court. Such rules shall be filed in the office of the Executive Office of the Nation and the office of the Clerk of the Supreme and District Court.

(b) Wyandotte Nation District Court shall adhere to the Federal Rules of Criminal Procedure, except insofar as such rules are superseded by order of the court or by the existence of inconsistent Nation rules or laws.

Section 306. Judge disability.

(a) If by reason of death, sickness or other disability, the Judge before whom a jury has commenced is unable to proceed with the trial, any other Trial Judge may, upon certifying that he or she has familiarized himself or herself with the record of the trial, proceed with the trial.

(b) If by reason, of death, sickness or other disability, the Judge before whom the defendant has been tried is unable to perform the required duties of a Judge after the verdict or finding of guilt, any other Trial Judge may perform those duties unless such Judge feels he cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

Section 307. Evidence.

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the Evidence Code of the Nation, except as herein otherwise provided.

Section 308. Expert Witnesses and Interpreters.

(a) Either party may call expert witnesses of their own selection and each shall bear the cost of such.

(b) The Court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

(c) The Trial Judge or Clerk may act as an interpreter only with the consent of all parties.

Section 309. Motion for Judgment of Acquittal.

(a) The Court, on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his or her right to present evidence.

(b) If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

Section 310. Jury Instructions.

At the close of evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign

as error any portion of the charge or omission therefrom unless he or she objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he or she objects and the grounds of the objection. Opportunity shall be given out of the hearing and out of the presence of the jury.

Section 311. Verdict.

(a) The verdict of a jury shall be unanimous. It shall be returned by the jury to the Judge in open Court. If the jury is unable to agree, the jury may be discharged and the defendant tried again before a new jury.

(b) If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.

(c) If the evidence is found to support such verdict, the defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or a lesser included offense without having been formally charged with the lesser included offense or attempt.

(d) Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

(e) After return of a verdict, the jury may, at the Judge's discretion, be requested to recommend the punishment to be imposed after a hearing at which both parties have the opportunity to present evidence in mitigation or aggravation of the sentence. The jury's recommendation in such cases shall not be binding on the Judge at sentencing except as otherwise provided in the case of sentences of banishment.

CHAPTER FOUR JUDGMENT AND SENTENCE

Section 401. Judgment.

A judgment of conviction shall set forth in writing the charge, plea, verdict or findings, and the sentence imposed. If the defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment shall be signed by the Judge and entered by the Clerk.

Section 402. Sentence.

Sentence shall be set forth as follows:

(a) Sentence shall be imposed without unreasonable delay in accordance with the provisions of the criminal statute violated, and this Title. Pending sentence, the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall allow counsel an opportunity to speak on behalf of the defendant and shall address the defendant

personally and ask him if he or she wishes to make a statement on his or her own behalf and to present any information in mitigation of punishment.

(b) After imposing sentence, the Court shall inform the defendant of his or her right to appeal. The Defendant may file a Notice of Appeal within twenty (20) days. At any time after a Notice of Appeal is filed, the Court may entertain a motion to set bail pending appeal.

(c) Time served in jail prior to the judgment and sentence while awaiting or during trial may be allowed as a credit toward any sentence of imprisonment or banishment imposed.

Section 403. General Sentencing Provisions.

(a) The sentencing policy of the Wyandotte Nation in criminal cases is to strive toward restitution and reconciliation of the offender and the victim and Nation. While one goal of sentencing is to impress upon the wrongdoer the wrong he or she has committed, the paramount goal is to restore the victim and Tribe to the position that existed prior to the commitment of the offense, and to restore the offender to harmony with them and the community by requiring him or her to right his or her wrongdoing.

(b) Unless the Court determines that the ends of justice will not be served thereby, or that a civil action will more adequately adjudicate damages in the specific case at hand, then in addition to any sentence otherwise provided by law, the Court shall:

(1) Order the offender to pay restitution to the victim in money, property or services; and/or

(2) Order the offender to pay restitution to the Nation in money, property or services.

(c) In effectuating Wyandotte Nation sentencing policy, if the offender recognizes the wrong committed, the Court, paying particular attention to prior offenses, in its discretion may:

(1) Allow such offender to exchange actual work performed for the Nation in lieu of a fine or imprisonment at the rate of eight hours per day for a credit of the federal minimum wage amount per hour to be applied to fines; or

(2) Place the offender on probation under such reasonable conditions as the Court may direct for a period not exceeding three times the amount of the maximum sentence allowed; or

(3) Defer entering the judgment and imposing sentence for a period not exceeding four times the maximum sentence allowed on condition that if the defendant violated no law and satisfies such other reasonable conditions, such as restitution as may be imposed, the plea or guilty verdict will be withdrawn and said charges will be dismissed.

Section 404. Sentence of Banishment.

(a) If a sentence of banishment is imposed, during the term of banishment, a person who is banished from the territory and association of the Nation shall:

(1) Retain all rights of a criminal defendant during any prosecution for an offense during the term of banishment, and while attending or going directly to or from any Court, or a proceeding involving a criminal action to which he or she is a party including the appeal of his or her case; and

(2) Be expelled from the jurisdiction of the Nation and not be allowed to return for any reason during the period of banishment except when required to attend Court.

(b) If a person who has been banished, violates the banishment order:

(1) If the person is not going directly to, attending or returning from a Court hearing required in his or her case, such act shall be considered criminal contempt in violation of a lawful order of the Court and may be punished accordingly;

(2) Upon expiration of the term of banishment and satisfaction of any other terms imposed by the sentence, the banished person shall be restored to all rights forfeited during the banishment and shall thereafter be treated as if banishment had never been imposed.

Section 405. New Trial.

The Court, on motion of a defendant, may grant a new trial to him or her if required in the interest of justice. If trial was by the Court without a jury, the Court, on motion of a defendant for new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the grounds of newly discovered evidence may be made only within one month after final judgment, but if an appeal is pending, the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven days after verdict or finding of guilty or within such further time as the Court may fix during the seven-day period.

Section 406. Correction or Reduction of Sentence.

The Court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within thirty (30) days after the sentence is imposed, or within thirty (30) days after receipt by the Court of a mandate issued affirming the judgment or dismissal of the appeal. The Court may also reduce a sentence upon revocation of probation.

Section 407. Clerical Mistakes.

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

CHAPTER FIVE APPEALS

Section 501. Right of Appeal; How Taken.

- (a) The defendant has the right to appeal from the following:
 - (1) A final judgment of conviction, and the sentence imposed thereon;
 - (2) An order made, after judgment and sentences, affecting his or her substantial rights.
- (b) The Nation has the right to appeal from the following:
 - (1) A judgment of dismissal, upon a motion to dismiss based on any procedural irregularity occurring before trial, or an order excluding evidence in favor of the defendant prior to trial;
 - (2) An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;
 - (3) An order of the Court directing the jury to find for the defendant;
 - (4) An order made after judgment and sentence affecting the substantial rights of the Nation.
- (c) A notice of appeal must be filed within ten (10) days of the entry of the final judgment and sentence or other appealable order and such must be served on all parties except the party filing the appeal.
- (d) Such appeals shall be had in accordance with the Rules of Appellate Procedure.

Section 502. Stay of Judgment and Relief Pending Review.

- (a) A sentence of imprisonment or banishment 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 or 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 requirement to pay such.
- (c) An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.

CHAPTER SIX BAIL

Section 601. Setting Bail or Conditions of Release.

(a) Each person charged with a criminal offense under Title 5 of the Wyandotte Nation Code of Laws 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 accused's appearance;

(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 of a bond or other sufficient collateral in an amount specified by the Judge or a bail schedule;

(5) Release after execution of a bail agreement by two responsible members of the community; or

(6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(b) Any law enforcement officer authorized to do so by the Wyandotte Nation District Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the Court.

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

(d) The Wyandotte Nation District Court may revoke its release of the defendant and order him or 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.

Section 602. Release in Banishment Cases or After Conviction.

A person (1) who is charged with 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 have bond set

in accordance with Section 701 of this Title, 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.

Section 603. Penalties for Failure to Appear.

When an individual, having been released pursuant to this chapter, willfully fails to appear before the Court or a judicial officer as required, he or she shall incur a forfeiture of any security which was given or pledged for his or her release, and in addition, shall be fined not more than the maximum provided for the offense charged or imprisonment for not more than six months or both.

Section 604. Incarceration Expenses.

Any person incarcerated under the Nation's criminal laws shall be responsible for paying the costs of such incarceration. In the event the Nation pays these costs, they may be recovered through an action in court.

CHAPTER SEVEN OTHER PROVISIONS

Section 701. Search and Seizure.

(a) A search warrant issued for a person or property shall issue only after a Judge receives a sworn affidavit(s) establishing grounds for issuing the warrant. If the Judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he or she shall issue a warrant identifying the property and naming or describing the person or place to be searched.

(b) Every search warrant shall contain the name and address of the Court and the signature of the Judge issuing the warrant. It shall specifically describe the place to be searched and the items to be searched for and seized. The warrant shall be directed to any law enforcement officer or official and shall command such person or persons to search, within a specified period of time not to exceed ten (10) days, the person or place named for the property or persons specified, and contain the date on which it was issued.

(c) Search warrants shall be served by any Wyandotte Nation or federal law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m., unless otherwise directed on the warrant by the Judge who issued it. A copy of the warrant shall be left with an occupant or owner who is competent and is over fifteen (15) years of age of the place searched if present during said search. If the place to be searched is not occupied at the time of the search, a copy of the warrant shall be left in some conspicuous place on the premises.

(d) The officer serving a search warrant shall make a signed inventory of all property seized and attach such inventory to the warrant. A copy of the inventory and search warrant shall be left

with an occupant or owner over sixteen (16) years of age if present during the search or left in a conspicuous place on the premises if an occupant is not present during the search.

(e) A return of all executed search warrants shall be made and shall require:

(1) That the officer endorse on the warrant the date, time and place of service and the signature of the officer serving it;

(2) The warrant shall be returned to the Court with an inventory of property seized within twenty-four (24) hours of service, Saturdays, Sundays and legal holidays excluded;

(3) In every case the warrant shall be returned within ten (10) days of the date of issuance, unless return be due on a Saturday or Sunday or legal holiday, in which case the return shall be made on the next business day.

(f) Property which is subject to seizure is property in which there is probable cause to believe such property is:

(1) Stolen, embezzled, contraband or otherwise criminally possessed; or

(2) Which is or has been used to commit a criminal offense; or

(3) Property which constitutes evidence of the commission of a criminal offense.

(g) A law enforcement officer may conduct a search without a warrant only:

(1) Incident to a lawful arrest; or

(2) With the consent of the person to be searched; or

(3) With the consent of the person having actual possession and control of the property to be searched; or

(4) When he or she has reasonable grounds to believe that the person searched may be armed and dangerous; or

(5) When the search is of a vehicle capable of being moved and the officer has probable cause to believe that it contains property subject to seizure, or upon inventory of such vehicle after impoundment and seizure; or

(6) In any other circumstances wherein federal law has held that a search without obtaining a warrant prior to the search in those circumstances would not be unreasonable.

(h) A person aggrieved by an unlawful search and seizure may move the Trial Court for the return of the property, not contraband, on the grounds that he or she is entitled to lawful possession of the property illegally seized.

(i) A law enforcement officer may stop any person in a public place whom he has reasonable cause to believe is in the act of committing an offense, or has committed an offense, or is attempting to commit an offense and demand of him his name, address, an explanation of his or her actions and may, if he or she has reasonable grounds to believe his or her own safety or the safety of others nearby is endangered, conduct a frisk type search of such person for weapons.

Section 702. Arrests.

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

(b) No law enforcement officer shall arrest any person for a criminal offense except when:

(1) The officer shall have a warrant signed by a Wyandotte Nation Judge or duly appointed judicial official commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(2) The offense shall occur in the presence of the arresting officer; or

(3) The officer shall have probable cause to believe that the person arrested has committed an offense.

(4) The officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by the Wyandotte Criminal Code, Title 5 or the Wyandotte Domestic Violence Code, Title 7, although the assault did not take place in the presence of the peace officer. An officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

Section 703. Arrest in Hot Pursuit.

A law enforcement officer of the Wyandotte Nation Police Department, the BIA, or other law enforcement officer commissioned to enforce the laws of the governmental unit by which he is authorized to act may arrest a person for a crime or a traffic crime or issue a citation for a traffic offense at a place outside the jurisdictional authority of the governmental unit by which he is authorized to act, pursue, and apprehend person(s) who flee from apprehension. Pursuit must be immediate, not delayed, and an attempt to contact local law enforcement must be made when exiting or entering Indian Country. The following apply to hot pursuit:

(a) The crime or traffic offense was committed in the officer's presence at a place within the jurisdictional authority of the governmental unit; and

(b) The officer immediately pursues the person who committed the offense; and

(c) The officer arrests or cites the person immediately upon the conclusion of a continuous pursuit.

Section 704. Limitation on Arrests in the Home.

A person may be arrested in his or her own home only:

- (a) By a law enforcement officer pursuant to an arrest warrant;
- (b) By a law enforcement officer for an offense committed in the home in the presence of the officer;
- (c) By a law enforcement officer in continuous pursuit of a person who flees to his or her home to avoid arrest.

Section 705. Notification of Rights.

- (a) Upon arrest, the defendant shall be notified that he or she has the following rights:
 - (1) The right to remain silent and that any statements made by him or her may be used against him or her in Court;
 - (2) That he or she has the right to obtain an attorney at his or her own expense and to have an attorney present at any questioning; and
 - (3) That if he or she wishes to answer the questions of the police he or she may stop or request time to speak with his or her attorney at any point in the questioning.
- (b) Prior to conducting a consensual, warrantless search pursuant to Section 601 of this Title, the officer shall specifically inform the person to be searched or the person in charge of the property to be searched that:
 - (1) The search will be conducted only with the person's consent;
 - (2) The person is under no obligation or requirement to consent to the search and may refuse to consent to the search if he or she chooses to do so, or request the advice of an attorney at his or her own expense prior to responding to the requested consent to the search;
 - (3) If the person refuses to consent to the search, the officer will not search the person or property without first obtaining a warrant from the Court.

Section 706. Probation.

- (a) Where a sentence of imprisonment has been imposed on a convicted offender, the Wyandotte Nation District Court may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the Court.

(b) Any person who violates the terms of his or her probation may be required by the Court to serve the sentence originally imposed or such part of it as the Court may determine to be suitable giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the Court at which the offender shall have the opportunity to explain his or her actions.

Section 707. Parole.

(a) Any person upon whom a sentence of detention or labor has been imposed by the Court shall be eligible for parole at such time and under such reasonable conditions as set by the Wyandotte Nation District Court.

(b) Any person who violates the conditions of his or her parole may be required by the Court to serve the whole original sentence, provided that such revocation or parole shall not be ordered without a hearing before the Court at which the offender shall have the opportunity to explain his or her actions.

Section 708. Extradition.

The Wyandotte Nation District Court may order delivery to the proper tribal, state, federal or BIA law enforcement authorities of any person found within the jurisdiction of the Court, who is charged with an offense in another jurisdiction. Prior to delivery to the proper officials, the accused shall be accorded a right to contest the propriety of the Court's order in a hearing before the Court.