

POTAWATOMI LAW AND ORDER CODE

**TITLE 16
CRIMINAL PROCEDURE**

**CHAPTER 16-1
PRELIMINARY PROVISIONS**

Section 16-1-1. Scope, Purpose and Construction.

(A) This Title governs the procedure in all criminal proceedings in the Nation's Tribal District Court and all preliminary or supplementary 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 determination 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, resort shall be made to the civil and appellate procedure provisions of this Code or other applicable tribal law, subject always to the rights of the defendant. If no procedure is provided in either this Title, the Code, or other tribal law, the court may proceed in any lawful fashion while protecting the rights of the defendant.

Section 16-1-2. Prosecution of Offenses.

(A) No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt or nolo contendere in open court, by a court of competent jurisdiction, provided, however, that no incarceration or other disposition of one 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 Nation plaintiff, against the person charged with an offense, referred to as the defendant.

(C) The case number prefix assigned to criminal actions shall be sufficiently different and unique from the prefix assigned to other types of cases to clearly distinguish them.

Section 16-1-3. Rights of Defendant.

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

- (A) To appear and defend in person or by counsel at the defendant's expense except:
- (1) Trial of traffic, hunting and fishing offenses not resulting in injury to any person nor committed while using alcohol or non-prescription drugs, or offenses of a civil regulatory nature involving a non-Indian offender may be considered civil proceedings and may be prosecuted without the presence of the defendant upon a showing that the defendant received actual and reasonable notice prior to the proceeding.
 - (2) The defendant may represent himself or be represented by an adult enrolled Tribal member with leave of the court, if such representation is without charge to the defendant, or by any attorney or advocate admitted to practice before the tribal court, but no defendant shall have the right to have appointed professional counsel provided at the Nation's expense. However, the privilege to have counsel appointed may be granted by the court or any tribal law as may be provided in the rules of the court relating to attorneys and lay advocates.
- (B) To be informed of the nature of the charges against the defendant and to have a written copy thereof.
- (C) To testify in his or her own behalf, or to refuse to testify regarding the charge, provided, however, that once a defendant takes the stand to testify on any matter relevant to the immediate proceeding, the defendant shall be deemed to have waived all right to refuse to testify in that immediate criminal proceeding. The defendant shall not, however, be deemed to have waived the right to remain silent in other distinct phases of the criminal trial process.
- (D) To confront and cross-examine the witnesses against the defendant.
- (E) To compel by subpoena the attendance of witnesses in the defendant's own behalf.
- (F) To have a speedy public trial by an impartial judge or jury as provided in this Code and; upon request for an offense punishable by imprisonment, to have a trial by jury of not less than six persons.
- (G) To appeal in all cases.
- (H) To prevent a present spouse from testifying against the other spouse concerning any matter, which occurred during such marriage, except;

(1) In any case in which the offense charged is alleged to have been committed against the spouse or the immediate family, or the children of either the spouse or the defendant, or against the marital relationship and

(2) Any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.

(I) Not to be twice put in jeopardy by the Nation for the same offense.

Section 16-1-4. Limitation of Prosecution.

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

(B) If an offense is committed by actions occurring on two or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be completed 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 the co-conspirator(s) 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.

Section 16-1-5. No Common Law Offenses.

No act or failure to act shall be subject to criminal prosecution unless made an offense by some statute of the Nation.

CHAPTER 16-2 PROCEEDINGS BEFORE TRIAL

Section 16-2-1. The Complaint.

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

(B) Contents of Complaint. The complaint shall contain:

- (1) The name and address of the court;
- (2) The name of the defendant if known or some other name if not known plus whatever description of the defendant is known;
- (3) The signature of the tribal prosecutor or assistant with the typewritten name.
- (4) A written statement describing in ordinary and plain language the facts of the offense alleged to have committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated.
- (5) The person against whom or against whose property the offense was committed and the names of the witnesses of the Nation if known, otherwise no statement need be made.
- (6) The general name and tribal code title and section number of the alleged offense.
- (7) If the offense(s) is punishable by banishment, the prosecutor 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) Error. 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) Time of filing complaint. A complaint may be filed at any time within the period prescribed for prosecution 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 16-2-2. Arrest Warrant or Summons to Appear.

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

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

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

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

(E) Service of Arrest Warrants and Summons.

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

(2) Warrants of arrest and summons should be served at a person's home between the hours of 7:00 a.m. and 9:00 p.m., but may be served at other times.

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

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

Section 16-2-3. Criminal Citations.

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

(B) Contents of Citation.

- (1) The citation shall contain the name and address of the court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.
- (2) The citation shall contain an agreement by the defendant to appear before a tribal judge within five days or on a day certain to answer to the charge, and the signature of the defendant.
- (3) The citation shall contain a notice that upon 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.
- (4) One copy of the citation shall be given to the defendant and two copies shall be delivered to the tribal prosecutor.

Section 16-2-4. Arraignment.

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

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

- (1) The judge or magistrate should request the prosecutor read the charges.
- (2) The prosecutor should read the entire complaint, deliver a copy to the defendant unless the defendant has previously received a copy thereof, and state the minimum and maximum authorized penalties.
- (3) The judge or magistrate should determine that the defendant understands the charge and explain that the defendant has the following rights:
 - (a) The right to remain silent.
 - (b) To be tried by a jury upon request.
 - (c) To consult with an attorney at the defendant's own expense and that if the defendant desires to consult with an attorney, the arraignment will be postponed.
- (4) The judge or magistrate shall ask the defendant if he or she wishes to obtain counsel and, if the defendant so desires, the defendant will be given a reasonable time to obtain counsel. If the defendant shows indigency and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, the defendant shall not be required to enter a plea until the date set for the appearance.

(5) The judge or magistrate should then ask the defendant whether he or she wishes to plead “guilty”, “nolo contendere”, or “not guilty”.

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

(1) If the defendant refuses to plead, the judge shall enter a plea of “not guilty” for the defendant.

(2) If the defendant pleads “not guilty”, the judge shall set a trial date and conditions for bail prior to trial.

(3) If the defendant pleads “nolo contendere” or “guilty” the judge shall question the defendant personally to determine that he 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 16-2-5. Commitments.

No person shall be detained or jailed for a period longer than 72 hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of a judge or magistrate of the tribal court has been issued.

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

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

Section 16-2-6. Joinder.

(A) **Joinder of Offenses.** Two 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) **Joinder of Defendants.** Two or more defendants may be joined in one complaint if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each defendant need not be charged in each count.

Section 16-2-7. 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 16-2-8. Withdrawing Guilty Plea.

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

Section 16-2-9. Plea Bargaining.

(A) Whenever the defendant pleads guilty as a result of a plea arrangement with the prosecutor, the full terms of such agreement shall be disclosed to the judge. The judge has the discretion not to honor such agreement. In the event that the judge decides not to honor such agreement, the judge should offer the defendant an opportunity to withdraw the plea and proceed to trial.

Section 16-2-10. 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 that 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 proceeding.

(3) Such pretrial motions shall be made in writing and filed with the court at least five business days before the day set for trial. Such motions will be argued before the court on 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) 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, 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 16-2-11. 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.

Section 16-2-12. Discovery and Inspection.

(A) The police, or prosecutor, shall, upon request, permit the defendant or the defendant's 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 police or prosecution. The police and prosecution shall make similarly available copies of reports of physical, mental or scientific test or examinations relating to or done on the defendant.

(B) The defendant or defendant's attorney shall reveal by written notice to the court and prosecutor at least five working days before trial 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 defense 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 judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

Section 16-2-13. Subpoena.

(A) The defendant and the prosecutor shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued in blank. Subpoenas in criminal cases shall be issued, served and returned as in civil cases.

(B) A subpoena may be served any place within the jurisdiction of the tribal court, and as provided for service in civil cases.

(C) Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of court, and prosecution thereof may proceed upon the order of the court. No contempt shall be prosecuted unless a return of service of the subpoena

has been made on which is endorsed the date, time and place of service and the person performing such service.

CHAPTER 16-3 TRIAL

Section 16-3-1. Trial By Jury or 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 \$100 jury fee not less than ten business days prior to the date set for trial. A judge has the discretion to waive the jury fee if it is shown that the defendant is without sufficient funds to pay the jury fee.
- (B) Juries shall be composed of six members with one alternate if an alternate juror is deemed advisable by the court.
- (C) 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 of fact and law which may be embodied in a written decision.

Section 16-3-2. Trial Jurors.

- (A) Jurors shall be drawn from the list of eligible jurors, prepared as provided in the Code.
- (B) The court shall permit the defendant or defendant's counsel and the prosecutor to examine the jurors and the court itself may make such an examination.
- (C) Challenges regarding jury members may be taken as follows:
 - (1) Each side shall be entitled to three peremptory challenges.
 - (2) Either side may challenge any juror for cause.
 - (3) An alternate juror shall be treated as a regular juror for purpose of challenges.
- (D) The alternate juror shall be dismissed prior to the jury's retiring to deliberation if the juror has not previously been called to replace an original juror who has become, for any reason, unable or disqualified to serve.
- (E) Jurors shall otherwise be subject to all rules applicable to juries in civil cases.

Section 16-3-3. Order of Trial

The trial of all criminal offenses 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 jury, the judge should require all prospective jurors to swear 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 civil procedures by random and questioning 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 such person 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 the 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 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. 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 then present the Nation's evidence followed by the defendant's presentation of defense evidence. After the defendant has presented evidence, the prosecutor may present evidence in rebuttal.

(K) The prosecutor shall then present a closing argument, the defendant a closing argument, and the prosecutor shall be allowed to present a rebuttal.

(L) If trial is to a jury, the judge should give them instructions and they shall retire to decide their verdict. If 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 or 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. 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 appeal bond if an appeal is filed.

Section 16-3-4. Trial by Judicial Panel.

(A) In every trial for an offense or offenses punishable by imprisonment for more than three months in which a jury trial is not requested, the judge has the discretion, upon request of the defense or prosecution, to order the matter to be heard by a three judge panel.

(B) In every trial for an offense or offenses punishable by banishment in which a jury trial is not requested, and in which the prosecutor shall recommend in the complaint that banishment be imposed upon conviction, the court shall order the case to be heard before a three judge panel. If no recommendation for banishment is made in the complaint, or an amendment thereof, banishment may not be imposed.

(C) The administration judge shall assign three judges to sit on the judicial panel for trial, one of whom shall be designated as the presiding judge for that trial. Those judges shall be subject to disqualification only for good cause shown.

(D) The presiding judge in such cases shall rule on all motions, objections, and procedural questions, however, the judgment of conviction or acquittal shall be by majority vote. In cases in which banishment has been recommended, banishment may not be imposed unless there is a unanimous finding of guilt by the judicial panel and a unanimous agreement by the panel that banishment is a proper sentence and the term of banishment must be agreed upon by the judicial panel. The actual vote of each judge shall be held in strict confidence and only the actual decision shall be announced.

Section 16-3-5. Judge Disability.

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

(B) If by reason of death, sickness and 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 guilty, any other tribal judge may perform those duties unless such judge feels he or she 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 16-3-6. Evidence.

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

Section 16-3-7. Expert Witnesses and Interpreters.

(A) Either party may call expert witnesses of their own selection and each 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 interpreter only with the consent of all parties.

Section 16-3-8. 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 and 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 any 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 16-3-9. 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 the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter in which the party objects and the grounds of the objection. Opportunity shall be given out the hearing and out of the presence of the jury.

Section 16-3-10. Verdict.

(A) Except as herein before provided in cases where banishment is recommended, the verdict of a trial to a judicial panel shall be by majority vote and shall be returned in open court.

(B) 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 against before a new jury.

(C) 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.

(D) 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 having been formally charged with the lesser included offense or attempt.

(E) 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.

(F) After return of the verdict, the jury may, in 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 16-4 JUDGMENT AND SENTENCE

Section 16-4-1. 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 16-4-2. Sentence.

(A) Sentence shall be imposed without unreasonable delay in accordance with the provisions of the criminal statute or ordinance 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 if the defendant 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 the right of appeal, and if so requested, shall direct the clerk to file a notice of appeal on behalf to the defendant. 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 shall be allowed as a credit toward any sentence of imprisonment or banishment imposed.

Section 16-4-3. General Sentencing Provisions.

Statement of Policy. The sentencing policy of the 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 committed, the paramount goal is to restore the victim and Nation 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 the offender to right the wrongdoing. Therefore, with consideration of these goals in mind, the provisions of this Chapter shall govern tribal sentencing for criminal offenses.

(A) 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 the 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.

(B) In effectuating tribal sentencing policy, if the offender recognizes the wrong committed, and earnestly repents of such wrong, 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 of work per \$25.00 of fine,
- (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,
- (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 violates no law and satisfies such other reasonable conditions such as restitution as may be imposed, the plea or verdict guilty will be withdrawn and said charges will be dismissed or
- (4) In the discretion of the court, allow the offender to pay a fine in goods or commodities at the fair market value of the goods or commodities to be surrendered, provided, that the Nation shall not reimburse the offender for any excess value of the property surrendered.

Section 16-4-4. Sentence of Banishment.

(A) **Banishment Defined.** Banishment is the traditional and customary 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. During the term of banishment, a person who is banished from the territory and association of the Nation shall:

- (1) Be considered legally dead and a nonentity with no civil rights to engage in contracts or come before the courts of the Nation for any reason not related to the original conviction, provided, that the banished person retains 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 the person is a party, including the appeal of the defendant's case.

- (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.
- (3) Forfeit all positions or offices of honor or profit with the Nation.
- (4) Be absolutely ineligible for any service, monies, or benefits provided by the Nation, or due as a result of citizenship in the Nation.
- (5) Be absolutely ineligible to vote in any election conducted by or hold any office in the Nation.
- (6) Be subject to the claims of creditors, who may apply for an order attaching the banished person's personal property within this jurisdiction and bringing execution thereon to satisfy the debt.

(B) Violation of Banishment.

- (1) If the person banished be found within the jurisdiction of the Nation not going directly to, attending, or returning from a court hearing required in the person's case, such act shall be considered criminal contempt in violation of a lawful order of the court and may be punished accordingly.
- (2) A person under a decree or judgment of banishment found unlawfully within the jurisdiction of the Nation shall, upon conviction, and in addition to any other punishment imposed for disobedience of a lawful order of the court, forfeit to the Nation all personal property brought by the person into the jurisdiction of the Nation or in the person's immediate control therein, whether ownership of said property is in the banished person or another, as civil damages for breach of the peace and safety of the Nation.

(C) Expiration of Banishment Term. 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 16-4-5. New Trial.

The court, on motion of a defendant, may grant a new trial if required in the interest of justice. If trial was by the court without a 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. A motion for a new trial based on the ground 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 16-4-6. Arrest of Judgment.

The court, on motion of a defendant, shall dismiss the action if the complaint does not charge an offense or if the court was without jurisdiction of the offense charged. The motion

in arrest of judgment shall be made within seven days after verdict or finding of guilty or plea of guilty, or within such further time as the court may fix during the seven day period.

Section 16-4-7. 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 days after the sentence is imposed, or within thirty days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal. The court may also reduce a sentence upon revocation or probation.

Section 16-4-8. 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 16-5
APPEAL**

Section 16-5-1. 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) From an order made, after judgment and sentences, affecting substantial rights of the defendant.

- (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 or
 - (4) An order made after judgment and sentence affecting the substantial rights of the Nation.

- (C) A notice of appeal must be filed within 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 appellate procedures.

Section 16-5-2. 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 the sentence in the matter under appeal.

(B) A sentence to pay a fine or 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 for paying such.

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

**CHAPTER 16-6
OTHER PROVISIONS**

Section 16-6-1. Search and Seizure.

(A) **Search Warrants.** A search warrant is an order directed to any tribal or federal law enforcement officer directing the officer to search a particular place for described persons or property and if found to seize them.

(B) A warrant shall issue only on an affidavit or affidavits sworn to before a tribal judge or magistrate and establishing grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, they shall issue a warrant identifying the property and naming of describing the person or place to be searched. The finding of probable cause may be based on evidence either in whole or in part. Before ruling on a request for a warrant, the judgment may require the affiant to appear personally and to be examined under oath.

(C) **Service of Search Warrants.** Search warrants shall, if practicable, be served by any tribal or federal law enforcement officer between the hours of 7:00 a.m. and 9:00 p.m. A copy of the warrant shall be left with an occupant or owner over sixteen 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. The officer may break open any outer or inner door or window of the place to be searched, or any part of any place to be searched, or anything thereon to execute a search warrant, if after notice of the officer's authority and purpose, the officer is denied or refused admittance, it is necessary to eliminate a restraint of the officer or a person aiding in the execution of the warrant or when the premises to be searched are unoccupied at the time of the search.

(D) Inventory. The officer serving a search warrant shall make a signed inventory of all property seized and attached such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen years of age if present during the search or left in a conspicuous place with the search warrant if an occupant is not present during the search.

(E) Return of Search Warrants.

(1) The officer shall 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 hours of service, Saturdays, Sundays, and legal holidays excluded.

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

(F) Property Subject To Seizure. 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,

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

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

(G) Warrantless Searches. A law enforcement officer may conduct a search without a warrant only:

(1) Incident to a lawful arrest,

(2) With the consent of the person to be searched,

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

(4) When the officer has reasonable grounds to believe that the person searched may be armed and dangerous,

(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 tribal court for the return of the property, not contraband, on the ground that the person is entitled to lawful possession of the property illegally seized. The judge may receive evidence on any issue of fact necessary to the decision of the motion. If the motion is

granted, the property shall be returned, if not contraband, and shall not be admissible at any hearing or trial.

(I) A law enforcement officer may stop any person in a public place whom the officer 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 from the suspect a name, address, and explanation of his or her actions. If the officer has reasonable grounds to believe his or her own safety or the safety of another nearby is endangered, the officer may conduct a frisk type search of such suspect for weapons.

(J) The term “property” is used in this section to include documents, books, papers, and any other tangible objects.

Section 16-6-2. Arrest.

(A) An arrest is the taking of a person into custody in the manner authorized by law. An arrest may be made by either a police or law enforcement officer or by a private person.

(B) A police or law enforcement officer may make an arrest in obedience to an arrest warrant, or, without a warrant, may arrest a person:

(1) When the officer has probable cause to believe that an offense has been committed in the officer's presence.

(2) When the officer has probable cause for believing the person has committed an offense, although not in the officer's presence, and there is reasonable cause for believing that such person may, before a warrant can be obtained:

- (a)** flee the jurisdiction or conceal him or herself to avoid arrest,
- (b)** destroy or conceal evidence of the commission of an offense, or
- (c)** injure or annoy another person or damage property belonging to another person.

(C) A private person may arrest another, for prompt delivery to a law enforcement officer:

(1) When an offense is committed or attempted in the private person's presence or

(2) When an arrest warrant for the person is in fact outstanding.

(D) Any person making an arrest may orally summon as many persons as the person deems necessary to help make the arrest.

(E) If the offense charged is an offense punishable by banishment or in violation of the federal major crimes act, the arrest may be made at the suspect's residence at

any time of day or night. Otherwise, the arrest pursuant to a warrant should normally be made at a person's residence between the hours of 7:00 a.m. and 9:00 p.m. Arrest at places other than at the residence may be made at any time.

(F) Any person, upon making an arrest:

(1) Must inform the suspect to be arrested of the intention to make the arrest of the cause or reasons for the arrest, and of the authority to make it, except when the person to be arrested is actually engaged in the commission of, or an attempt to, commit an offense, or is pursued immediately after its commission or an escape, if such is not reasonably possible under the circumstances.

(2) Must show the warrant of arrest as soon as is practicable, if such exists and is demanded.

(3) If a law enforcement officer, may use reasonable force and use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists after receiving information of the officer's intent to arrest except that deadly force may be used only as otherwise provided by law.

(4) If a law enforcement officer, may break open a door or window of a building in which the person to be arrested is, or is reasonably believed to be, after demanding admittance and explaining the purpose of which admittance is desired.

(5) May search the person arrested and take and put into evidence all weapons the person may have.

(6) Shall as soon as is reasonably possible, deliver the person arrested to a police officer or do as commanded by the arrest warrant or deliver the person arrested to the jail for processing of a complaint.

Section 16-6-3. Arrest in Hot Pursuit.

(A) Any law enforcement officer otherwise empowered to arrest a person within this jurisdiction may continuously pursue such person from a point of initial contact within the jurisdiction of the Nation to any point of arrest within or without the jurisdiction of the Nation and such arrest shall be valid, provided, that such officer shall respect and comply with the extradition requirements of the jurisdiction in which the arrest is finally made.

(B) Any law enforcement officer commissioned by the Federal Government, any Indian Nation, or any state, when in hot and continuous pursuit of any person for the commission of a felony within such other jurisdiction may validly arrest such person within the jurisdiction of the Nation, provided, that the officer will notify and cooperate with the Tribal Police.

Section 16-6-4. Limitation on Arrests in the Home.

A person may be arrested at the person's 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 the person's home to avoid arrest.

Section 16-6-5. Notification of Rights.

- (A) Upon arrest, the defendant shall be notified of the following rights:
 - (1) The right to remain silent and that any statements made by him or her may be used against the person in court.
 - (2) That the suspect has the right to obtain an attorney at his or her own expense and to have an attorney present at any questioning.
 - (3) That if the suspect wishes to not answer the questions of the police, he or she may stop the questioning or request time to speak with an attorney at any point in the questioning.
- (B) Prior to conducting a consensual warrantless search, 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) That the person is under no obligation or requirement to consent to the search and may refuse to consent to the search if the person 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) That 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 courts.
- (C) Whenever possible, the officer should obtain a written statement that the person knows these rights, understands, and waives them prior to taking a voluntary statement from a suspect or conducting a warrantless consensual search, provided that the absence of such a written statement does not preclude the admission of the statement or other evidence if the court determines that the statement or consent to search were voluntary.

Section 16-6-6. Executive Order for Relief from Judgment.

(Deleted by PBP TC No. 99-68, May 12, 1999)

CHAPTER 16-7
BAIL

Section 16-7-1. Release in Non-banishment Cases Prior to Trial.

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

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

- (1) Place the person in the custody of a designated person or organization agreeing to supervise the person released,
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release,
- (3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the performance of the conditions of release,
- (4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof or
- (5) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hour.

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

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

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

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

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

(G) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court, nor to prevent the court by rule from authorizing and establishing a bail schedule for certain offenses or classes of offenses through which a person arrested may post bail with the Chief of the Tribal Police for transmittal to the court clerk and obtain release prior to appearance before a judicial officer.

Section 16-7-2. Appeal From Conditions of Release.

(A) A person who is detained, or whose release on a condition requiring return to custody after specified hours is continued, after review of an application pursuant to this chapter by a magistrate of the court, may move the court to amend the order and have such motion determined by a judge of the court. Said motion will be determined promptly.

(B) In any case in which a person is detained after (1) a judge of the tribal court denies a motion, under subsection (A) above, to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a judge of the tribal district court, an appeal may be taken to the appellate court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If an order is

not so supported, the appellate court may remand the case for further hearing, or may, with or without additional evidence, order the person released upon such conditions as the appellate court determines to be proper. This appeal shall be determined promptly.

Section 16-7-3. Release in Banishment Cases or After Conviction.

A person who is charged with an offense punishable by banishment or who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be treated in accordance with the provisions section 16-7-1 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 not pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of section 16-7-2 shall not apply to persons described in this section.

Section 16-7-4. Penalties for Failure to Appear.

Whoever, having been released pursuant to this chapter willfully fails to appear before the court or a judicial officer as required, shall incur a forfeiture of any security which was given or pledged for release, and in addition, shall (A) if the person was released in connection with a charge having banishment as a possible punishment, or while awaiting sentence or pending appeal after conviction of any offense having had banishment imposed as a part of the sentence, be subject to a fine of not more than \$5,000 and imprisonment for a term of not more than six months, and if banishment is imposed, one year shall be added to the term of banishment otherwise imposed, or (B) if the person was released in connection with a charge other than described, in (A) above, the person shall be fined not more than the maximum provided for the offense charged or imprisoned for not more than six months or both, or (3) if the person was released for appearance as a material witness, shall be fined not more than \$250 or imprisoned for not more than three months or both.

Section 16-7-5. Persons or Classes Prohibited as Bondsmen.

The following person or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond; jailers, police officers, magistrates, judges, court clerks and any person having the power to arrest or having anything to do with the control of tribal prisoners.

Section 16-7-6. Authority to Act as Bail Bondsmen.

Any person authorized to act as bail bondsmen or runners in the federal or state courts shall be qualified to act as bondsmen and runners in the tribal court, and shall be liable to the same obligations as in their licensing jurisdiction and comply with all orders and rules of the tribal courts. Such qualification is contingent upon the bail bondsmen or runners obtaining a tribal business license under PBP Tribal Code Title 13.

(Enacted by PBP TC No. 97-30; amended by PBP TC No. 98-55, July 21, 1998; amended by PBP TC No. 99-68, May 12, 1999; amended by PBP TC No. 20008-153.)

Section 16-7-7. 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 from such person either by being setoff against the person's per capita payments in an amount not to exceed 75% for any one payment or through an action in tribal court, or both.

(Enacted by PBP TC No. 2008-044, February 7, 2008)

**CHAPTER 16-8
TRIBAL PROSECUTOR**

Section 16-8-1. Tribal Prosecutor.

There is hereby created an Office of the Tribal Prosecutor, reporting to the Executive Director and the Tribal Council.

Section 16-8-2. Appointment.

(A) The Tribal Council by majority vote of a quorum shall appoint a Tribal Prosecutor for a primary term not to exceed two (2) years, with eligibility for renewable appointment. The Tribal Council may also appoint special tribal court prosecutors to serve on a case-by-case basis in the event of conflict or unavailability of the Tribal Prosecutor. The Tribal Council shall establish rates of compensation of the Tribal Prosecutor and any special prosecutors.

(B) Before entering upon the duties of office, the Tribal Prosecutor and special prosecutors shall take the following oath of affirmation:

"I, _____, do solemnly swear (or affirm) that I will truly, faithfully and impartially discharge all duties of my office as prosecutor to uphold the laws of the Prairie Band Potawatomi Nation to the best of my abilities and understanding. So help me God."

Section 16-8-3. Qualifications.

A person shall be eligible to serve as Tribal Prosecutor only if he/she:

(A) is a graduate of an ABA accredited law school and an attorney in good standing licensed to practice law in the State of Kansas and is admitted, or eligible for admission, to practice in the Prairie Band Potawatomi Nation Tribal Court;

(B) has at least two (2) years experience prosecuting or defending criminal actions in tribal, state and/or federal courts in order to have sufficient knowledge of criminal laws, policies, procedures and practices.

(C) has not been convicted, within five (5) years of such appointment, of any felony by a court of competent jurisdiction;

(D) has demonstrated moral integrity and fairness in his or her business, public and private life;

(E) is twenty-five (25) years of age or older;

(F) has abstained from the excessive use of alcohol or any use of illegal drugs; and,

(G) does not hold or is not a member of an appointed or elected position of this Nation during the term of service as Tribal Prosecutor;

Section 16-8-4. Duties.

The Tribal Prosecutor shall:

(A) be responsible for all criminal investigations conducted by Tribal Police and for all prosecutions in Tribal Court, including arraignments, motions, trials and appeals to make sure is case is fairly and promptly presented.

(B) have the discretion to prosecute violations of the Tribe's criminal code and ordinances in Tribal Court.

(C) work closely with the Tribal Court Administrator and Tribal Judges to improve the delivery of services within the Tribal Court and to assist the Court in case management and docket preparation.

(D) serve as presenting officer in the Nation's Juvenile Court, shall represent juveniles in court where parents or guardian are charged by neglect, abuse or abandonment, and represent the Nation in Indian Child Welfare Act cases, including in other tribal and state jurisdictions upon the authorization of the Tribal Council.

(E) review and approve all charges and complaints of violations of Tribal criminal codes and ordinances, except those complaints signed by a Tribal Police officer having personal knowledge of the alleged violation, determine what charges to bring and whom to charge, and shall be authorized to dismiss any criminal complaint that is not supported by sufficient evidence or is improvidently brought.

(F) review requests for arrest warrants and search warrants to determine if all constitutional requirements are satisfied prior to approval or authorization.

(G) establish an effective working relationship with local, state and federal jurisdictions, the public, news media, tribal officials and members, and establish a protocol for coordinating criminal investigations and prosecutions with such local, state and federal jurisdictions.

(H) meet with and provide regular and special reports to the Executive Director and Tribal Council on all aspects of the Tribal Prosecutor's activities

(I) periodically review the Nation's criminal laws, its Law Enforcement policies and operating procedures, and consult with the Nation's Tribal Police, in order to make recommendations from time to time to the Tribal Council on the administration of justice on the Nation's Reservation.

Section 16-8-5. Removal from Office.

The Tribal Council may, by an affirmative vote of a majority of its members, remove the Tribal Prosecutor from office during the term of any appointment for any of the following reasons:

(A) Official misconduct;

(B) Willful neglect of duty;

(C) Gross misconduct;

(D) Abusing the authority of their office by failing to bring or prosecute cases in a fair or impartial manner;

(E) Conviction of a Felony;

(F) Disbarment from any court of competent jurisdiction, resignation from the Bar, or upon the expiration of his or her license to practice;

(G) Mental or physical incapacity; and/or

(H) Unethical conduct as defined by the American Bar Association

Section 16-8-6. Special Responsibilities of Tribal Prosecutor.

The Tribal Prosecutor represents the sovereignty of the Prairie Band Potawatomi Nation and therefore has responsibilities above and beyond those required of an attorney in private practice. Therefore, the Tribal Prosecutor should use restraint in the discretionary exercises of governmental powers, and in the performance of the duties of the office shall follow these guidelines:

- (A) refrain from prosecuting a charge that the Tribal Prosecutor knows is not supported by probable cause;
- (B) make reasonable efforts to assure that the accused has been advised of the right to counsel and has been given reasonable opportunity to obtain counsel;
- (C) not seek to obtain from an unrepresented accused a waiver of important pretrial rights;
- (D) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense, and, in connection with sentencing, disclose to the defense and to the Court all underprivileged mitigating information known to the Tribal Prosecutor, except when the Tribal Prosecutor is relieved of this responsibility by a protective order of this Court; and
- (E) during the course of participating in or being associated with the investigation of a criminal matter, not make or participate in making any extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration the information contained in a public record, that the investigation is in progress, the general scope of the investigation including a description of the offense, and if permitted by law, the identity of the victim, a request for assistance in apprehending a suspect or assistance in other matters and the information necessary to the request for assistance; or, a warning to the public of any dangers.
- (F) exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the Tribal Prosecutor in a criminal case from making an extra-judicial statement that the Tribal Prosecutor would be prohibited from making.
- (G) refrain from public and private criticism of other officers of the Court except as set out in these rules as being their responsibility. Tribal prosecutors shall not engage in discussions whose sole purpose or main thrust shall be the criticism of any officers of the Court, i.e., judges, lay advocates, attorneys, or law enforcement officers, in public or in private, except that constructive criticism delivered in a forum conducive to the purpose and designed to improve the performance of the individual may be given.
- (H) study the applicable law and facts of each case in order to make prosecutorial decisions based only on these factors and not be dissuaded from making difficult or unpopular decisions.
- (I) only engage in political activity that is consistent with the support of the community's jurisdictional rights. Tribal prosecutors will refrain from all political activities or actions which could be interpreted in the community as supporting any

political position except that the tribal community has the right and the responsibility to govern its own members and its own territory. All actions should be consistent with this belief and supportive of this community standard. This prohibition does not mean that tribal prosecutors cannot, if they choose, engage in activities of electoral politics at the local, state, national or tribal level. This prohibition is specific as to politics adversely affecting the jurisdictional rights of the tribal community.

(J) avoid financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of his or her prosecutorial duties, exploit the prosecutor's position, or involve him or her in frequent transactions with lawyers and others likely to be involved in the opposing side in tribal court cases. The tribal prosecutor may, however, hold other employment or participate in the operation of a business.

(K) disqualify himself or herself from acting as prosecutor in any proceeding in which his or her impartiality might reasonably be questioned, including instances where the Tribal Prosecutor has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts, where the tribal prosecutor served as lawyer, advocate, or personal representative in the matter before the Court, or a person with whom the tribal prosecutor has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter, or where the tribal prosecutor knows that he or she individually or a member of his or her family or household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings.

(Enacted by PBP TC No. 97-30, June 17, 1997; amended by PBP TC No. 98-55, July 21, 1998; amended by PBP TC No. 99-68, May 12, 1999; amended by PBP TC No. 2003-023, February 13, 2003; amended by PBP TC No. 2008-153; enacted by PBP TC No. 2008-044, February 7, 2008.)

