

**TITLE IV  
RULES OF CRIMINAL PROCEDURE**

CHAPTER 1                    SCOPE, PURPOSE AND CONSTRUCTION

Rule 4-1-1                    Scope, Purpose and Construction

- (1) These rules shall govern the procedure in all criminal proceedings in the Shoshone and Arapaho Tribal Court.
- (2) Every proceeding in which a person is charged with an offense of any degree and brought to trial and punishment is a criminal proceeding.
- (3) These rules are intended in every criminal proceeding to provide for just determination by utilizing simplicity in procedure and fairness in administration to diminish unreasonable expense and delay.
- (4) No provision of these Rules shall be interpreted as a bar to any claim of denial of rights as required by the Indian Civil Rights Act, Section 1302 of Title 25, United States Code.
- (5) Any reference in these Rules to the pronoun “he,” “him,” or “his” shall be interpreted to include “she,” “her,” or “hers,” as the case may be, so that it effectively includes both the male and female genders.

CHAPTER 2                    PRELIMINARY PROVISIONS

Rule 4-2-1                    Prosecution of Offenses

- (1) No person shall be punished for an offense, including a plea of guilty, unless it is a legal conviction by a court of competent jurisdiction.
- (2) All criminal prosecutions shall be prosecuted in the name of the Shoshone and Arapaho Tribes, plaintiff, against the person charged with the offense, defendant.
- (3) The prosecutor has a duty to assist in the administration of justice on behalf of the Tribes and shall decline to prosecute any complaint or ticket which he believes is not made in good faith or not substantially supported by competent evidence.
- (4) All criminal proceedings where the defendant is under eighteen (18) years of age shall be confidential.

Rule 4-2-2

Rights of Defendant

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

(1) To appear and defend himself, in person, with or without counsel, except where he chooses to not appear and forfeit posted bond and the offense is one which can be forfeited.

(2) Right to Retain Counsel

- (a) To retain counsel and, in any proceeding where the defendant is under eighteen (18) years of age, to inform the minor and his parents, guardian, or custodian of their right to retain counsel by telling them, "According to the Indian Civil Rights Act, you have the right to have a lawyer or other person represent you at this hearing, however, you or your family must pay any fees for such representation which may be required."
- (b) An indigent defendant shall be entitled to have an attorney or a tribal court advocate appointed to represent him or her at the Tribe's expense in any criminal proceeding in which the Tribe is seeking punishment by loss of liberty. At the initial appearance, the Tribe shall inform the Court whether or not the Tribe seeks punishment by loss of liberty. If the Tribe elects to seek punishment by loss of liberty at any time subsequent to the initial appearance, the Tribe shall notify the Court not later than thirty days before trial, and counsel shall be appointed by the Court.
- (c) If the charges facing an defendant could result in loss of liberty of one year or more or a fine of greater than \$5,000, or the defendant is facing any length of imprisonment and is charged under the Special Domestic Violence Criminal Jurisdiction defined at 25 U.S.C. §1304, then the defendant shall have the right to an attorney licensed to practice law in both the Wind River Tribal Court and in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
- (d) If a defendant facing charges under section (C) above is determined to be indigent, then the Court will appoint an attorney licensed to practice law in both the Wind River Tribal Court and in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys at the Tribe's expense.
- (e) A defendant may waive his or her rights to counsel in writing, after the court has determined that he or she knowingly, intelligently and voluntarily desires to forego them. A defendant may withdraw a waiver of the right to counsel at any time, but will not be allowed to repeat any proceeding already held solely on the grounds of the waiver and consequent lack of counsel

- (3) To be informed of the nature of the charges against him and to have a copy thereof.
- (4) To testify in his own behalf, or to refuse to testify, however, if he chooses to testify he will be deemed to have waived this right.
- (5) To confront and cross examine all witnesses against him.
- (6) To compel by subpoena the attendance of witnesses in his own behalf.
- (7) To have a speedy public trial by an impartial judge and jury as provided in these rules.
- (8) To appeal as provided in this code.
- (9) To not twice be put in jeopardy for the same offense.
- (10) To be allowed reasonable bail or bond.

Rule 4-2-3                      Statute of Limitations: Tolling

(1) Except for those offenses set forth in Sections 7-3-7 (Child Neglect), 7-3-8 (Child Abuse), 7-3-9 (Sexual Assault) and 7-3-10 (Other Acts Prohibited Against Children), all complaints alleging the commission of an offense against the Shoshone and Arapaho Tribes shall not be valid unless filed within one (1) year of its occurrence.

(2) The period of limitations shall commence upon the commission of the offense and shall not run during any period in which the defendant is not physically located on the reservation.

Rule 4-2-4                      Burden of Proof Required for Conviction

Every case resulting in a conviction of the defendant must result from a finding by a judge or jury, as the case may be, of there having been presented sufficient evidence to prove beyond a reasonable doubt every essential element of the offense or violation of which the defendant is charged.

CHAPTER 3                      PRELIMINARY PROCEEDINGS

Rule 4-3-1                      The Complaint; Time Limits; Extensions

(1) The complaint is a written statement of the essential facts constituting the offense charged.

(2) All complaints shall be signed by the complaining witness in the presence of a law enforcement officer, prosecutor or other person authorized to process complaints.

(3) Subject to the provisions of these Rules regarding exclusions when computing periods of delay:

a) The complaint charging an individual with the commission of an offense shall be filed within thirty (30) days from:

i) the date on which such individual was arrested regarding such charges; or

ii) the date the action occasioning the trial becomes final in cases where the complaint has been dismissed by the trial court and reinstated following an appeal; and

b) The prosecutor may apply to the court before the applicable deadline has passed, and, if otherwise consistent with these Rules, the court may grant an extension of the time limits specified above.

(4) The complaint should state:

a) The complete name and last known address, both physical and mailing, of the accused and his description;

b) If against a person under eighteen (18) years of age, the complete names and last known addresses, both physical and mailing, of both of the minor's parents, guardian, or custodian;

c) The general location where the offense was committed;

d) The general name and designation of the offense under this Law and Order Code;

e) A short, concise statement of the specific acts or omissions complained of;

f) The date and time of the commission; and

g) The name of the complaining witness.

(5) No omission or error in form shall be grounds for dismissal unless prejudicial to defendant.

(6) A complaint may be withdrawn anytime prior to trial by the complaining witness or prosecutor:

- a) Signing a voluntary statement giving sufficient grounds why;
- b) Receiving approval from a judge to withdraw it; and
- c) Paying a \$30.00 fee, unless complainant is a prosecutor or law enforcement officer.

Rule 4-3-2      Notice Requirements Where Complaint is Against a Minor

(1) In any proceeding charging a person under eighteen (18) years of age with a crime under the provisions of this Law and Order Code, notice of all proceedings shall be given to the minor, both of his parents, guardian, or custodian and the minor's counsel as soon as the time for a proceeding has been established and at least one (1) day prior to the proceeding.

(2) The notice shall contain:

- a) The name of the court;
- b) The title of the proceedings;
- c) An attached copy of the complaint; and
- d) The date, time, place, and type of proceeding of which the minor, and his parents, guardian, or custodian and minor's counsel are being notified.

(3) The notice shall be delivered by a law enforcement officer or an appointee of the court to the minor, both parents, guardian, or custodian and minor's counsel of record.

Rule 4-3-3                      Summons

Whenever a traffic offense, victimless crime, or minor offense is charged, a summons shall be issued which orders the defendant to appear and plea within five (5) days of the date when the summons is served.

Rule 4-3-4                      Citation

(1) Whenever a person is detained for any traffic violation, the law enforcement officer may supply a written notice (citation) to appear at a time and date to enter a plea or forfeit a bond posted prior to that time. The citation must provide at least two (2) days' notice of the date and time to appear unless the defendant demands an earlier hearing.

(2) In order to secure his release, the defendant must either post bond or sign his written promise to appear; otherwise he shall be arrested.

(3) No citation shall issue under the following conditions:

a) Where the person is charged with Driving While Under the Influence, Reckless Driving or failure to stop for an accident involving injury; or

b) Where the person refuses to sign a written promise to appear after declining to post bond.

Rule 4-3-5                    Arrest - Without Warrant

No law enforcement officer shall arrest a person for any offense without a warrant except where such offense occurs in his presence, where the officer is in hot pursuit, or where the officer has reliable evidence that a person committed an offense.

Rule 4-3-6                    Arrest With Warrant

(1) When a warrant is requested, the judge shall examine a complaint for probable cause and, if it exists, issue a warrant for the arrest of the defendant. It shall describe the offense charged and command that the defendant be arrested and brought before a judge for purposes of a minor's initial appearance or an adult's arraignment.

(2) A warrant shall be executed only by a law enforcement officer within the boundaries of the Wind River Indian Reservation or outside the reservation if the defendant is in custody or detained in another jurisdiction and the authorities of that jurisdiction agree to release him.

Rule 4-3-7                    Return of Summons or Warrant

The date, time, and place of service of a summons, citation, or arrest warrant upon the defendant shall be endorsed on the summons, citation, or warrant, along with the name of the person serving or executing such, which shall then be returned to the court. An endorsed copy shall be given the defendant when served or, if arrested, not later than the time set for a minor's initial appearance or an adult's arraignment.

Rule 4-3-8                    Bench Warrant

A bench warrant shall be issued when necessary to bring a convicted person before a judge to show cause why the original sentence should not be imposed for failure to comply with conditions set by the court. Its execution and return shall be the same as an arrest warrant.

Rule 4-3-9                      Taking Minors Into Custody

(1) Whenever a minor is taken into custody during school hours, the law enforcement officer shall inform the principal or other school authorities of his intent and request their cooperation so that the taking of custody may be accomplished privately, orderly, and without unduly disturbing the school population.

(2) An arresting officer shall warn any minor he takes into custody prior to any questioning that:

- a) The minor has a right to remain silent;
- b) Anything the minor says can be used against the minor in court;
- c) The minor has the right to the presence of his parents, guardian, or custodian and an attorney during questioning; and
- d) If he cannot afford an attorney, the court will provide him with a list of names, addresses, and telephone numbers of those attorneys and advocates licensed to practice before the Shoshone and Arapaho Tribal Court.

Rule 4-3-10                      Detention of Minors Pending Initial Appearance

(1) A law enforcement officer who has taken a minor into custody shall release the minor to the minor's parent, guardian, or custodian and issue verbal advice or warning as may be appropriate unless detention is necessary due to a determination that:

- a) The minor's act is serious enough to warrant continued detention or placement in a restrictive facility;
- b) There is reasonable cause to believe that the minor will run away so that he will be unavailable to attend further proceedings; or
- c) There is reasonable cause to believe that the minor will commit a serious act causing damage to himself, another person, or property.

(2) If the minor is not released, the arresting officer shall make all reasonable efforts, immediately and on a reasonably recurring basis until contact is made, to notify the minor's parents, guardian, or custodian to inform them that the minor has been taken into custody and of

their right to be present with the minor until a determination has been made by the court whether or not continued detention is necessary.

(3) A minor alleged to have committed a crime may be detained, pending his initial appearance, in a juvenile detention facility approved by the Tribes or by means of electronically monitored home detention provided:

a) Whenever a minor is placed in a facility located outside the boundaries of the reservation, the court shall require an agreement that the minor be returned to court upon order of the court;

b) Whenever possible, the minor is allowed to attend the school in which he is enrolled or, in any event, provided his school work and educational assistance;

c) The minor is allowed to attend traditional religious ceremonies or funerals of extended family members, natural or adopted, provided further that he is accompanied by a parent, guardian, or custodian, has received consent to do so by the court, and returns immediately to the detention or shelter care facility;

d) The minor is not locked alone in a room unless there exists a reasonable belief that such confinement is necessary to prevent him from physically injuring himself or others if not locked alone, provided further that the minor is visited at least once an hour; and

e) The minor is not punished by physical force, solitary confinement, or deprivation of meals or family visits.

(4) In the alternative, a minor who is sixteen (16) years of age or older who is alleged to have committed a crime may be detained in a jail or facility used for the detention of adults if:

a) A juvenile facility is not reasonably available or would not assure adequate supervision;

b) Detention is provided in a cell separate from adults;

c) Whenever possible, detention is provided in a cell removed from sight and sound of adults; and

d) Adequate supervision is provided twenty-four (24) hours a day.

Rule 4-3-11                      Initial Appearance in Cases Involving a Minor

(1) An officer or person making an arrest of a person under eighteen (18) years of age, with or without a warrant, shall take the arrested minor without unnecessary delay, but in no

event later than seventy-two (72) hours from the time of arrest, before the court for the purpose of determining:

a) Whether probable cause exists to believe the minor committed the alleged criminal act; and

b) Whether continued detention is necessary pending further proceedings.

(2) If, after arrest of a minor, the minor has been released to his parent, guardian, or custodian, the minor shall make the Initial Appearance before the court within seventy-two (72) hours after having been served a copy of the complaint.

(3) If the minor's parents, guardian, or custodian is/are not present at the Initial Appearance, the court shall determine what efforts have been made to notify and to obtain the presence of the parents, guardian, or custodian. If it appears that further efforts are likely to produce the parents, guardian, or custodian, the court shall recess for not more than twenty-four (24) hours and direct an officer of the court to make continued efforts to obtain the presence of the parents, guardian, or custodian.

(4) During the Initial Appearance, or within twenty-four (24) hours if continued, the court shall hear testimony concerning:

a) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

b) The need for detention.

(5) The Court shall:

a) Release the minor to his parents, guardian, or custodian or, with the consent of the parents, guardian, or custodian, to another Indian adult unless probable cause exists to believe that:

i) the act is serious enough to warrant detention or placement in a restrictive facility;

ii) there is probable cause to believe that the minor will run away so that he will be unavailable for further proceedings; or

iii) there is probable cause to believe that the minor will commit a serious act causing injury to himself or another person or damage to property; and

b) In the event the minor is not released, an order that the minor be detained at an appropriate facility, based upon the court's express finding of one of the circumstances set forth above.

(6) If, after hearing the testimony presented, the court finds that probable cause exists to believe the offense charged was committed by the accused, the court, pending trial, shall set the matter for arraignment within seven (7) days if the court has also found a need for the defendant to be confined, or within thirty (30) days if the court has found that there is not a need for the defendant to be confined.

(7) If, after hearing the testimony presented, the court does not find that probable cause exists to believe the offense charged was committed by the accused, the court shall dismiss the complaint and, if previously detained, order the minor's release.

Rule 4-3-12                      Arraignment - Procedure

(1) As soon as reasonably possible after arrest, but no more than seventy-two (72) hours thereafter, or at the time designated in the summons, warrant, or citation, or within seven (7) days of a minor's Initial Appearance if the defendant who is a minor is presently in confinement, or within thirty (30) days if the defendant who is a minor is not presently in confinement, the defendant shall appear before a judge and be informed of his rights as outlined in Chapter 2, Rule 2-2.

(2) The clerk shall read the charges against the defendant stated in the complaint and then hand a copy of the complaint to the judge who will ask if the defendant understands the charges against him, the potential sentence the court may impose, and his rights as outlined in Chapter 2, Rule 2-2.

(3) The court may accept a plea of guilty upon a finding that:

a) The defendant fully understands his rights, including the right to consult with counsel prior to entering a plea and to a continuance upon the defendant showing good cause, and fully understands the potential sentence which the court may impose upon his plea of guilty;

b) The defendant voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for the court's action;

c) The allegations of the complaint are sustained by proof beyond a reasonable doubt; and

d) The defendant has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

(4) If the defendant offers and the court accepts a plea of guilty, the defendant will be advised of the sentence imposed unless the defendant is under eighteen (18) years of age, in which case the court shall:

a) Order a pre-sentence report pursuant to Rule 5-2 and inform the minor of the time and date of his sentencing, notice of which will be served pursuant to Rule 3-2 on the minor, the minor's parents, guardian, or custodian, and the minor's attorney; and

b) Set the matter of sentencing for hearing within thirty (30) days in those instances where the court has accepted a plea of guilty.

(5) If defendant pleads not guilty, he will be told the amount of the bond and the time and date of his trial, notice of which will be served on him by the clerk and, if under eighteen (18) years of age, pursuant to Rule 3-2, on the minor, the minor's parents, guardian, or custodian and upon the minor's counsel.

(6) Adults may be arraigned as a group.

(7) The defendant shall be given a copy of the complaint if he has not already received one.

Rule 4-3-13                      Pleas

(1) A defendant may plead guilty, not guilty, or nolo contendere, which will be considered a guilty plea for purposes of sentencing. All pleas must be voluntary. The court shall not accept a guilty plea without hearing a factual basis therefor.

(2) The defendant, the prosecutor and the court may agree to a plea bargain agreement where, in exchange for a guilty plea, some of the charges are dismissed or a reduced or lighter sentence is imposed.

Rule 4-3-14                      Pleading and Motions Before Trial; Defenses and Objections

(1) Pleadings in criminal cases shall consist of the complaint and the plea entered. All other motions or pleas shall be made in accordance with these rules.

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

a) Any defenses or objections which are capable of determination other than at trial may be raised prior to trial by motion;

b) Defenses and objections based upon defects in the institution of the complaint, other than lack of jurisdiction of the court, may be raised on motion only

before trial or else such shall be deemed waived, whereas lack of jurisdiction may be raised at any stage on the court's own motion or by any party;

c) Such motions shall be made in writing and filed with the court at least five (5) days before trial, heard separately or at the trial in the court's discretion, and decided by a judge rather than a jury; and

d) If a motion is:

i) denied, the trial shall proceed; or

ii) granted, the judge shall so alter the proceedings or enter a decision when appropriate.

Rule 4-3-15                      Consolidation of Trials

(1) The court may order that two (2) or more defendants be tried together if they could have been joined in a single complaint or that a defendant be tried on more than one complaint in a single trial.

(2) If consolidation of trials is prejudicial to any party the court shall order separate trials as justice requires.

Rule 4-3-16                      Discovery and Alibi

(1) The law enforcement officer or prosecutor shall allow the defense to inspect or copy any statements of the defendant within their control including, but not limited to, results or reports of physical, mental or scientific tests or examinations of any other kind relating to or done on the defendant.

(2) Both the prosecution and defense shall reveal to the other, at least five (5) days before trial upon request of the other, the names of all witnesses they intend to call at trial, and whether or not the defendant intends to use an alibi defense.

(3) Failure of either side to abide by this rule may result in disciplinary action.

Rule 4-3-17                      Subpoena

(1) A subpoena is an order of the court issued by a judge. It shall contain the name of the court, title of the case, and command the person to attend and give testimony or produce for use at trial objects or documents in his possession or control.

(2) A subpoena may be served by a law enforcement officer or person appointed by the court by handing a copy to the person named. No fees or mileage allowance need to be tendered with service. Service can be anywhere within the jurisdiction of the court.

(3) Failure to obey the order contained in the subpoena may be deemed a contempt; however, no prosecution shall be made unless an endorsed return of the subpoena exists.

## CHAPTER 4            TRIAL

### Rule 4-4-1            Speedy Trial; Time Limits

(1) Subject to the provisions of these Rules regarding exclusions when computing periods of delay, criminal trials shall commence:

a) Not less than thirty (30) days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se, unless the defendant consents in writing to the contrary;

b) Not more than ninety (90) days:

i) after the filing of the complaint; or

ii) of the date the defendant has appeared before a judicial officer of the court in which the charge is pending, whichever date last occurs; provided, however, that the prosecutor may apply to the court before the applicable deadline has passed and, if otherwise consistent with these Rules, the court may grant an extension of the time limits specified above.

(2) The provisions of this Rule shall also apply to:

a) Trials upon complaints dismissed by the trial court and refiled by the prosecutor;

b) Trials upon complaints dismissed by the trial court and reinstated following an appeal, from the date the action occasioning the trial becomes final; and

c) Retrials following declaration of mistrial by the trial judge or following an order of such judge for a new trial, from the date the action occasioning the retrial becomes final.

### Rule 4-4-2            Trial by Jury or Court

(1) All trials shall be by the court without a jury unless the defendant requests a jury trial not less than ten (10) days prior to the date set for trial.

(2) A jury shall be composed of six (6) persons with one (1) alternate if one is deemed to be needed by the court.

(3) In a trial without a jury, the judge shall make a general finding of guilt or innocence and, upon request of either party, specific findings embodied in a written decision.

(4) Trial jurors shall be selected as provided in Rule 19 of the Rules of Civil Procedure of this Law and Order Code.

Rule 4-4-3                      Judge Disability

If by reason of death, sickness or any other disability, the judge before whom a trial has commenced is unable to proceed, any other judge may upon certifying that he has familiarized himself with the record of trial proceeding with the trial or verdict unless such judge grants a new trial.

Rule 4-4-4                      Evidence

Rule 17 of the Rules of Civil Procedure of this Law and Order Code shall apply to evidence offered at all hearings and trials of a criminal nature.

Rule 4-4-5                      Expert Witnesses and Interpreters

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

(2) The court may appoint an interpreter of its own selection or each party may provide their own interpreters.

(3) Any interpreter through whom testimony is received from a defendant or witness or who communicates with either shall be put under oath to faithfully and accurately translate and communicate as required by the court.

Rule 4-4-6                      Motion for Judgment of Acquittal

(1) The court on motion from the defendant shall order the entry of a judgment of acquittal of one or more offenses charged in the complaints after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offense(s). Such motion shall not affect the right of the defendant to present evidence.

(2) If a motion for judgment of acquittal is made in a jury trial the judge shall rule on the motion prior to the case being submitted to the jury for verdict.

Rule 4-4-7                      Instructions and Final Arguments

Rule 21 of the Rules of Civil Procedure of this Law and Order Code shall apply to instructions and final arguments in criminal proceedings.

Rule 4-4-8                      Verdicts

(1) The verdict of the jury shall be unanimous and returned to the judge by the jury in open court.

(2) If there is more than one defendant, the jury may return a verdict or verdicts with respect to those it has agreed upon; if it cannot agree as to all or any, the defendant or defendants as to whom it does not agree may be tried again.

(3) A defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein, if such an attempt is an offense, without the necessity of the defendant having to have been formally charged with such lesser offense or with attempt.

(4) When a verdict is returned and before it is recorded, the jury shall 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 deliberations or may be discharged if it is apparent that no agreement can be reached.

CHAPTER 5                      JUDGMENT

Rule 4-5-1                      Judgment

(1) A judgment of conviction shall set forth the plea, verdict and sentence imposed. If the defendant is found not guilty or the case dismissed, the judgment shall be entered accordingly. It shall be signed by the judge and entered by the clerk.

(2) Sentence shall proceed as follows:

a) Sentences shall be imposed without unreasonable delay. In cases against a minor, the matter of sentencing shall be set for hearing within thirty (30) days of plea or verdict, and the court shall order that a pre-sentence report be written and provided, along with notice of hearing pursuant to Rule 3-2, to the minor, both of the minor's parents, guardian, or custodian and minor's counsel at least three (3) days prior to the hearing.

Pending sentence, the defendant may be committed to jail or otherwise confined or bond may be imposed or altered;

b) Before imposing sentence the court shall offer the defendant an opportunity to speak on his own behalf and present any information in mitigation of punishment;

c) After trial and imposition of sentence, the defendant shall be informed of his right to appeal; and

d) Sentence may be imposed as provided in the offense charged.

(3) A motion to withdraw a guilty plea may be made only before sentence has been imposed, except that the court may, to correct manifest injustice, set aside the judgment of conviction after having imposed sentence and permit the defendant to withdraw his guilty plea.

Rule 4-5-2                      Pre-Sentence Report in Cases Involving Minors

(1) The probation officer shall prepare a written report describing all reasonable and appropriate alternative sentences. The report shall contain a specific plan for the care of and assistance to a defendant under eighteen (18) years of age calculated to resolve the problems presented by the complaint, circumstances surrounding the crime, and matters related to the crime which may assist the court in sentencing.

(2) The report shall review the performance of the minor, the minor's parents, guardian, or custodian and persons providing assistance to the minor and the minor's family, as well as a detailed explanation showing the basis for proposing the sentence, the benefits to the minor, and the manner in which the proposal is consistent with the interests of the Tribes.

(3) The probation officer shall present the pre-sentence report to the court, the prosecutor, the minor, the minor's parents, guardian, or custodian and the minor's legal counsel at least three (3) days before the sentencing hearing.

Rule 4-5-3                      New Trial

(1) The court on motion of the defendant may grant a new trial in the interest of justice. The court may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment.

(2) A motion for a new trial based on the grounds of newly discovered evidence shall be made within one (1) month after final judgment, except that if the matter is on appeal, the motion may only be granted upon a remand.

(3) A motion on any other grounds shall be made within ten (10) days after the verdict.

Rule 4-5-4                    Arrest of Judgment

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

(2) The motion in arrest of judgment shall be made within ten (10) days after verdict, finding of guilty, or plea of guilty.

Rule 4-5-5                    Correction or Reduction of Sentence

(1) The court may correct:

- a) an illegal sentence at any time; or
- b) a sentence imposed in an illegal manner within thirty (30) days after:
  - i) the sentence is imposed; or
  - ii) the court receives a mandate issued upon affirmation of the judgment or dismissal of an appeal.

(2) The court may reduce a sentence upon a revocation of parole or probation as provided in this Law and Order Code.

(3) The court may modify or reduce a sentence upon the motion of the defendant.

CHAPTER 6                    GENERAL PROVISIONS

Rule 4-6-1                    Search and Seizure

(1) A search warrant may be issued by a tribal judge upon request of a tribal, state, or federal law enforcement officer.

(2) A warrant may be issued to search for and seize any:

- a) Property that constitutes evidence of the commission of any crime, not limited to violations pursuant to this Law and Order Code;

b) Contraband, the fruits of crime, or things otherwise criminally possessed;  
or

c) Property designed or intended for use or which is or has been used as the means of committing any criminal offense.

(3) A search warrant shall issue only on an affidavit establishing reasonable grounds for issuing the warrant. If probable cause exists, the warrant shall be issued identifying the property and naming or describing the person or place to be searched or property seized. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on the request for a warrant, the judge may require the affiant to appear personally and be examined under oath. The warrant shall be directed to any law enforcement officer and shall command such person to search, within at least ten (10) days, the person or place named for the person or property specified. The warrant shall be served between the hours of 6:00 a.m. and 10:00 p.m. local time unless the issuing judge otherwise authorizes on the warrant. The warrant shall be returned to the judge after service or at the end of ten (10) days, whichever occurs first.

(4) The officer taking property under a warrant shall give the person from whom or from whose premises the property was taken a copy of the warrant, the affidavit and a receipt for the property taken or shall leave copies of such and a receipt at the place from which the property was taken. The return to the issuing judge shall be made promptly and shall include an inventory of the property taken.

(5) A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that he is entitled to lawful possession. Evidence may be received on any issue of fact necessary to the decision and if the motion is granted, the property shall be returned and shall not be admissible at any hearing or trial.

(6) No law enforcement officer shall search or seize any premises, property or person without a search warrant unless:

a) He knows of or has reasonable cause to believe that the person in possession of such property is engaged in the commission of an offense;

b) The search and seizure is done incidental to a lawful arrest; or

c) Under such other circumstances in which it would be unreasonable to require the obtaining of a warrant prior to the search and seizure.

(7) A law enforcement officer may stop any person in a public or private place when he has probable cause to believe that person is in the act of committing an offense, has committed an offense, or is attempting to commit an offense, and demand of him his name, address, and an explanation of his actions and may, if he has reasonable grounds to believe his

own safety or the safety of others nearby is endangered, conduct a frisk-type search for weapons on or about such person.

Rule 4-6-2                    Extradition

(1) A judge may, upon receipt of certified copies of a complaint, information, indictment, or arrest warrant, together with a request to extradite from the executive authority of any tribal, state or federal government, cause to be arrested and delivered to such executive authority, any person subject to the jurisdiction of the Shoshone and Arapaho Tribal Court who is charged with a felony, misdemeanor, or violation of probation or parole arising out of such, and who has fled from justice and is seeking to use the reservation as a refuge.

(2) The Joint Tribal Council shall be the only entity which may request the extradition to the Wind River Reservation of any person subject to the jurisdiction of the Shoshone and Arapaho Tribal Court who is alleged to have committed an offense or violated probation or parole and thereafter fled from the reservation to avoid prosecution.

(3) A hearing will be provided upon written request of the defendant.

Rule 4-6-3                    Commitment

(1) No person shall be detained or jailed under this Law and Order Code for longer than seventy-two (72) hours without a hearing, unless there has been issued a commitment signed by a judge.

(2) Pending trial or investigation of charges, a temporary commitment shall be issued.

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

Rule 4-6-4                    Bond; Release from Custody

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

(2) A bond schedule for all offenses shall be adopted by the court, and the defendant may obtain release from jail at any time by posting the amount or amounts of bond specified in the bond schedule for the offense charged or as set by a judge; provided, however, that if the arresting officer or prosecutor shall certify to the jailer or judge, or the jailer shall certify based on his own observation, that the defendant is unconscious or in an intoxicated or apparently intoxicated condition, such defendant shall not be allowed to post bond for eight (8) hours or until it appears that he is sober. The defendant shall be informed by the jailer of his right to post bond at the appropriate time.

(3) At arraignment the judge shall set bond at an amount not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the defendant's appearance at trial. A defendant at arraignment may request a bond lower than the bond schedule or that he be released on his own recognizance as provided under subsection (4) below.

(4) The judge may, upon request and at his discretion, release a defendant on his own recognizance, if substantially certain that the defendant will appear at the appointed time, or refuse to so release a defendant if the court finds that:

- a) The defendant has previously violated a release on his own recognizance;
- b) The defendant likely to abscond and not return;
- c) The defendant is likely to commit acts of violence or harm to others if released; or
- d) The defendant is not in adequate physical condition to be released.

(5) The required bond shall be tendered in the form of money order only.

(6) In the event the defendant fails to appear, the bond shall be forfeited and the charge dismissed if it is the type of offense which can be forfeited.

(7) In the event the defendant fails to appear and it is the type of offense which cannot be forfeited, the bond posted may, in the court's discretion, be forfeited and a warrant issued for the defendant's arrest.

(8) In the event the defendant fails to appear in violation of a release on his own recognizance, he shall be charged with the offense of violating an order of the court.

Rule 4-6-5                      Time Computations

In computing any time period in these rules, the day of the act or event from which the designated period begins to run shall not be included, and the last day of the period will be included unless it falls on a weekend or legal holiday. If a time period prescribed is less than seven (7) days, intermediate weekends and legal holidays shall not be included.

Rule 4-6-6                      Periods of Delay Excluded

The following period of delay shall be excluded in computing the time within which a complaint must be filed or the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including without limitation, delay resulting from:

- a) Any proceeding, including any examination, to determine mental competency or physical capacity of the defendant, or from the fact that the defendant is mentally incompetent or physically unable to stand trial;
- b) Trial with respect to other charges against the defendant;
- c) Any interlocutory appeal;
- d) Any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of such motion;
- e) Consideration by the court of a proposed plea agreement to be entered into by the defendant and the prosecutor;
- f) Deferral of prosecution pursuant to written agreement between the prosecutor and the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct; or
- g) Absence or unavailability of the defendant or an essential witness, provided that a defendant or essential witness shall be considered absent or unavailable when
  - i) his whereabouts are unknown and he is attempting to avoid apprehension or prosecution;
  - ii) his whereabouts cannot be determined by due diligence; or
  - iii) his whereabouts are known, but his presence for trial cannot be obtained by due diligence or because he resists appearing at or being returned for trial.

(2) Any period of delay resulting from a continuance granted by any judge, but only if such continuance is granted on the basis of the judge's written findings that the ends of justice served by taking such action outweigh the best interest of the defendant and the public in a speedy trial; provided, however, that no continuance shall be granted because of general congestion of the court's calendar, lack of diligent preparation, or the prosecutor's failure to obtain available witnesses.

Rule 4-6-7

Motions

An application to the court for an order shall be by motion. A motion other than one made at a hearing or trial shall be in writing unless allowed orally by the court. It shall state specifically the grounds upon which it is made and set forth the relief or order sought. It may be supported by affidavit and/or memorandum or points and authorities. It may be ruled on with or without a hearing or be reserved until trial unless it is a motion for continuance.

Rule 4-6-8                      Dismissal

(1) The prosecuting attorney may move that a complaint be dismissed with or without prejudice at any time and, upon the court's granting such motion, the prosecution of that complaint shall cease, the defendant released, and any bond posted returned.

(2) If a complaint is not filed within the time limits required by these Rules, the charges against the individual contained in such complaint shall be dismissed by the court on its own motion.

(3) If there is an unreasonable and unnecessary delay in bringing the defendant to trial which is not the fault of the defendant, the court may, on motion of the defendant or its own motion, dismiss the complaint.

(4) If the defendant has not requested a continuance and trial is not commenced within the time limits required by these Rules, the charges against the individual contained in the complaint shall be dismissed by the court on motion of the defendant; however, failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal.

Rule 4-6-9                      Service and Filing of Papers

(1) Written motions, written notices and similar papers shall be served on each party in the manner provided for in civil actions.

(2) All papers required to be served shall also be filed with the court, by leaving the original with the clerk who shall stamp "Filed" together with the date it was received on it and all copies requested by the person filing it.

(3) Filing fees are due when a document is filed.

Rule 4-6-10                      Calendars and Continuances

(1) The court shall provide for the placing of criminal proceedings on a court calendar without unreasonable delay.

(2) The court may, for good cause shown by either party, allow at least one (1) or more continuance, if justice warrants it; however, if the defendant is granted a continuance or continuances, he cannot complain of lack of a speedy trial.

Rule 4-6-11                    Dismissals With or Without Prejudice; Burden of Proof

In determining whether to dismiss the cause with or without prejudice, the court shall consider, among others, each of the following factors:

- (1) The seriousness of the offense;
- (2) The facts and circumstances of the case which led to dismissal;
- (3) The impact of re-prosecution on the administration of justice;
- (4) Knowingly false statements made in connection with a motion for continuance;
- (5) Willful failure to proceed to trial without justification consistent with this rule;
- (6) Knowingly allowing the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; and
- (7) Filing of a motion solely for purposes of delay which the movant knows is totally frivolous and without merit.

Rule 4-6-12                    Burden of Proof Regarding Dismissals or Delays

- (1) The defendant shall have the burden of proof in those cases where he has filed a motion for dismissal based upon a claimed denial of his right to a speedy trial.
- (2) The prosecutor shall have the burden of going forward with the evidence in connection with any exclusion when computing the time within which a complaint must be filed or the trial of any such offense must be commenced.

Rule 4-6-13                    Exceptions

Exceptions to rulings or orders are not necessary, and it is sufficient that a party makes it known at the time of his objection what action he wishes the court to take and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection will not thereafter prejudice him.

Rule 4-6-14                    Harmless and Plain Error

(1) Any error, defect, irregularity or variance which does not affect substantial rights of the defendant shall be disregarded.

(2) Errors or defects affecting substantial rights may be recognized and acted upon by the court even though they were not brought to the attention of the court by either party or counsel.

Rule 4-6-15                      Records; Confidentiality

(1) A record of all hearings under this Code shall be made and preserved. The clerk of court shall keep all records in criminal proceedings, including a book known as the “Criminal Docket” in which, among other information, shall be entered the disposition or judgment of the court and the date thereof.

(2) Unless otherwise ordered by the court, all court and law enforcement records and proceedings in cases where the defendant is under eighteen (18) years of age at the time of the alleged offense shall be kept both separate from the records and files of adults and confidential and shall not be open to inspection or attendance by any but the following:

- a) The minor, his representative, or counsel;
- b) The minor’s parents, guardian, or custodian;
- c) A probation officer;
- d) A prosecutor; or
- e) Law enforcement personnel.

Rule 4-6-16                      Regulation of Conduct in the Court Room

Each judge may regulate the conduct of all persons in the courtroom and may forbid the taking of pictures or other visual or audio recordation of proceedings occurring therein.

Rule 4-6-17                      Rules of Court

(1) The chief judge may promulgate rules governing criminal procedure not inconsistent with these rules and in supplement thereto which shall be available to the public for copy and inspection.

(2) If no procedure is specified by rule, the court may proceed in any lawful manner not inconsistent with these rules or the principles of justice and fairness underlying these rules.

Rule 4-6-18

Citation

These rules may be known and cited as the Shoshone and Arapaho Rules of Criminal Procedure (or S&A-CR).