

PUEBLO OF ACOMA LAWS 2003 (2019 Replacement)

TITLE 5

RULES OF CRIMINAL PROCEDURE

This Replacement includes laws enacted since the Pueblo of Acoma Laws 2003 pursuant to Tribal Council Resolutions dated January 1, 2016 through December 31, 2018.

PUEBLO OF ACOMA LAWS 2003 (2019 Replacement)

TITLE 6 RULES OF CRIMINAL PROCEDURE

These laws may be cited by Title, Chapter, Section and Year as Section or
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PUEBLO OF ACOMA LAWS 2003

**TITLE 5
RULES OF CRIMINAL PROCEDURE**

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PUEBLO OF ACOMA LAWS 2003

TITLE 5 RULES OF CRIMINAL PROCEDURE

Origins: These laws were adopted by the Pueblo of Acoma Tribal Council as part of the 1985 Law and Order Code unless otherwise noted. The 1995 Law and Order Code re-formatted the provisions of the 1985 Law and Order Code by sub-dividing the Title into Chapters and providing Chapter headings, and re-numbering the sections accordingly.

Chapter 1. GENERAL MATTERS.

5-1-0. Purposes. It is declared that the public policy of this Pueblo and the general purposes of the provisions of this title are:

- A. To proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;
- B. To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
- C. To define the act or omission and the accompanying mental state which constitute each offense and limit the condemnation of conduct as criminal when it does not fall within the purposes set forth;
- D. To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each;
- E. To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized; and
- F. To impose just and deserved punishment on those whose conduct threatens the public peace.

Annotations: This section was previously located at Section 5-0.0 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement and as reformatted by the Pueblo of Acoma Laws 2003.

5-1-1. Applicability of Title.

- A. Except as otherwise provided by law, the procedure governing the accusation, prosecution, conviction and punishment of offenders and offenses is regulated by this title, the rules of criminal procedure.
- B. This title does not affect any power conferred by law upon federal authorities, a court-martial or other military authority or officer to prosecute and punish conduct and offenders violating military codes or laws, nor any power conferred by law to impose or inflict punishment for contempt.
- C. This title does not bar, suspend or otherwise affect any right or liability to damages, penalty, or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this title.
- D. Except as otherwise expressly provided, or unless the context otherwise requires, the provisions of this title shall govern the construction of and punishment for offenses defined outside this title.

Annotations: This section was previously located at Section 5-1.0 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

At subsection A, the 1985 Law and Order Code stated that the procedure governing the accusation, prosecution, conviction and punishment is *not* regulated by this title, but by the Rules of Criminal Procedure. Since this title is entitled the Rules of Criminal Procedure, the 1995 Restatement revised subsection A.

In light of the existing section concerning forfeiture which appeared to address both criminal and civil forfeiture (in rem), the reference to Aforfeiture@ after Apenalty@ in subsection C was removed in the 1995 Restatement.

5-1-2. Abolition of Common Law Offenses. All common law offenses are hereby

abolished. No conduct or omission constitutes an offense unless it is an offense under this title or under another statute or ordinance.

Annotations: This section was previously located at Section 5-1.1 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-1-3. Rule of Construction. The general rule that a penal statute is to be strictly construed does not apply to this title, but the provisions herein must be construed according to the fair meaning of their terms to promote justice and effect the objects of the law, including the purposes stated in [Section 1.0 of this Title].

Annotations: This section was previously located at Section 5-1.2 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement. The 1995 Restatement supplied the bracketed information to add clarity.

- 5-1-4. Definitions. In this title, unless the context otherwise requires:

- A. "Accomplice" means a person, other than a peace officer acting in his official capacity within the scope of his authority and in the line of duty, who with the intent to promote or facilitate the commission of an offense:
1. Solicits or commands another person to commit the offense; or
 2. Aids, counsels, agrees to aid or attempts to aid another person in planning or committing the offense;
 3. Provides means or opportunity to another person to commit the offense.
- B. "Act" means a bodily movement.
- C. "Benefit" means anything of value or advantage, present or prospective.
- D. "Conduct" means an act or omission and its accompanying culpable mental state.

- E. "Crime" means a misdemeanor or a felony.
- F. "Culpable mental state" means intentionally, knowingly, recklessly, or with criminal negligence as those terms are defined:
 - 1. "Intentionally" or "with the intent to" means, with respect to a result or to conduct described by a statute defining an offense, that a person's objective is to cause that result or to engage in that conduct.
 - 2. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists.
 - 3. "Recklessly" means, with respect to a result or to a circumstance described by a statute defining an offense that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.
 - 4. "Criminal negligence" means, with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
- G. "Dangerous drug" means any dangerous drug which according to common usage alters one's mental state. It also includes any drug identified on the list of controlled substances under federal law that is not used or consumed in a legally approved way.

- H. "Dangerous instrument" means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.
- I. "Deadly physical force" means force which is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury.
- J. "Deadly weapon" means anything designed for lethal use. The term includes a firearm.
- K. "Enterprise" includes any corporation, association, labor union or other legal entity.
- L. "Felony" means any offense for which a sentence to a term of imprisonment in excess of one year is authorized.
- M. "Firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, except that it does not include a firearm in permanently inoperable condition.
- N. "Government" means the Pueblo, any political subdivision thereof or any department, agency, board, commission, institution, or governmental instrumentality of or within the Pueblo or political subdivision.
- O. "Government function" means any activity which a public servant is legally authorized to undertake on behalf of a government.
- P. "Intoxication" means any mental or physical incapacity resulting from use of drugs, narcotics, toxic vapors or intoxicating liquors.
- Q. "Misdemeanor" means an offense for which a sentence to a term of imprisonment of less than one year three hundred and sixty-four days is authorized.
- R. "Narcotic" means narcotic drugs as defined under the Acoma Controlled Substances Act or the laws of the State of New Mexico.

- S. "Offense" means conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of this Pueblo or by any law, regulation or ordinance of a political subdivision of this Pueblo.
- T. "Omission" means the failure to perform an act as to which a duty of performance is imposed by law.
- U. "Peace officer" means any person vested by law with a duty to maintain public order and make arrests.
- V. "Person" means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government or a governmental authority.
- W. "Petty offense" means an offense for which a sentence of a fine only is authorized by law.
- X. "Physical force" means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force.
- Y. "Physical injury" means the impairment of physical condition.
- Z. "Possess" means knowingly to have physical possession or otherwise to exercise dominion or control over property.
- AA. "Possession" means a voluntary act if the defendant knowingly exercised dominion or control over property.
- BB. "Property" means anything of value, tangible or intangible.
- CC. "Public servant" means any officer or employee of any branch of government, whether elected, appointed or otherwise employed, including a peace officer, and any person participating as advisor, consultant or otherwise in performing a governmental function. The term does not include jurors or witnesses. "Public servant" includes those who have been elected, appointed, employed or designated to become a public servant although not yet occupying that position.

- DD. "Serious physical injury" includes physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement, or serious impairment of health or loss of protracted impairment of the function of any bodily organ or limb.
- EE. "Unlawful" means contrary to law or, where the context so requires, not permitted by law.
- FF. "Vehicle" means a device in, upon or by which any person or property is or may be transported or drawn upon a highway, waterway, airway or railroad.
- GG. "Voluntary act" means a bodily movement performed consciously and as a result of effort and determination.
- HH. "Voluntary intoxication" means intoxication caused by the knowing use of drugs, narcotics, toxic vapors or intoxicating liquors by the defendant, the tendency of which to cause intoxication the defendant knows or ought to know, unless the defendant introduces them pursuant to medical advice or under such duress as would afford a defense to an offense.

Annotations: This section was previously located at Section 5-1.3 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. At subsection A, the definition for AAccomplice@ formerly appeared at Section 5-1.20 of the 1985 Law and Order Code. All other definitions appeared collectively in Section 5-1.3 of the 1985 Code.

5-1-5. Time Limits.

- A. A prosecution for any grievous bodily injury, misuse of public monies, Pueblo felony or involving a falsification of public records may be commenced within 5 years of the discovery by Pueblo authorities of the offense. There are no time limits for commencing prosecution where the victim of a first or second degree felony offense is under age 18 years old.
- B. Except as otherwise provided in this section, prosecutions for other offenses must be commenced within two (2) years of the Pueblo

obtaining jurisdiction of the offense or discovery by the Pueblo whichever is later.

- C. For the purposes of subsection B, a prosecution is commenced when a criminal complaint is filed.
- D. The period of limitation does not run during any time when the accused is absent from the Pueblo or has no reasonably ascertainable place of abode within the Pueblo.
- E. If a timely criminal complaint is dismissed for any error, defect, insufficiency or irregularity, a new prosecution may be commenced within six (6) months after the dismissal becomes final even if the period of limitation has expired at the time of the dismissal or will expire within six (6) months of such dismissal.

Annotations: This section was previously located at Section 5-1.5 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. In the 1995 Restatement, subsection E was revised to be compatible with Section 5-1-8 of that title which states Aall criminal actions shall begin with a criminal complaint@. The words Aindictment@ and Ainformation@ which appeared after Acriminal complaint@ in the first line were deleted in the 1995 Restatement. This deletion was made globally in the 1995 Restatement.

5-1-6. Territorial Applicability.

- A. This Pueblo has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which such person is legally accountable if:
 - 1. Conduct constituting any element of the offense or a result of such conduct occurs within this Pueblo; or
 - 2. The conduct outside the Pueblo constitutes an attempt or conspiracy to commit an offense within this Pueblo and an act in furtherance of the attempt or conspiracy occurs within this Pueblo; or
 - 3. The conduct within this Pueblo constitutes an attempt,

solicitation, conspiracy or facilitation to commit, or establishes criminal accountability for, the commission of an offense in another jurisdiction that is also an offense under the law of this Pueblo; or

4. The offense consists of an omission to perform a duty imposed by the law of this Pueblo regardless of the location of the defendant at the time of the offense; or
5. The offense is a violation of a statute of this Pueblo that prohibits conduct outside the Pueblo.

- B. This Pueblo includes the land and water and the air space above the land and water.

Annotations: This section was previously located at Section 5-1.6 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-1-7. Disposition of Property Taken from Defendant; Receipts. When money or other property is taken from a defendant arrested upon a charge of a crime or public offense, the officer taking it shall at the time make duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken.

Annotations: This section was previously located at Section 5-1.14 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-1-8. Complaint. All criminal actions shall begin with a criminal complaint filed in the tribal court as outlined in Title 6.

Annotations: This section was previously located at Section 5-1.71 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-1-9. Arrest by Warrant Upon Complaint.

- A. In lieu of a summons, an arrest warrant may be issued by the

Judge at his discretion following the filing of a complaint by a complainant, officer, or the Tribal Prosecutor.

- B. When an accused is arrested under a warrant, he shall be taken without unnecessary delay before the Judge who issued the warrant and at such time a copy of the complaint and warrant shall be given to him. Also, at such time, the Judge shall either:
 - 1. Admit the accused to bail or release him upon personal recognizance and give a summons to him; or
 - 2. Order the accused held in custody and proceed without unnecessary delay with arraignment according to this Code.

5-1-10. Arrest without Warrant.

- A. A law enforcement officer may make an arrest without a warrant if the officer has probable cause to believe that the person has committed a crime, or for any other offense committed in the officer's presence, or if there is probable cause to believe the person has violated a protective order.
- B. A law enforcement officer may arrest a person without a warrant when he is notified by telegraph, telephone, radio or other mode of communication by another law enforcement officer of any other jurisdiction that there exists a duly issued warrant for the arrest of a person charged with a crime committed within his jurisdiction.
- C. Arrest by Court Appointed Duly Authorized and Sworn Probation Officer.
 - 1. A duly authorized and sworn probation officer may arrest any individual under pretrial or probation if he or she has a warrant or probable cause to believe the arrested person committed the crime. A probation officer making such an arrest shall, without unnecessary delay, take the arrested person before a judge.
 - 2. In order to make the arrest a duly authorized and sworn probation officer may use physical force as is justifiable. However, a duly authorized and sworn probation officer shall not carry fire arms but may carry nonlethal weapons such

as mace or a device that delivers an electronic nonlethal shock.

5-1-11. Arrestment.

- A. An arrestment shall be conducted in open Court upon the defendant's first appearance in Court unless defendant is granted a continuance to seek assistance of counsel, to determine which plea to enter, or for other good or sufficient reason. The Judge shall advise each defendant of his right to have the arrestment continued upon his request for good cause which may be made at any time prior to pleading guilty or not guilty. If no such request is made, the Judge may proceed with the arrestment in accordance with this rule.
- B. Except for good cause shown, or at the request of the defendant, the Tribal Court shall hold an arrestment hearing for any defendant in custody during the first 72 hours of custody. The defendant may appear in person or by counsel.
- C. Before defendant is called upon to plead guilty or not guilty, the following proceedings shall be conducted by the Judge: The complaint shall be read to the defendant or the substance of the charge contained in the complaint shall be stated to him.
 - 1. The defendant shall be given a copy of the complaint or summons and complaint, if one has not been previously served.
 - 2. The defendant shall be advised of the maximum penalty which the Judge may impose in event of conviction. The judge shall inform the defendant of his rights, which shall include, but not be limited to, the following:
 - a. The right to counsel and the right to a reasonable continuance to obtain counsel. If the defendant cannot afford counsel, one will be appointed for them at the expense of the Confederated Tribes. Pueblo.
 - b. The right to be informed of the charges against him.

- c. The right to have the Court compel the witnesses against him to appear and testify.
- d. The right to cross-examine and question the witnesses against him.
- e. The right to call witnesses in his own behalf and to have the Court issue subpoenas within its jurisdictional limits notifying the witnesses to appear.
- f. The right to a speedy and public trial. The right to a jury trial.
- g. At trial, the right to testify or not to testify in his own behalf, because he has the privilege against self-incrimination.
- h. If found guilty, the right to appeal.
- i. The right to file a writ of habeas corpus in the United States District Court if defendant feels his rights have been violated.
- j. The right to be released on bail or on his own recognizance pending trial.
- k. The reading of any or all of these rights may be waived by a defendant represented by legal counsel.

5-1-12. Pleas.

- A. A defendant, personally or by counsel, may plead not guilty, guilty or no contest.
- B. Plea of Not Guilty. If defendant pleads not guilty, the Judge shall:
 - 1. Ask the defendant if he wants a jury trial, or if he waives his right to a jury trial. (If the maximum amount of time a defendant may be imprisoned for any charge is six months or less, the Court will inform the defendant of the requirements for posting a bond to cover the cost of a jury trial according to this code.) If defendant requests a jury trial,

the case shall be placed on the jury trial calendar. If defendant waives his right to a jury trial, the Judge shall record the waiver in the case record. The Judge may continue the case to allow defendant time to decide.

2. Set the date and time for trial, or for further proceedings.
3. Advise the defendant of his right to bail if the defendant is still in custody upon arrest with or without warrant. If bail has not yet been set, the Judge shall set bail, and if bail has already been set, the amount shall be reviewed. Bail shall be set or defendant released on personal recognizance according to the Code.

C. Plea of Guilty or No Contest. The Court shall not accept the plea of guilty or no contest without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge, and explaining fully to the defendant his right to trial by jury, his right to engage counsel, and the maximum penalty possible for the offense charged.

1. If a defendant refuses to plead or if the Judge refuses to accept a plea of guilty or no contest, the Judge shall enter a plea of not guilty. The Judge shall not enter a judgment upon a plea of guilty unless he is satisfied that the defendant is pleading guilty because he, in fact, committed the offense of which he is charged.
2. A plea of guilty or no contest shall in no case be entered except by the defendant in person.
3. A plea of guilty may be withdrawn:
 - a. At any time before judgment at the Judge's discretion and a plea of not guilty substituted.
 - b. Before sentencing, upon a adequate or compelling reason given by the defendant.
4. A defendant may be permitted to plead guilty to lesser degree of the offense charged, or to a lesser offense included within the offense charged, and if so, the reasons

for the acceptance of such plea shall be set forth in the order of the Court, and any recommendations by an officer or the prosecutor, with the reasons therefore, shall be stated in writing and filed in the official files of the case.

5. Upon acceptance of a plea of guilty or no contest, the Judge may sentence immediately or at a later date.

5-1-13. Bail.

- A. Entitlement. Every defendant shall be entitled to bail. Bail shall be set by the Judge. Bail is allowable pending appearance before the Trial Court, or, if after conviction, during any state of execution or pending appeal. Bail shall be set at the close of arraignment, unless exceptional circumstances require it being set at an earlier proceeding.
- B. Amount. A defendant shall be admitted to bail in an amount which in the judgment of the Judge is necessary and sufficient to insure the defendant's presence at future Court proceedings at which defendant's presence is required.
- C. Form of Bail Bond and Place of Deposit. A defendant admitted to bail shall execute a bond for his appearance in Court on a designated day, and from day to day thereafter as the Judge may deem appropriate. The bail bond may be in the form of cash, some type of surety arrangement, or other kind of security as may be acceptable in the judgment of the Judge. A personal recognizance bond may be allowed by the Judge at his discretion in lieu of cash, surety or other kind of security bond. The bond shall be made and deposited in the office of the Clerk of the Court.
- D. Disposition of Bail. 1) Forfeiture. If there is a breach of condition, of a bond, the Judge shall declare a forfeiture of the bail. 2) Setting Aside. The Judge may direct that a forfeiture be set aside, upon such conditions as the Judge may impose, if it appears that justice does not require the enforcement of the forfeiture. 3) Enforcement. By entering into a bond each obligor, whether defendant or surety submits to the jurisdiction of the Court. His liability under the bond may be enforced, without the necessity of an independent action. The Judge shall order the issuance of a citation directed to the obligor to show cause why judgment should not be entered against

him forthwith and execution issued thereon. The defendant and the prosecutor shall be given notice of the hearing. At the conclusion of the hearing, a judgment and execution shall issue thereon as on other judgments. Judgment may be for Contempt of Court and bail posted may also be forfeited.

5-1-14. Motions During Arraignment. Any defense or objection which is capable of determination without the trial of the general issue may be raised during arraignment.

5-1-15. Joinder of Defendants of Offenses of Trial. During arraignment, the Judge may order two or more defendants to be tried together if the offenses and defendants could have been joined in a single complaint. The joinder, if ordered, must occur at least 15 days prior to trial, and notice shall be given to defendant forthwith.

5-1-16. Pretrial Motions.

A. Generally. Any defense or objection which is capable of determination without the trial of the general issue and which are not required to be raised during arraignment must be raised by pretrial motion on or before the pretrial conference. The failure to raise such motion may be grounds for denial if there is not good cause for the late filed motion or it prejudices the other party. Pretrial motions include but are not limited to the following:

1. Motions for use of interpreter;
2. Motion for continuance of the trial date;
3. Motion to dismiss complaint for lack of jurisdiction or for failure to charge an offense;
4. Motion to suppress evidence. A motion to suppress evidence may be made when it is learned through discovery or other pretrial procedures that an opposing party intends to introduce evidence that is inadmissible under these rules.
5. Motion for pretrial conference. At any time after the filing of the complaint, the Court, upon motion of any party or upon its own motion, may order one or more conferences to

consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference, the Judge shall prepare and file a memorandum of the matters agreed upon.

- B. Time and Manner of Making and Opposing Motions. Motions made under this rule shall be written and supported by reasons therefore, and shall be filed not later than 15 days before the trial date or not later than the pretrial conference, whichever is first. Such motions shall be served on the opposing party simultaneously with filing thereof. Response in opposition to such motions shall be made in writing and supported by reasons therefore, and shall be filed not later than ten days after the original motion, unless the Court orders a different schedule. Responses in opposition shall be served simultaneously with the filing thereof. The Judge, at his discretion, may direct that any motion be made orally.
- C. Determination of Motions. The Judge may enter judgment on pretrial motions solely on papers filed, or he may set a date and time for hearing of pretrial motions.

5-1-17. Discovery.

- A. Disclosure of evidence by prosecution, information subject to disclosure.
 - 1. Statement of Defendant. Upon request of a defendant the tribe shall permit the defendant to inspect and copy or photograph; any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the Tribe, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Tribe; the substance of any oral statement which the Tribe intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a Tribal agent; and recorded testimony of the defendant which relates to the offense charged.
 - 2. Defendant's Prior Record. Upon request of the defendant, the Tribe shall furnish to the defendant such copy of his

prior criminal record, if any, as is within the possession, custody or current control of the Tribe, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Tribe.

3. Documents and Tangible Objects. Upon request of the defendant the Tribe shall permit the defendant to inspect any copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof which are within the possession, custody or control of the Tribe, and which are material to the preparation of his defense are intended for use by the Tribe as evidence in chief at the trial, or were obtained from or belong to the defendant. Where the defendant is indigent or represented by the public defender the Court will provide, upon request copies of documents to the defense counsel.
 4. Reports and Examinations and Tests. Upon request of a defendant the Tribe shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the Tribe, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Tribe, and which are material to the preparation of the defense or are intended for use by the Tribe as evidence in chief at the trial. Where the defendant is indigent or represented by the public defender the Court will provide, upon request copies of documents to the defense counsel.
 5. Information not subject to disclosure. Except as provided in paragraphs (1), (2) and (4) of subsection (A), this rule does not authorize the discovery or inspection of reports, memoranda or other internal Tribal documents made by the attorney for the Tribe or other Tribal agents in connection with the investigation or prosecution of the case, or of statements made by Tribal witnesses or prospective Tribal witnesses.
- B. Disclosure of evidence by defense, information subject to disclosure.

1. Documents and Tangible Objects. If the defendant requests disclosures under subsection (A)(3) or (4) of this rule, upon compliance with such request by the Tribe, the defendant, on request of the Tribe, shall permit the Tribe to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.
2. Reports of Examinations and Tests. If the defendant requests disclosure under subdivision (A)(3) or (4) of this rule, upon compliance with such request by the Tribe, the defendant, on request of the Tribe, shall permit the Tribe to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.
3. Information Not Subject to Disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by Tribal or defense witnesses, or by prospective Tribal or defense witnesses, to the defendant, his agents or attorneys.

5-1-18. Subpoena

- A. Attendance of Witnesses, Form, Issuance. A subpoena shall be issued by the Judge or by the clerk under authority of the Judge. It shall state the name of the Court and the title, if any, of the proceedings, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein.

- B. Service. A subpoena may be served by any officer, or by any person, not a party, who is 18 years of age or over. Service of a subpoena shall be made by delivering a copy thereof to the person ordered to appear.
- C. Proof of Service. Proof of service of a subpoena shall be made by the to be served cannot be located, the person who attempted to serve the subpoena shall file a statement of attempt to serve which shall describe his efforts at service.
- D. Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the Court from person who served the subpoena in accordance with this Code. If the person which the subpoena is issued.

5-1-19. Trial by Court.

- A. Upon the waiver by the defendant of his right to a trial by a jury he shall have a trial by the Court in accordance with these rules. The prosecution has the burden of proving beyond a reasonable doubt that the defendant is guilty of an offense as charged. A person does not have a right to a jury trial for civil infractions.
- B. Opening Statements. Both parties shall have the right to make an opening statement to summarize for the Court the facts, evidence and arguments each will present and rely on during trial. The prosecution shall present its statement first and the defense shall have the option of making its opening statement at that time or after the prosecution has completed the presentation of its case. Either side may waive the opening statement.
- C. Presentation of the Prosecution's Case. Upon the completion of the opening statements, the prosecution shall present to the Court, all of the evidence and testimony of witnesses on the prosecution's side of the case.
- D. Presentation of the Defendant's Case. Upon the completion of the presentation of the prosecution's case and after making any appropriate motions, the defense shall present to the Court all the evidence in accordance and testimony of witnesses for the defendant's case.

- E. Reopening Case. After the presentation of both sides of the case either side may ask that the case be reopened to allow the presentation of evidence or testimony that was inadvertently omitted, unavailable or non-existent earlier in the trial. Whether such evidence or testimony will be received is in the discretion of the Court.
- F. Closing Arguments. After the presentation of both sides of the case, both parties shall have the right to make closing arguments in which they may interpret the facts and argue the law and generally summarize the case as they interpret it. Either side may waive their right to making closing arguments.

5-1-20. Trial by Jury.

- A. The defendant shall have the right to a trial by a jury of his peers composed of not less than six persons and one alternate unless such right has previously been waived. The prosecution has the burden of proving beyond a reasonable doubt that the defendant is guilty as charged.
- B. Selection of the Jury.
 - 1. Voir Dire. The prosecution and defense, in that order, shall have the opportunity to ask questions of the prospective jurors as they are individually called upon by the court to determine if there is any reason why a particular candidate should not be seated as a juror. Either party may question the propriety of any question asked by the other party of a prospective juror and it shall be within the discretion of the Court to rule on the propriety of the question.
 - 2. Challenges. When both sides have completed their voir dire questioning of the six prospective jurors and the one alternate, they shall confer privately with the Judge and state all challenges they have to make against any prospective juror.
 - a. Preemptory Challenges. Both parties shall have four preemptory challenges with which they may disqualify any prospective juror and need not state any reason

for doing so.

- b. Challenges for Cause. When it is established that any prospective juror is prejudiced, biased or otherwise unable to sit as a fair and impartial juror, he may be disqualified by a challenge for cause by either side. The allowance or disallowance of a challenge for cause shall be within the discretion of the Court. The number of challenges for cause by either party is unlimited.
3. Oath to Trial Jury. After the six members and one alternate of the jury have been selected and seated, the Court shall administer an oath by which the jury swears that it will act fairly and impartially in the trial it will hear.
- C. Opening Statements. Both parties shall have the right to make an opening statement to summarize for the Court and the jury the facts, evidence and arguments each will present or rely on during trial. The prosecution shall present its statement first and the defense shall have the option of making its opening statement at that time or after the prosecution has completed the presentation of its case. Either side may waive the opening statement.
 - D. Presentation of the Prosecution's Case. Upon the completion of the opening statements, the prosecution shall present to the Court and jury all of the evidence and testimony of witnesses on the prosecution's side of the case.
 - E. Presentation of the Defendant's Case. Upon the completion of the presentation of the prosecution's case and after making any appropriate motions, the defense shall present to the Court and jury, all of the evidence and testimony of witnesses for the defendant's case.
 - F. Reopening Case. After the presentation of both sides of the case, either side may ask that the case be reopened to allow the presentation of evidence not discovered, unavailable or non-existent earlier in the trial. Whether such evidence or testimony will be received is in the discretion of the Court.
 - G. Closing Arguments. After the presentation of both sides of the

case, both parties shall have the right to make closing arguments in which they may interpret the facts and argue the law and generally summarize the case as they interpret it. Either side may waive their right to make closing arguments.

- H. Jury Deliberations. Upon completion of the closing arguments and the reading of instructions to the jury by the Court, the jury shall retire to a place where privacy and freedom from outside interference and interruption is assured. The jury members shall first elect from among their number a foreman who shall act as spokesman for the jury. They shall then evaluate and weigh the evidence, resolve the conflicts and inconsistencies, apply the law to the facts as previously instructed by the Court and reach a verdict of guilty or not guilty by unanimous vote. The foreman shall notify the Judge when a verdict has been reached.
- I. Objections. Objections may be made by either party to test the validity of any procedural, substantive, or evidentiary matter before the Court during any hearing or trial. All objections shall be made at the time the objectionable matter arises and the specific grants therefore shall be stated. The Court shall either rule immediately on the objection or take the matter under advisement for a later ruling in its discretion.

5-1-21. Motions at Trial.

- A. Either party may make motions, all of which shall be oral unless otherwise directed by the Court throughout the course of the trial. Both parties shall have the opportunity to argue their respective positions on any motion made. The motions that can be made shall include but not be limited to the following:
 - B. Motion for a Directed Verdict.
 - 1. At the close of the prosecution's case, the defense may move that the Court direct a verdict of not guilty. Defendant's motion shall be granted only if the prosecution has failed to present a prima facie case.
 - 2. Either party may make a motion for a direct verdict at the close of the defendant's case. A directed verdict of not guilty can be made when the prosecution failed to present a prima

facie case and a directed verdict of guilty can be made if the Court finds as a matter of law that no adequate defense was presented.

- C. Motions for Exclusion of Witnesses. A motion to exclude all witnesses who have not yet testified may be made by either party or done by the Court on its own initiative, prior to the time any witness has testified to insure that the testimony of all witnesses is his own independent recollection of the facts and that he does not adopt the testimony of a prior witness. It shall be within the discretion of the Court to grant or deny a motion to exclude witnesses made by either party.
- D. Motion for Mistrial. A motion for a mistrial can be made at any time during the trial and can be granted in the Court's discretion. A party may make a motion for a mistrial when any action by any person other than the moving party, has the effect of prejudicing the outcome of the trial to the point that such prejudice could only be overcome by holding a new trial.
- E. Motion for Judicial Notice. Either party may, during the presentation of its case, move the Court to take judicial notice of matters which by their nature, are not properly the subject of testimony or which are universally regarded as established by common notoriety. Granting or denying the motion shall be within the discretion of the Court.
- F. Motion for a New Trial. The defendant may make a motion for a new trial after a verdict of guilty has been rendered against him. The motion must specifically allege the errors made by the Court during the trial which forms the basis for the motion. The motion shall be granted or denied as justice dictates.
- G. Motion to Exclude Evidence. A motion to exclude evidence may be made during the course of a trial when an opposing party introduces evidence that is inadmissible under these rules.
- H. Any motion for an alleged violation of defendant's speedy trial rights must be made no later than the pretrial conference or 30 days prior to the trial date whichever is sooner.

5-1-22. Evidence.

- A. All evidence which the Court deems proper and necessary for reaching a true and just verdict or which is in accordance with Tribal customs and traditions, provided it is otherwise admissible under the Court's rules of evidence, shall be admitted subject to rules governing the permissible scope of search and seizure. In reaching a decision on the admissibility of any evidence, the Court may avail itself of any materials, books or documents prior to ruling. Unless otherwise specified the Pueblo of Acoma Tribal Court relies upon Federal Rules of Evidence except where those rules are in direct conflict with Tribal Tradition. Further, a party may motion the Tribal Court to use New Mexico Rules of Evidence where appropriate and the Court will consider whether a New Mexico evidentiary rule is more appropriate where it conflicts with federal rules.
- B. In a case involving domestic or family violence as defined in Title 6, spousal privileges are inapplicable in criminal proceedings in which a spouse or other family or household member is a victim of an alleged crime involving domestic or family violence perpetrated by the other spouse, this includes the privilege of confidential communications between spouses and the testimonial privilege of spouses.
- C. Where the Pueblo of Acoma does not possess a specific evidentiary rule the Court shall first examine the Federal Rules of Evidence where it is not inconsistent with Pueblo traditions and customs and/or other parts of this Code. A party may argue that the New Mexico Rules of Evidence provide better authority as to a specific point of law and the Court shall consider it as long as it is not inconsistent with Pueblo traditions and customs and/or other parts of this Code.
- D. Witnesses. The testimony of witnesses shall be given orally unless the witness, for good reason presented to the Court, is or will be unable to appear personally in Court, in which case arrangements shall be made by the party calling the witness, for both parties to simultaneously question the witness under oath for purposes of obtaining a written statement for presentation to the Court at trial. Before either party relies or comments on a written statement so taken at trial, it shall be presented to the Court and he shall strike out any questions, answers or statements he deems

improper. Any witness testifying in Court or being questioned for purposes of a written statement shall be subject to direct examination by the party who called him as a witness, cross-examination by the opposing party, redirect examination by the party who called him and re-cross examination by the opposing party.

- E. The Defendant as a Witness. The defendant cannot be compelled to testify as a witness. If the defendant invokes this privilege and does not testify, the Court and jury shall not consider such action as an indication of evidence of guilt. If the defendant voluntarily testifies he shall be subject to direct, cross, redirect, and re-cross examination, the same as any other witness.
- F. Search and Seizure. Evidence obtained by unlawful search and seizure is inadmissible. Lawful searches and seizures may be made in accordance with the following subsections.
 - 1. Permissible Objects of Search and Seizure. The following are subject to search and seizure:
 - a. Evidence of or information concerning the commission of a criminal offense;
 - b. Contraband, the fruits of crime, or things otherwise criminally possessed;
 - c. Property that has been used, to commit or conceal the commission of an offense; and
 - d. A person for whose arrest there is probable cause or who is unlawfully held in concealment.
 - i. Issuance of Search Warrant.
 - 2. A search warrant may be issued only by a Judge
 - a. Application for a search warrant may be made only by a tribal attorney or by any tribal police officer.
 - i. The application shall consist of a proposed warrant in conformance with this

section, and shall be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that such things are in the places, or in the possession of individuals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set forth facts bearing on any unnamed informants reliability and shall disclose, as far as possible, the means by which the information was obtained.

- ii. Instead of the written affidavit, the Judge may take an oral statement under oath when circumstances exist making it impractical for a tribal attorney or police officer to obtain a warrant in person. The oral statement shall be recorded.

3. Contents of Search Warrant.

- a. A search warrant shall be dated and shall be addressed to and authorize its execution by an officer authorized by law to execute search warrants.
- b. The warrant shall state, or describe with particularity:
 - i. The identity of the Judge issuing the warrant and the date the warrant was issued;
 - ii. The name of the person to be searched, or the location and designation of the premises or places to be searched;
 - iii. The things constituting the object of the search and authorized to be seized; and
 - iv. The period of time, not to exceed five (5) days, after execution of the warrant except as provided in subparagraph (c) of this paragraph, within which the warrant is to be returned to the issuing authority.

G. Except as otherwise provided herein, the search warrant shall be executed between the hours of 7:00 AM and 10:00 PM and within five days from the date of issuance. The Judge issuing the warrant may, however, by endorsement upon the face of the warrant, authorize its execution at any time of the day or night and may further authorize its execution after five days, but not more than ten days from date of issuance.

H. Execution of Warrant.

1. A search warrant may be executed only within the period and at the times authorized by the warrant and only by a police officer. A police officer charged with its execution may be accompanied by such other persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.
2. The executing officer shall, before entering the premises, give appropriate notice of his identity, authority and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, as the case may be.
3. Before undertaking any search or seizure pursuant to the warrant, the executing officer shall read and give a copy of the warrant to the person to be searched, or to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant suitably affixed to the premises.
4. Scope of Search. The scope of search shall be only such as is authorized by the warrant and is reasonably necessary to discover the persons or things specified therein. Upon discovery of the persons or things so specified, the officer shall take possession or custody of them and search no further under authority of the warrant. If in the course of the search the officer discovers things, not specified in the warrant, which he has probable cause to believe to be subject to seizure under paragraph (1) which he did not have probable cause to expect to find, he shall also take possession of the things discovered.

5. List of Things Seized. Promptly upon completion of the search, the officer shall make a list of the things seized, and shall deliver a receipt embodying the list to the person from whose possession they are taken, or the person in apparent control of the premises or vehicle from which they are taken. If the vehicle or premises are unoccupied or there is no one present in apparent control, the executing officer shall leave the receipt suitably affixed to the vehicle or premises.
6. Return of the Warrant.
 - a. If a search warrant is not executed within the time specified by the warrant, the officer shall forthwith return the warrant to the issuing Judge.
 - b. An officer who has executed a search warrant shall, as soon as is reasonably possible and in no event later than the date specified in the warrant, return the warrant to the issuing Judge together with a signed list of things seized and setting forth the date and time of the search.
 - c. Subject to the provisions of this paragraph, the issuing Judge shall have the Court file the warrant and list returned to him, with the record of the proceedings on the application for the warrant made.
7. Handling and Disposition of Things Seized.
 - a. If an officer makes an arrest in connection with the seizure, he shall, as soon thereafter as is reasonably possible, make a written list of the things seized and furnish a copy of the list to the defendant.
 - b. If no claim to rightful possession has been established, the court shall order that the things be delivered to the officials having responsibility under the applicable laws for selling, destroying or otherwise disposing of contraband, forfeited or unclaimed goods in official custody.
 - c. If things seized in connection with an arrest are not needed for evidentiary purposes, and if a person having a rightful claim establishes his identity and right to possession beyond a reasonable doubt they may be returned to their rightful possessor. If the

things seized are perishable and it is not possible to return them to their rightful possessor, the seizing officer may dispose of the items as justice and the necessities of the case require.

- d. Motion for Return or Restoration of Things Seized.
 - a. Within 90 days after actual notice of any seizure, or at such later date as the court in its discretion may allow:
 - i. An individual from whose person, property or premises things have been seized may move the appropriate court to return things seized to the person or premises from which they were seized.
 - ii. Any other person a claim to rightful possession of the things seized may move the appropriate court to restore the things seized to the movant

5-1-23. Verdict.

- A. Upon the completion of the closing arguments, the Court or jury, as the case may be, shall render its verdict.
- B. Verdict by Court. The Court shall render a verdict of guilty if it believes the defendant to be guilty beyond a reasonable doubt, otherwise it shall render a verdict of not guilty. The Court shall have the option of rendering a verdict immediately after closing arguments or taking the case under advisement and ruling on it at a later date.
- C. Verdict by Jury. If a unanimous jury has found beyond a reasonable doubt that the defendant is guilty, a verdict of guilty shall be rendered. Otherwise, a verdict of not guilty or is the jury is split as to guilt or not guilty then a mistrial is declared and defendant may be retried or the prosecution may dismiss the charges.
- D. Verdict of Not Guilty. If a verdict of not guilty is rendered by either the Court or the jury, judgment shall be rendered immediately and the defendant shall be immediately released from custody.

- E. Verdict of Guilty. If a verdict of guilty is rendered by either the Court or jury, the Court shall so advise the defendant in open Court, set a date for sentencing, and enter a judgment of guilty in the Court's records.

5-1-24. Sentencing Procedure.

- A. On the date set for sentencing the defendant shall appear before the Court and sentence shall be pronounced. The purpose of sentencing is to achieve restorative justice for the Pueblo, community, victim(s) and/or defendant(s). This goal may be achieved through where appropriate: incarceration, probation, community service, and/or a deferral program such as Wellness Court.
- B. Pre-sentence Investigation. The Court may, in its discretion, order that a pre-sentence investigation report shall inquire into the characteristics, attitude, circumstances, needs, and potential of the defendant, his criminal and social history, circumstances of the offense and any other information pertinent to sentencing. The report may also at the Court's discretion, obtain any other information necessary to achieve restorative justice for the Pueblo, community, victim(s) and/or defendant(s) and the Court may ask probation, social services, behavioral health services and/or any other department or community members for relevant information.
- C. Availability to Defendant. A pre-sentence investigation, if ordered, shall be available to defendant and he shall have an opportunity to rebut the contents thereof and offer information in addition thereto prior to sentencing.

Chapter 2. PROCEDURAL RIGHTS OF CRIMINAL DEFENDANTS

- 5-2-1. Former Jeopardy or Acquittal as Bar to Same or Lessor Offenses. When the defendant is convicted or acquitted, or has once been placed in jeopardy upon a criminal complaint, the conviction, acquittal or jeopardy is a bar to another criminal complaint for the offense charged or for an attempt to commit the offense, or for any offense necessarily included therein, of which he might have been convicted under the criminal complaint.

Annotations: This section was previously located at Section 5-1.8 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-2-2. Former Conviction or Acquittal in Another Jurisdiction. When in the trial of an accused person it appears that upon a criminal prosecution under the laws of the United States or of another state or country, founded upon the act or omission in respect to which he is on trial he has been acquitted or convicted, [the acquittal or conviction] may be pleaded as a defense at a pre-trial hearing.

Annotations: This section was previously located at Section 5-1.9 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. The 1995 Restatement supplied the necessary information in brackets to add clarity.

5-2-3. Speedy Trial; Counsel; Witnesses and Confrontation.

- A. In a criminal action a defendant is entitled to:
1. Have a speedy public trial by an impartial jury of six members of the Pueblo de Acoma, or other jury pool established by the Tribal Code of the Pueblo de Acoma.
 2. Have counsel at his own expense, except where the Pueblo is required by this Code to provide counsel.
 3. Produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court, except that the testimony by deposition of a witness may be received in evidence for good cause shown.
- B. Upon conviction or [plea of guilty or no contest] a defendant may be assessed the reasonable costs of his prosecution including the cost of a jury trial and/or jail sentence. Pursuant to this Title a defendant may have to post a bond to cover costs. Upon a conviction of any of the charges the bond is forfeit. The bond is returned (minus any fees/fines owed to the Court and/or Pueblo) if there is an acquittal or dismissal of all charges.

Annotations: This section was previously located at Section 5-1.10 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. Pueblo of Acoma Laws 2003 supplied the necessary information in brackets to add clarity.

5-2-4. Presumption of Innocence and Benefit of Doubt; Degree of Guilt.

- A. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to be acquitted.
- B. When it appears that a defendant has committed a crime or public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he may be convicted of the lowest of such degrees only.

Annotations: This section was previously located at Section 5-1.11 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-2-5 Defendant as Witness; No Comment on Failure to Testify.

- A. A defendant in a criminal action or proceeding shall not be compelled to be a witness against himself, but may be a witness in his own behalf. If he offers himself as witness in his own behalf, he may be cross-examined to the same extent and subject to the same rules as any other witness.
- B. The defendant's neglect or refusal to be a witness in his own behalf shall not in any manner prejudice him, or be used against him in the trial or proceedings.

Annotations: This section was previously located at Section 5-1.13 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-2-6. Double Punishment. An act or omission which is made punishable in

different ways by different sections of the laws may be punished under both. An acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other, to the extent the Constitution of the United States or the laws of this Pueblo require.

Annotations: This section was previously located at Section 5-1.12 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-2-7. Right to a Jury Trial with Impartial Jury.

- A. In any criminal proceeding, a defendant has a right to an impartial jury drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians.
- B. The defendant shall have the right to a trial by a jury of his peers composed of not less than six persons and one alternate unless such right has previously been waived or a defendant refuses to post any required bond. The prosecution has the burden of proving beyond a reasonable doubt that the defendant is guilty as charged. The jury's verdict must be unanimous.
- C. Eligibility, List, Record of Service.
 - 1. Any resident within the boundaries of the Pueblo of Acoma of the age of 18 or over is eligible to be a juror regardless of race or tribal citizenship.
 - 2. In addition, an individual who works for the Pueblo of Acoma, or any other business located within the Pueblo who is 18 years or older is also eligible to be a juror regardless of race or tribal citizenship.
 - 3. A list of eligible jurors shall be kept by the Clerk of the Court and a record of each juror's service as a juror shall be noted thereon. The list shall be compiled from the names kept by the Tribal Enrollment Office, the county voting rolls for individuals who reside within the Pueblo and the names of individuals employed within Acoma. The governmental departments for Acoma and Pueblo businesses shall

cooperate with the Court in compiling this list.

4. Selection of Jury Panel. In January of each year, the Judge shall select at least 80 names from the list of eligible jurors and each shall be notified of his or her selection. This selected list shall comprise the trial jury list for the ensuing year from which jury panels shall be selected from time to time. A jury panel shall consist of not less than 18 names.
5. Time and Manner of Notification. Those persons who are selected to serve on a jury panel shall be notified at a reasonable time prior to the trial date but not less than 10 days prior to trial and the notice shall state the date, time, place and title of the proceeding for which they shall serve.

D. Exemption From Jury Service.

1. Any individual selected for jury service may motion the Court to be excused for good cause.
2. Upon review of a motion or for other good cause shown, the Judge may exempt any person from jury service.
3. The Judge shall order the exemption be either permanent or for a specified period of time. If the exemption is temporary, the name of the prospective juror shall be returned to the annually selected jury list for possible selection for another panel at the expiration of the exemption. In the Court's discretion, the name of a person with a temporary exemption may be removed for that year from the selected list of jurors.
4. If the exemption is permanent, the name of the person shall be removed from the list of eligible jurors.
5. Any individual selected for jury service and not exempted, who does not report to Court when notified of service may be held in contempt.

E. Bond for Jury Trial for Minor/Petty Offenses

1. In order to preserve scarce Tribal resources, for any offense

where the maximum penalty for imprisonment is six months or less the defendant will, prior to trial and/or at the time of a request for a jury, post a bond to be set by the Court to cover the cost of the jury.

2. If the defendant is found not guilty or the jury trial does not take place the bond will be refunded to the defendant (minus fines/fees the defendant owes the Pueblo that have been properly assessed from any other matters). If the defendant is found guilty by the jury of any single offense for which he or she is charged the entire bond will be forfeit.
3. A defendant may for good cause timely file a motion to waive this bond requirement that will be considered by the Court. A defendant's indigent is a factor but not dispositive in the court's consideration of the motion.

5-2-8. Every defendant is entitled to those rights enumerated in the Indian Civil Rights Act, 25 U.S.C. §1302.

5-2-9. Every defendant has the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution.

5-2-10. Right to Counsel for Indigent Defendant.

A. The Pueblo of Acoma shall provide any indigent defendant who is charged with any offense where the maximum time of imprisonment is more than six months, at trial, on appeal and for each critical stage in the proceeding, the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States, including tribes, provided that jurisdiction applies appropriate licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.

B. Where the public defender is not appointed by the court, any defendant who that is charged with an offense for which the maximum imprisonment that may be imposed is no more than six months may petition the Court for access to the Pueblo's public defender.

5-2-11. In any criminal proceeding, the presiding judge shall:

- A. have sufficient legal training to preside over criminal proceedings; and,
- B. be licensed to practice law by any jurisdiction in the United States, including the tribes.

5-2-12. In any criminal proceeding, the court shall maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding. Further, in any criminal proceeding the court shall provide a defendant with access to all criminal procedures, evidentiary procedures, criminal statutes and ordinances and any other applicable rules or law of the court from court clerk and/or on line.

5-2-13. Every defendant has the privilege of the writ of habeas corpus in a court of the United States to test the legality of their detention by order of the Pueblo of Acoma.

- A. Every defendant who has been detained in jail by the Pueblo of Acoma shall be notified of this right at arraignment and any additional rights and privileges they are entitled to by the court and in writing under 25 U.S.C. §1304(e).
- B. A defendant has the right to file a writ of habeas corpus in the United States District Court if the defendant maintains his rights have been violated. The written form will include the following:

***NOTICE OF RIGHT OF HABEAS CORPUS PETITION
IN FEDERAL COURT***

If you are detained by the Pueblo of Acoma, pursuant to 25 U.S.C. §1303, you have the privilege of the writ of habeas corpus in a court of the United States to test the legality of your detention.

In accordance with 25 U.S.C. §1304(e)(1), if you file a petition for a writ of habeas corpus in a court of the United States under 25 U.S.C. §1303, you may petition that court to stay further detention by the Pueblo of Acoma.

Pursuant to 25 U.S.C. §1304(e)(2), the court of the United States shall grant a stay of detention if that court finds there is a substantial likelihood that the habeas

corpus petition will be granted, and after giving each alleged victim in the matter an opportunity to be heard, the court finds by clear and convincing evidence that under conditions imposed by that court, you are not likely to flee or pose a danger to any person or the community if released.

- C. When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.
- D. The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.
- E. Petition. A person prosecuting a writ of habeas corpus shall state in substance the following, which must be declared to be true to the best of the declarant's belief subject to the penalty of perjury: (1) That the party in whose behalf the writ is petitioned is illegally imprisoned or restrained of liberty; (2) How the person's liberty has been restrained; (3) That the petition is not barred by this Code; (4) Why the restraint is illegal; (5) Where or by whom the petitioner is restrained; and (6) Name the Chief of Police, or any other person who the Petitioner claims has restrained their liberty, as Respondent.
- F. Granting of the Writ. The judge to whom a petition for writ of habeas corpus is presented shall without delay, unless the petition on its face is barred under this Code or is otherwise frivolous, issue an order directing the Respondent to show cause why the writ should not be allowed. The Tribal Prosecutor shall represent the Chief of Police in the proceedings. Such order shall be served on both the Respondent and Tribal Prosecutor. Upon issuance of a show cause order, the following shall apply:
 - 1. The judge shall order the Respondent to appear in writing in opposition to the issuance of the writ as soon as is

practicable and not more than 14 days from the date that the show cause order issues.

2. The judge shall rule on the show cause order within 7 days after either the Respondent files a written appearance in opposition or the appearance period expires, whichever comes first. Upon making a ruling, the judge shall do one of the following, as appropriate:

a. If the motion and the files and records of the case conclusively show that the Petitioner is entitled to no relief, issue a judgment denying the petition without prejudice and explain the reason for the denial.

b. Issue a writ of habeas corpus requiring that a return be made and proceed in a summary way to hear such evidence and argument as may be produced in support of or against the petition and dispose of the matter as law and justice may require. If a writ is issued, it shall, at a specified time and place, require the Respondent to file a return that states the time and cause of the Petitioner's restraint. The writ shall not command the Respondent to produce the Petitioner before the court issuing the writ unless the court, in its discretion, so orders. If after hearing the evidence and argument there is found to be no legal cause for the restraint of liberty, the court shall discharge the Petitioner from the restraint under which the Petitioner is held.

G. Contents of Return. The person on whom a writ has been served shall state in the return whether the person has the Petitioner in custody or otherwise under restraint, and if not, whether they had the Petitioner in custody or under restraint at any time, and at what time, prior to or subsequent to the date of the writ. If the person has the Petitioner in custody or otherwise under restraint, the return shall state the authority and cause of such restraint. If the Petitioner is restrained by written authority, a copy of that authority shall be included with the return. If the person on whom the writ was served had the Petitioner in custody or under restraint at any time before or after the date of the writ, but has transferred custody or restraint to another, the return shall state to whom, at what time, for what

cause, and by what authority the transfer occurred. The return shall be signed by the person making the return, and such return shall be subject to the penalty of perjury.

- H. **Conclusiveness of Judgment.** Any party to a proceeding by habeas corpus may appeal any final order of the court. No question once finally determined upon a proceeding by habeas corpus may be reexamined through another habeas corpus proceeding unless the court finds that: (1) Newly discovered evidence, viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the Petitioner guilty of the offense; or (2) A new rule of tribal constitutional law, tribal law interpreting the Code or binding federal law addressing rights enumerated in the Indian Civil Rights Act that are reflective of rights in the United States Constitution, made retroactive to cases on collateral review by the Tribes' Appellate Court or the United States Supreme Court, that was previously unavailable.

Chapter 3. RULES APPLICABLE TO DETERMINING GUILT OR INNOCENCE

- 5-3-1. **Requirements for Criminal Liability.** The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which the person is physically capable of performing.

Annotations: This section was previously located at Section 5-1.16 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-3-2. **Construction of Statutes with Respect to Culpability.** If a statute defining an offense prescribes a culpable mental state that is sufficient for commission of the offense without distinguishing among the elements of such offense, the prescribed mental state shall apply to each such element unless a contrary legislative purpose plainly appears.

Annotations: This section was previously located at Section 5-1.17 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-3.

Causal Relationship Between Conduct and Result; Relationship to Mental Culpability.

- A. Conduct is the cause of a result when both of the following exist:
 - 1. But for the conduct the result in question would not have occurred.
 - 2. The relationship between the conduct and result satisfies any additional causal requirements imposed by the statute defining the offense.

- B. If intentionally causing a particular result is an element of an offense, and the actual result is not within the intention or contemplation of the person, that element is established if:
 - 1. The actual result differs from that intended or contemplated only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or extensive than that caused; or
 - 2. The actual result involves similar injury or harm as that intended or contemplated and occurs in a manner which the person knows or should know is rendered substantially more probable by such person's conduct.

- C. If recklessly or negligently causing a particular result is an element of an offense, and the actual result is not within the risk of element of an offense, and the actual result is not within the risk of which the person is aware or in the case of criminal negligence, of which the person should be aware, that element is established if:
 - 1. The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or extensive than that caused; or
 - 2. The actual result involves similar injury or harm as the probable result and occurs in a manner which the person knows or should know is rendered substantially more

probable by such person's conduct.

Annotations: This section was previously located at Section 5-1.18 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-4. Effect or Ignorance of Mistake upon Criminal Liability.

- A. Ignorance or a mistaken belief as to a matter of fact does not relieve a person of criminal liability unless:
 - 1. It negates the culpable mental state required for commission of the offense; or
 - 2. It supports a defense of justification as defined in Section 5-3-11 through Section 5-3-21 of this Chapter.
- B. Ignorance or mistake as to a matter of law does not relieve a person of criminal responsibility.

Annotations: This section was previously located at Section 5-1.19 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-5. Criminal Liability Based upon Conduct. A person may be guilty of an offense committed by such person's own conduct or by the conduct of another for which such person is criminally accountable as provided in this chapter, or both. In any prosecution, testimony of an accomplice need not be corroborated.

Annotations: This section was previously located at Section 5-1.21 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-6. Criminal Liability Based upon Conduct of Another.

- A. A person is criminally accountable for the conduct of another if:
 - 1. The person is made accountable for such conduct by the

statute defining the offense; or

2. Acting with the culpable mental state sufficient for the commission of the offense such person causes another person, whether or not such other person is capable of forming the culpable mental state, to engage in such conduct; or
3. The person is an accomplice of such other person in the commission of the offense.

B. If causing a particular result is an element of an offense, a person who acts with the kind of culpability with respect to the result that is sufficient for the commission of the offense is guilty of that offense if:

1. The person solicits or commands another person to engage in the conduct causing such result; or
2. The person aids, counsels, agrees to aid or attempts to aid another person in planning or engaging in the conduct [causing] such result.

Annotations: This section was previously located at Section 5-1.5 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. The Pueblo of Acoma Laws 2003 supplied the bracketed information to add clarity.

5-3-7. Nondefenses to Criminal Liability Based upon Conduct of Another. In any prosecution for an offense in which the criminal liability of the accused is based upon the conduct of another under [Section 5-3-6], it is no defense that:

- A. The other person has not been prosecuted for or convicted of such offense or has been acquitted of such offense, or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction for such offense; or
- B. The accused belongs to a class of persons who by definition of the offense are legally incapable of committing the offense in an individual capacity.

Annotations: This section was previously located at Section 5-1.23 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-3-8. Conviction for Attempt Although Crime Committed. A person may be convicted of an attempt to commit a crime, although it appears upon the trial that the crime intended or attempted was perpetrated by the person in pursuance of such an attempt, unless the court, in its discretion, discharges the jury and directs the person to be tried for the crime.

Annotations: This section was previously located at Section 5-1.7 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-3-9. Criminal Liability of Enterprises; Definitions.

- A. Notwithstanding any other provisions of law, an enterprise commits an offense if:
1. The conduct constituting the offense consists of a failure to discharge a specific duty imposed by law; or
 2. The conduct undertaken in behalf of the enterprise and constituting the offense is engaged in, authorized, solicited, commanded or recklessly tolerated by the directors of the enterprise in any manner or by a high managerial agent acting within the scope of employment; or
 3. The conduct constituting the offense is engaged in by an agent of the enterprise while acting within the scope of employment and in behalf of the enterprise; and
 - a. The offense is a misdemeanor or petty offense; or
 - b. The offense is defined by a statute which imposes criminal liability on an enterprise.
- B. As used in this section:

1. "Agent" means any officer, director, employee of an enterprise or any other person who is authorized to act in behalf of the enterprise.
2. "High managerial agent" means an officer of an enterprise or any other agent in a position of comparable authority with respect to the formulation of enterprise policy.

Annotations: This section was previously located at Section 5-1.24 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-10. Criminal Liability of an Individual for Conduct of an Enterprise. A person is criminally liable for conduct constituting an offense which such person performs or causes to be performed in the name of or in behalf of an enterprise to the same extent as if such conduct were performed in such person's own name or behalf.

Annotations: This section was previously located at Section 5-1.25 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-11. Unavailability of Justification Defense; Justification as Defense.

- A. Even though a person is justified under this chapter in threatening or using physical force or deadly physical force against another, if in doing so such person recklessly injures or kills an innocent third person, the justification afforded by this chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.
- B. Except as provided in subsection A, justification, as defined in this section is a defense to any prosecution for a criminal offense pursuant to [the laws of the Pueblo].

Annotations: This section was previously located at Section 5-1.26 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. The 1995 Restatement supplied the necessary information in brackets at

subsection B to add clarity. 1985 Law and Order Code provided Athis title@ in lieu of the phrase in brackets. Criminal offenses are contained in Title 6 of the Pueblo of Acoma Laws.

5-3-12. Justification; Execution of Public Duty.

- A. Unless inconsistent with the other sections of this chapter defining justifiable use of physical force or deadly physical force or with some other superseding provision of law, conduct which would otherwise constitute an offense is justifiable when it is required or authorized by law.
- B. The justification afforded by subsection A also applies if:
 - 1. A reasonable person would believe such conduct is required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; or
 - 2. A reasonable person would believe such conduct is required or authorized to assist a peace officer in the performance of such officer's duty, notwithstanding that the officer exceeded the officer's legal authority.

Annotations: This section was previously located at Section 5-1.27 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-13. Justification; Use of Physical Force; Deadly Force.

- A. The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal when a parent, guardian, teacher or other person entrusted with the care and supervision of a minor or incompetent person may use reasonable and appropriate physical force upon the minor or incompetent person when and to the extent reasonably necessary and appropriate to maintain discipline.

Annotations: This subsection was previously located at Section 5-1.28 of the 1985 Law and Order Code.

Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- B. A person is justified in threatening or using deadly physical force against another:
 - 1. If such person would be justified in threatening or using physical force against the other under Section 5-3-14; and
 - 2. When and to the degree a reasonable person would believe that deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force.

Annotations: This subsection was previously located at Section 5-1.30 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-14. Justification; Self Defense.

- A. Except as provided in subsection B of this section, a person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force.
- B. The threat or use of physical force against another is not justified:
 - 1. In response to verbal provocation alone; or
 - 2. To resist an arrest that the person knows or should know is being made by a peace officer or by a person acting in a peace officer's presence and at his direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law; or
 - 3. If the person provoked the other's use or attempted use of unlawful physical force, unless:
 - a. The person withdraws from the encounter or clearly

communicates to the other his intent to do so reasonably believing he cannot safely withdraw from the encounter; and

- b. The other nevertheless continues or attempts to use unlawful physical force against the person.

Annotations: This section was previously located at Section 5-1.29 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-15. Justification; Defense of a Third Person. A person is justified in threatening or using physical force or deadly physical force against another to protect a third person if:

- A. Under the circumstances as a reasonable person would believe them to be, such person would be justified under Sections 5-3-14 or 5-3-13(B) in threatening or using physical force or deadly physical force to protect himself against the unlawful physical force or deadly physical force a reasonable person would believe is threatening the third person he seeks to protect; and
- B. A reasonable person would believe that such person's intervention is immediately necessary to protect the third person.

Annotations: This section was previously located at Section 5-1.31 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-16. Justification; Use of Physical Force in Defense of Premises.

- A. A person or his agent in lawful possession or control of premises is justified in threatening to use deadly physical force or in threatening or using physical force against another when and to the extent that a reasonable person would believe it immediately necessary to prevent or terminate the commission or attempted commission of a criminal trespass by the other person in or upon the premises.
- B. A person may use deadly physical force under subsection A only in the defense of himself or third person as described in Sections 5-3-

13(B) and 5-3-115.

- C. In this section, "premises" means any real property and any structure, movable or immovable, permanent or temporary, adapted for both human residence and lodging whether occupied or not.

Annotations: This section was previously located at Section 5-1.32 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-3-17. Justification; Use of Physical Force in Defense of Property. A person is justified in using physical force against another when and to the extent that a reasonable person would believe it necessary to prevent what a reasonable person would believe is an attempt or commission by the other person of theft or criminal damage involving tangible movable property under his possession or control, but such person may use deadly physical force under these circumstances as provided in Sections 5-3-15 and 5-3-19.

Annotations: This section was previously located at Section 5-1.33 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-3-18. Justification; Use of Physical Force in Law Enforcement; Deadly Physical Force.

- A. A person is justified in threatening or using physical force against another if in making or assisting in making an arrest or detention or in preventing or assisting in preventing the escape after arrest or detention of that other person, such person uses or threatens to use physical force and all of the following exist:
1. A reasonable person would believe that such force is immediately necessary to effect the arrest or detention or prevent the escape.
 2. Such person makes known the purpose of the arrest or detention or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested or

detained.

3. A reasonable person would believe the arrest or detention to be lawful.

Annotations: This subsection was previously located at Section 5-1.34 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- B. The use or threatened use of deadly force by a person against another is justified pursuant to Paragraph A only if a reasonable person effecting the arrest or detention, or preventing the escape would believe the suspect or escapee is:

1. Actually resisting the discharge of a legal duty with deadly physical force or with the apparent capacity to use deadly physical force; or
2. A felon who has escaped from lawful confinement; or
3. A felon who is fleeing from justice or resisting arrest with physical force.

- C. Notwithstanding any other provisions of this chapter, a peace officer is justified in threatening to use deadly physical force when and to the extent a reasonable officer believes it necessary to protect himself against another's potential use of physical force or deadly physical force.

Annotations: Subsections B and C were previously located at Section 5-1.35 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-19. Justification; Use of Force in Crime Prevention.

- A. A person is justified in threatening or using both physical force and deadly physical force against another if and to the extent a reasonable person would believe the physical force or deadly physical force is immediately necessary to prevent the other=s commission of arson of an occupied structure under ' [6-7-3],

burglary in the second or first degree under ' [6-5-6] or '[6-5-7], kidnaping under ' [6-3-6], manslaughter under _____, sexual assault under ' [6-4-5], child molestation under ' [6-4-9], armed robbery under ' [6-9-3], or aggravated assault under ' [6-3-1], subsection A, paragraphs 1 and 2.

- B. There is no duty to retreat before threatening or using deadly physical force justified by subsection A of this section.

Annotations: This section was previously located at Section 5-1.36 of the 1985 Law and Order Code. The 1985 Law & Order Code left blanks for the section numbers at Subsection A. The Pueblo of Acoma Laws 2003 Restatement fills in the appropriate blanks. Pueblo of Acoma Laws 1985-2003 did not have a provision for manslaughter. This section was omitted from the Pueblo of Acoma Laws 1995. This section is re-included because no Tribal Council Resolution authorizing the omission was located.

5-3-20. Duress.

- A. Conduct which would otherwise constitute an offense is justified if a reasonable person would believe that he was compelled to engage in the proscribed conduct by the threat or use of immediate physical force against his person or the person of another which resulted or could result in serious physical injury which a reasonable person in the situation would not have resisted.
- B. The defense provided by subsection A, is unavailable if the person intentionally, knowingly or recklessly placed himself in a situation in which it was probable that he would be subjected to duress.

Annotations: This section was previously located at Section 5-1.37 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-3-21. No Civil Liability for Justified Conduct. No person shall be subject to civil liability for engaging in conduct otherwise justified pursuant to the provisions of this chapter.

Annotations: This section was previously located at Section 5-1.38 of the 1985 Law and Order Code.

Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-3-22. Immaturity. A person less than twelve years old at the time of the conduct charged is not criminally responsible in the absence of clear proof that at the time of committing the conduct charged the person knew it was wrong.

Annotations: This section was previously located at Section 5-1.39 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-3-23. Mental Disease or Defect: Burden of Proof.

- A. A person is not responsible for criminal conduct if at the time of such conduct the person was suffering from a mental disease or defect so as not to know the nature and quality of the act or, if such person did know, that such person did not know that what he was doing was wrong.
- B. The defendant has the burden of proof in showing the defense of mental disease or defect under this section.

Annotations: This section was previously located at Section 5-1.40 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-3-24. Effect of Intoxication; Consideration by Jury. No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition, but when the actual existence of any particular culpable mental state is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time in determining the culpable mental state with which he committed the act.

Annotations: This section was previously located at Section 5-1.41 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

Chapter 4. SENTENCING RULES

5-4-1. Classification of Offenses. Crimes if classified, are classified for the purpose of sentence, into the following categories:

- A. Misdemeanors are any offense that is not defined as a felony and is subject to a term of imprisonment of less than one year and/or a fine of less than \$5,000 or both.
 - 1. High Misdemeanor is any offense for which the incarceration penalty is no more than 364 days and/or a maximum fine of no more than \$2,500.
 - 2. Full Misdemeanor is any offense for which the incarceration penalty is no more than 6 months and/or a maximum fine of no more than \$500.
 - 3. Simple Misdemeanor is any offense for which the incarceration period is no more than 90 days and/or a maximum fine of no more than \$250.
 - 4. Petty Misdemeanor is any offense for which the incarceration penalty is no more than 30 days and/or a maximum fine of no more than \$50.

- B. Felonies are any offense expressly defined as a felony and is subject to a term of imprisonment of not more than 3 years and/or a fine of \$15,000. The total term of imprisonment for any criminal proceeding shall not exceed 9 years. A defendant shall not be subject to felony prosecution unless the defendant: (1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States (including tribal jurisdiction; or (2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by a United States federal or state court.
 - 1. 1st Degree Felony is any offense for which the maximum period of incarceration is 3 years and/or a maximum fine of \$15,000.
 - 2. 2nd Degree Felony is any offense for which the maximum

period of incarceration is 2 years and 6 months and/or the maximum fine is \$10,000.

3. 3rd Degree Felony is any offense for which the maximum period of incarceration is 2 years and/or a maximum fine is \$5,000
4. 4th Degree Felony is any offense for which the maximum period of incarceration is 1 year and/or a maximum fine of \$1,000.

5-4-2. Designation of Offenses.

- A. The particular classification of crime is expressly designated in the section or chapter defining it. Any person convicted of an offense in this Code without either specification of the classification or of the penalty is subject to imprisonment of not more than one hundred eighty (180) days or a fine of not more than five hundred dollars (\$500) or both.
- B. Any offense defined without classification is punishable according to the penalty prescribed for such offense.

Annotations: This section was previously located at Section 5-1.43 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. The 1995 Restatement revised subsections A and B to add clarity.

5-4-3. Authorized Disposition of Offenders.

- A. Every person convicted of any offense defined in this title shall be sentenced in accordance within the provisions of this title unless otherwise provided by law.
- B. If a person is convicted of an offense, the court may suspend the imposition or execution of sentence and grant such person a period of probation except as otherwise provided by law. The sentence is tentative to the extent that it may be altered or revoked in accordance with the terms of probation, but for all other purposes it is a final judgment of conviction.

- C. If the court imposes probation it may also impose a fine as authorized by this title and shall require the convicted person to make restitution to the victim of the crime in such amount and manner as the court may order, after consideration of the economic loss to the victim and economic circumstances of the convicted person.
- D. If a person is convicted of an offense and not granted a period of probation, or when probation is revoked, the following sentences may be imposed:
1. A term of imprisonment authorized by these laws;
 2. A fine authorized by these laws;
 3. Both imprisonment and a fine; or
 4. A new term of probation.
- The sentence is tentative to the extent it may be modified or revoked, but for all other purposes it is a final judgment of conviction.
- E. If an enterprise is convicted of any offense, a fine may be imposed as authorized by this title.
- F. If a person or an enterprise is convicted of any felony, the court may in addition to any other sentence authorized by law, order the forfeiture, suspension or revocation of any charter, license, permit or prior approval granted to such person or an enterprise by any department or agency of this Pueblo or of any political subdivision.
- G. A court authorized to pass sentence upon a person convicted of any offense defined within or without this title shall have a duty to determine and impose the punishment prescribed for such offense.
- H. A defendant who is found guilty or who enters a plea of guilt or no contest may receive a suspended or deferred sentence or a conditional discharge. If the defendant receives a deferred sentence or conditional discharge and successfully completes all sentencing conditions he or she may motion to have the charges dismissed.

- I. Any fine imposed as a sentence of part of a sentence may be at the judge's discretion suspended. Further, at the judge's discretion a fine may be paid in installments or through the community service as supervised by the Court and/or probation. Unless specifically ordered by the Court, the presumption is that any fine imposed must be paid at time of sentencing and not through installments and/or community service.
- J. In addition to any fines or community service imposed, at its discretion the judge may impose costs against the defendant as determined by the Court. These costs include but are not limited to: probation, the cost of a trial, jury costs (when the maximum time for incarceration is more than 6 months).

Annotations: This section was previously located at Section 5-1-44 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. The 1995 Restatement revised subsection D to add clarity.

5-4-4. Dangerous and Repetitive Offenders.

- A. A person who is at least eighteen (18) years of age or who has been tried as an adult and who stands convicted of a crime which in other jurisdictions (i.e., New Mexico) would be classified as a first, second or third degree felony, whether a completed or preparatory offense, and who has previously been convicted of any three felonies within ten years next preceding the date of the present offense, shall be sentenced to imprisonment for not less than the sentence and not more than twice the sentence authorized for the offense for which the person currently stands convicted, and shall not be eligible for suspension or commutation of sentence, probation, pardon or parole or release on any other basis until not less than one-half of the sentence pursuant to this subsection has been served. The court shall impose as a presumptive term the median of the allowable range. The presumptive term may be mitigated or aggravated by one-half pursuant to evidence received at sentencing [, except where limited by Section 5-4-8].
- B. A person who has been convicted in any court outside the

jurisdiction of this Pueblo of an offense which if committed within this Pueblo would be punishable as a felony or misdemeanor is subject to the provisions of this section. A person who has been convicted as an adult of an offense punishable as a felony or a misdemeanor under the provisions of any prior code in this Pueblo shall be subject to the provisions of this section.

Annotations: Former Section 5-1.45 included a subsection C which authorized Tribal Court to expel the convicted person from Pueblo of Acoma Lands for a period of not less than one year, but no more than three years. Tribal Council Resolution No. TC-OCT-11-90-3 codified at Section 1-12-1 Title 1, Chapter 12 Exclusion, Pueblo of Acoma Laws 2003 provides that Tribal Council has exclusive power to exclude any person from Pueblo of Acoma Lands. The 1995 Restatement supplied the information in brackets at subsection A to be consistent with Section 5-4-8 Pueblo of Acoma Laws 2003.

5-4-5. Diagnostic/Evaluative Commitment.

- A. If after presentence investigation, the court desires more detailed information as a basis for determining the sentence to be imposed, it may commit the defendant to the custody of the Acoma Police Department. The availability of staff and facilities shall be considered by the Court in conducting this presentence investigation. The notice to the court of acceptance of the commitment shall specify the time and place the defendant is to be received. The commitment shall not exceed one hundred and twenty (120) days.
- B. If after presentence investigation the court desires more detailed information about the defendant's mental condition, it may commit or refer the defendant to the custody of any diagnostic facility for the performance of a psychiatric evaluation. The commitment or referral shall be for a period not to exceed one hundred and twenty (120) days. Within that period the facility shall return the prisoner to court and transmit to the court a diagnostic report, including whatever recommendations the facility may wish to make. After receiving the report and recommendations, if the court does not order a further diagnostic commitment under subsection A of this section, it shall sentence the defendant as authorized, or invoke the provisions of [Section 5-4-6].

- C. In an appropriate case the court in its discretion may order diagnostic commitments under both subsections A and B of this section.
- D. If after receiving a diagnostic report under subsection A or B of this section the court sentences the defendant to imprisonment, the period of commitment under either or both shall be credited to the sentence imposed.

Annotations: This section was previously located at Section 5-1.46 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-4-6. Civil Commitment after Imposition of Sentence.

- A. If, after imposition of sentence authorized by Section 5-4-3 and on the basis of the report and recommendations submitted to the court under Section 5-4-5(B), the court believes that the defendant discloses symptoms of mental disorder, the court may proceed to commit the convicted defendant to a mental care facility as authorized by law.
- B. After termination of the commitment in subsection A of this section, the defendant shall be returned to the court for release or to serve the unexpired term imposed as authorized by Section 5-4-3. The period of confinement pursuant to the civil commitment shall be credited to the sentence imposed.

Annotations: This section was previously located at Section 5-1.47 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-4-7. Sentence of Imprisonment. A sentence of imprisonment shall be a definite term of days, months or years and the person sentenced, unless otherwise provided by law, shall be committed to the custody of the Acoma Police Department or related agency.

Origins: 1971 Ordinance.

Annotations: This section was previously located at

Pueblo of Acoma Laws 2003 (2019 Replacement)

Section 5-1.48 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. Revised in 1995 Restatement to add clarity.

5-4-8. Sentencing.

- A. Sentences provided for a first conviction may be increased by the court up to twenty-five per cent or may be reduced by the court. Such reduction or increase shall be based on the aggravating and mitigating circumstances contained in subsections B and C of this section.
- B. For the purpose of determining the sentence pursuant to subsection A of this section, the court shall consider the following aggravating circumstances:
 - 1. Infliction or threatened infliction of serious physical injury.
 - 2. Use, threatened use or possession of deadly weapon or dangerous instrument during the commission of the crime.
 - 3. If the offense involves the taking of or damage to property, the value of the property so taken or damaged.
 - 4. Presence of an accomplice.
 - 5. Especially heinous, cruel or depraved manner in which the offense was committed.
 - 6. The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.
 - 7. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.
 - 8. At the time of the commission of the offense, the defendant was a public servant and the offense involved conduct directly related to his office or employment.

9. Any other factors which the court may deem appropriate to the ends of justice.
- C. For the purpose of determining the sentence pursuant to subsection A of this section, the court shall consider the following mitigating circumstances:
1. The age of the defendant.
 2. The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired although not such as to constitute a defense to prosecution.
 3. The defendant was under unusual or substantial duress, although not such as to constitute a defense to prosecution.
 4. The degree of the defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution.
 5. Any other factors which the court may deem appropriate to the ends of justice.
- D. In determining what sentence to impose, the court shall take into account the amount of aggravating circumstances and whether the amount of mitigating circumstances is sufficiently substantial to call for the lesser term.

Origins: 1971 Ordinance.

Annotations: This section was previously located at Section 5-1.49 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-4-9. Concurrent Terms of Imprisonment. If multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run concurrently unless the court expressly directs otherwise, in which case,

the court shall set forth on the record the reason for the sentence.

Annotations: This section was previously located at Section 5-1.50 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-4-10. Calculation of Terms of Imprisonment.

- A. A sentence of imprisonment commences when sentence is imposed if the defendant is in custody or surrenders into custody at that time. Otherwise it commences when the defendant becomes actually in custody.
- B. All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for that particular offense shall be credited against the term of imprisonment otherwise provided for by this Code.
- C. If a sentence of imprisonment is vacated and a new sentence is imposed on the defendant for the same offense, the new sentence is calculated as if it had commenced at the time the sentence is vacated. All time spent in actual custody for that particular offense under the vacated sentence shall be credited against the new sentence.
- D. If a person serving a sentence of imprisonment escapes from custody, the escape interrupts the sentence. The interruption continues until the person is apprehended and confined for the escape or is confined and subject to a detainer for the escape. Time spent in actual custody prior to return under this subsection shall be credited against the term authorized by law if custody rested on an arrest or surrender for the escape itself, or if the custody arose from an arrest on another charge which culminated in a dismissal or an acquittal, and the person was denied bail pending disposition of that charge because of a warrant lodged against such person arising from the escape.
- E. The sentencing court shall include the time of commencement of sentence under subsection A and the computation or time credited against sentence under subsection B, C or D, in the original or an amended commitment order, under procedures established by rule

of court.

Annotations: This section was previously located at Section 5-1.51 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. The 1995 Restatement revised subsection C to add clarity.

5-4-11. Fines for Felonies.

- A. A judgment that the defendant shall pay a fine, with or without the alternative of imprisonment, shall constitute a lien in like manner as a judgment for money rendered in a civil action.
- B. This section does not apply to an enterprise.

Origins: The 1971 Law and Order Code allowed payment of fines pursuant to Ordinance of 4/13/71. See Chapter 4, '1(A) and (B).

Annotations: This section was previously located at Section 5-1.52 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-4-12. Fine of Restitution for Offense Causing Death, Physical Injury or Economic Loss.

- A. Upon a defendant's conviction for an offense resulting in the death, physical injury or economic loss of the victim, the court may order additional sums to be imposed as restitution to be paid by the defendant.
- B. If the court does not have sufficient evidence to support a finding of the amount of restitution in subsection A of this section, it may conduct a hearing upon the issue according to procedures established by rule of court.
- C. If a defendant is sentenced to pay a fine, payment and enforcement of restitution shall take priority over payment to the Pueblo.

Origins: The 1971 Law and Order Code allowed restitution to injured party pursuant to Ordinance of

4/13/71. See Chapter 4, ' 1(C).

Annotations: This section was previously located at Section 5-1.53 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-4-13. Fines Against Enterprises. A sentence to pay a fine imposed on an enterprise for an offense for which no special enterprise fine is specified, shall be a sentence to pay an amount, fixed by the court, of not more than fifteen thousand dollars (\$15,000).

Annotations: This section was previously located at Section 5-1.54 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. The 1995 Restatement revised this section to add clarity.

5-4-14. Time and Method of Payment of Fines.

- A. If a defendant is sentenced to pay a fine alone or in addition to any other sentence, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence the fine shall be payable immediately.
- B. If a defendant sentenced to pay a fine is also sentenced to probation the court may make payment of the fine a condition of probation.

Annotations: This section was previously located at Section 5-1.55 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-4-15. Consequences of Nonpayment of Fines or Restitution.

- A. If a defendant sentenced to pay a fine or restitution defaults in the payment of such fine or restitution or of any installment, the clerk of the court imposing the fine or restitution shall, as provided by law, give notice to the defendant of the delinquency. If payment is not made within ten (10) days of the notice of delinquency, the clerk

shall notify the prosecutor and the sentencing court. The court on motion of the prosecutor or on its own motion may require the defendant to show cause why the defendant's default should not be treated as contempt, and may issue a summons or a warrant of arrest for his appearance.

Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or an intentional refusal on his part to make a good faith effort to obtain the funds required for the payment, the court shall find that the default constitutes contempt and may order the defendant incarcerated in jail until the fine or restitution, or a specified part of the fine or restitution, is paid.

- B. If a fine or restitution is imposed on an enterprise it is the duty of the person or persons authorized to make disbursement from the assets of the enterprise to pay it from those assets, and their failure to do so shall be held a contempt unless they make the showing required in subsection A.
- C. The term of imprisonment on contempt for nonpayment of a fine or restitution shall be specified in the order of commitment, and shall not exceed one (1) day for each ten dollars (\$10) of the fine or restitution, said sentence not to exceed six (6) months in any case. A person committed for nonpayment of a fine or restitution shall be given credit toward payment for each day of imprisonment at the rate specified in the order of commitment.
- D. If it appears that the default in the payment of a fine or restitution is not in contempt, the court may revoke or reduce the fine or restitution or modify the method of payment.
- E. Upon any default in the payment of a fine or restitution or any installment of such fine or restitution, execution may be levied and such other measures taken for the collection of an unpaid civil judgment entered against the defendant in an action on a debt. The levy of execution for the collection of a fine or restitution shall not discharge a defendant incarcerated for nonpayment of the fine or restitution until the amount of the fine or restitution has actually been collected.

Annotations: This section was previously located at Section 5-1.56 of the 1985 Law and Order Code.

Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-4-16. Community Service. The court in its discretion may order community service in lieu of or in addition to imprisonment or fines so long as in the aggregate said sentence does not exceed six months on any one misdemeanor count or twelve months on any one felony count.

Origins: The 1971 Law and Order Code allowed community service as part of a criminal sentence pursuant to Ordinance of 4/13/71. See Chapter 4, ' 1.

Annotations: This section was previously located at Section 5-1.57 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-4-17. Disposition of Fines.

- A. All fines and fees collected in any tribal court shall be paid to the special fines account of the Tribal Court.
- B. Fines and fees for non-traffic related civil infractions or criminal offenses shall be disposed for proper court functions. Fines and fees for traffic related offenses shall be disposed of as per the procedures outlined in the Traffic Code of the Pueblo de Acoma.

Origins: The 1971 Law and Order Code authorized disposal of fines pursuant to Ordinance of 4/13/71. See Chapter 4.

Annotations: The Traffic Code at Section 10-12-1-C(1) states that any person violating the Traffic Code shall pay a corrections fee of \$15 to the Tribal Court. In spite of the statement in Section 5-4-17, the chapter on penalties and procedures on arrest in the Traffic Code are limited to traffic offenses, and do not apply to other violations of the Pueblo of Acoma Laws. See Section 10-12-1 et.al, Pueblo of Acoma Laws 2003.

This section was previously located at Section 5-1.58 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-4-18. Probation.

- A. If a person who has been convicted of an offense is eligible for probation, the court may suspend the imposition or execution of sentence and if so, shall without delay place such person on supervised or unsupervised probation. If a person is not eligible for probation, imposition or execution of sentence shall not be suspended or delayed. If the court imposes probation, it may also impose a fine. If probation is granted the court shall impose a condition that the person waive extradition for any probation revocation procedures and it shall order restitution, where there is a victim who has suffered economic loss.
- B. The period of probation shall be determined according to Section 5-4-19.
- C. The court may modify or add to the conditions or, if the defendant commits an additional offense or violates a condition, revoke probation at any time prior to the expiration or termination of the period of probation.
- D. The court on its own initiative or upon application of the probationer may terminate the period of probation and discharge the defendant at a time earlier than that originally imposed if in the court's opinion the ends of justice will be served thereby and if the conduct of the defendant on probation warrants it.
- E. When granting probation the court may require that the defendant be imprisoned in a jail at whatever time or intervals, consecutive or non- consecutive, the court shall determine, within the period or probation, as long as the period actually spent in confinement does not exceed what is allowable under this Code given the offense.
- F. When restitution is made a condition of probation, the court shall fix the amount thereof and the manner of performance. If the record does not contain sufficient evidence to support a finding of the amount, the court may conduct a hearing upon the issue, according to procedures established by rule of court.
- G. When granting probation, the court shall set forth at the time of sentencing and on the record the factual and legal reasons in support of each sentence.

Annotations: This section was previously located at Section 5-1.59 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-4-19. Periods of Probation.

- A. Unless terminated sooner, probation may continue for a period three (3) times the maximum sentence on each count.
- B. When the court has required as a condition of probation, that the defendant make restitution for any economic loss related to his offense and that condition has not been satisfied, the court at any time prior to the termination or expiration of probation may extend the period.

Annotations: This section was previously located at Section 5-1.60 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-4-20. Calculation of Periods of Probation.

- A. A period of probation commences on the day it is imposed or as designated by the court, and an extended period of probation commences on the day the original period lapses.
- B. If a court determines that the defendant violated a condition of the defendant's probation but reinstates probation, the period between the date of violation and the date of restoration of probation is not computed as part of the period of probation. If it is determined that the defendant is not a violator, there is no interruption of the period.
- C. The running of the period of probation shall cease during the unauthorized absence of the defendant from the jurisdiction or from any required supervision and shall resume only upon the defendant's voluntary or involuntary return to probation supervision.
- D. If probation is imposed on one who at the time is serving a sentence of imprisonment imposed on a different conviction, service of the sentence of imprisonment shall not satisfy the

probation.

- E. Time spent in custody under Section 5-4-18(E) shall be credited to any sentence of imprisonment imposed upon revocation of probation.

Annotations: This section was previously located at Section 5-1.61 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

Chapter 5. OTHER PROCEEDINGS

- 5-5-1. Jurisdiction of the Court in Proceedings after Trial and Sentencing. Whenever any further proceedings are instituted before the trial court subsequent to the original trial and sentencing, excepting motions for new trial made within one (1) year after the rendition of the verdict or the finding of the court, the court in the same action shall have jurisdiction to hear such matter only after due proof has been made that notice of such proceedings has been given to the Pueblo at least ten (10) days prior to such hearing.

Annotations: This section was previously located at Section 5-1.15 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-5-2. Forfeiture.

- A. If a forfeiture is provided for by the criminal laws of the Pueblo, the procedure for forfeiture shall be as set forth in this section, unless a different procedure is otherwise provided by law.
- B. Subject to the requirements of subsection D, when a forfeiture is authorized by law, it may be ordered by a court upon:
 - 1. Motion by the Pueblo for forfeiture following the conviction of a person for an offense based on such person's unlawful possession, use or other act with respect to the thing that is forfeited; or
 - 2. An action in rem for forfeiture brought by the Pueblo upon

a complaint alleging that a person, known or unknown, unlawfully possessed, used or otherwise acted with respect to the thing that is forfeited, in an unlawful manner or with respect to the thing that is forfeited, used it in the commission of a crime.

- C. Upon a showing of good cause, the court may, in an action in rem under subsection B, paragraph 2, issue writs of attachment, injunction and other appropriate writs in aid of the action.
- D. Upon a motion for forfeiture specified in subsection B, Paragraph 1 or the institution of an action in rem specified in subsection B, paragraph 2, the court shall order the thing which may be subject to forfeiture to be held for a period of sixty days, during which period adequate notice in the manner and form prescribed by the court, whether by personal service, publication or otherwise, shall be given to all persons who might have an interest in the pending forfeiture.
- E. During the sixty (60) day period following the court's order under subsection D, any person claiming a lawful interest in the thing with respect to which forfeiture is pending may make a claim in the court for the recovery of the thing. The court shall order the thing restored or transferred to the claimant, if any, who proves, by a preponderance of the evidence, all of the following:
 - 1. The claimant is the lawful owner or is otherwise entitled by law to ownership of the thing, due to enforcement of a civil proceeding.
 - 2. The claimant's possession, use or other act is or was lawful.
 - 3. The unlawful possession, use or other act upon which forfeiture is sought was without the consent of the claimant.
- F. If no claimant makes the proof required by subsection E, the court shall declare the thing forfeited to the Pueblo or political subdivision responsible for its seizure. No forfeiture shall be ordered in an action in rem pursuant to subsection B, paragraph 2 for forfeiture unless the Pueblo or political subdivision satisfies the court that: the forfeiture is authorized in the instant case. If the thing declared forfeited is money, the court shall order it deposited

to the credit of the general fund of the Pueblo or political subdivision, for use in the Courts and law enforcement programs, otherwise the court shall order the thing:

1. Destroyed by a law enforcement agency of the jurisdiction in which the conviction or forfeiture was obtained; or
2. Except in the case of firearms which shall be sold in accordance with the laws of this Pueblo and of the United States, sold at public auction with expenses of keeping and selling such property and the amount of all valid liens established by intervention paid out of the proceeds of the sale with the balance paid into the general fund of the Pueblo or political subdivision responsible for its seizure; or
3. Returned to the owner or lienholder upon payment of expenses incurred by its lawful seizure if the property is worthless, encumbered with liens in excess of its value or otherwise a burdensome asset; or
4. Retained for official Pueblo or political subdivision law enforcement use with expenses for keeping and transferring such property to be paid by the Pueblo or appropriate political subdivision.

Annotations: This section was previously located at Section 5-1.4 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-5-3. Suspension of Civil Rights and Occupational Disabilities.

- A. A conviction for a felony, suspends the following civil rights of the person sentenced:
 1. The right to hold public office of trust or profit.
 2. The right to serve as a juror.
 3. During any period of imprisonment any other civil rights the suspension of which is reasonably necessary for the security of the institution in which the person sentenced is

confined or for the reasonable protection of the public.

- B. Persons sentenced to imprisonment shall not thereby be rendered incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property.
- C. A person sentenced to imprisonment is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if such person was not convicted and sentenced.
- D. The conviction of a person for any offense shall not work forfeiture of any property, except if a forfeiture is expressly imposed by law.
- E. A person shall not be disqualified from employment by this Pueblo or any of its agencies or political subdivisions, nor shall a person whose civil rights have been restored be disqualified to engage in any occupation for which a license, permit or certificate is required to be issued by this Pueblo solely because of a prior conviction for a felony or misdemeanor within or without this Pueblo. A person may be denied employment by this Pueblo or any of its agencies or political subdivisions or a person who has had his civil rights restored may be denied a license, permit or certificate to engage in an occupation by reason of the prior conviction of a felony or misdemeanor if the offense has a reasonable relationship to the functions of the employment or occupation for which the license, permit or certificate is sought.
- F. Subsection E is not applicable to any law enforcement agency.

Annotations: This section was previously located at Section 5-1.62 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-5-4. Restoration of Civil Rights; Person Completing Probation.

- A. A person who has been convicted of two or more felonies whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction restored by the judge who discharges him at the end of the term of probation.

- B. Upon proper application, a person who has been discharged from probation either prior to or after adoption of this chapter may have any civil rights which were lost or suspended by his felony conviction restored by the Chief Tribal Court Judge by whom the person was sentenced or his successors in office from the Pueblo in which he was originally convicted. The clerk of such court shall have the responsibility for processing the application upon request of the person involved or his attorney. The court shall cause a copy of the application to be served upon the Chief of Police.
- C. A defendant may apply to expunge his/her record or a portion of their criminal record upon a proper showing by clear and convincing evidence of an extended period of time of not less than 5 years for good conduct, no criminal convictions, service to the Pueblo and need. The expunged record will be removed from defendant's criminal record but remain under court seal. Any defendant whose record has been expunged and who thereafter commits any high misdemeanor or felony will have his criminal record reinstated and be subject to one count of contempt for each criminal count that was expunged.

Annotations: This section was previously located at Section 5-1.63 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-5-5. Applications by Persons Discharged from Jail.

- A. Upon proper application, a person who has been convicted of two (2) or more felonies who has received an absolute discharge from imprisonment may have any civil rights which were lost or suspended by his or her conviction restored by the Chief Tribal Court Judge by whom the person was sentenced.
- B. A person who is subject to the provisions of subsection A may file no sooner than two (2) years from the date of his or her absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the Chief of Police. The clerk of the court that sentenced the applicant shall have the responsibility for processing applications for restoration of civil rights upon request of the person involved, his or her attorney

or a representative of the Chief of Police. The court shall cause a copy of the application to be served upon the Chief of Police.

Annotations: This section was previously located at Section 5-1.64 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-5-6. Setting Aside Judgment of Convicted Person upon Discharge; Making of Application; Release from Disabilities; Exception. Every person convicted of a criminal offense may, upon fulfillment of the conditions of probation or sentence and discharge by the court, apply to the judge who pronounced sentence or imposed probation or such judge's successor in office to have the judgment of guilt set aside. The convicted person shall be informed of this right at the time of discharge. The applications to set aside the judgment may be made by the convicted person, by his or her attorney or probation officer authorized in writing. If the judge grants the application, the judge shall set aside the judgment of guilt, dismiss the complaint and order that the person be released from all penalties and disabilities resulting from the conviction, and except that the conviction may be pleaded and proved in any subsequent prosecution of such person by the Pueblo or any of its subdivisions for any offense.

Annotations: This section was previously located at Section 5-1.65 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

- 5-5-7. Restoration of Civil Rights in the Discretion of the Tribal Court Judge. Except as provided in Section 5-5-10 the restoration of civil rights and the dismissal of the criminal complaint under the provisions of this chapter shall be in the discretion of the tribal court judge by whom the person was sentenced or his successor in office.

Annotations: This section was previously located at Section 5-1.66 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003. The 1995 Restatement deleted the reference to Accusation@ or Ainformation@ which appeared in lieu of Acriminal complaint to be consistent with Section 5-1-8 Pueblo of Acoma Laws 2003.

5-5-8. Restoration of Civil Rights; Persons Completing Probation for Federal Offense.

- A. A person who has been convicted of two (2) or more felonies whose period of probation has been completed may have any civil rights which were lost or suspended by his or her felony conviction in a United States district court restored by the presiding judge of the tribal court, upon filing of an affidavit of discharge from the judge who discharged him or her at the end of the term of probation.
- B. Upon proper application, a person who has been discharged from probation either prior to or after adoption of this chapter may have any civil rights where were lost or suspended by his or her felony conviction restored by an application filed with the Clerk of the Tribal Court. The Clerk of the Court shall process the application upon request of the person involved or his attorney.

Annotations: This section was previously located at Section 5-1.67 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

5-5-9. Applications by Persons Discharged from Federal Prison.

- A. Upon proper application, a person who has been convicted of two (2) or more felonies who has received an absolute discharge from imprisonment in a federal prison may have any civil rights which were lost or suspended by his or her conviction restored by the presiding judge of the Tribal Court.
- B. A person who is subject to the provisions of subsection A may file, no sooner than two (2) years from the date of his or her absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the Director of the Federal Bureau of Prisons, unless it is shown to be impossible to obtain such certificate. Such application shall be filed with the clerk of the Tribal Court and such clerk shall be responsible for processing applications for restoration of civil rights upon request of the person involved or his or her attorney.

Annotations: This section was previously located at Section 5-1.68 of the 1985 Law and Order Code.

Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

The 1995 Restatement deleted Section 5-1.69 from the 1985 Law and Order Code since it repeated Section 5-5-7 in all substantive respects.

5-5-10. Restoration of Civil Rights; Automatic for First Offenders. Upon completion of the term of probation, or upon absolute discharge from imprisonment, and upon the completion of payment of any fine or restitution imposed, any person who has not previously been convicted of any other felony or offense punishable by one hundred eighty (180) days in jail shall automatically be restored any civil rights which were lost or suspended by the conviction.

Annotations: This section was previously located at Section 5-1.70 of the 1985 Law and Order Code. Removed to this section as a result of the re-formatting of the 1995 Restatement, and as reformatted by the Pueblo of Acoma Laws 2003.

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