

## CHAPTER 176A - PROBATION AND SUSPENSION OF SENTENCE

### GENERAL PROVISIONS

<a href="#">SECTION 176A.010</a>	Definitions.
<a href="#">SECTION 176A.030</a>	“Court” defined.
<a href="#">SECTION 176A.040</a>	“Department” defined.
<a href="#">SECTION 176A.045</a>	“Mental illness” defined.
<a href="#">SECTION 176A.047</a>	“Mental retardation” defined.
<a href="#">SECTION 176A.050</a>	“Probation officer” defined.
<a href="#">SECTION 176A.060</a>	“Residential confinement” defined.

### AUTHORITY OF THE COURT; LIMITATIONS

<a href="#">SECTION 176A.100</a>	Authority and discretion of court to suspend sentence and grant probation; persons eligible; factors considered; intensive supervision; submission of report of presentence investigation.
<a href="#">SECTION 176A.110</a>	Persons convicted of certain offenses required to be certified as not representing high risk to reoffend before court suspends sentence or grants probation; immunity.

### PROCEDURE

<a href="#">SECTION 176A.200</a>	Investigation by Department.
<a href="#">SECTION 176A.210</a>	Promise to comply with conditions of probation; waiver of extradition.
<a href="#">SECTION 176A.220</a>	Certification of copy of records; delivery of copy to Probation Officer.

### ASSIGNMENT TO PROGRAM FOR TREATMENT OF MENTAL ILLNESS

<a href="#">SECTION 176A.260</a>	Conditions and limitations on assignment of defendant to program; effect of violation of terms and conditions; discharge of defendant upon fulfillment of terms and conditions; effect of discharge.
<a href="#">SECTION 176A.265</a>	Sealing of records after discharge.

### TERMS AND CONDITIONS

<a href="#">SECTION 176A.400</a>	Imposition by court; alternative programs or treatment; prohibition on suspending term of imprisonment; placement under supervision of Probation Officer.
<a href="#">SECTION 176A.410</a>	Required terms and conditions for sex offenders; powers and duties of court; exceptions.
<a href="#">SECTION 176A.413</a>	Restrictions relating to computers and use of Internet and other electronic means of communication; powers and duties of court; exceptions.
<a href="#">SECTION 176A.416</a>	Evaluations and counseling for offenses involving cruelty to animals; powers and duties of court.
<a href="#">SECTION 176A.420</a>	Tests to determine use of controlled substance.
<a href="#">SECTION 176A.430</a>	Restitution.
<a href="#">SECTION 176A.440</a>	Program of intensive supervision.

### DURATION; ARREST FOR ALLEGED VIOLATION

<a href="#">SECTION 176A.500</a>	Authority of court to fix duration; limitations; arrest for alleged violation; powers and duties of peace officers.
----------------------------------	---

## PROCEEDINGS AFTER ARREST

### RESIDENTIAL CONFINEMENT PENDING INQUIRY OR CONSIDERATION BY COURT

<a href="#">SECTION 176A.530</a>	Authority of Probation Officer to order.
<a href="#">SECTION 176A.540</a>	Requirements; intensive supervision; use of electronic device; limitations.
<a href="#">SECTION 176A.550</a>	Terms and conditions; modification; notice to probationer.
<a href="#">SECTION 176A.560</a>	Termination; detention of probationer in jail.

### INQUIRY TO DETERMINE PROBABLE CAUSE

<a href="#">SECTION 176A.580</a>	Inquiry required before alleged violation considered by court; qualifications of inquiring officer; time and place of inquiry; exceptions; subpoenas.
<a href="#">SECTION 176A.590</a>	Enforcement of subpoena issued by inquiring officer; contempt.
<a href="#">SECTION 176A.600</a>	Notice to probationer; rights of probationer at inquiry.
<a href="#">SECTION 176A.610</a>	Duties of inquiring officer; determination; detention or residential confinement of probationer upon finding probable cause.

### RESIDENTIAL CONFINEMENT AFTER VIOLATION

<a href="#">SECTION 176A.660</a>	Authority of court to order; requirements; intensive supervision; use of electronic device; limitations.
<a href="#">SECTION 176A.670</a>	Terms and conditions; modification; notice.
<a href="#">SECTION 176A.680</a>	Authority of court to modify or rescind for subsequent violation; imposition of other punishment.
<a href="#">SECTION 176A.690</a>	Establishment of procedures by Department for supervision of persons in residential confinement.

### PROGRAM OF REGIMENTAL DISCIPLINE

<a href="#">SECTION 176A.770</a>	Legislative declaration.
<a href="#">SECTION 176A.780</a>	Eligibility; procedure; completion; deduction of time from sentence.

### DISCHARGE

<a href="#">SECTION 176A.850</a>	Honorable discharge from probation: When granted; restoration of civil rights; effect; documentation.
<a href="#">SECTION 176A.870</a>	Dishonorable discharge.

---

### GENERAL PROVISIONS

**SECTION 176A.010 Definitions.** As used in this chapter, unless the context otherwise requires, the words and terms defined in [SECTION 176A.020](#) to [176A.080](#), inclusive, have the meanings ascribed to them in those sections.

**SECTION 176A.030 “Court” defined.** “Court” means the Court of the Ely Shoshone Tribe.

**SECTION 176A.040 “Department” defined.** “Department” means the Department of Probation of the Ely Shoshone Tribe.

**SECTION 176A.045 “Mental illness” defined.** “Mental illness” has the meaning ascribed to it in [SECTION 433.164](#).

**SECTION 176A.047 “Mental retardation” defined.** “Mental retardation” has the meaning ascribed to it in [SECTION 433.174](#).

**SECTION 176A.050 “Probation officer” defined.** “Probation officer” means the Probation Officer appointed by the Ely Shoshone Tribal Council.

**SECTION 176A.060 “Residential confinement” defined.** “Residential confinement” means the confinement of a person convicted of a crime to his place of residence under the terms and conditions established by the sentencing court.

### **AUTHORITY OF THE COURT; LIMITATIONS**

**SECTION 176A.100 Authority and discretion of court to suspend sentence and grant probation; persons eligible; factors considered; intensive supervision; submission of report of presentence investigation.**

1. Except as otherwise provided in this section and [SECTION 176A.110](#) and [176A.120](#), if a person is found guilty in a tribal court upon verdict or plea of:

(a) Murder of the first or second degree, kidnapping in the first degree, sexual assault, attempted sexual assault of a child who is less than 16 years of age, lewdness with a child pursuant to [SECTION 201.230](#), an offense for which the suspension of sentence or the granting of probation is expressly forbidden, or if the person is found to be a habitual criminal pursuant to [SECTION 207.010](#), a habitually fraudulent felon/**Category A offender** pursuant to [SECTION 207.014](#) or a habitual felon/**Category A offender** pursuant to [SECTION 207.012](#), the court shall not suspend the execution of the sentence imposed or grant probation to the person.

(b) A **Category A offense**, except as otherwise provided in SECTION 176A.100, the court shall suspend the execution of the sentence imposed and grant probation to the person. The court may, as it deems advisable, decide not to suspend the execution of the sentence imposed and grant probation to the person if, at the time of sentencing, it is established that the person:

(1) Was serving a term of probation or was on parole at the time the crime was committed, whether on this reservation or elsewhere, for a felony/**Category A offense** conviction;

(2) Had previously had his probation revoked, whether on this Reservation or elsewhere, for a felony/**Category A offense** conviction;

(3) Had previously been assigned to a program of treatment and rehabilitation pursuant to [SECTION 453.580](#) and failed to successfully complete that program; or

(4) Had previously been two times convicted, whether on this reservation or elsewhere, of a crime that under the laws of the situs of the crime or of this Reservation or State would amount to a felony/**Category A offense**.

➤ If the person denies the existence of a previous conviction, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the person. At such a hearing, the person may not challenge the validity of a previous conviction. For the purposes of this paragraph, a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.

(c) Another **Category A offense**, a **Category B offense** or a **Category C, D, or E offense**, the court may suspend the execution of the sentence imposed and grant probation as the court deems advisable.

2. The court shall consider the recommendation of the Probation Officer in determining whether to grant probation to a person.

3. If the court determines that a person is otherwise eligible for probation but requires more supervision than would normally be provided to a person granted probation, the court may, in lieu of sentencing him to a term of imprisonment, grant him probation pursuant to a Program of Intensive Supervision.

4. Except as otherwise provided in this subsection, if a person is convicted of a felony/**Category A offense** and the Department is required to make a presentence investigation and report to the court pursuant to [SECTION 176.135](#), the court shall not grant probation to the person until the court receives the report of the presentence investigation from the Probation Officer. The Probation Officer shall submit the report of the presentence investigation to the court not later than 45 days after receiving a request for a presentence investigation from the clerk. If the report of the presentence investigation is not submitted by the Probation Officer within 45 days, the court may grant probation without the report.

5. If the court determines that a person is otherwise eligible for probation, the court shall, when determining the conditions of that probation, consider the imposition of such conditions as would facilitate timely payments by the person of his obligation, if any, for the support of a child and the payment of any such obligation which is in arrears.

**SECTION 176A.110 Persons convicted of certain offenses required to be certified as not representing high risk to reoffend before court suspends sentence or grants probation; immunity.**

1. The court shall not grant probation to or suspend the sentence of a person convicted of an offense listed in subsection 3 unless:

(a) If a psychosexual evaluation of the person is required pursuant to [SECTION 176.139](#), the person who conducts the psychosexual evaluation certifies in the report prepared pursuant to [SECTION 176.139](#) that the person convicted of the offense does not represent a high risk to reoffend based upon a currently accepted standard of assessment; or

(b) If a psychosexual evaluation of the person is not required pursuant to [SECTION 176.139](#), a licensed psychologist who is trained to conduct psychosexual evaluations or a licensed psychiatrist who is certified by the American Board of Psychiatry and Neurology, Inc., and is trained to conduct psychosexual evaluations certifies in a written report to the court that the person convicted of the offense does not represent a high risk to reoffend based upon a currently accepted standard of assessment.

2. The provisions of this section apply to a person convicted of any of the following offenses:

(a) Attempted sexual assault of a person who is 16 years of age or older pursuant to [SECTION 200.366](#).

(b) Statutory sexual seduction pursuant to [SECTION 200.368](#).

(c) Battery with intent to commit sexual assault pursuant to [SECTION 200.400](#).

(d) Abuse or neglect of a child pursuant to [SECTION 200.508](#).

(e) An offense involving pornography and a minor pursuant to [SECTION 200.710](#) to [200.730](#), inclusive.

(f) Incest pursuant to [SECTION 201.180](#).

(g) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to [SECTION 201.195](#).

(h) Open or gross lewdness pursuant to [SECTION 201.210](#).

(i) Indecent or obscene exposure pursuant to [SECTION 201.220](#).

(j) Sexual penetration of a dead human body pursuant to [SECTION 201.450](#).

(k) Luring a child or a person with mental illness pursuant to [SECTION 201.560](#), if punished as a felony.

(l) A violation of [SECTION 207.180](#).

(m) An attempt to commit an offense listed in paragraphs (b) to (l), inclusive.

(n) Coercion or attempted coercion that is determined to be sexually motivated pursuant to [SECTION 207.193](#).

## PROCEDURE

**SECTION 176A.200 Investigation by Department.** The Department shall inquire into the circumstances of the offense, criminal record, social history and present condition of the defendant. Such an investigation may include a physical and mental examination of the defendant.

**SECTION 176A.210 Promise to comply with conditions of probation; waiver of extradition.** Upon entry of an order of probation by the court, a person:

1. Shall be deemed accepted for probation for all purposes; and

2. Shall submit to the Department for filing with the clerk of the court of competent jurisdiction a signed document stating that:

(a) He will comply with the conditions which have been imposed by the court and are stated in the document; and

(b) If he fails to comply with the conditions imposed by the court and is taken into custody outside of this Reservation, he waives all his rights relating to extradition proceedings.

**SECTION 176A.220 Certification of copy of records; delivery of copy to Probation Officer.** The court shall, upon the entering of an order of probation or suspension of sentence, as provided for in this chapter, direct the clerk of the court to certify a copy of the records in the case and deliver the copy to the Probation Officer.

## ASSIGNMENT TO PROGRAM FOR TREATMENT OF MENTAL ILLNESS

### **SECTION 176A.260 Conditions and limitations on assignment of defendant to program; effect of violation of terms and conditions; discharge of defendant upon fulfillment of terms and conditions; effect of discharge.**

1. Except as otherwise provided in subsection 2, if a defendant who suffers from mental illness or is mentally retarded tenders a plea of guilty, guilty but mentally ill or nolo contendere to, or is found guilty or guilty but mentally ill of, any offense for which the suspension of sentence or the granting of probation is not prohibited by the Tribal Code, the court may, without entering a judgment of conviction and with the consent of the defendant, suspend further proceedings and place the defendant on probation upon terms and conditions that must include attendance and successful completion of a program established pursuant to [SECTION 176A.250](#).

2. If the offense committed by the defendant involved the use or threatened use of force or violence or if the defendant was previously convicted in this Tribal Court or in any other jurisdiction of a felony/**Category A offense** that involved the use or threatened use of force or violence, the court may not assign the defendant to the program unless the prosecuting attorney stipulates to the assignment.

3. Upon violation of a term or condition:

(a) The court may enter a judgment of conviction and proceed as provided in the section pursuant to which the defendant was charged.

4. Upon fulfillment of the terms and conditions, the court shall discharge the defendant and dismiss the proceedings against him. Discharge and dismissal pursuant to this section is without adjudication of guilt and is not a conviction for purposes of this section or for purposes of employment, civil rights or any tribal code or regulation or license or questionnaire or for any other public or private purpose, but is a conviction for the purpose of additional penalties imposed for second or subsequent convictions or the setting of bail. Discharge and dismissal restores the defendant, in the contemplation of the law, to the status occupied before the arrest, indictment or information. The defendant may not be held thereafter under any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge that arrest, indictment, information or trial in response to an inquiry made of him for any purpose.

### **SECTION 176A.265 Sealing of records after discharge.**

1. Three years after a defendant is discharged from probation pursuant to [SECTION 176A.260](#), the court shall order sealed all documents, papers and exhibits in the defendant's record, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the court's order if the defendant fulfills the terms and conditions imposed by the court and the Department. The court shall order those records sealed without a hearing unless the Department petitions the court, for good cause shown, not to seal the records and requests a hearing thereon.

2. If the court orders sealed the record of a defendant discharged, the court shall send a copy of the order to each department or officer named in the order. Each such department or officer shall notify the court in writing of its compliance with the order.

## TERMS AND CONDITIONS

### **SECTION 176A.400 Imposition by court; alternative programs or treatment; prohibition on suspending term of imprisonment; placement under supervision of Probation Officer.**

1. In issuing an order granting probation, the court may fix the terms and conditions thereof, including, without limitation:

(a) A requirement for restitution;

(b) An order that the probationer dispose of all the weapons he possesses; or

(c) Any reasonable conditions to protect the health, safety or welfare of the community or to ensure that the probationer will appear at all times and places ordered by the court, including, without limitation:

(1) Requiring the probationer to remain on this reservation, in this State or a certain county within this State;

(2) Prohibiting the probationer from contacting or attempting to contact a specific person or from causing or attempting to cause another person to contact that person on his behalf;

(3) Prohibiting the probationer from entering a certain geographic area; or

(4) Prohibiting the probationer from engaging in specific conduct that may be harmful to his own health, safety or welfare, or the health, safety or welfare of another person.

2. In issuing an order granting probation to a person who is found guilty of a **Category A offense**, the court may require the person as a condition of probation to participate in and complete to the satisfaction of the court any alternative program, treatment or activity deemed appropriate by the court.

3. The court shall not suspend the execution of a sentence of imprisonment after the defendant has begun to serve it.

4. In placing any defendant on probation or in granting a defendant a suspended sentence, the court shall direct that he be placed under the supervision of the Probation Officer.

**SECTION 176A.410 Required terms and conditions for sex offenders; powers and duties of court; exceptions.**

1. Except as otherwise provided in subsection 6, if a defendant is convicted of a sexual offense and the court grants probation or suspends the sentence, the court shall, in addition to any other condition ordered pursuant to [SECTION 176A.400](#), order as a condition of probation or suspension of sentence that the defendant:

(a) Submit to a search and seizure of his person, residence or vehicle or any property under his control, at any time of the day or night, without a warrant, by any probation officer or any peace officer, for the purpose of determining whether the defendant has violated any condition of probation or suspension of sentence or committed any crime.

(b) Reside at a location only if:

(1) The residence has been approved by the probation officer assigned to the defendant.

(2) The defendant keeps the parole and probation officer assigned to the defendant informed of his current address.

(c) Accept a position of employment or a position as a volunteer only if it has been approved by the probation officer assigned to the defendant and keep the probation officer informed of the location of his position of employment or position as a volunteer.

(d) Abide by any curfew imposed by the probation officer assigned to the defendant.

(e) Participate in and complete a program of professional counseling approved by the Department.

(f) Submit to periodic tests, as requested by the probation officer assigned to the defendant, to determine whether the defendant is using a controlled substance.

(g) Abstain from consuming, possessing or having under his control any alcohol.

(h) Not have contact or communicate with a victim of the sexual offense or a witness who testified against the defendant or solicit another person to engage in such contact or communication on behalf of the defendant, unless approved by the probation officer assigned to the defendant, and a written agreement is entered into and signed in the manner set forth in subsection 5.

(i) Not use aliases or fictitious names.

(j) Not obtain a post office box unless the defendant receives permission from the probation officer assigned to the defendant.

(k) Not have contact with a person less than 18 years of age in a secluded environment unless another adult who has never been convicted of a sexual offense is present and permission has been obtained from the probation officer assigned to the defendant in advance of each such contact.

(l) Unless approved by the probation officer assigned to the defendant and by a psychiatrist, psychologist or counselor treating the defendant, if any, not knowingly be within 500 feet of any place, or if the place is a structure, within 500 feet of the actual structure, that is designed primarily for use by or for children, including, without limitation, a public or private school, a school bus stop, a center or facility that provides day care services, a video arcade, an amusement park, a playground, a park, an athletic field or a facility for youth sports, or a motion picture theater.

(m) Comply with any protocol concerning the use of prescription medication prescribed by a treating physician, including, without limitation, any protocol concerning the use of psychotropic medication.

(n) Not possess any sexually explicit material that is deemed inappropriate by the probation officer assigned to the defendant.

(o) Not patronize a business which offers a sexually related form of entertainment and which is deemed inappropriate by the probation officer assigned to the defendant.

(p) Not possess any electronic device capable of accessing the Internet and not access the Internet through any such device or any other means, unless possession of such a device or such access is approved by the parole and probation officer assigned to the defendant.

(q) Inform the probation officer assigned to the defendant if the defendant expects to be or becomes enrolled as a student at an institution of higher education or changes the date of commencement or termination of his enrollment at an institution of higher education. As used in this paragraph, "institution of higher education" has the meaning ascribed to it in [SECTION 179D.045](#).

2. Except as otherwise provided in subsection 6, if a defendant is convicted of an offense listed in subsection 6 of [SECTION 213.1255](#) against a child under the age of 14 years, and the court grants probation or suspends the sentence of the defendant, the court shall, in addition to any other condition ordered pursuant to subsection 1, order as a condition of probation or suspension of sentence that the defendant:

(a) Reside at a location only if the residence is not located within 1,000 feet of any place, or if the place is a structure, within 1,000 feet of the actual structure, that is designed primarily for use by or for children, including, without limitation, a public or private school, a school bus stop, a center or facility that provides day care services, a video arcade, an amusement park, a playground, a park, an athletic field or a facility for youth sports, or a motion picture theater.

(b) As deemed appropriate by the Probation Officer, be placed under a system of active electronic monitoring that is capable of identifying his location and producing, upon request, reports or records of his presence near or within a crime scene or prohibited area or his departure from a specified geographic location.

(c) Pay any costs associated with his participation under the system of active electronic monitoring, to the extent of his ability to pay.

3. A defendant placed under the system of active electronic monitoring pursuant to subsection 2 shall:

(a) Follow the instructions provided by the Department to maintain the electronic monitoring device in working order.

(b) Report any incidental damage or defacement of the electronic monitoring device to the Department within 2 hours after the occurrence of the damage or defacement.

(c) Abide by any other conditions set forth by the Department with regard to his participation under the system of active electronic monitoring.

4. Except as otherwise provided in this subsection, a person who intentionally removes or disables or attempts to remove or disable an electronic monitoring device placed on a defendant pursuant to this section is guilty of a **Category B offense**. The provisions of this subsection do not prohibit a person authorized by the Department from performing maintenance or repairs to an electronic monitoring device.

5. A written agreement entered into pursuant to paragraph (i) of subsection 1 must state that the contact or communication is in the best interest of the victim or witness, and specify the type of contact or communication authorized. The written agreement must be signed and agreed to by:

(a) The victim or the witness;

(b) The defendant;

(c) The probation officer assigned to the defendant;

(d) The psychiatrist, psychologist or counselor treating the defendant, victim or witness, if any; and

(e) If the victim or witness is a child under 18 years of age, each parent, guardian or custodian of the child.

6. The court is not required to impose a condition of probation or suspension of sentence listed in subsections 1 and 2 if the court finds that extraordinary circumstances are present and the court enters those extraordinary circumstances in the record.

7. As used in this section, "sexual offense" has the meaning ascribed to it in [SECTION 179D.097](#).

### **SECTION 176A.413 Restrictions relating to computers and use of Internet and other electronic means of communication; powers and duties of court; exceptions.**

1. Except as otherwise provided in subsection 2, if a defendant is convicted of stalking with the use of an Internet or network site or electronic mail or any other similar means of communication pursuant to subsection 3 of [SECTION 200.575](#), an offense involving pornography and a minor pursuant to [SECTION 200.710](#) to [200.730](#), inclusive, or luring a child or a person with mental illness through the use of a computer, system or network pursuant to paragraph (a) or (b) of subsection 4 of [SECTION 201.560](#) and the court grants probation or suspends the sentence, the court shall, in addition to any other condition ordered pursuant to [SECTION 176A.400](#), order as a condition of probation or suspension that the defendant not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

2. The court is not required to impose a condition of probation or suspension of sentence set forth in subsection 1 if the court finds that:

(a) The use of a computer by the defendant will assist a law enforcement agency or officer in a criminal investigation;

(b) The defendant will use the computer to provide technological training concerning technology of which the defendant has a unique knowledge; or

(c) The use of the computer by the defendant will assist companies that require the use of the specific technological knowledge of the defendant that is unique and is otherwise unavailable to the company.

3. Except as otherwise provided in subsection 1, if a defendant is convicted of an offense that involved the use of a computer, system or network and the court grants probation or suspends the sentence, the court may, in addition to any other condition ordered pursuant to [SECTION 176A.400](#), order as a condition of probation or suspension that the defendant not own or use a computer, including, without limitation, use electronic mail, a chat room or the Internet.

4. As used in this section:

(a) "Computer" has the meaning ascribed to it in [SECTION 205.4735](#).

(b) "Network" has the meaning ascribed to it in [SECTION 205.4745](#).

(c) "System" has the meaning ascribed to it in [SECTION 205.476](#).

#### **SECTION 176A.416 Evaluations and counseling for offenses involving cruelty to animals; powers and duties of court.**

1. As a condition of probation, the court may order a defendant who is convicted of a violation of [chapter 574](#) of Nevada Revised Statutes that is punishable as a **Category A offense** or **Category B offense** to:

(a) Submit to a psychiatric evaluation; and

(b) Participate in any counseling or therapy recommended in the evaluation.

2. The court shall order a defendant, to the extent of his financial ability, to pay the cost for an evaluation and any counseling or therapy pursuant to this section.

#### **SECTION 176A.420 Tests to determine use of controlled substance.**

1. Upon the granting of probation to a person convicted of a **Category A offense** or **Category B offense**, the court may, when the circumstances warrant, require as a condition of probation that the probationer submit to periodic tests to determine whether the probationer is using any controlled substance. Any such use or any failure or refusal to submit to a test is a ground for revocation of probation.

#### **SECTION 176A.430 Restitution.**

1. The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant make full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable. Such an order may require payment for medical or psychological treatment of any person whom the defendant has injured. In appropriate circumstances, the court shall include as a condition of probation or suspension of sentence that the defendant execute an assignment of wages earned by him while on probation or subject to the conditions of suspension of sentence to the Department for restitution.

2. All money received by the Department for restitution for:

(a) One victim may; and

(b) More than one victim must,

↳ be deposited with the tribal finance office.

3. If restitution is not required, the court shall set forth the circumstances upon which it finds restitution impracticable in its order of probation or suspension of sentence.

4. Failure to comply with the terms of an order for restitution is a violation of a condition of probation or suspension of sentence unless the defendant's failure has been caused by economic hardship resulting in his inability to pay the amount due. The defendant is entitled to a hearing to show the existence of such a hardship.

#### **SECTION 176A.440 Program of intensive supervision.**



1. The Probation Officer shall develop a program for the intensive supervision of a person granted probation pursuant to subsection 4 of [SECTION 176A.100](#).

2. A Program of Intensive Supervision must include an initial period of electronic supervision of the probationer with an electronic device approved by the Department. The device must be minimally intrusive and limited in capability to recording or transmitting information concerning the probationer's presence at his residence, including, but not limited to, the transmission of still visual images which do not concern the probationer's activities while inside his residence. A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the probationer's activities while inside his residence,

↳ must not be used.

## **DURATION; ARREST FOR ALLEGED VIOLATION**

### **SECTION 176A.500 Authority of court to fix duration; limitations; arrest for alleged violation; powers and duties of peace officers.**

1. The period of probation or suspension of sentence may be indeterminate or may be fixed by the court and may at any time be extended or terminated by the court.

2. At any time during probation or suspension of sentence, the court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested. Except for the purpose of giving a dishonorable discharge from probation, and except as otherwise provided in this subsection, the time during which a warrant for violating any of the conditions of probation is in effect is not part of the period of probation. If the warrant is cancelled or probation is reinstated, the court may include any amount of that time as part of the period of probation.

3. Any probation officer or any peace officer with power to arrest may arrest a probationer without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the probation officer, violated the conditions of probation. Except as otherwise provided in subsection 4, the probation officer, or the peace officer, after making an arrest shall present to the detaining authorities, if any, a statement of the charges against the probationer. The probation officer shall at once notify the court which granted probation of the arrest and detention or residential confinement of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation.

4. A probation officer or a peace officer may immediately release from custody without any further proceedings any person he arrests without a warrant for violating a condition of probation if the parole and probation officer or peace officer determines that there is no probable cause to believe that the person violated the condition of probation.

5. An offender who is sentenced to serve a period of probation for a **Category A offense** who has no serious infraction of the regulations of the Department, the terms and conditions of his probation or the laws of the Tribe or State recorded against him, and who performs in a faithful, orderly and peaceable manner the duties assigned to him, must be allowed for the period of his probation a deduction of 20 days from that period for each month he serves.

## **PROCEEDINGS AFTER ARREST**

### **Residential Confinement Pending Inquiry or Consideration by Court**

**SECTION 176A.530 Authority of Probation Officer to order.** The Probation Officer may, in accordance with the provisions of [SECTION 176A.530](#) to [176A.560](#), inclusive, order any probationer who is arrested pursuant to [SECTION 176A.500](#) to be placed in residential confinement in lieu of detention in a jail pending an inquiry to determine whether there is probable cause to believe that the probationer has committed any act which would constitute a violation of a condition of his probation.

### **SECTION 176A.540 Requirements; intensive supervision; use of electronic device; limitations.**

1. The Probation Officer may order the residential confinement of a probationer if he believes that the probationer poses no danger to the community and will appear at a scheduled inquiry or court hearing.

2. In ordering the residential confinement of a probationer, the Probation Officer shall:

(a) Require the probationer to be confined to his residence during the time he is away from his employment, community service or other activity authorized by the Department; and

(b) Require intensive supervision of the probationer, including, without limitation, unannounced visits to his residence or other locations where he is expected to be to determine whether he is complying with the terms of his confinement.

3. An electronic device approved by the Department may be used to supervise a probationer who is ordered to be placed in residential confinement. The device must be minimally intrusive and limited in capability to recording or transmitting information concerning the probationer's presence at his residence, including the transmission of still visual images which do not concern the probationer's activities while inside his residence. A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the probationer's activities while inside his residence,

→ must not be used.

4. The Probation Officer shall not order a probationer to be placed in residential confinement unless the probationer agrees to the order.

5. Any residential confinement must not extend beyond the unexpired maximum term of the original sentence.

#### **SECTION 176A.550 Terms and conditions; modification; notice to probationer.**

1. In ordering a probationer to be placed in residential confinement, the Probation Officer may establish the terms and conditions of that confinement.

2. The Probation Officer may, at any time, modify the terms and conditions of the residential confinement.

3. The Probation Officer shall cause a copy of his order to be delivered to the probationer.

4.

#### **SECTION 176A.560 Termination; detention of probationer in jail.**

1. The Probation Officer may terminate the residential confinement of a probationer and order the detention of the probationer in a jail pending an inquiry or court hearing if:

(a) The probationer violates the terms or conditions of his residential confinement; or

(b) The Probation Officer, in his discretion, determines that the probationer poses a danger to the community or that there is a reasonable doubt that the probationer will appear at the inquiry or hearing.

2. A probationer has no right to dispute a decision to terminate his residential confinement.

### **Inquiry to Determine Probable Cause**

#### **SECTION 176A.580 Inquiry required before alleged violation considered by court; qualifications of inquiring officer; time and place of inquiry; exceptions; subpoenas.**

1. Before a probationer in custody for a violation of a condition of his probation may be returned to the court for that violation, an inquiry must be conducted to determine whether there is probable cause to believe that he has committed any act that would constitute such a violation.

2. The inquiry must be conducted before an inquiring officer who:

(a) Is not directly involved in the case;

(b) Has not made the report of violation of the probation; and

(c) Has not recommended revocation of the probation,

→ but he need not be a judicial officer.

4. Any conviction for violating a federal, state or Tribal law, except a minor traffic offense, which is committed while the probationer is on probation constitutes probable cause for the purposes of this section and an inquiry need not be held.

5. For the purposes of this section, the inquiring officer may administer oaths and issue subpoenas to compel the attendance of witnesses and the production of books and papers.

#### **SECTION 176A.590 Enforcement of subpoena issued by inquiring officer; contempt.**

1. If any witness refuses to attend or testify or produce any books and papers as required by the subpoena, the inquiring officer may report to the tribal court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the inquiring officer pursuant to [SECTION 176A.580](#); and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena at the inquiry which is named in the subpoena, or has refused to answer questions propounded to him,

↳ and asking for an order of the court compelling the witness to attend and testify or produce the books and papers.

2. Upon such petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced the books or papers at the inquiry. A certified copy of the order shall be served upon the witness.

3. If it appears to the court that the subpoena was regularly issued by the inquiring officer, the court shall enter an order that the witness appear at the inquiry at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order the witness shall be dealt with as for contempt of court.

#### **SECTION 176A.600 Notice to probationer; rights of probationer at inquiry.**

1. The probation officer or detaining authority shall give the arrested probationer advance notice of:

(a) The place and time of the inquiry.

(b) The purpose of the inquiry.

(c) What violations of probation have been alleged.

2. The inquiring officer shall allow the probationer to:

(a) Appear and speak on his own behalf.

(b) Obtain counsel.

(c) Present any relevant letters or other documents and any person who can give relevant information.

(d) Confront and question any person who appears against him, unless in the opinion of the inquiring officer the person would be subjected to a risk of harm by disclosure of his identity.

#### **SECTION 176A.610 Duties of inquiring officer; determination; detention or residential confinement of probationer upon finding probable cause.**

1. Upon completion of the inquiry, the inquiring officer shall:

(a) Make a written summary of what occurred at the inquiry, noting the substance of the evidence given to support a revocation of the probation and the probationer's position and responses.

(b) Determine whether there is probable cause to hold the probationer for a court hearing on revocation.

2. If the inquiring officer determines that there is probable cause:

(a) His determination is sufficient to warrant the continued detention of the probationer pending the court's hearing; or

(b) The Probation Officer may order the probationer to be placed in residential confinement in accordance with the provisions of [SECTION 176A.530](#) to [176A.560](#), inclusive.

### **RESIDENTIAL CONFINEMENT AFTER VIOLATION**

#### **SECTION 176A.660 Authority of court to order; requirements; intensive supervision; use of electronic device; limitations.**

1. If a person who has been placed on probation violates a condition of his probation, the court may order him to a term of residential confinement in lieu of causing the sentence imposed to be executed. In making this determination, the court shall consider the criminal record of the person and the seriousness of the crime committed.

2. In ordering the person to a term of residential confinement, the court shall:

(a) Direct that he be placed under the supervision of the Department and require:

(1) The person to be confined to his residence during the time he is away from his employment, community service or other activity authorized by the Department; and

(2) Intensive supervision of the person, including, without limitation, unannounced visits to his residence or other locations where he is expected to be in order to determine whether he is complying with the terms of his confinement; or

3. An electronic device approved by the Department may be used to supervise a person ordered to a term of residential confinement. The device must be minimally intrusive and limited in capability to recording or transmitting information concerning the person's presence at his residence, including, but not limited to, the transmission of still visual images which do not concern the person's activities while inside his residence. A device which is capable of recording or transmitting:

- (a) Oral or wire communications or any auditory sound; or
- (b) Information concerning the person's activities while inside his residence,

↳ must not be used.

4. The court shall not order a person to a term of residential confinement unless he agrees to the order.

5. A term of residential confinement may not be longer than the maximum term of a sentence imposed by the court.

6. As used in this section, "facility" has the meaning ascribed to it in [SECTION 209.065](#).

#### **SECTION 176A.670 Terms and conditions; modification; notice.**

1. In ordering a person to a term of residential confinement, a court may establish the terms and conditions of that confinement.

2. The court may, at any time, modify the terms and conditions of the residential confinement.

3. The court shall cause a copy of its order to be delivered to the person and the Department.

**SECTION 176A.680 Authority of court to modify or rescind for subsequent violation; imposition of other punishment.** If it is determined that the person violated any term or condition of his residential confinement, the sentence may be rescinded, modified or continued. If it is rescinded, another punishment authorized by law must be imposed.

**SECTION 176A.690 Establishment of procedures by Department for supervision of persons in residential confinement.** The Department shall establish procedures to administer a program of supervision for persons who are ordered to a term of residential confinement.

## **DISCHARGE**

**SECTION 176A.850 Honorable discharge from probation: When granted; restoration of civil rights; effect; documentation.**

1. A person who:

(a) Has fulfilled the conditions of his probation for the entire period thereof;

(b) Is recommended for earlier discharge by the Department; or

(c) Has demonstrated his fitness for honorable discharge but because of economic hardship, verified by the Department, has been unable to make restitution as ordered by the court,

↳ may be granted an honorable discharge from probation by order of the court.

2. Any amount of restitution remaining unpaid constitutes a civil liability arising upon the date of discharge.

3. Except as otherwise provided in subsection 4, a person who has been honorably discharged from probation:

(a) Is free from the terms and conditions of his probation.

(b) If he meets the requirements of [SECTION 179.245](#), may apply to the court for the sealing of records relating to his conviction.

(c) Must be informed of the provisions of this section and [SECTION 179.245](#) in his probation papers.

(d) Is exempt from the requirements of [chapter 179C](#), but is not exempt from the requirements of [chapter 179D](#).

**SECTION 176A.870 Dishonorable discharge.** A defendant whose term of probation has expired and:

1. Whose whereabouts are unknown;

2. Who has failed to make restitution in full as ordered by the court, without a verified showing of economic hardship; or

3. Who has otherwise failed to qualify for an honorable discharge as provided in [SECTION 176A.850](#),

↳ is not eligible for an honorable discharge and must be given a dishonorable discharge. A dishonorable discharge releases the probationer from any further obligation, except a civil liability arising on the date of discharge for any unpaid restitution, but does not entitle the probationer to any privilege conferred by [SECTION 176A.850](#).