

**SANTA CLARA PUEBLO  
SPECIAL TRIBAL CRIMINAL JURISDICTION CODE**

The Special Domestic Violence Criminal Jurisdiction Code was enacted by Res. No. 2019-04, adopted April 12, 2019, approved by Sec’y, April 30, 2020; amended by Res. No. 2020-002, adopted February 6, 2020, approved by USDOJ, June 3, 2020, approved by Sec’y, July 9, 2020.

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## **ARTICLE 1: PURPOSE OF SPECIAL TRIBAL CRIMINAL JURISDICTION CODE**

The Pueblo of Santa Clara is a Federally recognized Indian Tribe exercising inherent powers of sovereignty and self-government, through its traditional institutions and by virtue of its Constitution, which was approved on December 20, 1935. The Pueblo of Santa Clara wishes to protect its members and their community from the threat of domestic violence. Domestic violence by Natives or non-Natives is not traditional and will not be tolerated. Domestic violence within the community is a re-occurring crime that plagues the Pueblo. The lack of Tribal criminal jurisdiction over non-Native offenders is a continual threat to the community.

In Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), the United States Supreme Court stripped Native American Tribes of their inherent and traditional authority to exercise criminal jurisdiction over non-Natives. In order to protect their community from all offenders, the Pueblo of Santa Clara takes every opportunity to regain their inherent and traditional authority to exercise criminal jurisdiction over non-Natives. The Pueblo of Santa Clara looked forward to the day when they exercise sovereign dominion over their lands.

The Violence Against Women Reauthorization Act of 2013 (“VAWA 2013”), Title IX - Safety for Indian Women, helped to accomplish the Pueblo of Santa Clara’s goals to protect their community from domestic violence, and affirmed our self-governing Tribe’s inherent power to exercise domestic violence criminal jurisdiction over all persons who committed crimes of domestic violence, dating violence and who violate an Order of Protection. The Pueblo of Santa Clara elected to exercise this “special domestic violence criminal jurisdiction over non-Indians” (SDVCJ).

In the past, most notably with the passage of the Indian Civil Rights Act of 1968 (ICRA) 25 U.S.C. §§1301-1304, Congress enacted Federal laws imposing requirements upon the Tribal governments without appropriating the necessary funds for implementation of those requirements. In order to exercise SDVCJ over non-Indians, funding was required to implement Federally-guaranteed rights and court procedures. Without funding, the Pueblo of Santa Clara could not, and would not, authorize the exercise of SDVCJ. In 2016, with the award of Federal grants, the Pueblo authorized the exercise of SDVCJ for as long as there was Federal funding.

Santa Clara Pueblo recognized that the rights and Court procedures guaranteed under VAWA 2013 may have followed Federal interpretations of certain laws in order for Santa Clara Pueblo to exercise SDVCJ. Santa Clara Pueblo recognized that these Federal law interpretations are often in conflict with the Pueblo's interpretation of the ICRA. Therefore, in order to avoid any potential conflicts, this SDVCJ Code was adopted exclusively for the exercise of SDVCJ over non-Indians. The provisions contained in the SDVCJ Code were not to be applicable to any other section in the Santa Clara Pueblo Tribal Law Code (2006 Compilation) ("Tribal Code").

See, Tribal Council Resolution 2013-53, [Supporting Full Implementation of the Violence Against Women Act as Soon as Funding is Secured](#), October 8, 2013.

See, Tribal Council Resolution 2015-36, [Requesting that the New Mexico Congressional Delegation and All Federal Executive Agencies and the President of the United States Support Appropriation of the Funds Necessary to Implement the Tribal Law and Order Act of 2010 and the Violence Against Women Act of 2013](#), June 5, 2015.

The Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) was included as a part of the Consolidated Appropriations Act (H.R. 2471) and signed into law by President Biden on March 15, 2022. The Act includes a number of important provisions for tribal communities, including expansions of the scope of jurisdiction that can be exercised over non-Indian offenders. VAWA was first enacted in 1994 and has been reauthorized four times since – in 2000, 2005, 2013, and 2022. Each time VAWA has been reauthorized, it has included new provisions aimed at addressing the high rates of violence against Native women.

Among the 2022 amendments, "special domestic violence criminal jurisdiction (SDVCJ)" was replaced with "special tribal criminal jurisdiction (STCJ)" throughout the law. The current STCJ Code reflects all VAWA 2022 changes.



**ARTICLE 2: NON-WAIVER OF SOVEREIGN IMMUNITY  
AND SEVERABILITY OF PROVISIONS**

(a) Non-Waiver of Sovereign Immunity

Nothing in the STCJ Code shall be deemed to constitute a waiver by the Santa Clara Pueblo of its sovereign immunity for any reason whatsoever.

(b) Severability of Provisions

If any section, subsection, paragraph, sentence, phrase or portion of the STCJ Code is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

### **ARTICLE 3: SPECIAL TRIBAL CRIMINAL JURISDICTION AND COVERED CRIMES**

The Santa Clara Pueblo STCJ Court is vested with criminal jurisdiction over a non-Indian who commits a crime within the exterior boundaries of Santa Clara Pueblo except as limited by Federal law. Applicable Federal law limits Santa Clara Pueblo jurisdiction to Covered Crimes involving an Indian Victim, except when the alleged criminal conduct involves assault of a tribal justice personnel or obstruction of justice. Offenses that can be charged against non-Indians in Santa Clara Pueblo for each category of Covered Crimes include:

(a) Assault of Tribal Justice Personnel.

(1) “Assault of Tribal Justice Personnel” means any violation of the criminal law of the Pueblo that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of the Pueblo or serving the Pueblo during, or because of, the performance or duties of that individual in:

- (A) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;
- (B) adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime; or
- (C) detaining, providing supervision for, or providing services for, persons charged with a covered crime; or
- (D) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.

(2) “Tribal Justice Personnel” may include, but is not limited to, the Santa Clara Pueblo Tribal officials, a law enforcement officer, corrections officer, education staff, teacher, probation officer, parole officer, court monitor, judicial officer, judge, firefighter, emergency medical technician, medical responder, nurse, physician, social worker, clergy, Tribal government employee and Tribal Court staff. Tribal Justice Personnel may include Indians or non-Indians.

- (3) Offenses that can be charged against non-Indians over whom the Pueblo asserts jurisdiction for the covered crime “Assault of a Tribal Justice Personnel” include:
- (A) Simple assault. It shall be a criminal offense to threaten bodily harm to tribal justice personnel through use of unlawful force or violence or through verbal threats, threats through the social media or written threats and that person reasonably fears the assault.
  - (B) Assault and battery. It shall be a criminal offense to willfully strike another or otherwise intentionally inflict bodily injury on another or who shall cause another to harm themselves.
  - (C) Assault with a deadly weapon. It shall be a criminal offense to assault another, or to attempt to assault another, or to threaten to assault another, or to inflict serious bodily injury, with a deadly weapon.
  - (D) Assault inflicting serious bodily injury. It shall be a criminal offense to assault another person and to inflict serious bodily injury.
  - (E) Assault by pointing a firearm or weapon. It shall be a criminal offense to point any firearm or weapon at another, either in fun or otherwise, whether or not the firearm or weapon is capable of discharging a projectile.

(b) Child Violence:

- (1) “Child Violence” means the use, threatened use, or attempted use of violence against a child proscribed by the criminal law of the Pueblo. The child must be an Indian child.
- (2) Offenses that can be charged against non-Indians over whom the Pueblo asserts jurisdiction for the covered crime Child Violence include Child Abuse. It shall be a criminal offense to:
  - (A) intentionally inflicts, or allows, physical injury, impairment of bodily function or disfigurement of a child; or
  - (B) commit, threaten to commit or attempt to commit, serious emotional damage to the child such as serious anxiety, depression, withdrawal or outward aggressive behavior of a child; and

- (C) The emotional damage is diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of a person having care, custody or control of the child.

(c) Dating Violence

- (1) “Dating Violence” means any violation of the STCJ Code that occurs during a dating relationship which is a social relationship of a romantic or intimate nature. In determining whether parties have a dating relationship, the trier of fact shall consider the length of time the relationship has existed, the nature of the relationship, and the frequency of the interaction between the parties. The STCJ Victim must be an Indian.
- (2) Offenses that can be charged against non-Indians over whom the Pueblo asserts jurisdiction for the covered crime Dating Violence include:
  - (A) Simple assault. It shall be a criminal offense to willfully threaten bodily harm to another person through use of unlawful force or violence or through verbal threats, threats through the social media or written threats and that person reasonably fears the assault.
  - (B) Assault and battery. It shall be a criminal offense to willfully strike another person or otherwise intentionally inflict bodily injury on another or cause another to harm themselves.
  - (C) Assault with a deadly weapon. It shall be a criminal offense to assault another, or to attempt to assault another, or to threaten to assault another, or to inflict serious bodily injury, with a deadly weapon
  - (D) Assault inflicting serious bodily injury. It shall be a criminal offense to assault another and to inflict serious bodily injury.
  - (E) Assault by pointing a firearm or weapon. It shall be a criminal offense to intentionally point any firearm or weapon at another, either in fun or otherwise, whether or not the firearm or weapon is capable of discharging a projectile.

- (F) False imprisonment. It shall be a criminal offense to knowingly, and without lawful authority, to restrain another so as to interfere with that person's liberty.
- (G) Homicide. It shall be a criminal offense to purposely, knowingly, or wrongfully cause the death of another human being; or to cause the death of another human being during or as a result of the commission or attempted commission of a crime; or to recklessly or negligently with disregard of the possible consequence of one's conduct to cause the death of another human being.
- (H) Kidnapping. It shall be a criminal offense to intentionally and wrongfully remove another from their place of residence, business, or from the vicinity where he/she is found, or to unlawfully confine or conceal another for a substantial period. A removal, restraint, or confinement is wrongful within the meaning of this section if it is accomplished by force, threat, deception, or otherwise without the STCJ Victim's consent, for any of the following purposes:
- (1) To hold for ransom or reward, or as a shield or hostage;
  - (2) To facilitate commission of any offense, or flight thereafter;
  - (3) To inflict bodily injury, to terrorize or to threaten the STCJ Victim or another.
- (I) Maiming. It shall be a criminal offense to wrongfully, purposely, or knowingly deprive a human being of a member of his body or render it useless, or to cut out or off, disable or disfigure any part of the body of another.
- (J) Threats. It shall be a criminal offense to willfully threaten to physically injure the person or damage the property of a Native, when the threat is communicated, orally, in writing, or by any other means, and the threat is

made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out.

- (K) Firearms. It is a criminal offense for a person subject to the STCJ Code to carry a firearm or weapon when they are involved in a dating relationship and the prohibition of carrying a firearm or weapon is included in an Order of Protection issued by any jurisdiction.

(d) Domestic Violence

- (1) “Domestic Violence” means any violation of the STCJ Code that occurs within the exterior boundaries of Santa Clara Pueblo and the victim is an Indian and the violation has been committed by a spouse or intimate partner.
- (2) Offenses that can be charged against non-Indians over whom the Pueblo asserts jurisdiction on for the covered crime Domestic Violence include:
  - (A) Simple assault. It shall be a criminal offense to threaten bodily harm to another person through use of unlawful force or violence or through verbal threats, threats through the social media or written threats and that person reasonably fears the assault.
  - (B) Assault and battery. It shall be a criminal offense to willfully strike another person or otherwise intentionally inflict bodily injury on another or who shall cause another to harm themselves.
  - (C) Assault with a deadly weapon. It shall be a criminal offense to assault another, or to attempt to assault another, or to threaten to assault another, or to inflict serious bodily injury, with a deadly weapon.
  - (D) Assault inflicting serious bodily injury. It shall be a criminal offense to assault another person and to inflict serious bodily injury.
  - (E) Assault by pointing a firearm or weapon. It shall be a criminal offense to point any firearm or weapon at any person, either in fun or otherwise, whether or not the firearm or weapon is capable of discharging a projectile.

- (F) False imprisonment. It shall be a criminal offense to knowingly, and without lawful authority, restrain or imprison another so as to interfere with that person's liberty.
- (G) Homicide. It shall be a criminal offense to purposely, knowingly, or wrongfully cause the death of another human being; or to cause the death of another human being during or as a result of the commission or attempted commission of a crime; or to recklessly or negligently with disregard of the possible consequence of one's conduct to cause the death of another human being.
- (H) Kidnapping. It shall be a criminal offense to intentionally and wrongfully remove another from their place of residence, business, or from the vicinity where he/she is found, or to unlawfully confine or conceal another for a substantial period. A removal, restraint, or confinement is wrongful within the meaning of this section if it is accomplished by force, threat, deception, or otherwise without the STCJ Victim's consent, for any of the following purposes: To hold for ransom or reward, or as a shield or hostage; to facilitate commission of any offense, or flight thereafter; to inflict bodily injury, to terrorize or to threaten the STCJ Victim or another.
- (I) Maiming. It shall be a criminal offense to wrongfully, purposely, or knowingly deprive a human being of a member of his body or render it useless, or to cut out or off, disable or disfigure any part of the body of another.
- (J) Threats. It shall be a criminal offense to willfully threaten to physically injure the person or damage the property of a Native, when the threat is communicated, orally, in writing, or by any other means, and the threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out.

(e) Obstruction of Justice.

(1) “Obstruction of Justice” means any violation of the criminal or civil law of the Pueblo that involves interfering with the administration or due process of the law of the Pueblo, including any Tribal criminal proceeding or investigation of a crime.

(2) Offenses that can be charged against non-Indians over whom the Pueblo asserts jurisdiction for the covered crime Obstruction of Justice include:

(A) Harboring or concealing another.

(B) Providing or aiding in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape of another.

(C) Concealing or destroying evidence of the offense or tampering with a witness or informant.

(D) Warning another of impending discovery or apprehension.

(E) Volunteering false information for the purpose of preventing apprehension of another or oneself.

(F) Obstructing by force, threat bribery, deception or perjury anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of another.

(G) Obstructing, by any means, the apprehension, prosecution, conviction or punishment of oneself or another.

(f) Sexual Violence.

(1) “Sexual violence” means any nonconsensual sexual act or contact proscribed by the criminal law of the Pueblo, including in any case in which the STCJ Victim lacks the capacity to consent to the act.

(2) The following offenses can be charged against non-Indians over whom the Pueblo asserts jurisdiction for the covered crime Sexual Violence. Sexual Violence includes sexual abuse. It shall be a criminal offense to knowingly:



- (A) Cause, or attempt to cause, another to engage in a sexual act by threatening or placing that other person in fear, by using force against that other person, or placing that other person in fear that any person will be harmed.
- (B) Render, or attempt to render, another unconscious and thereby engage in a sexual act with that other person.
- (C) Administer, or attempt to administer, to another by force or threat of force or without the knowledge or permission of that person a drug, intoxicant or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct and engages in a sexual act with that other person.
- (D) Assault, or attempt to assault, another and to cause, or attempt to cause, physical injury by means of strangulation during a sexual act.
- (E) Engage in a sexual act with another when that other person is incapable of appraising the nature of the conduct; or physically incapable of declining participation in or communicating unwillingness to engage in the sexual act.
- (F) Engage in sexual contact with another without their permission.

(g) Sex Trafficking.

- (1) “Sex Trafficking” means an act proscribed by the criminal law of the Pueblo, including in any case in which the STCJ Victim lacks the capacity to consent to the act.
- (2) The offense of sex trafficking can be charged against non-Indians over whom the Pueblo asserts jurisdiction when:
  - (A) The person knowingly use force, fraud or coercion in an attempt to have a STCJ Victim engage in sexual contact or a sexual act; and
  - (B) The person benefits financially or receives anything of value or sexual favors; and

- (C) The sexual contact or sexual act with the STCJ Victim is performed in person or is recorded on any visual or spoken device with or without the victim's permission; and
- (D) The STCJ Victim suffers physical or emotional damage as diagnosed by a medical doctor or psychologist and the damage is caused by the acts or omissions of the person.

(h) Stalking

- (1) "Stalking" means engaging in a course of conduct directed at a specific person proscribed by the criminal law of the Pueblo that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress. Stalking includes cyberstalking.
- (2) A non-Indian over whom the Pueblo asserts jurisdiction can be charged with the criminal offense of Stalking if the person intentionally or knowingly engages in a course of conduct, including maintaining visual or physical proximity or directing any type of threat on two or more occasions toward another person and if that conduct:
  - (A) Would cause a reasonable person to fear for the person's safety or the safety of that person's immediate family member and that person in fact fears for their safety or the safety of that person's immediate family member; or
  - (B) Would cause a reasonable person to fear death of that person or that person's immediate family member and that person in fact fears death of that person or that person's immediate family member; or
  - (C) Would cause a reasonable person to suffer substantial emotional distress.

(i) Violation of an Order of Protection.

- (1) "Violation of an Order of Protection means an act that occurs in Indian country of the Pueblo and violates a provision of an Order of Protection that prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical

proximity to another person and was issued against the Defendant and is enforceable by the Pueblo and is consistent with section 2265(b) of title 18, United States Code.

- (2) It shall be a criminal offense for a non-Indian over whom the Pueblo asserts jurisdiction for the covered crime of Violation of an Order of Protection to violate an Order of Protection issued by any jurisdiction.
- (3) For enforcement under the STCJ Code, an Order of Protection must meet the requirements of this section and state that the STCJ Victim is the person specifically protected by the Order of Protection allegedly violated.

## ARTICLE 4: STATUTE OF LIMITATIONS

- (a) Intent: It is the intent of the statute of limitations to provide justice for the alleged offender, the alleged victim and the Pueblo.
- (b) Provisions
  - (1) This statute of limitations applies to all criminal offenses set forth in this Code.
  - (2) The statute of limitations begins to run on the date that the offense is committed, provided that:
    - (A) If the Defendant conceals or disguises their identity in the commission of the offense, then the statute of limitations shall begin to run on the date that the Defendant is identified;
    - (B) If the Defendant conceals the offense by hiding themselves or by destroying evidence, then the statute of limitations shall begin to run on the date that offense is discovered;
    - (C) If the victim is under the age of 18 years, then the statute of limitations shall begin to run on the date that the STCJ Victim reaches the age of 18 years;
    - (D) If the Defendant conceals or disguises their identity in the commission of the offense or hides themselves or destroys evidence and the STCJ Victim is under the age of 18 years, then the statute of limitations shall begin to run on the date after the STCJ Victim reaches the age of 18 and the Defendant has been identified.
  - (3) The statute of limitations shall be paused:
    - (A) While a STCJ Victim is incompetent as determined by the Court after a competency hearing which follows Federal standards.
    - (B) If the STCJ Defendant induced or intimidated the STCJ Victim to not report the offense to law enforcement or prevented the STCJ Victim from reporting the offense, or testifying about the offense, to law enforcement

about the offense. The statute of limitations will start upon the STCJ Victim reporting the offense, or testifying to about the offense, to law enforcement.

(C) If the STCJ Defendant has physically left the Pueblo of Santa Clara.

(4) The statute of limitations for each offense in Article 3 is six (6) years.

## ARTICLE 5: DEFINITIONS

### (a) Scope

The definitions included in this Article shall govern in all Covered Crime cases in the STCJ Court.

### (b) Purpose and Construction

(1) The definitions of this Article are intended to provide for the just and speedy determination of all Covered Crime cases. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare.

(2) When a definition is not available elsewhere in the STCJ Code or in this Article, the definitions shall follow the definitions provided in Title 18-Crimes and Criminal Procedure-of the United States Code.

“Acknowledgment” means a statement of acceptance of responsibility and the short declaration at the end of a legal paper showing that the paper was duly executed.

“Action” means case, cause, suit, or controversy disputed or contested before a court.

“Adversarial System” means the trial method used in the U.S. and some other countries. This system is based on the belief that truth can best be determined by giving opposing parties full opportunity to present and establish their evidence, and to test the evidence presented by their adversaries by cross-examination. This is done under the established rules of procedure before an impartial judge and/or jury.

“Affirmative Defense” is used in response to criminal charges, where the defendant introduces facts or evidence to justify or excuse his/her conduct. If the Defendant meets this burden, the Defendant may avoid criminal responsibility.

“Allegation” means a statement of the claim in a written document (a pleading) that a person is prepared to prove in court.

“Appeal” means an application to a higher court for review of a court order.

“Appellant” means the party who takes an appeal from one court or jurisdiction to another.

“Appellate Court” means a court having jurisdiction to hear appeals and review a trial court’s decision.

“Appellee” means the party who prevailed in the lower court.

“Arraignment” means a proceeding in which the Defendant is brought before the court to plead guilty, not guilty or no contest to the violation charged against him.

“Arrest Warrant” means an order by a judge that directs a police officer to arrest a person for allegedly committing a crime.

“Attorney of Record” means the attorney retained or assigned to represent a client.

“Bail” means an amount of money set by the judge which must be posted by a STCJ Defendant in order to gain his/her release until trial, or pending appellate proceedings; the amount of bail is set at such amount as to reasonably ensure that the STCJ Defendant comes to court when the STCJ Defendant is required.

“Bail Bond” means cash posted by a STCJ Defendant to meet the bail set by the judge as a prerequisite to STCJ Defendant’s release from custody until a trial or appellate proceedings.

“Bailiff” means a court officer who keeps order in the courtroom.

“Beyond a Reasonable Doubt” means the standard in a criminal case requiring that the jury (or judge in non-jury cases) be satisfied to a moral certainty that every element of a crime has been proven by the prosecution. This standard of proof does not require that Santa Clara Pueblo establish absolute certainty by eliminating all doubt, but it does require that the evidence be sufficiently conclusive that all reasonable doubts are removed from the mind of the ordinary person.

“Brief” means a written statement prepared by one side to explain to the court its view of the facts of a case and the applicable law.

“Burden of Proof” means, in a criminal case, the burden on the Prosecutor is to establish the STCJ Defendant’s guilt beyond a reasonable doubt. Guilt is determined by the judge or jury. The “burden of proof” means, in establishing jurisdiction, that facts that do not bear on guilt are decided by the judge and only require proof by a preponderance of evidence that the offense was committed in the territorial jurisdiction of the STCJ Court.

“Challenge for cause” means a request by one side in a court case to disqualify a potential juror for specific reasons. The reasons may include the inability of the potential juror to be fair, unbiased or capable of serving as a juror. The challenge is submitted to the STCJ Judge who will decide whether the potential juror should serve on the jury.

“Child” means, for the purpose of any Covered Crime, a person who has not attained the age of 18, except in the case of sexual violence.

“Circumstantial Evidence” requires that an inference be made between the evidence and the conclusion to be drawn from it.

“Civil Law” means the laws relating to private rights and remedies as opposed to criminal law.

“Clerk” means an employee of the Santa Clara Pueblo Tribal Court responsible for carrying out the duties and responsibilities of the Clerk of the Court as set forth in the STCJ Code.

“Code” means this STCJ Code.

“Coercion; Commercial Sex Act” includes the meanings given the terms in section 1591(e) of title 18, United States Code.

“Common Law” means a system of law that is derived from judges’ decisions and customs and traditions of Santa Clara Pueblo rather than legislation or Tribal Council Resolutions.

“Competent” means properly qualified; adequate. When applied to the STCJ Defendant, it also means the mental capacity to stand trial.

“Complaint” means a written statement of the essential facts constituting the offense charged.

“Complainant” means the STCJ Prosecutor or law enforcement officer signing a complaint alleging a violation of the STCJ Code.

“Concurrent” means together, at the same time; or having the same authority.

“Consecutive” means one following another.

“Contempt” means an act that obstructs a court’s work or lessens the dignity of the court.

“Conviction” means, in a criminal action, the finding that the STCJ Defendant is guilty of the crime.

“Corroborating Evidence” means supplementary evidence that tends to strengthen or confirm the other evidence.

“Course of Conduct” means a pattern composed of two or more acts for the purpose of achieving a goal.

“Covered Crimes”, for purposes of exercising criminal jurisdiction over non-Indians, means conduct that involves:

1. assault of Tribal justice personnel;
2. child violence;
3. dating violence;
4. domestic violence;
5. obstruction of justice;
6. sexual violence;
7. sex trafficking;
8. stalking; and
9. violation of an order of protection.

“Crime” means an act or omission for which a sentence of incarceration, fines, restitution, community service or probation is authorized.



“Criminal Justice System” means the network of law enforcement, detention agencies, courts and tribunals that deal with the criminal law and its enforcement.

“Cross-examination” means asking a witness questions when the witness was called by another party. The questions may evaluate the truth of the witness’ testimony or to develop the testimony further.

“Custom” means regular behavior of the Santa Clara Pueblo that, over time, takes on legal importance so that it will strongly influence the STCJ Court’s decision.

“Cyberstalking” means the repeated use of electronic communications to harass or frighten someone.

“Defendant” means one who commits, or allegedly commits, an offense or crime.

“Decision” means the judgment reached or given by a court of law.

“Declination” means a formal refusal.

“Detention” means physical confinement and electronic monitoring.

“Direct Evidence” means proof and testimony that directly go to an issue at hand.

“Direct Examination” means the first questioning of witnesses by the party on whose behalf they are called.

“Disciplinary Action” means sanctions as defined within the STCJ Code.

“Discovery” means investigation and gathering of information by opposing parties. The tools of discovery include: interrogatories, depositions, production of documents or things, permission to enter land or other property, physical or mental examinations, and, in civil cases, requests for admission.

“Dismissal” means an order or judgment disposing of a specific charge without a trial.

“Disposition” means the sentencing or other final settlement of a case.

“Due Process of Law” means the right of all persons to receive the guarantees and safeguards of the law and the judicial process, including the Indian Civil Rights Act and the Violence Against Women Act. The guarantees and safeguards include adequate notice of legal proceedings, opportunity to be heard by the judge or jury, assistance of counsel, and the STCJ Defendants’ rights to remain silent, to a speedy and public trial, to an impartial jury and to confront and secure witnesses.

“Elders” means a person over 65 years of age.

“Elements of a Crime” means specific factors that define a crime and which the prosecution must prove beyond a reasonable doubt in order to obtain a conviction.

“Enrolled Member” means a person who is deemed to be an enrolled member of Santa Clara solely by Santa Clara Pueblo’s Constitution and membership laws.

“Essential Personal Effects” means those items necessary for a person’s health, welfare and livelihood, including but not limited to, clothing, cribs, beds, bedding, family heirlooms,

medications, money, personal documents, personal hygiene, items, tools of the trade, vehicles, jewelry, regalia or any religious, cultural or ceremonial items, and pets.

“Exclusionary Rule” means the rule preventing illegally obtained evidence, such as property found during an illegal search, from being used in any criminal trial.

“Exclusive Jurisdiction” means the power that a court exercises over an action or over a person to the exclusion of all other courts; that forum in which an action must be commenced because no other forum has the jurisdiction or hear and determine the action.

“Exemption” means freedom from a general duty; a privilege allowed by law; immunity from certain legal obligations.

“Exhaustion Doctrine” means a legal doctrine that requires an individual seeking to challenge the jurisdiction of a tribal court, or to assert a violation of rights under the Indian Civil Rights Act to first raise those challenges in tribal court, not Federal court. Even if the tribal court ultimately rejects these challenges, the person making these claims must first pursue all chances to appeal that rejection in the tribal legal system before going to the Federal court.

“Ex Parte” means on behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present at the proceeding.

“Ex Parte Communication” means communication about a case or lawsuit that is conducted between a judge and one party, witness, attorney, or other person interested in the litigation when all of the parties are not present and the absent party did not have notice.

“Ex Parte Proceeding” means the legal procedure in which only one side is present or represented. It differs from the adversary system or adversary proceeding, and is only lawful in limited circumstances; for example, a hearing for a temporary restraining order.

“Explicit” means fully developed or described.

“Family member” means any adult or child who reside in the household or are persons who are related by blood, adoption or marriage and who cohabits a dwelling with another or recently cohabitated a dwelling with another.

“File” means to place a paper in the official custody of the clerk of court/court administrator to enter into the files or records of a case.

“Filed in Open Court” means court documents entered into the file in court during legal proceedings.

“Final Order” means an order that ends the lawsuit between the parties, resolves the merits of the case, and leaves nothing to be done but enforcement or appeal.

“Firearm” means a) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; b) the frame or receiver of any such weapon; c) any firearm muffler or firearm silencer; or d) any destructive device. Such term does not include an antique firearm.

“Good Faith” means honest intent to act without taking an unfair advantage over another person.

“Habeas Corpus” means a writ used as a means to bring a person before the court to determine whether he or she is being detained unlawfully.

“Harmless Error” means an error committed during a trial that was corrected or was not serious enough to affect the outcome of the trial and therefore was not sufficiently harmful (prejudicial) to require that the judgment be reversed on appeal.

“Hearing” means a proceeding, generally public, at which an issue of fact or law is discussed and both parties have the right to be heard.

“Hearsay” means testimony by a witness concerning events about which the witness has no personal knowledge that is offered to prove the truth of the matter asserted. Hearsay testimony conveys not what the witness observed personally, but what others told the witness or what the witness heard others say. Hearsay is usually not admissible as evidence in court because of its unreliability.

“Immediate family” means spouse, children, parents, brothers, sisters and wards.

“Impeachment of a Witness” means an attack on the credibility (believability) of a witness, through evidence introduced for that purpose.

“Indian” means: an enrolled member of Santa Clara Pueblo; any member of a Federally recognized tribe in the United States and its territories; any natural person who is considered an Indian by the traditions, customs, culture and mores of the Santa Clara Pueblo; any natural person who is recognized as an Indian by a Federally recognized tribe or by the Federal government.

“Indian country” means the term as defined in section 1151 of title 18, United States Code.

“Indigent” means a STCJ Defendant who is not financially able to employ an attorney.

“Individual Rights” means those rights set forth in 25 U.S.C. §§ 1302-1304

“Inherent” means the natural authority not derived from another; powers originating from the nature of government or sovereignty that are not dependent on being granted by another government; usually used as inherent jurisdiction or inherent power.

“Injunction” means a judge’s order to a person to do or refrain from doing a particular thing. An injunction may be preliminary or temporary (until the issue can be fully tried in court), or it may be final or permanent.

“Judge” means an appointed official with authority to hear and decide cases in a court of law.

“Judge Pro Tempore” means a temporary judge. Judge pro tem is an abbreviation for Judge Pro Tempore.

“Judiciary” means the branch of government that interprets the law; the branch that judges.

“Jurisdiction” means legal authority; a government’s or court’s power to exercise authority over persons and things.

“Jury” mean persons selected according to law and sworn to inquire into and declare a verdict on matters of fact.

“Jury List” means a list containing the names of jurors summoned or empaneled to try an action.

“Jury Trial” means a case tried by a by a group selected to hear the facts and make a decision.

“Law enforcement officer” means any law enforcement officer who has been authorized to enforce the STCJ Code.

“Lay Counsel” means a person who is not a licensed attorney.

“May” means “is permitted.”

“Mitigating Circumstances” means those facts which do not constitute a justification or excuse for an offense but which may be considered as reasons for reducing the degree of blame.

“Motions” means requests, either written or oral, made to the court.

“Movant,” in a contempt proceeding, means the party who files a motion.

“Must” means “is required to.”

“Native” has the same legal meaning as “Indian”: An Indian is an enrolled member of the Pueblo of Santa Clara; an enrolled member of any Federally recognized tribe in the United States and its territories; any natural person who is considered an Indian by the traditions, customs, culture and mores of the Pueblo of Santa Clara; any natural person who is recognized as an Indian by a Federally recognized tribe or by the Federal government; and any corporation or other non-governmental legal entity of any kind that is majority-owned by an Indian tribe or one or more Indians. While Native and Indian are used interchangeably in the STCJ Code, the preferred term in Santa Clara Pueblo for an American who is a native of the United States is “Native” or “Native American.” However, the term “Indian” has been used historically in past laws. Whenever a U.S. law uses the term “Indian,” as in the Indian Civil Rights Act, the STCJ Code has also used the same term.

“No Contest” or “Nolo Contendere” means a plea through which the STCJ Defendant does not admit guilt, but which has the same legal effect as a plea of guilty in a criminal case. However, a “no contest” plea related to a criminal charge, may not be used in a civil action to prove the STCJ Defendant’s civil liability. For example, a plea of no contest for a criminal assault cannot be used to convince a judge in a civil case that the STCJ Defendant is responsible for damages from the assault.

“Non-jury trial” means a case tried by a judge on the facts as well as the law.

“Non-Member Residence Committee” means the committee established by Title IV, Chapter 27 of the Tribal Code, Regulation of Non-Member Residence.

“Offense” means a violation of the STCJ Code.

“Officer of the Court” means any person who has an obligation to promote justice and effective operation of the judicial system, including judicial or ministerial services.

“Opening Statement” means the initial statement made by attorneys for each side, outlining the facts each intends to establish.

“Opinion” means a judge’s written explanation of a decision of the court.

“Order” means a written or oral command from a court directing or forbidding an action.

“Order of Protection” means:

- (A) any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
- (B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as an order issued pending litigation in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of the person seeking protection.

“Parole” means the conditional release of prisoners before they complete their sentence.

“Peremptory Challenge” means the right to challenge a prospective juror without assigning a reason for the challenge.

“Permitted Resident” means a person who is not an enrolled member of Santa Clara Pueblo whose residence on Santa Clara land has been permitted under Tribal Code, Title IV, Chapter 27, Regulation of Non-Member Residence.

“Personal Recognizance” means a promise by a STCJ Defendant to appear at proceeding upon which promise the judge order his release from custody.

“Petition” means a written request to a court. For example, a petition for an Order of Protection.

“Plea” means the STCJ Defendant’s answer to the charge: Guilty, not guilty or nolo contendere.

“Plea Agreement” means an agreement between the STCJ Prosecutor and the STCJ Defendant, presented for the court’s approval, regarding the charges to which the STCJ Defendant will enter a plea of guilty or a no contest plea. Typically, the STCJ Defendant pleads guilty in an exchange for some form of leniency. For example, the STCJ Defendant may plead to lesser charges so that the penalties are diminished. Or, the STCJ Defendant may plead to some, but not all of the charges so that the others are dropped. The agreement may include sentencing recommendations.

“Plea Bargaining or Plea Negotiating” means the process through which an Defendant person and an STCJ Prosecutor negotiate a mutually satisfactory disposition of a case. The STCJ Court is not privy to the actual negotiations, but is presented with a plea agreement for its approval or rejection.

“Prejudice” means bias or preconceived opinion.

“Pre-sentence Investigative Report” means a report designed to assist the judge in passing sentence on a convicted STCJ Defendant. Such reports should contain at least the following: (1) complete description of the situation surrounding the criminal activity; (2) offender’s educational background; (3) offender’s employment background; (4) offender’s social history; (5) residence history of the offender; (6) offender’s medical history; (7) information about environment to which the offender will return; (8) information about any resources available to assist the

offender; (9) probation officer's view of the STCJ Defendant's motivations and ambitions in committing the crime; and (10) full description of the STCJ Defendant's criminal record.

"Probable Cause" means such a state of facts and circumstances known to the STCJ Prosecutor or to the officer personally or by information from others as would, in the judgment of the court, lead a man of ordinary caution acting conscientiously in light of such facts and circumstances, to believe that appropriate judicial proceedings are warranted.

"Probation" means a sentence of a convicted offender, released into the community under supervision of a probation officer.

"Protocol" means the rules of correct or appropriate behavior for a particular group of people in a particular situation. For example, the police protocol for handling Domestic Violence.

"Quash" means to vacate or void a summons; subpoena, etc.

"Reasonable person" means whether a reasonable man or a reasonable woman would consider conduct appropriate under specific circumstances.

"Record" means all the documents and evidence plus transcripts of oral or copies of video proceedings in a case.

"Recusal" means the voluntary action by a judge to remove himself or herself from presiding in a given case because of self-interest, bias, conflict, or prejudice or the appearance of such.

"Restitution" means giving something back; making good for something.

"Revoking" means taking back a legal decision.

"Sanctioned" means admonished, cautioned, or reprimanded. A sanction is a penalty or punishment attached to a law so that it is obeyed.

"Search Warrant" means a written order, signed by a STCJ Judge, which directs a law enforcement officer to search and seize from a specific area or person a specific piece or type of evidence, or to search and seize a person for whom an arrest warrant is outstanding.

"Sentencing" means the phase of a criminal proceeding after the STCJ Defendant is found guilty, when the punishment is imposed.

"Serious bodily injury" means a bodily injury so serious that it creates a substantial risk of death, or a serious permanent disfigurement, or a coma, or a permanent or protracted condition that causes extreme pain, or a permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

"Sexual act" means

- (a) Contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or
- (b) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

- (c) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

“Sexual contact” means the intentional touching, either directly or through the clothing or any covering, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

“Shall” means “is required to.”

“Should” means recommended but not required.

“Sovereign Immunity” means a government’s freedom from being sued.

“Spouse or Intimate Partner” means, for exercise of criminal jurisdiction over non-Indians,

- (a) a current or former spouse or intimate partner of the victim;
- (b) a person with whom the victim shares a child in common;
- (c) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or
- (d) a person similarly situated to a spouse of the victim according to the customs and traditions of the Pueblo; or
- (e) a person who has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length and type of relationship, and the frequency of interaction between the persons involved in the relationship.

“Strangulation” means intentionally or knowingly impeding normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose and mouth.

“STCJ” means Special Tribal Criminal Jurisdiction.

“STCJ Code” means this Special Tribal Criminal Jurisdiction Code.

“STCJ Court” means the Court with authority over STCJ offenses.

“STCJ Defendant” means a non-Indian, or a non-Native, person who is subject to the jurisdiction of the STCJ Court pursuant to Article 3 of this STCJ Code.

“STCJ Judge” means the judge who presides over STCJ cases.

“STCJ Prosecutor” means the attorney who presents the Pueblo’s case in the STCJ Court.

“SCTJ Victim” means a person who has suffered, physical or mental harm, property damage, or economic loss as a result of a crime, or an attempted or a threatened crime, when that crime is listed under the Covered Crimes or when that crime is a violation of an Order of Protection.

“Summons” means a notice to appear before the court.

“Summons and Complaint” means a single document containing all the requisites of both a summons and complaint.

“Trial” means examination of any issue of fact or law before the court.

“Tribal Code” means the Santa Clara Pueblo Tribal Code (2006 Compilation, as amended).

“Tribal Holidays” mean the schedule of holidays and administrative leave days approved by the Santa Clara Pueblo Tribal Governor after the annual election.

“Unanimity” means complete agreement within a group.

“Vacate” means to set aside, as a judgment.

“Venire” means a writ summoning persons to a court to act as jurors, also refers to the people summoned for jury duty, as in the “jury venire” or “jury panel.”

“Violence” means:

- (A) an offense that has an element the use, attempted use, or threatened use of physical force or emotional damage against the person or property of another, or
- (B) any other offense that involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense, and
- (C) the offense is listed in the Covered Crimes.

“Voir dire” is a Latin term meaning “to see or speak.” It is the legal procedure conducted before trial in which the attorneys and the judge question prospective jurors to determine if any juror is biased and/or cannot deal with the issues fairly, or if there is cause not to allow a juror to serve.

“Vulnerable Adult” means a person eighteen (18) years of age or older who is within the jurisdiction of the Santa Clara Pueblo Tribal Court and whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical, or developmental disability or dysfunction; or brain damage; or the infirmities of aging; or drug or alcohol abuse or addiction

“Waive” means to voluntarily agree to not exercise a specific right.

“Ward” means a person, especially a child, placed by the court under the care of a guardian.

“Weapon” means a thing designed or used for inflicting bodily harm or physical damage.

“With Prejudice” means, when applied to a criminal case, that the case has been permanently dismissed and cannot be brought again to court.

“Without Prejudice” means that the claim or cause that is dismissed may be the subject of a new criminal complaint.



“Witness” means a person who testifies to what he/she has seen, heard, or otherwise experienced. The experience may include, but is not limited to, writings, photos and videos.

“Writ” means a judicial order directing a person to do something or to refrain from doing something.

## ARTICLE 6: LAW ENFORCEMENT

### (a) Law Enforcement Duties to Victims

A law enforcement officer who responds to an allegation of Covered Crimes violations shall use means to protect the STCJ Victim and any household member, and prevent further violence, including, but not limited to:

- (1) Taking necessary actions to provide for the safety of the STCJ Victim and any family or household members or witnesses, including arresting the alleged Defendant or dominant aggressor;
- (2) Assisting the STCJ Victim or any household member in obtaining medical treatment including obtaining transportation to a medical facility;
- (3) Assisting the STCJ Victim or any household member in removing essential personal effects from their home;
- (4) Notifying a designated agency, such as the Santa Clara Pueblo Victim Services, the Santa Clara Pueblo Social Services or Behavioral Health Program or the PeaceKeepers Domestic Violence Program so that immediate support can be offered to the STCJ Victim and their family;
- (5) Transporting or obtaining transportation for the STCJ Victim and any household member to any domestic violence safe house or other place of safety;
- (6) Confiscating any weapon;
- (7) Assisting the STCJ Victim in obtaining an Order of Protection.

### (b) Mandatory Arrest

- (1) The purpose of mandating arrest of a Defendants is to provide STCJ Victims with immediate protection from the current violence, to afford them an opportunity to consider legal options, to provide STCJ Victims with time to safely relocate or obtain an Order of Protection, and to ensure an adequate and prompt law enforcement response to Covered Crimes violations. The Defendant shall be held in custody pending further action by the Court.

- (2) A law enforcement officer shall make a warrantless arrest and charge a person for the appropriate crime if the officer has probable cause to believe that the person has violated the STCJ Code. The warrantless arrest shall be made within four (4) hours of the time when the STCJ Victim first has the ability to report the incident. The officer shall make an arrest upon probable cause regardless of the express wishes of the STCJ Victim, but those wishes should be noted in any report written about the arrest.
- (3) Nothing in this Article prohibits an officer from arresting and booking a person upon probable cause to believe that a person has committed a crime involving Covered Crimes violations when more than four hours has passed since the crime was committed.
- (4) If a law enforcement officer receives a complaint alleging a crime involving Covered Crimes violations from two or more possible victims, the officer shall evaluate each person's account separately to determine who was more likely to have been the predominant physical aggressor. In determining whether a person was the predominant physical aggressor, the officer must consider the following as well as any other relevant factors:
  - (A) Prior complaints of Covered Crimes violations; and
  - (B) The relative severity of the injuries inflicted on each person, including the types of injuries and, if known, whether the injuries appeared offensive or defensive; and
  - (C) The likelihood of future injury to each person; and
  - (D) Whether one of the persons acted in self-defense; and
  - (E) Whether violence was used to control, or isolate, another; and
  - (F) Whether future harm has been threatened; and
  - (G) The extent to which each person present appears to fear any party, including any relevant history of the relationship..

- (5) If a law enforcement officer determines that one person was the predominant physical aggressor, the officer may not arrest the other person, in their sole discretion, even if the officer has probable cause to believe that the other person has committed a crime involving Covered Crimes violations against the predominant physical aggressor.
- (6) A law enforcement officer who does not make an arrest, or who arrests two or more persons after investigating an alleged crime involving Covered Crimes violations, must include in the police report a detailed explanation why the officer did not make an arrest or arrested two or more parties.
- (7) Persons arrested shall be held in custody pending further STCJ Court disposition.
- (8) Whenever a law enforcement officer investigates an allegation of Covered Crimes violations, whether or not an arrest is made, the officer shall make a detailed written report of the alleged abuse and submit that report to the STCJ Prosecutor.
- (9) After submission of the report to the STCJ Prosecutor, whether to further investigate or prosecute an alleged crime is in the sole discretion of the STCJ Prosecutor.
- (10) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties.

(c) Authority to Seize and Hold Weapons

- (1) Incident to arrest for a crime involving Covered Crimes violations, the law enforcement officer shall seize all weapons that are alleged to have been involved or were threatened to be used in the commission of the crime.
- (2) The law enforcement officer may also seize weapons that are in plain view of the officer or that are discovered pursuant to a consensual search, an officer safety pat-down or a search incident to arrest as necessary for the protection of the officer or other persons.

(3) The law enforcement officer is authorized to confiscate weapons from a person who is prohibited by Tribal or Federal law from owning, possessing or using the weapon.

(d) Liability of Law Enforcement Officers or Legal Advisors

A law enforcement officer or his/her legal advisor shall not be held liable in any civil action for an arrest based on a good faith belief the officer has probable cause, enforcement in good faith of any court order, or any other action or omission made in good faith under this Article arising from an incident of alleged Covered Crimes.

## ARTICLE 7: DEFENDANTS

### (a) Rights in a Criminal Proceeding

- (1) Unless otherwise set forth in this Article, the STCJ Defendant shall be present at all stages of the proceedings. The STCJ Defendant may be present personally or through audio or visual means. The STCJ Judge in his/her discretion may allow the STCJ Defendant to appear through an attorney.
- (2) A STCJ Defendant shall have all applicable rights under 25 U.S.C. § 1302, Indian Civil Rights Act, and 25 U.S.C. § 1304, Tribal jurisdiction over Covered Crimes.
- (3) Should there be any inconsistency between the STCJ Code and 25 U.S.C. § 1302, the provisions of 25 U.S.C. § 1302 shall control.
- (4) Should there be any inconsistency between the STCJ Code and 25 U.S.C. § 1304, the provisions of 25 U.S.C. § 1304 shall control.
- (5) In all criminal proceedings, the STCJ Defendant shall have the following rights:
  - (A) Upon arrest, be provided with a notice of rights.
  - (B) To be free from excessive bail, excessive fines, and cruel or unusual punishment;
  - (C) To a defense pro se or by attorney;
  - (D) To be informed of the nature of the charges against him or her and to have a written copy of those charges;
  - (E) To confront and cross-examine all prosecution or hostile witnesses;
  - (F) To compel by subpoena the attendance of any witnesses necessary to defend against the charges; and the production of any books, records, documents, or other things necessary to defend against the charges;
  - (G) To have a speedy and public trial by the STCJ Court or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the STCJ Defendant;

- (H) Not to be required to testify, and no inference may be drawn from STCJ Defendant's exercise of the right not to testify;
- (I) To petition for a writ of habeas corpus;
- (J) The right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and does not systematically exclude any distinctive group in the community, including non-Indians; and
- (K) All other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over an STCJ Defendant.

(b) Right to an Attorney

- (1) At the arraignment, the STCJ Defendant shall be notified, in writing, that he/she has the absolute right to an attorney, as long as the attorney is licensed to practice law under the STCJ Code.
- (2) The right to be represented shall include the right to consult with the attorney as soon as feasible after STCJ Defendant is taken into custody, at reasonable times thereafter and sufficiently in advance of a proceeding to allow adequate preparation therefore.
- (3) An indigent STCJ Defendant shall be entitled to have an attorney appointed to represent him or her at the Pueblo's expense.
- (4) A STCJ Defendant may waive his or her right to an attorney in writing, after the STCJ Court has determined that he or she knowingly, intelligently and voluntarily desires to forego that right. An STCJ Defendant may withdraw a waiver of the right to attorney at any time but will not be allowed to repeat any proceeding already held solely on the grounds of the waiver and consequent lack of attorney.

(c) Habeas Corpus

Notification:

When the STCJ Judge has ordered the detention of any person, the Judge shall notify such person, in writing, of his or her right to file a petition for writ of habeas corpus to test the legality of his or her detention. The petition may be filed in either the STCJ Court or Federal Court.

Petition to stay detention:

The STCJ Court shall grant a stay if the court:

Finds that 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, finds by clear and convincing evidence that under conditions imposed by the court, the habeas petitioner is not likely to flee or pose a danger to any person or the community if released.

Petition for Writs of Habeas Corpus in Federal Court. The Defendant has the absolute right to seek Federal habeas corpus relief. Before an individual may seek Federal habeas corpus relief, he or she must first exhaust all STCJ Code remedies.

(d) Indigent Defendant

- (1) The term “indigent” as used in this Article means a STCJ Defendant who is not financially able to employ an attorney.
- (2) An STCJ Defendant desiring to proceed as an indigent shall complete under oath a questionnaire concerning the STCJ Defendant’s financial resources, on a form approved by the Chief Judge. The STCJ Defendant shall be examined under oath regarding the STCJ Defendant’s financial resources by the STCJ Judge presiding at the STCJ Defendant’s arraignment.
- (3) After a determination of whether the STCJ Defendant is indigent has been made by the court, if there is a material change in circumstances, either the STCJ



Defendant, the appointed attorney, or the STCJ Prosecutor may move for reconsideration of that determination. The Court shall then conduct a hearing on the motion.

(e) Appointment of an Attorney

- (1) Whenever an attorney is appointed to represent an STCJ Defendant, the STCJ Judge shall enter an order to that effect, a copy of which shall be given or sent to the STCJ Defendant, the attorney appointed, and the STCJ Prosecutor.
- (2) If the Pueblo does not employ a public defender, or the public defender is unable to represent STCJ Defendant, due to a conflict of interest or for any other reason, then an attorney under contract with the Pueblo to provide criminal defense services shall be appointed to represent an indigent STCJ Defendant.
- (3) On appeal of a matter requiring appointment of an attorney under the STCJ Code, the STCJ Judge shall appoint a new attorney for the indigent STCJ Defendant if the prior attorney has been permitted to withdraw.

(f) Trial; Priorities

- (1) The trial of STCJ cases shall have priority over all other cases.
- (2) The STCJ Prosecutor shall advise the court, in the Complaint, of facts, relevant to determining the order of cases on the calendar.
- (3) The STCJ Defendant's attorney shall advise the court of the impending expiration of time limits in the STCJ Defendant's case. Failure to do so may result in sanctions and should be considered by the court in determining whether to dismiss an action with, or without, prejudice.

(g) Speedy Trial

- (1) Every person released pending trial shall be tried within six calendar months after arraignment.
- (2) Every person held in custody on a criminal charge shall be tried within 90 calendar days from the date of arraignment.

- (3) A trial ordered after a mistrial, upon a motion for a new trial, or upon the reversal of a judgment by the court of appeals shall begin within 60 days after the entry of the order.
- (4) The calculation of the time limits prescribed by this section shall not include any delays attributable to the STCJ Defendant, including, but not limited to, delay caused by an examination and hearing to determine competency, the STCJ Defendant's absence or incompetence, or his or her inability to be arrested or taken into custody on the Pueblo.
- (5) If the STCJ Judge determines that a speedy trial time limit established by this Article has been violated, it shall, on motion of STCJ Defendant or on its own initiative, dismiss the prosecution, with or without prejudice, as justice requires.

(h) Issuance of Subpoena

- (1) Upon the request of any party to a case or upon the STCJ Judge's own initiative, the STCJ Judge shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant and necessary to the determination of the case.
- (2) The subpoena shall include the seal of the court, and command the witness to attend and testify at the time and place the subpoena specifies. The subpoena may also order the witness or to produce records. The clerk shall issue a blank subpoena, signed and sealed, to the party requesting it, and that party shall fill in the blanks before the subpoena is served.

(i) Service of Subpoena

- (1) A subpoena may be served at any place within or outside the exterior boundaries of the Pueblo, but any subpoena served outside the Pueblo shall be served by a person authorized to serve subpoenas according to the law of the jurisdiction in which the subpoena is served.
- (2) Except as provided above for the service of subpoenas outside of the Pueblo, a subpoena may be served by a tribal law enforcement officer or other person appointed by the court for such purpose. Service of a subpoena shall be made by

delivering a copy of it to the person named or by leaving a copy at his or her place of residence with any competent person 16 years of age or older who also resides there.

- (3) Proof of service of the subpoena shall be filed with the clerk of the court by noting on a copy of the subpoena the date, time, and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena on a form approved by the Chief Judge.
- (j) Failure to Obey Subpoena
- (1) Upon determining that any person has failed to obey a subpoena without a justification satisfactory to the court, the court may issue an order to show cause why that person should not be held in contempt of court. A bench warrant for his or her arrest may be issued and the STCJ Court may direct that the order and warrant be served upon the person. Willful evasion of service of a subpoena shall be considered failure to obey a subpoena.
  - (2) Upon the arrest, or failure to appear, of the person made the subject of the order to show cause, that person shall be given the opportunity to justify to the court his or her failure to obey the subpoena. In the event that the STCJ Court determines that the failure to obey the subpoena was unjustified, the court may find the person in contempt of court. Contempt of the STCJ Court is civil in nature.

## ARTICLE 8: STCJ VICTIMS

All STCJ Victims shall be have their rights explained in either English or Tewa. All STCJ Victims shall have the following rights:

- (a) Right to be protected. The following measures may be taken to protect STCJ Victims as necessary and appropriate:
  - (1) Law enforcement escorts to and from court;
  - (2) Secure waiting areas separate from those of the Defendant and the Defendant's family, witnesses and friends during court proceedings;
  - (3) Confidentiality of the STCJ Victim's address, place of employment, and other personal identification information based upon the STCJ Victim's reasonable apprehension of acts or threats of physical violence or intimidation by the STCJ Defendant or at the STCJ Defendant's direction against the STCJ Victim or the STCJ Victim's family; and
  - (4) Have any other reasonable action taken that is necessary to protect the STCJ Victim from the Defendant.
- (b) Right to Notice. The right to reasonable, accurate, and timely notice of the STCJ Victim's rights and any public court proceeding, or any release proceeding, involving the crime or any release or escape of the Defendant.
  - (1) Initial Notice of Rights. Upon the initial contact between the STCJ Victim and law enforcement, law enforcement shall have the responsibility of giving the STCJ Victim information about the availability of emergency and medical services and he/she shall be provided with a written copy of the Article 8 rights of the STCJ Victim and the contact information for the Santa Clara Pueblo's Victim Services Coordinator.
  - (2) Notice of Charges. The right to be consulted by the STCJ Prosecutor before the STCJ Prosecutor decides to prosecute or dismiss charges against the STCJ Defendant.

(c) Right to Notice of Pretrial Release and Trial Process.

- (1) Prior to the arraignment of the STCJ Defendant for a crime, the STCJ Prosecutor, or their designee, must give the STCJ Victim notice of whether the STCJ Defendant is eligible for pretrial release.
- (2) If the STCJ Defendant is released from custody by bond or otherwise, the STCJ Prosecutor, or their designee, must give the STCJ Victim notice.
- (3) After the offense, the STCJ Prosecutor may move that the bond or personal recognizance of STCJ Defendant be revoked where the STCJ Victim's statement or affidavit asserts acts or threats of physical violence or intimidation by the STCJ Defendant or at the STCJ Defendant's direction against the STCJ Victim or the STCJ Victim's immediate family.
- (4) Notice of Trial Process. The STCJ Prosecutor, or their designee, must tell the STCJ Victim:
  - (A) The procedural steps in the processing of a criminal case;
  - (B) Suggested procedures if the STCJ Victim is subjected to threats or intimidation; and
  - (C) The appropriate person to contact for further information.

(d) Notice of Sentencing.

- (1) The STCJ Victim must be given notice of the following:
  - (A) The STCJ Defendant's conviction;
  - (B) The crimes for which the STCJ Defendant was convicted;
  - (C) The STCJ Victim's right to make a written or oral impact statement for use in the preparation of a pre-sentence investigation report concerning the STCJ Defendant;
  - (D) The address and telephone number of the probation office, if any, which is to prepare the pre-sentence investigation report;

- (E) That a pre-sentence investigation report and any statement of the STCJ Victim included in the report will be made available to the STCJ Defendant unless exempted from disclosure by the STCJ Judge. The reasons for exemption from disclosure shall be written and included in a Court Order;
- (F) The STCJ Victim's right to make an impact statement at sentencing;
- (G) The time and place of the sentencing proceeding; and
- (H) The notice given by the STCJ Prosecutor to the STCJ Victim must be given by any means reasonably calculated to give prompt and actual notice.

(e) Notice of Appeal.

(1) The STCJ Court must notify the STCJ Victim of the following:

- (A) That the STCJ Defendant has filed an appeal of his or her conviction;
- (B) The appeal process, including the possible outcomes;
- (C) Whether the STCJ Defendant has been released on bail, bond or personal recognizance pending the disposition of the appeal;
- (D) The time and place of any appellate court proceedings and any changes in the time or place of those proceedings;
- (E) The result of the appeal.

(f) Notice of Release.

After the trial, the STCJ Court shall notify the STCJ Victim if the STCJ Defendant is released.

(g) Notice of Escape.

It is the duty of the Court to give the STCJ Victim and the STCJ Prosecutor immediate notice of the escape of the person Defendant, convicted or imprisoned for committing a crime against the STCJ Victim. The notice must be given by means reasonably calculated to give prompt and actual notice.

(h) Right Not to be Excluded.

The STCJ Victim has the right to attend proceedings related to the crime for which the STCJ Defendant is charged, unless the Court, after receiving clear and convincing evidence, determines that testimony by the STCJ Victim would be materially altered if the STCJ Victim heard other testimony at the proceeding. The STCJ Victim has the right to have a support person present during such proceedings such as a family member, trusted advocate, or legal representative.

(i) Right to be Heard During Proceedings.

- (1) The STCJ Victim has the right to be heard at any STCJ Court proceeding, including arraignment, bond or bail hearings, plea agreement hearings, sentencing, probation or parole.
- (2) The STCJ Victim has the right to submit or make a written or oral impact statement to law enforcement for use in preparing investigations and reports.
- (3) The STCJ Victim has the right to appear and make an oral or written impact statement at the sentencing of the STCJ Defendant.

(j) Opportunity to Confer with the STCJ Prosecutor.

The STCJ Prosecutor must offer the STCJ Victim an opportunity to confer with the STCJ Prosecutor to obtain the STCJ Victim's views about the disposition of a crime, including the STCJ Victim's views about dismissal, plea or sentence negotiations, and pretrial or probation programs.

(k) Restitution

- (1) Consistent with the STCJ Code, the Court may order the STCJ Defendant to make restitution to any STCJ Victim or to the STCJ Victim's estate as long as the STCJ Defendant's actions caused the damage. The burden of proof is upon the STCJ Prosecutor to prove that it is more likely than not that the damage alleged was caused by the STCJ Defendant's action.

- (2) If a crime results in damage to or loss or destruction of property of the STCJ Victim of the offense, the order of restitution may require that the STCJ Defendant do either of the following:
- (A) Return the property to its owner or to another person designated by the owner; or
  - (B) If return of the property is impossible, impractical or inadequate, pay an amount equal to the value of the property on the date of the damage, loss or destruction.
- (3) If a crime results in physical or psychological injury to a STCJ Victim, the order of restitution may require that STCJ Defendant to do one or more of the following, as applicable:
- (A) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care;
  - (B) Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation;
  - (C) Reimburse the STCJ Victim or the STCJ Victim's estate for after-tax income loss suffered by the STCJ Victim as a result of the offense; and/or
  - (D) Pay an amount equal to the cost of psychological and medical treatment for members of the STCJ Victim's family that has been incurred as a result of the offense.
  - (E) The Court, in a separate hearing, shall determine, by a preponderance of evidence, whether psychological or medical treatment damages to the STCJ Victim's family were incurred as a result of the offense.
- (4) If a crime resulting in bodily injury also results in death of a STCJ Victim, the order of restitution may require that the STCJ Defendant pay an amount equal to the cost of actual funeral and related expenses.



- (5) If the STCJ Victim or the STCJ Victim's estate consents, the order of restitution may require the STCJ Defendant make restitution in services in lieu of money, or make restitution to a person designated by the STCJ Victim or STCJ Victim's estate if that person provided services to the STCJ Victim as a result of the crime.
- (6) If the STCJ Court orders restitution, the STCJ Court must, if the STCJ Victim is deceased, order that the restitution be made to the STCJ Victim's estate, except as provided in paragraph k(5) above.
- (7) Any order of restitution must be as fair as possible to the STCJ Victim or STCJ Victim's estate without unduly complicating or prolonging the sentencing process.
- (8) Any amount paid to a STCJ Victim or STCJ Victim's estate as restitution must be set off against any amount later recovered as compensatory damages by the STCJ Victim or the STCJ Victim's estate in any tribal, Federal or state civil proceeding.
- (9) If the STCJ Defendant is placed on probation or parole, any restitution ordered under this section must be a condition of that probation or parole. The Court may revoke probation or parole if the STCJ Defendant fails to comply with the order and if the STCJ Defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the Court must consider the STCJ Defendant's employment status, earning ability, financial resources, and the willfulness of the STCJ Defendant's failure to pay and any other special circumstances that may have a bearing on the STCJ Defendant's ability to pay.
- (10) An order of restitution may be enforced by the STCJ Prosecutor, a STCJ Victim, or STCJ Victim's estate named in the order to receive the restitution in the same manner as a judgment in a civil action.
- (l) Right to Proceedings without Unreasonable Delay.

The right to proceedings free from unreasonable delay. If the Court is ruling on a continuance or other delay in the proceedings, the Court must consider the impact of

the delay on the STCJ Victim. Cases involving STCJ Victims who are children, elders or vulnerable adults must be given preference in setting the Court docket.

(m) Right to be Treated with Fairness and Respect.

The right to be treated with fairness and with respect for the STCJ Victim's dignity and privacy. The STCJ Victim must be treated with fairness, respect, and dignity throughout the criminal justice process. During STCJ proceedings, the STCJ Prosecutor and the STCJ Judge must take this into consideration when requesting or ordering testing, testimony, or any other potentially invasive act.

(n) Right to Return of Property.

The right to the expeditious return of personal property seized as evidence whenever possible. Law enforcement must promptly return to the STCJ Victim property belonging to that STCJ Victim which is taken in the course of the investigation, except that law enforcement:

- (1) Must not return property which is contraband;
- (2) Must not return property if the ownership of the property is disputed until the dispute is resolved by the Tribal Court; and
- (3) Must retain as evidence any weapon used in the commission of the crime and any other evidence unless the STCJ Prosecutor certifies that it can be released.

o) Right to Enforcement.

The STCJ Victim may request, in writing, that the STCJ Court enforce the rights of the STCJ Victim. The request will cite the specific right that the STCJ Victim wishes to be enforced.

## ARTICLE 9: STCJ JUDGES

### (a) Qualifications

- (1) The Chief Judge of the Santa Clara Pueblo Tribal Court shall serve as the presiding officer of the Santa Clara Pueblo STCJ Court. They shall adopt written policies concerning the STCJ Court's internal operations and other administrative matters.
- (2) The Chief Judge may designate a certified Pro tem Judge, to hear STCJ cases. The Pro tem Judge shall be a sitting judge in Santa Clara Tribal Court, or elsewhere, or shall have prior experience as a criminal prosecutor or defense attorney.
- (3) All judges, including a Chief Judge, who sit as STCJ judges shall have graduated from an accredited law school and be a member of a Federal bar.

### (b) Vacancy

A vacancy in the Chief Judge's position shall be filled by the Acting Chief Judge as appointed by the Tribal Council or Governor.

### (c) Disqualification and Recusal

- (1) No STCJ Judge shall hear or determine an appeal from the decision of a case or an appeal from the decision of a case or issue tried by him or her. No STCJ Judge shall hear or determine any case on original trial or appeal when he/she has a direct interest in the outcome of the case, or is related to one of the litigants in the trial within the second degree of lineal consanguinity. A litigant may file a motion requesting that the STCJ Judge recuse themselves for these just causes. The STCJ Judge shall proceed no further and they shall call in another STCJ Judge to hear and determine the matter.
- (2) An STCJ Judge may recuse himself/herself from presiding in a given case because of self-interest, bias, conflict, or prejudice.

## ARTICLE 10: ATTORNEYS

### (a) Lay Counsel

Lay Counsel are not permitted to practice before the STCJ Court.

### (b) Professional Attorneys

Only professional attorneys meeting the standards in this section, including defense attorneys and prosecutors, may practice before the STCJ Court.

(1) Any STCJ Defendant appearing as a party in a criminal action before the STCJ Court shall have the right to be represented by a professional attorney of their own choice and at their own expense, unless they meet the requirements for indigency.

(2) To be a professional attorney and practice in the STCJ Court, the professional attorney must:

- (A) Have graduated from an accredited law school.
- (B) Be an active member in good standing of any Federal bar.
- (C) Be familiar with and abide by the Rules and Orders of the Courts of Santa Clara Pueblo and be a member of the Santa Clara Pueblo bar.
- (D) Be knowledgeable and generally informed about the STCJ Code and the Federal laws regarding Domestic Violence.
- (E) Score 90%, or higher, on a Court-administered written test regarding the STCJ Code, Pueblo criminal jurisdiction, Federal criminal law and the STCJ.
- (F) Pay an admission fee of \$100.00.
- (G) Take the following oath:

“I do solemnly swear (or affirm) that I will support the Constitution and laws of the United States, the Santa Clara Pueblo Constitution, the Santa Clara Pueblo Special Tribal Criminal Jurisdiction Code and all ordinances and

resolutions of the Pueblo of Santa Clara, and that I will maintain proper respect for the Courts and judicial officers of the Pueblo of Santa Clara.”

(c) Suspension and Disbarment

- (1) Grounds. It shall be grounds for suspension or disbarment of an attorney licensed to practice before the STCJ Court for that attorney to:
  - (A) violate the oath of the STCJ Court (set forth in Sec. B(2)(g) of this Article);
  - (B) be disbarred from practice before any tribal, state or Federal court;
  - (C) violate the American Bar Association Model Rules of Professional Conduct;
  - (D) commit any improper or contemptuous act, whether inside or outside of the courtroom, against the dignity of the Santa Clara Pueblo, the STCJ Court, or the Santa Clara Pueblo people.
- (2) Only the Chief Judge or acting Chief Judge may suspend or disbar an attorney.
- (3) Immediate provisional suspension. Upon receipt of sufficient evidence that there are grounds pursuant to Section C(1) of this Article for suspension or disbarment of an attorney and the situation warrants immediate suspension, the Chief Judge may immediately suspend any attorney on a provisional basis until notice and a due process hearing, which shall be held as soon as practicable.
- (4) Disbarment. An attorney may be disbarred only after a due process hearing.
- (5) Due process hearing. After notice and a due process hearing, the Chief Judge may continue a suspension, suspend, or disbar an attorney when the Chief Judge finds by clear and convincing evidence that there are grounds for suspension or disbarment of the attorney pursuant to Section c(1) of this Article.
- (6) Suspension and/or disbarment may be for an indefinite period of time and/or include conditions precedent to full restoration of the privileges of the bar.

## **ARTICLE 11: STCJ PROSECUTORS**

### **(a) Power and Authority of STCJ Prosecutors**

- (1) In all STCJ proceedings, the STCJ Prosecutors shall have the power and authority, on behalf of the Pueblo to sign, file and present any and all complaints, subpoenas, affidavits, motions and papers of any kind in any such proceeding within the Pueblo's jurisdiction.

### **(b) Appointment of STCJ Prosecutors**

- (1) STCJ Prosecutors, whether contracted or Pueblo employees, shall be subject to the approval of the Tribal Council with the recommendation of the Governor.

### **(c) Eligibility for Appointment and Service**

- (1) A person is eligible to serve as an STCJ Prosecutor only if the person:
  - (A) is not a Santa Clara Pueblo official or member of the Santa Clara Pueblo Tribal Council;
  - (B) is not a judge of the Santa Clara Pueblo Tribal Court; and
  - (C) meets all requirements of an attorney licensed to practice in the STCJ Tribal Court, as specified in Article 10, Attorneys.

### **(d) Compensation**

The STCJ Prosecutors shall be paid a reasonable level of compensation, to be determined by the Pueblo, but not less than \$80 per hour.

### **(e) Independent Function**

- (1) An STCJ Prosecutor shall be independent and free of inappropriate influence from any source to ensure that the discretionary decision-making authority of the STCJ Prosecutor remains unimpaired.
- (2) Any allegations of inappropriate influence against an STCJ Prosecutor shall be immediately forwarded to the Tribal Governor for his disposition.

- (3) An STCJ Prosecutor may be suspended from practice, or disbarred, by the Chief Judge or Acting Chief Judge in accordance with Article 10, Attorneys.
- (4) An STCJ Prosecutor may also be removed from his or her position according to the terms of his or her contract.

## **ARTICLE 12: CRIMINAL PROCEDURE**

### **(a) Scope**

The provisions of this Article shall govern procedure in all criminal proceedings in the STCJ Court.

### **(b) Purpose and Construction**

- (1) The provisions of this Article are intended to provide for the just and speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unnecessary delay and expense, and to protect the fundamental rights of the individual while preserving the public welfare.
- (2) Unless otherwise expressly provided in this Article, criminal procedure shall follow the Federal Rules of Criminal Procedure.
- (3) When an interpretation of the Federal Rules of Criminal Procedure is required, the Court shall consider Federal Indian law, any Federal case law, Pueblo case law, and Santa Clara Pueblo laws, customs and traditions.

### **(c) Computation of Time**

- (1) Whenever this Code, or an order of the STCJ Court, requires that an action be taken within a certain number of days, the day of the event from which the time limit runs shall not be counted, but the last day shall be counted unless it is a Saturday, Sunday, or tribal holiday, in which case the time continues to run until the end of the next day that is not a Saturday, Sunday, or tribal holiday.
- (2) The time limit is counted from or to the time that notice is delivered to a person.
- (3) If the notice is mailed, the time limit is counted from three days after the notice is mailed.
- (4) All notices delivered by the United States Postal Service, shall be served certified, return receipt.



(d) Search Warrants

- (1) “Search Warrant” means a written order, signed by a STCJ Judge, which directs a law enforcement officer to search and seize from a specific area or person, a specific piece or type of evidence, or to search for and seize a person for whom an arrest warrant is outstanding.
- (2) Every search warrant shall:
  - (A) identify and describe the particular property or place to be searched;
  - (B) identify and describe the items to be searched for and seized, and/or the person to be searched for; and
  - (C) specify a time after which the warrant shall be void, in no case longer than ten days from the date of its issuance.

(e) Examination of Oath; Affidavits

- (1) Before issuing a warrant, the STCJ Judge may examine, on oath, the person or persons seeking the warrant, and any witnesses produced, and must take his or her affidavit, or their affidavits, in writing or by telephone, and cause the affidavit to be supported by oath or affirmation by the party or parties making the affidavit.
- (2) Before issuing the warrant, the STCJ Judge may also examine any other sworn affidavit submitted to him which sets forth facts tending to establish probable cause for the issuance of the warrant.
- (3) The affidavit or testimony must set forth the facts tending to establish the grounds of the application, or probable cause for believing the grounds exist.
- (4) All affidavits shall be in writing.

(f) Issuance; Form of Search Warrants; Duplicate Original Warrant

- (1) Search warrants issued in an STCJ proceeding shall only be issued by a STCJ Judge.

- (2) The STCJ Judge shall have the power to issue warrants for the search and seizure of the property and premises of any person under the jurisdiction of the STCJ Court.
- (3) No search warrant shall be issued except upon a finding of probable cause that the search to be authorized by the warrant will discover:
- (A) property or items which have been stolen, embezzled, contraband or otherwise criminally possessed; or
  - (B) property or items which have been or is being used to commit a criminal offense; or
  - (C) property or items which constitutes evidence of the commission of a criminal offense; or
  - (D) a person for whom an arrest warrant is outstanding.
- (4) On a reasonable showing that an announced entry to execute the warrant would endanger the safety of any person or would result in the destruction of any of the items described in the warrant, the STCJ Judge shall authorize an unannounced entry.
- (5) The search warrant shall be in substantially the following form:

“To any Santa Clara Pueblo Tribal Law Enforcement officer:

After reviewing the affidavit provided by (naming every person whose affidavit has been taken) there is probable cause for believing that (stating the grounds of the application). You are therefore commanded to make a search of (naming persons, buildings, premises or vehicles, describing each with reasonable particularity) for the following property, persons, or things; (describing such with reasonable particularity), and if you find such, retain it in your custody.

This warrant must be executed no later than [date here].

Signed and dated by [the STCJ Judge]

(g) Execution and Return

- (1) Search warrants shall only be executed by Santa Clara Pueblo tribal law enforcement officers.
- (2) The executing officer shall return the warrant to the STCJ Court within the time limit shown on the face of the warrant.
- (3) Warrants not executed by the date shown on the face of the search warrant and filed in the STCJ Court no later than the next court business day shall be void.
- (4) A facsimile of the original warrant is deemed to be a search warrant for the purposes of this Article.
- (5) On return of the facsimile of the original warrant, the STCJ Judge, or his designee, shall file the original warrant and the facsimile of the original warrant.

(h) Search Without a Warrant

No Santa Clara Pueblo tribal law enforcement officer shall conduct any search pursuant to this Code without a valid warrant except:

- (1) Incident to making a lawful arrest, in which case the search shall be limited to the individual arrested and the immediate surroundings within his or her reach; or
- (2) With the voluntary consent of the person being searched, or of the owner or occupant of the place to be searched; or
- (3) When the search is incident to an arrest and such search is for the purpose of taking an inventory of the item(s) in order to protect the property of the person or owner, and to account for all item(s) which have been seized; or
- (4) Any other search which does not violate the rights of an individual, and has been found to be reasonable under the particular facts and circumstances of the situation by the STCJ Court and its interpretation of the rights as guaranteed by the Indian Civil Rights Act.

(i) Disposition of Seized Property

- (1) Any law enforcement officer who seizes property by warrant or otherwise, shall make an inventory of all property seized, and a copy of such inventory shall be given to the person from whom the property was taken or left in a conspicuous place on the property if no one is present at the time of the execution of the warrant or time of seizure.
- (2) After the entry of a judgment finally disposing of a case, a hearing shall be held by the STCJ Court to determine the disposition of all property seized by any tribal law enforcement agency in connection with that case. Upon satisfactory proof of ownership, the property shall be delivered to the owner unless such property is contraband, is to be used as evidence in a pending or appellate case or if the owner is not entitled/allowed to possess the item.

(j) Complaint

- (1) All criminal prosecutions for violation of the STCJ Code shall be initiated by the filing of a complaint in the STCJ Court. A complaint is a written statement of the essential facts constituting an offense under this Code signed by an STCJ Prosecutor and charging that a named individual has committed a particular criminal offense under this Code.
- (2) Complaints shall contain:
  - (A) a written statement, describing in ordinary language the offense committed, including the time and place as nearly as may be determined, and the name or description of the person alleged to have committed the offense, the STCJ Defendant's non-Indian status;
  - (B) the section of the STCJ Code allegedly violated; and
  - (C) the possible range of sentence that may be imposed by the STCJ Court on the STCJ Defendant for each offense charged..

- (3) The STCJ Prosecutor shall file all criminal complaints with the STCJ Court based upon information received from a criminal investigation.
- (4) If the complaint, or the complaint together with other sworn statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, and the STCJ Defendant has not been arrested or is not in custody, the STCJ Court shall issue a summons commanding the Defendant to appear before the court at a specified time and place to answer to the charge, provided if there is reasonable cause to believe that the STCJ Defendant will fail to appear upon being summoned, or if the summons cannot readily be served or delivered, an arrest warrant shall issue to cause the STCJ Defendant's appearance before the STCJ Court to answer to the charge.
- (5) The STCJ Judge may, without unnecessary delay, subpoena and examine such witnesses as the judge deems necessary to the determination of whether or not a warrant or summons should be issued.
- (6) If STCJ Defendant who has been duly summoned fails to appear, the STCJ Court shall issue a warrant for the STCJ Defendant's arrest.
- (7) When an Defendant has been arrested without a warrant, a complaint or a complaint together with other sworn statements shall be filed with the STCJ Court for review as to whether probable cause exists to hold the Defendant, and in all cases, a complaint shall be filed no later than at the time of arraignment, otherwise the STCJ Defendant shall be released without prejudice to the subsequent filing of a criminal complaint.
- (8) Any person who files or causes to be filed a criminal complaint under this Code knowing the complaint to be frivolous, or without basis in fact, or only for the purpose of harassment, is guilty of contempt of court and may, in the discretion of the court, be found liable for court costs, and/or fined in an amount not to exceed \$1,000.00.

(k) Arrest

- (1) Arrest is the taking of a person into custody in order that the STCJ Defendant may be held to answer for a criminal offense.
- (2) No Santa Clara Pueblo tribal law enforcement officer shall arrest any person for a criminal offense set out in the STCJ Code except when:
  - (A) the officer has a warrant signed by an STCJ Judge commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or
  - (B) the offense occurred in the presence of the arresting officer; or
  - (C) the officer has probable cause to believe that the person to be arrested has committed an offense.
- (3) In any case where a law enforcement officer has authority to make an arrest and where a reasonable person would have reason to believe that life or limb is in danger, the law enforcement officer may break open an outer or inner door or window of a dwelling house or other structure for the purpose of making the arrest if, after a notice of his intention, the law enforcement officer is not allowed admittance within a reasonable time.

(l) Arrest Warrants and Summons

- (1) Every STCJ Judge may issue arrest warrants; provided, however, that such warrants shall be issued only upon a showing of probable cause in sworn written statements containing reliable information. No STCJ Judge shall issue an arrest warrant if he/she finds that there is not probable cause to believe that the offense charged has been committed by the named Defendant.
- (2) Every arrest warrant shall command that the STCJ Defendant be arrested and brought before the issuing STCJ Judge and shall contain the following information:

- (A) the name of the STCJ Defendant, or if his or her name is unknown, any name or description by which he/she can be identified with reasonable certainty; and if known, the STCJ Defendant's address; and
- (B) the date of issuance of the warrant; and
- (C) a statement of the offense with which the STCJ Defendant is charged and a description of the acts which the Defendant committed which constitute the offense; and
- (D) the signature of the issuing STCJ Judge.

(3) A summons shall order the STCJ Defendant to appear at a stated time and place. The summons may also command the Defendant to report to a designated place to be photographed and fingerprinted prior to the arraignment. Unless good cause for failure to report is shown, such failure shall result in the STCJ Defendant's arrest at the time of arraignment in response to the summons, whereupon the STCJ Judge may direct the Defendant to report immediately for such photographing and fingerprinting.

(4) Application for warrants shall be reviewed and acted upon daily by the STCJ Court.

(m) Execution and Return of Arrest Warrant

(1) The arrest warrant shall be directed to, and may be executed by, any law enforcement officer authorized to execute the arrest warrant.

(2) An arrest warrant shall be executed by arrest of the STCJ Defendant. The officer need not have the warrant in his or her possession at the time of the arrest, but upon request shall show the warrant to the STCJ Defendant as soon as possible. If the officer does not have the warrant in his or her possession at the time of the arrest, the officer shall inform the STCJ Defendant of the offense charged and of the fact that a warrant has been issued.

(n) Service of Summons

- (1) A summons may not be served by publication.
- (2) A summons must be served personally or by certified or registered mail, return receipt requested.
- (3) Return of the receipt shall be prima facie evidence of service.

(o) Defective Warrant

- (1) A warrant of arrest shall not be invalidated, nor shall any person in custody thereon be discharged, because of a defect in form.
- (2) The warrant may be amended by an STCJ Judge to remedy such defect.

(p) Notification of Rights After Arrest

An STCJ Defendant who is under arrest shall be advised of the following rights prior to being questioned:

- (A) that he or she has the right to remain silent;
- (B) that any statements made by the STCJ Defendant may be used against him or her in court; and
- (C) that the STCJ Defendant has the right to counsel, and to have counsel present during all questioning, and that legal counsel will be provided at no cost if the court finds that the STCJ Defendant is indigent.

(q) Notice to Appear

- (1) When otherwise authorized to arrest a Defendant, and when an arrest warrant or summons has not yet been issued for the Defendant, a law enforcement officer may, in lieu of such arrest, if the Defendant's true identity can be determined and verified, issue a notice to appear, commanding the Defendant to appear before the STCJ Court at a stated time and place and answer to the charge.



- (2) The Defendant, as a condition to the issuance of such a notice to appear in lieu of arrest, shall be required to sign a promise that he/she will appear at the stated time and place. The promise to appear shall contain a warning that a person who signs the promise and fails to appear as promised will be subject to contempt of court proceedings.
  - (3) The notice to appear shall contain the same information as a warrant, except that it may be signed by a law enforcement officer, instead of an STCJ Judge.
  - (4) If a Defendant fails to appear in response to a notice to appear, a warrant for his or her arrest shall be issued.
- (r) Procedure Upon Arrest, Arraignment
- (1) Arraignment shall be held in open STCJ Court with the STCJ Defendant present, either in person or by audio or visual means. Unless the time is waived by the STCJ Defendant with the concurrence of the STCJ Judge, the arraignment shall take place within 72 hours after the arrest, excluding weekends and tribal holidays.
  - (2) At the arraignment the STCJ Judge shall:
    - (A) provide the STCJ Defendant with a copy of the complaint and then read the complaint to the STCJ Defendant unless the STCJ Defendant waives such reading;
    - (B) appoint counsel for an indigent STCJ Defendant;
    - (C) determine the STCJ Defendant's plea of not guilty, guilty, or no contest. Unless the STCJ Defendant pleads guilty or no contest, the STCJ Judge shall enter a plea of not guilty on the STCJ Defendant's behalf;
    - (D) hear and decide motions concerning the conditions of release;
    - (E) advise the parties orally or in writing of the dates set for further proceedings and other important deadlines; and

- (F) inform the STCJ Defendant of his or her rights and present the STCJ Defendant with a copy of the STCJ Code.
- (G) that the STCJ Defendant must request a jury trial within three days of the arraignment or the right to a jury trial is waived.
- (H) provide the Defendant with a written notice of his rights under the Indian Civil Rights Act.

(s) Not Guilty Plea

If the Defendant pleads “not guilty” to the charge, the STCJ Judge shall then inform him or her of the pre-trial hearing date and set conditions for release prior to trial.

(t) Plea of Guilty or No Contest

- (1) A plea of guilty or no contest shall be accepted only when it is made personally by the STCJ Defendant to the STCJ Judge.
- (2) A plea of guilty or no contest may be accepted only if voluntarily and intelligently made. Before accepting a plea of guilty or no contest, the STCJ Judge shall address the STCJ Defendant personally, by informing the STCJ Defendant of the following and determining that he/she understands:
  - (A) The nature of the charge to which the plea is offered.
  - (B) The nature and range of possible sentences for the offense to which the plea is offered.
  - (C) The rights the STCJ Defendant gives up by pleading guilty or no contest, including:
    - (1) The right to counsel at the STCJ Defendant’s own expense;
    - (2) The right to have appointed counsel if the STCJ Defendant is indigent;
    - (3) The right to a speedy and public trial;
    - (4) The right to plead not guilty;

(5) The right to a trial by jury if the Defendant is accused of a crime punishable by any term of imprisonment;

(6) The right to confront and cross-examine his or her accusers; and

(7) The right to subpoena witnesses.

(3) Before accepting a plea of guilty or no contest, the STCJ Judge shall address the STCJ Defendant personally and determine that there is a factual basis for the plea, that the STCJ Defendant knowingly and voluntarily wishes to give up the rights of which he/she has been advised, and that the plea is voluntary and not the result of force, threats, or promises (other than a plea agreement).

(u) Bail, Release Prior to Trial

(1) Every STCJ Defendant shall be released pending and during trial on his or her own recognizance or on bail, unless the court determines, based upon findings of fact made at the arraignment, or a later hearing to modify the conditions of release:

(A) That such release will not reasonably assure his/her appearance for all future hearings; or

(B) That there is a reasonable risk that the STCJ Defendant, while released, will commit a crime; or

(C) That the STCJ Defendant's release endangers the alleged STCJ Victim's or the community's safety and that safety cannot be guaranteed through reasonable means.

(v) No Contact

The STCJ Judge may prohibit a STCJ Defendant from any contact with the alleged STCJ Victim.

(w) Conditions of Release

- (1) At the arraignment before an STCJ Judge, a determination of the conditions of release shall be made. The STCJ Defendant shall have the opportunity to be heard by the court with respect to the conditions of release. The STCJ Judge shall issue an order containing the conditions of release and shall inform the STCJ Defendant of the release conditions. The order shall also include any consequences for a violation of the release conditions, including possible incarceration pending further STCJ Court disposition or the possible issuance of an arrest warrant immediately upon report of a violation.
- (2) Every order of release on bond or STCJ Defendant's own recognizance shall require, at a minimum, that the STCJ Defendant:
  - (A) appear to answer and submit to the orders and process of the STCJ Court;
  - (B) refrain from committing any criminal offense;
  - (C) not depart from the Pueblo without prior permission of the Court;
  - (D) obey all no-contact orders.

(x) Modification and Revocation of Release

- (1) Any STCJ Defendant remaining in custody may move for re-examination of the conditions of release based upon the existence of material facts not previously presented to the STCJ Court.
- (2) The STCJ Judge may, on its own initiative, at any time modify the conditions of release, after giving the parties and the victim an opportunity to respond to the proposed modification.
- (3) Violation of Conditions of Release
  - (A) Upon a motion by the STCJ Prosecutor stating facts or circumstances constituting an STCJ Defendant's violation of the conditions of release, the STCJ Court may issue a warrant or summons to secure the STCJ Defendant's

presence in the STCJ Court. A copy of the motion shall be served with the warrant or summons.

- (B) Hearing. If, after a hearing on the matters set forth in the motion, the STCJ Judge finds that the person released has not complied with the conditions of release, the STCJ Judge may modify the conditions or revoke release.

(y) Disposition of Bond

- (1) Forfeiture. If at any time it appears to the STCJ Judge that a condition of a bond has been violated, it shall require the parties and any surety to show cause why the bond should not be forfeited, setting a hearing within ten (10) days. If at the hearing the violation is not explained or excused, the court may enter an appropriate order of judgment forfeiting all or part of the amount of the bond, which shall be enforceable by the STCJ Prosecutor as any civil judgment.
- (2) Exoneration: At any time that the STCJ Judge finds that there is no further need for a bond, it shall exonerate the bond and order the return of any security deposited.

(z) Plea Negotiations; STCJ Court Review

- (1) Plea negotiations may take place at any time prior to a determination of “guilty” or “not guilty” by the STCJ Judge or jury.
- (2) The STCJ Victim has the right to confer with the STCJ Prosecutor prior to any proposed plea agreement.
- (3) After consultation with the STCJ Victim, the STCJ Prosecutor and the STCJ Defendant may negotiate and agree on any aspect of the disposition of the case.
- (4) The terms of a plea agreement shall be in writing and shall be signed by the STCJ Defendant, his or her counsel, if any, and the STCJ Prosecutor. An agreement may be revoked by any party before it is accepted by the STCJ Court.
- (5) The SCTJ Victim may also present, orally or in writing, victim impact testimony with the entry of the plea agreement.

- (6) The parties shall file the agreement with the STCJ Court, which shall address the STCJ Defendant personally and determine that he or she understands and agrees to its terms and that the written document contains all the terms of the agreement.
- (7) After making such determinations, the STCJ Judge shall either accept or reject the tendered negotiated plea. The STCJ Judge shall not be bound by any provision of the plea agreement regarding the sentence or the term and conditions of probation to be imposed, if, after accepting the agreement, it rejects the provision as inappropriate.
- (8) If an agreement or any provision thereof is rejected by the STCJ Judge, the Judge shall give the STCJ Defendant an opportunity to withdraw the plea, advising the STCJ Defendant that if he/she allows the plea to stand, the disposition of the case may be more or less favorable than contemplated by the agreement.
- (9) When a plea agreement or any term thereof is accepted by the STCJ Court, the agreement or such term shall become part of the record. However, if no agreement is reached, or if the agreement is revoked, rejected by the court, or withdrawn or if the judgment is later vacated or reversed, neither the plea discussion nor any resulting agreement, plea, or judgment, nor statements made at a hearing on the plea, shall be admissible against the STCJ Defendant in any criminal or civil action or administrative proceeding.

(aa) Withdrawal of Plea

The STCJ Judge, in its discretion, may allow withdrawal of a plea of guilty or no contest when to do so would be in the interest of justice. Upon withdrawal, the charges against the STCJ Defendant as they existed before any amendment, reduction or dismissal made as part of a plea agreement shall be reinstated automatically.

(ab) Pretrial Hearings

At any time after arraignment, the STCJ Judge, at the request of the STCJ Prosecutor or Defendant or upon its own motion, may order one or more hearings to consider

such matters as will promote a fair and expeditious trial. Such a hearing shall be held only if the STCJ Defendant is represented by counsel, or knowingly and voluntarily waives the right to counsel at the arraignment. At the conclusion of the hearing, the STCJ Judge may issue an order on any matters agreed upon or any matters that the STCJ Judge deems appropriate to the case.

(ac) Motions

- (1) At any time after the arraignment, either party may, by filing a written motion, or by making an oral motion in open court in the presence of all other parties, request that the STCJ Court issue a particular order.
- (2) Such motions may include, but are not limited to:
  - (A) motions to suppress evidence which was illegally seized, or which was the product of the fruits of an illegal search or seizure;
  - (B) motions to prevent the introduction of evidence due to its unfairly prejudicial, inflammatory, or irrelevant nature; and
  - (C) motions to exclude witnesses from the courtroom until they are called by the STCJ Court, and to instruct them not to discuss the case.
- (3) A criminal complaint filed in the STCJ Court must be dismissed upon the Defendant's motion, or the STCJ Court's own motion, in the following cases:
  - (A) where it is found not to comply with the requirements of the STCJ Code;
  - (B) where the Defendant has been charged without reasonable or probable cause;  
or
  - (C) upon a determination that the STCJ Court has no jurisdiction over the person or the offense.
- (4) An order to dismiss the complaint is no bar to later prosecution for the same offense, except in the case wherein the STCJ Court has no jurisdiction or the case has been dismissed with prejudice.

(ad)Directed Verdict

At the close of the Prosecution's case and at the close of evidence, the STCJ Judge may direct a verdict of acquittal. If no directed verdict of acquittal is ordered, the STCJ Judge shall charge the jury as to the law and the jury shall retire to determine a verdict.

(ae)Records.

In all criminal proceedings under this Code, the STCJ Court shall maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding. Records shall be kept permanently. Indigent Defendants shall be able to access records free of charge.



### **ARTICLE 13: EVIDENCE**

Except as otherwise expressly provided under the STCJ Code, the STCJ Judge shall follow the Federal Rules of Evidence in STCJ Court proceedings. When an interpretation of the Federal Rules of Evidence is required, the STCJ Judge shall consider Federal Indian law, any Federal case law, Pueblo case law and Santa Clara Pueblo laws, customs and traditions.

## ARTICLE 14: JURIES

### (a) Right and Waiver of Jury Trial

In an STCJ case where there is a possible jail sentence upon conviction, the STCJ Defendant may assert his/her right to a jury trial within three days after the arraignment. If the right to a jury trial is not asserted within three days after the arraignment, the right to a jury trial is waived. If the right to a jury trial is not asserted within three days after the arraignment, then the trial shall be conducted by the STCJ Judge.

### (b) Eligible Jurors

- (1) Only a community member who is 18 years or older may serve as a juror in the STCJ Court.
- (2) As used in this Article, the term “community member” means any person who is an Enrolled Member of the Pueblo of Santa Clara and any person who is a Permitted Resident.
- (3) An “Enrolled Member” is a person who is an enrolled member in the Pueblo of Santa Clara, as determined solely by Santa Clara Pueblo’s Constitution and membership laws. A “Permitted Resident” is a non-member, or non-Indian, whose residence within the exterior boundaries of Santa Clara Pueblo has been permitted under the Tribal Code, Title IV, Chapter 27, Regulation of Non-Member Residence.
- (4) Each December, the Pueblo’s Office of Vital Statistics shall provide the STCJ Court with a list of Enrolled Members. Each December, the Non-Member Residence Committee shall provide the STCJ Court with a list of current Permitted Residents. The lists shall be combined into a master list of eligible jurors and the jury pool shall be selected from the master list of eligible jurors.

### (c) Jury Pool

- (1) Jury pools shall only be selected when a demand for jury trial has been made by the STCJ Defendant.

- (2) Random selection. The Clerk of the Court shall randomly select from the master list of eligible jurors a minimum of 16 names for the jury pool.
- (3) Summons. The Court shall issue a summons for each person so selected and thereby notify persons selected for jury service. Persons selected for jury service shall be summoned by mail or personal service. Persons who do not appear after proper notice of jury service shall be subject to contempt of Court and subsequent reprimand, fines, revocation of residency license or imprisonment.
- (4) Composition of the jury. Juries shall be composed of six jurors and two alternates. A person may be excused from serving on a jury upon providing a good reason, under oath, to the STCJ Judge. The STCJ Judge shall be solely responsible for determining whether there is a good reason to excuse a person from jury service. The STCJ Judge shall consider the needs of the STCJ Court to maintain an adequate jury pool before allowing jurors to be excused for employment reasons.

(d) Selection of Jurors.

- (1) Jury selection (voir dire). After summoning prospective jurors and before trial, or at a time designated by the STCJ Judge, the Clerk shall notify the STCJ Judge and counsel of the names of the members of the jury pool appearing for selection. In selecting a jury from among the panel members, the initial questioning of the jurors shall be conducted by the STCJ Judge in order to determine whether each prospective juror is capable of being fair and impartial. Questions to be asked by the STCJ Judge include whether a panel member:
  - (A) is directly related, by blood, marriage, adoption or foster parenting to any person involved in the action, including, but not limited to, the Defendant's attorney, the STCJ Prosecutor, the alleged STCJ Victim, or any prospective witness;
  - (B) is or has been involved in any business, financial, professional, or personal relationship with the Defendant's attorney, the STCJ Prosecutor, the alleged STCJ Victim, or any prospective witness;

(C) has had any previous involvement in a civil dispute or criminal case with a the Defendant or counsel or the alleged STCJ Victim; or

(D) has a financial or personal interest in the outcome of the action before the Court;

(E) has formed an opinion as to the STCJ Defendant's guilt.

(2) When the STCJ Judge determines that a juror is prejudiced or cannot act impartially, the juror shall be excused. After questioning by the STCJ Judge, both parties may question the jurors using the "struck jury" system. Either party may question the jurors concerning the nature of the action, including burden of proof in criminal cases and the presumption of innocence. The STCJ Judge may limit examination of jurors when the STCJ Judge believes such examination to be improper or unacceptably time consuming.

(e) Challenges to Prospective Jurors.

(1) When Made. All challenges to prospective jurors shall be made to the STCJ Judge before the jury is empaneled and sworn, provided that when a potential challenge for cause is discovered after the jury is sworn, the STCJ Judge may allow a challenge for cause to be made and the STCJ Judge will decide whether the challenged juror is dismissed

(2) For Cause. Each party shall have unlimited challenges for cause. Each challenge must be determined by the STCJ Judge at the time the challenge is made. The STCJ Judge shall excuse a prospective juror for cause if the STCJ Judge determines that there is a reasonable doubt that the prospective juror can be fair and impartial.

(3) Peremptory Challenges. Each party shall have two Peremptory Challenges. In criminal cases where two or more STCJ Defendants are tried together, the prosecution and defense shall each be entitled to one additional Peremptory Challenge.

(f) Motion to Discharge for Cause

- (1) Jury Pool or Jury. Any objection by an STCJ Defendant to the manner in which the members of the jury pool or the jury has been selected or drawn shall be raised by motion to discharge. Except for good cause, the motion must be made at least 14 calendar days prior to the scheduled trial date for which the jury is drawn.
- (2) STCJ Judge's Ruling. It shall be the duty of the STCJ Judge to conduct a hearing on any motion to discharge a jury pool for cause. The burden of proof shall be on the STCJ Defendant to show that there has been such a departure from the requirements in the STCJ Code for selecting the jury pool or the jury as to result in substantial prejudice to the STCJ Defendant. If the STCJ Judge finds that the jury pool was improperly selected or drawn, the STCJ Judge shall discharge the jury pool and order that a new jury pool be drawn.

(g) Jurors and Juror's conduct

- (1) Every person who is required to attend STCJ Court for selection or service as a juror shall be entitled to fees for each day. Fees shall be set at the U.S. District Court for the District of New Mexico rates for jurors. If the person is reimbursed for jury service by their employer, they will not be eligible for other juror fees.
- (2) All jurors shall be paid for mileage at the business mileage rate set by the Internal Revenue Service.
- (3) Juror Oath. The jury shall be sworn in by the STCJ Judge. Any juror who violates the oath may be held in contempt of STCJ Court and subject to reprimand, fines, revocation of residency license or incarceration
- (4) Conduct of Jury During Trial.
  - (A) Juror's Duties. Once empaneled, jurors shall be instructed by the STCJ Judge that it is their duty not to discuss the case or converse among themselves on any subject connected with the trial, or to read about the case or listen to podcasts, conduct internet searches, conduct their own research, visit the crime scene or to form or express any opinion thereon, until the

issues of the case are finally submitted to them. The STCJ Judge shall also instruct the jurors not to discuss the case or any subject connected with the trial with others not on the jury until after the STCJ Judge discharges the jury.

- (B) Notes. Jurors may be allowed to take notes. At each adjournment recess prior to submission of the case to the jury, jurors' notes shall be collected by the Tribal Court Administrator or Clerk and stored in a secure manner. Alternate jurors' notes are to be collected and destroyed by personnel once the alternate jurors have been discharged from the jury. The remaining jurors' notes are to be collected and destroyed by court personnel immediately after the verdict.
  - (C) Breaks. During breaks in the trial, the STCJ Judge shall instruct the jurors as to whether they may separate or must remain in the care of the Tribal Court Administrator or Clerk.
- (5) Unanimous Decision; Discharge after Verdict. The jury must render a verdict by unanimous decision of six (6) jurors on each charge in the complaint. After the verdict of the jury has been announced by the STCJ Judge, he or she shall discharge the jury. If the jury is deadlocked, the case may be retried, at the discretion of the STCJ Prosecutor.

## ARTICLE 15: SENTENCING

The purpose of sentencing is to heal the STCJ Victim, to provide justice for the community and to attempt to modify the STCJ Defendant's behavior so that future offenses will not happen. Sentencing is in the sole discretion of the STCJ judge.

- (a) Minor Imprisonment and Fine: The STCJ Court may impose for conviction for any one offense contained in the STCJ Code and charged in the criminal complaint a term of imprisonment for up to one year, or a fine of up to \$5,000, or both;
- (b) Major Imprisonment and Fine: The STCJ Court may impose for conviction for any one offense contained in the STCJ Code and charged in the criminal complaint a term of imprisonment greater than one year but not to exceed three years, or a fine greater than \$5,000 but not to exceed \$15,000, or both such imprisonment and fine, provided:
  - (1) That the STCJ Defendant to be sentenced:
    - (A) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or
    - (B) has been convicted of any offense comparable to an offense that would be punishable by more than one year of imprisonment if prosecuted by the United States or any of the States; and
  - (2) The total term of imprisonment imposed in the criminal proceeding cannot be longer than nine years.
- (c) Place of Imprisonment: The STCJ Court may require the STCJ Defendant to serve the imprisonment:
  - (1) In the nearest appropriate Federal facility, at the expense of the United States Bureau of Prisons, if available; or
  - (2) In a state or local government-approved detention or correctional center pursuant to an agreement between Santa Clara Pueblo and the state or local government; or
  - (3) In an alternative rehabilitation center of an Indian tribe.

- (d) Fines: In addition to the fines set forth above in Sections (a) and (b) of this Article, the STCJ Court may assess fines to offset the cost of incarceration of the offender after conviction, to offset the costs for operation and maintenance of the STCJ Court and to offset the costs of operation and services of the Tribal Police, provided that any fines imposed on an STCJ Defendant under section (d) are subject to the applicable maximum fines that may be imposed by the STCJ Court as set forth in Sections (a) and (b) of this Article. All fines shall be made payable to the Santa Clara Pueblo General Fund. If the Defendant is indigent, community service may be ordered at the rate of the Federal minimum wage. An indigent Defendant is responsible for paying the \$20 community service insurance fee.
- (e) Types of Sentencing: The STCJ Court may order any combination of imprisonment, fines, and/or conditions in lieu of imprisonment. The STCJ Court may:
- (1) Order a term of probation to be served under the STCJ Court's terms and conditions.
  - (2) Order counseling and treatment in an in-patient or out-patient setting.
  - (3) Order community service under any terms that the STCJ Court deems sufficient to protect the health, safety and welfare of the STCJ Victim, the community and the general public.
  - (4) Order the STCJ Defendant to pay restitution in accordance with Article 8, Section (k) of this Code.
  - (5) Order letters of apology.
  - (6) Order any terms consistent with justice for the victim and the community.
  - (7) Order any remedies to attempt to modify the Defendant's behavior and to ensure that the illegal conduct does not happen again.
- (f) Parole: The STCJ Court may grant parole to a STCJ Defendant after the STCJ Defendant has served a portion of his or her prison sentence. Parolees must abide by terms and conditions set by the STCJ Court in a separate parole hearing.



(g) Violation of Probation and Parole Conditions: If a STCJ Defendant violates the terms and conditions of probation or parole, the STCJ Defendant may be required to serve the balance of the original sentence, but the STCJ Judge shall not revoke probation or parole except after a hearing at which the STCJ Defendant shall be present, advised of the charges on which revocation is proposed, and defend against the charges. The STCJ Defendant may be incarcerated pending such hearing.

## ARTICLE 16: CONTEMPT OF STCJ COURT

(a) Contempt of STCJ Court is Civil in Nature.

All contempt proceedings under this STCJ Code are civil in nature, even when incarceration or detention is imposed on a person found in contempt of court, because in all such cases, incarceration or detention shall only be imposed for the purpose to coerce compliance with a lawful STCJ Court process, order, directive or instruction. The person found in contempt of court “holds the keys to the jail” and may purge the contempt by complying with the lawful STCJ Court process, order, directive or instruction.

(b) Contempt Charges.

Contempt of the STCJ Court may include any of the following:

- (1) Willful behavior committed during an STCJ Court proceeding which interrupts its proceeding;
- (2) Willful behavior committed during an STCJ Court proceeding and in the STCJ Judge’s presence that is disrespectful to either the STCJ Judge, the STCJ Court, any juror or witness, or any person present during the proceeding;
- (3) Willful disobedience of, failure to comply with, resistance to, or interference with a lawful STCJ Court process, order, directive, or instruction or the execution of same;
- (4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any lawful and proper question when the refusal is not legally justified;
- (5) Willful or grossly negligent failure by an Officer of the Court to perform his or her duties as required in his or her official capacity; or
- (6) Willful or grossly negligent failure to comply with schedules and practices of the STCJ Court resulting in substantial interference with the business of the STCJ Court.

(c) Contempt in the Presence or Outside the Presence of STCJ Judge.

Contempt may be committed either in the presence of the STCJ Judge (“direct contempt”) or outside the presence of the STCJ Judge (“indirect contempt”).

(d) Contempt Proceedings.

In all contempt proceedings under this STCJ Code:

- (1) Contempt may only be established by clear and convincing evidence or upon a finding the act or omission was preceded by a clear warning by the STCJ Court that the conduct is improper;
- (2) Unless as otherwise specifically provided in this STCJ Code, the STCJ Judge must use the least restrictive measures the STCJ Judge believes is appropriate to coerce the person in contempt (the “contemnor”) to comply with the STCJ Court’s order, including but not limited to a fine, compensatory remedies, community service or incarceration or detention;
- (3) If the STCJ Judge finds contempt of court, the STCJ Judge shall issue a written order that shall contain the STCJ Judge’s factual findings and specify how the person found in contempt may purge himself or herself of the contempt, and the order shall be personally served on the contemnor;
- (4) Upon the motion of the contemnor showing good cause or the STCJ Judge’s own motion, the STCJ Judge may at any time dismiss an order of contempt, withdraw, terminate, or reduce a sentence of imprisonment, or remit or reduce a fine imposed as punishment for contempt;
- (5) A person found in contempt of an STCJ Court order may be held in contempt for as long as (1) the STCJ Court order remains in force; (2) the purpose of the STCJ Court order may still be served by compliance with it; and (3) the person found in contempt is able to take reasonable measures that would enable him or her to comply with the STCJ Court order;

(6) A contemnor must be released when his or her contempt no longer continues.

Upon a finding of compliance with the actions required to purge the contempt set forth in the contempt order, the STCJ Judge shall release the contemnor from the conditions of the contempt order as soon as reasonably possible;

(7) There is no right to a jury trial in contempt proceedings; and

(8) There is no right to appeal a contempt order.

(e) Substantive and Procedural Requirements Apply to all Provisions of the STCJ Code.

The substantive and procedural requirement of Article 16 shall apply to any provision of the STCJ Code that subjects a person to contempt of court proceedings.

(f) Direct Contempt.

(1) The presiding STCJ Judge may summarily impose measures in response to direct contempt when necessary to restore order or to maintain the dignity and authority of the STCJ Court.

(2) The measures should be imposed substantially contemporaneously with the contempt.

(3) Before imposing measures, the STCJ Judge must give the person charged with direct contempt summary notice of the charges, warn the person of the potential legal sanctions, and give a summary opportunity to respond, unless doing so would compromise the safety of the Court, the courtroom, or persons in vicinity of the courtroom.

(4) The STCJ Judge must give notice to the person found in direct contempt of court who has been incarcerated or detained of their right to a show cause hearing to be held within forty-eight (48) hours of incarceration or detention.

(5) The STCJ Judge shall hold a show-cause hearing within forty-eight (48) hours of confinement for direct contempt to jail or any place of confinement that a person cannot leave on their own volition, unless waived by the contemnor. If

the contemnor does not waive the right to a show-cause hearing, and a show-cause hearing is not held within forty-eight (48) hours, the contemnor shall immediately be released from jail or other place of confinement that a person cannot leave on his or her own volition.

(g) Indirect Contempt.

- (1) The presiding STCJ Judge may, after a show-cause hearing, impose measures in response to indirect contempt of the STCJ Court.
- (2) A motion requesting a person or entity be held in contempt for indirect contempt (a motion for an order to show cause) may be brought forth by any of the following (the “moving party”):
  - (A) a party whose interests are harmed by the alleged indirect contempt;
  - (B) the STCJ Court;
  - (C) the STCJ Prosecutor; or
  - (D) any other Officer of the Court who is authorized to file such a motion.
- (3) If the motion is well taken, the STCJ Court shall issue a written order to show cause to the person alleged to have committed indirect contempt and shall have the order to show cause personally served on that person. The order to show cause must provide notice of the date and time of the show-cause hearing, set forth the alleged indirect contempt, and explain the measures that the STCJ Court may impose if indirect contempt is found.
- (4) The Chief Judge may appoint a member of the Santa Clara Pueblo bar to represent the STCJ Court in a show-cause hearing for indirect contempt.

(h) Show Cause Hearing.

- (1) All alleged contemnors shall be notified of and have the right to legal representation at their own expense at a show-cause hearing, provided that if the STCJ Court is considering imposing jail time, and the alleged contemnor is

indigent, the court shall appoint an attorney to represent him or her at the Pueblo's expense.

- (2) The alleged contemnor may not be compelled to be a witness against himself or herself in a show-cause hearing.
- (3) All alleged contemnors have the right to make a statement to the STCJ Judge in their defense.
- (4) The Court must show the existence of the order and the facts establishing the respondent's noncompliance. The burden then shifts to the alleged contemnor to establish his or defense and inability to comply with the order.
- (5) At the conclusion of the show-cause hearing, the STCJ Judge must enter a written order.

## **ARTICLE 17: POST-TRIAL PROCEDURE**

**(a) Acquittal.**

If the Court finds the STCJ Defendant not guilty or the jury brings in a verdict of not guilty on any charge in the complaint, a judgment of not guilty or acquittal shall be announced by the STCJ Judge and entered in the official court records by the Tribal Court Clerk, along with the names of the jurors in the case, and the STCJ Defendant shall be immediately discharged.

**(b) Judgment and Sentencing.**

Within a reasonable time or immediately after conviction upon a plea of guilty, a finding of guilt by the STCJ Judge, or a verdict of guilty by the jury, and after such pre-sentencing investigation as the STCJ Judge may direct, the STCJ Judge shall issue a judgment and sentence to be entered in the official court records by the Tribal Court Clerk. Sentencing shall be within the discretion of the STCJ Judge pursuant to the applicable provisions of this STCJ Code.

**(c) Motion for a New Trial.**

A motion for a new trial may be made by the STCJ Defendant within seven (7) days after the judgment and sentence has been entered. The STCJ Judge shall grant a motion for a new trial, if such trial, in the discretion of the STCJ Judge, is required in the interest of justice.

**(d) Right of Appeal.**

Upon entering a judgment and sentence in a case which has gone to a trial after a plea of not guilty, the STCJ Court shall advise the STCJ Defendant of his right to file an appeal, if the STCJ Defendant has not already been so advised.

**ARTICLE 18: SOUTHWEST INTER-TRIBAL COURT OF APPEALS (“SWITCA”)  
APPELLATE PROCEDURE**

Appeals from final decisions of the Santa Clara Pueblo STCJ Court shall be taken to the Southwest Inter-Tribal Court of Appeals (“SWITCA”), except for issues of contempt and membership in Santa Clara Pueblo. The Santa Clara Pueblo STCJ Court shall inform every party to every case in which a final judgment is rendered by that Court, at the time of the rendering of such final judgment, that any appeal from such final judgment must be taken to the SWITCA by filing a notice of appeal with the Clerk of the Santa Clara Pueblo Tribal Court, with copies to be served on each party to such case, and serving the notice of appeal on the Clerk of the Southwest Indian Tribal Court of Appeals, c/o Clerk, Post Office Box 4456, Station A, Albuquerque, New Mexico 87196, within 30 days from the date of entry of the final judgment of the Santa Clara Pueblo STCJ Court.

The SWITCA Appellate Procedure may be found at: <https://www.aile-inc.org/wp-content/uploads/SWITCA-Appellate-Rules.pdf>.