

CHAPTER XX

RULES OF CRIMINAL PROCEDURE

Section 1

Scope

These rules govern the procedure in all criminal proceedings in the Shoshone Bannock Tribal Court and all preliminary, supplementary and special proceedings as specified herein. Every proceeding in which a person is charged with an offense of any degree and brought to trial to be punished, if convicted, by a fine or jail sentence is a criminal proceeding.

Section 2

Purpose and Construction

These Rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Section 3

The Complaint

1. The Complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a Judge or Clerk of the Court, or shall be made upon oath by the Shoshone Bannock Prosecutor or his Deputy.

2. A Complaint may be issued by a Police officer or the Tribal Prosecutor or his Deputy for an offense constituting a violation of Tribal law:

(a) If committed in his presence;

(b) If not committed in his presence, which he has probable cause to believe was committed by the person charged. The original complaint shall be filed with the Tribal Court and a copy shall be made available to the Prosecutor's Office.

3. The complaint shall contain at least:

(a) the name of the person accused, if known, or some other name if not known plus whatever description of the person is known;

(b) the general location where the offense was committed;

(c) the name and number of the section of the Tribal Code alleged to have been violated;

(d) a short concise statement of the specific acts or omissions to act complained of;

(e) the person against whom or against whose property the offense was committed, if known;

(f) the date and approximate time of the commission of the offense;

(g) the name of the person filing the complaint and the source of his knowledge.

4. Arrest Followed by Complaint

If a peace officer makes an arrest without a warrant of a person for an offense, the person arrested shall be taken without unnecessary delay before a Tribal Judge. Thereafter, a complaint shall be filed in the Tribal Court and a copy thereof given to the defendant at or before the time he is arraigned. The defendant may be admitted to bail prior to the filing of the complaint.

5. Summons

A summons may be issued by the Clerk of the Court if a sworn complaint has been filed. The summons need only contain the date, time, and place of appearance of the defendant. A copy of the complaint shall be attached and served with the summons.

Section 4

Arrest Warrant or Summons Upon Complaint

1. Issuance

If it appears from the complaint, or from an affidavit or affidavits filed with the Complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant or a summons to appear, shall be issued to any officer authorized by law to execute it. More than one warrant or summons may be issued on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall be issued immediately.

2. Form

(a) Warrant. The warrant shall be signed by the Judge and shall contain the name of the defendant or if his name is not known, any name by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the Tribal Court.

(b) Summons. The summons shall be in the form above set forth requiring the defendant to appear before the Tribal Court at the stated time and place.

3. Execution or Service, and Return

(a) By Whom. The warrant shall be executed by the Fort Hall Police Department. The summons may be served by any person over eighteen (18) years of age who is not a witness or party to the action and may be served by giving a copy to the defendant personally or by leaving a copy at the defendant's usual place of abode with some person over the age of eighteen (18) years residing therein. Personal service may also be accomplished by mailing a copy to the defendant's last known address by certified mail, return receipt requested.

If the address of the defendant is at a point on the Fort Hall Reservation, it shall be mailed not less than 10 days prior to the time the defendant is required to appear before the Court. Service by mail shall be complete upon the return of the receipt signed by the defendant or some person authorized by him to receive his mail. Service of a warrant may be executed by the arrest of the defendant. The officer need not have a warrant in his possession at the time of arrest but upon request of the defendant he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of arrest he shall then inform the defendant of the offense charged and the fact that the warrant has been issued.

(b) Return. The officer executing the warrant or the person serving the summons shall make a return thereof to the Tribal Court by making a short statement of how, when and where the service was made, and if service is made by mail of a summons, the return receipt shall be attached to the return.

Section 5

Exclusion of Witnesses

In any criminal proceeding, if either party requests it, the judge may exclude from the courtroom any or all witnesses, with the exception of the defendant, not at the time under examination so that he may not hear the testimony of other witnesses.

Section 6

Limitation on Time of Filing Complaint

No complaint, charging the commission of an offense one year or more prior to the date the complaint is filed, other than those enumerated in Chapter 16, Sections 4-7, 10-11, 13-14, 18, 24, 27, 28, 34-35, 37, 43, 45-46, 60, 64, 68 & 79, which shall have a limitation of three years, shall be valid, provided that the absence of the person charged from the reservation to avoid service of summons or arrest shall toll the time and shall not count in computing the limit.

Section 7

Commitments

No Indian shall be detained, jailed or imprisoned for an offense under this Code for a period longer than 36 hours, unless there is issued a commitment bearing the signature of a duly qualified Judge of the Tribal Court. There shall be issued for each Indian held for trial in excess of 36 hours, a temporary commitment and for each Indian held after sentence a final commitment on such forms as may be acceptable and approved by the Court.

Section 8

Joinder of Offenses and of Defendants

(a) Joinder of Offenses - Two or more offenses may be charged in the same complaint if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants - Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Section 9

Extradition

Whenever the Chief Judge of the Shoshone-Bannock Tribal Court is informed and believes that an Indian has committed a crime outside of Indian Country and is present on the Fort Hall Indian Reservation using it as an asylum from prosecution by Federal, State or Tribal authorities off the reservation, the Chief Judge may order any Shoshone-Bannock Tribal Police Officer to apprehend such Indian and deliver him or her to the proper Federal, State or Tribal authorities after an appropriate hearing in Tribal Court, if such a hearing is requested by the subject in custody.

Section 9.1

Extradition Hearing

If any Indian is detained pursuant to Section 9 of this Chapter, and he or she demands a hearing, a hearing will be scheduled as soon as possible. At this hearing, if it appears to the Judge that there is probable cause to believe that the Indian in custody will not receive a fair and impartial trial in the off-reservation court, the Judge shall order that the Indian be released from custody.

Section 9.2

Proof Required Before Extradition Proceedings Commenced

No demand for extradition shall be recognized by the Tribal Court, nor shall any hearing for extradition be scheduled, until the Court shall receive such demand in writing and accompanied by certified copies of the indictment, information or complaint together with a certified copy of the warrant issued.

Section 10

Arraignment

Arraignment shall be conducted in open court by the judge or the clerk of the court reading to the defendant the complaint filed with the court. The defendant shall be given a copy of the complaint at this time if he hasn't received one prior thereto.

Section 11

Pleas

1. Alternatives

A defendant may plead not guilty, guilty, or no contest. If the defendant refuses to plead, the court shall enter a plea of not guilty on behalf of the defendant.

2. No Contest

A defendant may plead no contest only with the consent of the Judge. Such a plea shall be accepted by the court only after due consideration of the views of the party and the interest of the public in the effective administration of justice.

3. Advice to Defendant

Before accepting a plea the court must address the defendant in open court and inform him and determine that he understands the following:

(a) the nature of the charge to which the plea is offered and the possible penalty should he be guilty or plead guilty;

(b) that the defendant has a right to be represented at his own expense;

(c) that he has a right to have a trial to a jury of at least six persons with the right to be confronted by the witnesses against him and to cross-examine witnesses against him;

(d) that he has a right to testify or not to testify since he has the right not to be compelled to incriminate himself;

(e) that if he pleads guilty or no contest, there will not be a formal trial and in effect, he has waived his right to a trial by such a plea, and further that any statement he makes either to the court or to an officer or other persons concerning the violation charged can be used against him either in that proceeding or in any future prosecution.

4. Insuring that the Plea is Voluntary

The court shall not accept a plea of guilty or no contest without first talking to the defendant personally in open court to determine that the plea is voluntary and is not the result of force or threats or of promises apart from any plea arrangements which may have been entered into between the Tribe or Tribal Prosecutor and the defendant.

5. Plea Agreement Procedure

(a) In General. The Tribal Prosecutor and the attorney or advocate for the defendant, or the defendant acting pro se may engage in discussions with a view toward reaching an agreement that, upon entering a plea of guilty or no contest to a charged offense or to a lesser or related offense, the Tribe will do any of the following:

(1) move for dismissal of other charges; or

(2) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding on the judge; or

(3) agree that a specific sentence is the appropriate disposition of the case.

The judge shall not participate in any discussions.

(b) Notice of Such Agreement

If a plea or agreement has been reached by the Tribe and the Defendant, the court shall on the record require the disclosure of the agreement in open court or, on a showing of good cause, in chambers at the time the plea is offered. Thereupon the court may accept or reject the agreement or may defer a decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report if any is to be made.

(c) Acceptance of a Plea Agreement

If the judge accepts the plea agreement, the judge shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(d) Rejection of a Plea Agreement

If the judge rejects the plea agreement, the court shall, on the record, inform the defendant and the Tribe of this fact, advise the defendant personally in open court or on showing of good cause, in chambers, that the court is not bound by the plea agreement, afford the defendant an opportunity to then withdraw his plea and advise the defendant that if he persists in his guilty plea or a plea of no contest the disposition of the case may be less favorable to the defendant than contemplated by the plea agreement.

(e) Time of Plea Agreement Procedure

Except for good cause shown the judge of the Tribal Court shall be notified of the plea agreement at the time of arraignment or as soon thereafter as possible.

(f) Inadmissibility of Pleas, Offers of Pleas and Related Statements.

Any evidence of a plea of guilty, later withdrawn, or a plea of no contest to the offense charged or any other offense or of statements made in connection therewith, is not admissible in any other criminal proceeding or in any civil cases against the defendant who made the plea or offer. However, evidence of a statement made in connection with or relevant to a plea of no contest to the offense charged or any other offense is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and on the record, and in the presence of an attorney.

6. Determining Accuracy of Plea

The judge shall not enter a judgment on a tendered plea of guilty or no contest without first making an inquiry to satisfy himself that there is factual basis for the plea.

7. Record of Proceedings

A verbatim record of the proceedings at which the defendant enters a plea of guilty or no contest shall include the court's advice to the defendant, the inquiry into the voluntariness of the plea, including any plea agreement and inquiry into the accuracy of the plea.

Section 12

Pleadings and Motions Before Trial: Defenses and Objections

1. Pleadings in criminal proceedings shall consist of the complaint and the plea of either guilty, not guilty or no contest. Pleas and motions shall be made in accordance with these rules.

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

(a) any defenses or objections which are capable of determination other than at trial may be raised before trial by motion;

(b) defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses or noticed by the Court on its own motion at any stage of the proceeding;

(c) such motions shall be made in writing and filed with the Court at least five (5) business days before the day set for trial. Such motions will be argued before trial on the date unless the Court directs otherwise. Decision on such motions shall be made by the judge and not by the jury;

(d) if a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the judge shall alter the proceedings or enter judgment as is appropriate in light of the decision.

Section 12.1

Notice of Alibi

In the event that the defendant intends to introduce evidence that he was not at the place specified in the complaint at the time of the alleged crime, he shall serve upon the Tribe or its prosecutor within a reasonable time after the entry of a plea of not guilty, a statement in writing, specifying the place where he

claims to have been and the names and addresses of the witnesses he will call to support the defense of alibi. Upon receiving this statement, the tribal prosecutor shall advise the defendant of the names and addresses of any additional witnesses who may be called to refute such alibi, or within a reasonable time after their identity becomes known to the tribal prosecutor. Neither the prosecuting attorney nor the defendant shall be permitted at the trial to introduce evidence inconsistent with this specification unless the Court, for good cause and upon just terms, permits otherwise. If the defendant fails to satisfy the specification required by this section, the court may exclude evidence in his behalf, that he was at a place other than that specified by the tribal prosecutor, unless the court is satisfied that such evidence should be admitted.

Section 13

Trial Together of Complaints

The court may order two or more defendants tried together if they could have been joined in a single complaint or may order a single defendant tried on more than one complaint at a single trial.

Section 14

Relief From Prejudicial Joinder

If it appears that a defendant or the prosecution is prejudiced by a joinder of offenses or of defendants in a complaint or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance, the court may order the attorney for the Tribe to deliver to the court for inspection in camera any statements or confessions made by the defendants which the Tribe intends to introduce in evidence at the trial.

Section 15

Arrests

(a) By Police Officers

The Tribal Police will not arrest any person for any offense defined by this Law and Order Code or Ordinances hereafter enacted or by Federal Law except when such event occurs in the presence of the arresting officer or he has reasonable cause to believe that the person arrested has committed an offense, or the officer has official knowledge that a valid Warrant exists for the arrest of such person.

(b) By Private Citizens

Private citizen members of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation may make a citizen arrest of another when: (a) he believes on reasonable grounds, that an offense is being committed or attempted in his presence; or (b) when

a felony has in fact been committed and he believes on reasonable grounds, that the person arrested has committed it.

Section 16

Discovery and Inspection

1. Disclosure of Evidence by the Prosecution

(a) Information Subject to Disclosure

(1) Statement of Defendant.

Upon request of a defendant, the tribe shall permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant or copies thereof within the possession, custody or control of the tribe, the existence of which is known or by the exercise of due diligence may become known to the attorney for the tribe.

(2) Defendant's Prior Record.

Upon request of the defendant, the tribe shall furnish to the defendant a copy of his prior criminal record, if any.

(3) Documents and Tangible Objects.

Upon request of the defendant, the tribe shall permit the defendant to inspect and copy any photographs, books, papers, documents, tangible objects, buildings or places or copies or portions thereof which are in the possession, custody and control of the tribe and which are material and relevant to the defense of the defendant.

(4) Reports of Examinations and Tests.

Upon request of the defendant, the government shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations or of scientific tests or experiments which are within custody and possession of the tribe.

(b) List of Witnesses

The Tribe shall, upon request of the defendant deliver to the defendant a list of witnesses which the tribe intends to call in connection with the prosecution of the case. However, failure of the tribe to call any witness on said list shall not be grounds for comment by the defendant for failure to call said witness.

2. Disclosure of Evidence by the Defendant

(a) Information on Subject to Disclosure

(1) Documents and Tangible Objects.

If the defendant requests disclosure under subsection (1) of this rule, upon request of the tribe, the defendant shall permit the tribe to inspect, copy or photograph books, papers, documents, and tangible objects, photographs, or copies or portions thereof which are within the possession, custody and control of the defendant and which the

defendant intends to introduce as evidence in chief at the trial.

(2) Reports of Examination and Tests.

If the defendant requests disclosure under subsection (1) of Examinations and Tests by the tribe, the defendant, upon the request of the tribe shall permit the tribe to inspect and copy or photograph the results of any reports of physical or mental examination or scientific tests or experiments made in connection with the case which the defendant intends to introduce at the time of trial as evidence in chief.

(b) Information Not Subject to Disclosure by the Defendant.

The defendant shall not be required to make available to the tribe any other memoranda or documents or names of witnesses which are statements made by the defendant except as herein above provided.

3. Continuing Duty to Disclose

If, prior to or during trial a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or advocate or the court of the existence of the additional material.

4. Regulation of Discovery

(a) Upon proper notice and hearing, protective orders may be entered by the court to determine any controversy relative to what is subject to discovery or inspection and what is not.

(b) Failure to comply with request. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter any other order it deems just under the circumstances. The court may specify the time, place and manner of making discovery and inspection and may prescribe such terms and conditions as are just.

Section 17

Subpoena

1. For Attendance of Witnesses; Form; Issuance

A subpoena shall be issued by the clerk of the court. It shall state the name of the court, the title, if any, of the proceeding and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed, but otherwise in blank to a party requesting it who shall fill in the blanks before it is served.

2. The cost of issuance and service of subpoena shall be borne by the tribe when served upon the reservation.

3. For Production of Documents and of Objects

A subpoena may also command a person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion promptly made, may modify the subpoena if compliance would be unreasonable or oppressive.

4. Service

A subpoena shall be served by a member of the Law and Order division of the Tribe, or any person authorized by the court to make said service who is over the age of 18 years and not related to the party requesting the subpoena within the third degree.

5. Place of Service

Service of subpoenas shall be made only upon the reservation.

6. Contempt

Failure by a person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the issuing Court. Upon proper hearing, the individual may be punished for said contempt.

Section 18

Pretrial Conference

At any time prior to trial, upon motion of either party, the court may order a conference to consider matters which will promote a fair and expeditious trial. Any matters agreed upon shall be reduced to writing and signed by the parties and their attorneys or advocates. The record shall be kept in the English language.

Section 19

Trial by Jury or by the Court

1. Trial by the Court - Unless the defendant shall within 10 days after entering a plea of not guilty request a trial to a jury, the matter shall be tried by the court and the court shall make a general finding and shall, upon request, make a finding of facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of facts appear therein.

2. Trial by Jury - If the defendant shall, within 10 days so request in writing, the trial shall be to a jury of six or less as may be stipulated in writing by the defendant.

Section 20

Trial Jurors

1. Examination - The court itself may conduct the examination of prospective trial jurors and thereafter may permit the prosecutor and the attorney or advocate for the defendant supplement the examination, or the court may conduct all of the examination and ask such questions supplied by either the prosecutor or the defendant as it deems proper.

2. Peremptory Challenges - Each side shall have three peremptory challenges. If there is more than one defendant, each defendant shall have three peremptory challenges.

Section 21

Judge; Disability

1. During Trial

If by reason of death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting or assigned to the court may proceed and complete the trial.

2. After Verdict or Finding of Guilt

If by reason of absence, death, sickness or other disability, the judge before whom the Defendant has been tried is unable to perform duties after the verdict or finding of guilt, any other judge regularly sitting may perform those duties, but if such judge is not satisfied that he can perform such duties, he may order a new trial to be held.

Section 22

Taking of Testimony

In all trials the testimony of witnesses shall be taken orally in open court under the rules of evidence of the Shoshone-Bannock Law and Order Code. All trials shall be conducted in the English language. If trials are conducted in a language other than the English language, all testimony and trial proceedings shall be reduced to writing in the English language for a record.

Section 23

Proof of Official Record

An official record or an entry therein or lack of such a record or entry may be proved in the same manner as in civil actions.

Section 24

Interpreters

The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid in accordance with court customs and traditions on such matters.

Section 25

Motion for Judgment of Acquittal

1. Motion Before Submission to Jury

The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the complaint after evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of evidence offered by the Tribe is not granted, the defendant may proceed to offer evidence without having reserved the right to do so.

2. Reservation of Decision on Motion

If a motion for judgment of acquittal is made at the close of all of the evidence, the court may reserve decision on the motion, submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

3. Motion After Discharge of Jury

If the jury returns a verdict of guilt or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed forthwith after the jury is discharged, or within such further time as the court may fix. If the verdict of guilty is returned, the court may on such motion set aside the verdict and enter a judgment of acquittal. If no verdict is returned, the court may enter a judgment of acquittal.

Section 26

Closing Argument

After the closing of evidence the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

Section 27

Instructions

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury.

Section 28

Verdict

1. Return

In a criminal action, the jury shall render a verdict of guilty or not guilty. A unanimous verdict shall be necessary for the verdict of guilty and a concurring vote of four of six jurors for a verdict of acquittal. The judge shall render judgment in accordance with the verdict and existing law, and where a jury in a criminal proceeding has been unable to agree upon a verdict, the court may upon its own motion order a new trial.

2. Several Defendants

If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

3. Conviction of Lesser Offense

The defendant may be found guilty of an offense necessarily included in the offense charge or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

4. Poll of Jury

When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence, the jury may be directed to retire for further deliberations or may be discharged.

Section 29

Sentence and Judgment - Procedure

1. Sentence

(a) Imposition of Sentence. Sentence shall be imposed forthwith following either conviction by the court or jury or upon a plea of guilty. Before imposing sentence, the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The tribal prosecutor shall have an equal opportunity to speak to the court if he so desires.

(b) Notification of Right to Appeal. Following imposition of judgment, the court shall inform the defendant that he has a right to appeal providing he was found guilty either by the court or jury. No appeal shall exist upon a plea of guilty. If the defendant requests, the clerk of the court shall prepare and file a notice of appeal on behalf of the defendant.

2. Judgment

A judgment of conviction shall set forth the plea, the verdict or findings and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

3. Presentence Investigation

(a) When Made. If the court deems it helpful, it may request a presentence investigation to be made by a probation officer or any other competent person whom the court requests the services for such an investigation.

(b) Reports. The reports shall contain any prior criminal record of the defendant and such information as to his characteristics, financial condition, behavior, and other factors which may be helpful in imposing a judgment and sentence or in granting probation to the defendant, and such other information as may be required by the court.

(c) Disclosure. Before imposing sentence, if the court has requested and received a pre-sentence report, he shall make the same available to both the counsel and the defendant and the tribal prosecutor. All portions of said report shall be made available.

4. Withdrawal of Plea of Guilty

A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed or sentence is suspended. But to correct manifest injustice, the court after sentence may set aside a judgment of conviction and permit the defendant to withdraw his plea of guilty.

Section 30

New Trial

The court on motion of a defendant may grant a new trial to him if required in the interest of justice. Upon completion of trial either to the court or to a jury, and upon entry of the verdict, the defendant may forthwith request time in which to offer a motion for new trial. However, if not requested the motion for new trial shall be dispensed with and judgment entered forthwith or after presentence investigation provided in the above Section 29.

Section 31

Arrest of Judgment

The court on motion of the defendant may grant a stay of execution for a period not to exceed 10 days after judgment has been entered and may extend said period from time to time as will meet the ends of justice and not work undue hardship upon the defendant.

Section 32

Correction or Reduction of Sentence

The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner at any time before the same has been satisfied under said disposition. Or, if upon appeal it is so ordered, it may correct said sentence forthwith upon order from the Appellate court. The court may also reduce a sentence upon revocation of probation as provided by law.

Section 33

Clerical Mistakes

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

Section 34

Stay of Execution, and Relief Pending Review

1. Stay of Execution

(a) Imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken by the defendant and notice of appeal is filed with the clerk of the court on behalf of the defendant within the time limits prescribed in Chapter 4 of this Code.

(b) Fine. A sentence to pay a fine or a fine and costs if any appeal is taken may be stayed by the court upon the filing of the notice of appeal provided that the court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the court, or give bond for the payment thereof.

(c) Probation. An order placing the defendant on probation may be stayed if an appeal is taken by the filing of a notice of appeal.

2. Bail

The Defendant may be admitted to bail if he has been sentenced to imprisonment pending the appeal.

Section 35

Search and Seizure

1. Authority to Issue Warrant

A search warrant authorized by this rule may be issued by any judge of the court while on the reservation, upon request of any tribal prosecutor, or any tribal law enforcement officer acting on behalf of the tribe.

2. Property Which May Be Seized With the Warrant

A warrant may be issued under this rule to search for and seize any:

(a) property that constitutes evidence of the commission of a criminal offense;

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

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

3. Issuance and Contents

The warrant shall issue only on an affidavit or affidavits sworn to before a Judge of the Court and establishing the grounds for issuing the warrant. If the judge is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and names or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant, the Judge may require the person making the affidavit to appear personally and may examine, under oath, the witness or witnesses he may produce, provided that such proceeding shall be recorded on recording equipment and made part of the affidavit. The warrant shall be directed to any law enforcement officer on the reservation and it shall command the officer to search in a specific period of time, not to exceed 10 days, the person or place named for the property specified. The warrant shall be served in the day time unless the judge by appropriate provision in the warrant and for

reasonable cause shown authorizes its execution at times other than the day time. It shall designate where the return shall be made to the Court.

4. Execution and Return with Inventory

The officer taking the property under the warrant shall give the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken and shall leave a copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of the property taken. The inventory shall be written in the presence of the person from whose possession or premises the property was taken and shall be verified by the officer serving the search warrant. The judge shall, upon request, deliver a copy of the inventory to the person from who or from whose premises the property was taken and to the applicant for the warrant.

5. Motion for Return of Property

A person aggrieved by an unlawful search and seizure may move the Court for the return of the property on the grounds that he is entitled to lawful possession of the property which was illegally seized. The Judge shall receive evidence on any issue of fact necessary to the decision on the motion. If the motion is granted, the property shall be returned to the owner thereof or to the place where it was seized. If the motion is denied, it shall remain available for use in the trial subject to a motion to suppress. A motion to suppress evidence may be made before the Court as provided in Section 12.

6. Service of Off-Reservation Criminal Process

All criminal process, including warrant, summons, notices, subpoenas, juvenile petitions or summons, notice of jury duty, and any other applicable documents or written instruments that are issued by State Courts, District or Magistrate, or other jurisdictions of a similar form, shall be subject to review by the Chief Judge of the Tribal Court prior to any actual service by any law enforcement officer. All such process shall be reviewed by the Chief Judge who shall initial the documents to be served if he is satisfied that they are proper in form. Any such process that is served without review by the Chief Judge shall not be honored by this Court.

7. Execution of Off-Reservation Search Warrants

Subsections 6 and 7 of this section shall not apply to Federal process and warrants when served by federal officers. All search warrants issued by any court not within the Reservation for search of a person or residence of any Indian who resides on the reservation must follow the same procedure as set forth in Section 35 (6) of this Chapter

in regard to serving criminal process. Further, the execution of off-reservation search warrants must comply with execution procedures set forth in this Chapter.

No off-reservation search warrant shall be executed unless the executing officer is accompanied by an officer of the Shoshone-Bannock Police Department.

Any attempt by any off-reservation law enforcement officer to execute any off-reservation search warrant upon the reservation without complying with the provisions of this Section shall be considered a trespass and any such execution shall not be honored by this Court.

Section 36

Criminal Contempt

1. Summary Disposition

A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts as entered on the record by the judge.

2. Disposition Upon Notice and Hearing

Except as provided in subdivision (1) of this rule, a criminal contempt may be entered upon notice and hearing allowing a reasonable time for the preparation of the defense and shall state the essential facts constituting a criminal contempt, which may be made in open court orally by the judge in the presence of the defendant and any representative of the tribe acting for the prosecution. The defendant is entitled to a trial to the court of the contempt charge which involves acts committed by the person outside the presence of the court. Upon a finding of guilty by the court, it shall enter an order fixing the punishment.

Section 37

Presence of the Defendant

1. Presence Required

The defendant shall be present at the earliest possible time after his arrest to be arraigned and advised of his rights by the judge of the Court. Thereafter, he shall be present at the time of the plea, at the beginning of the trial either to the court or to a jury, at the return of a verdict and at sentencing, except as otherwise provided by this rule.

2. Presence Not Required

With the written consent of the defendant, the judge of the Court may permit arraignment, plea, trial and imposition of sentence in the defendant's absence. However, the defendant shall have the absolute right to be present at these stages of the prosecution against him and should be encouraged to do so.

Section 38

Time

1. Computation

In computing time, except length of sentences, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and other days appointed as a holiday by the President or the Congress of the United States, or by the tribal council of the tribe.

2. Enlargement

When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (a) with or without motion or notice, order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (b) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Sections 29, 33, 34, and 35, except to the extent and under the conditions stated in them.

3. For Motions; Affidavits

A written motion other than one which may be heard ex parte and notice of hearing thereof shall be served not later than 48 hours before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown, such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion and opposing affidavits may be served not less than 24 hours before the hearing, unless the court permits them to be served at a later time.

4. Additional Time After Service by Mail

Whenever a party has a right or is required to do an act within the prescribed period, after service of a notice or other paper upon him and the notice or other paper is served upon him by mail, three days shall be added to the prescribed period.

Section 39

Release from Custody

1. Release Prior to Trial

A defendant may be released upon bail, upon his own recognizance or upon conditions set by the court, prior to trial. Bail shall be fixed in an amount by the court or by its bond schedule regularly used by the tribe.

2. Release During Trial

A person released before trial shall continue on release during the trial under the same terms and conditions as were previously imposed, unless the court determines that other terms and conditions or termination of release are necessary to assure his presence during the trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial.

3. Pending Sentence and Notice of Appeal

A defendant may be continued on release if a presentence investigation is allowed or may be continued on release pending appeal, if a notice of appeal is filed as hereinabove provided. The burden of establishing that a defendant will not flee or pose a danger to any other person or to the community rests with the defendant. If a fine only has been imposed and the defendant has filed a notice of appeal, a bond sufficient to cover the payment of the fine, costs of the court, and cost of appeal must be approved by the judge before release is granted.

4. Justification of Sureties

No corporate surety shall be permitted to post bail on behalf of the defendant who has not been approved by the tribal council for use upon the reservation under such terms and conditions as the tribal council shall require. No bonds shall be approved by the court unless the surety appears to be qualified. No surety shall be required to justify if cash is posted in the amount of the bond.

5. Forfeiture

(a) Declaration. If there is a breach of the condition of the bond, the tribal judge shall declare a forfeiture of the bail because of the failure of appearance or other reason. The declaration of forfeiture shall be continued for a period of 30 days.

(b) The court may permit the defendant to appear in court within the 30 days to obtain a release of the order of forfeiture and reinstatement of the bond upon proper showing of his inability to appear as required. If the defendant appears, the court may require a new bond or return the defendant to custody and return the bond to the surety.

(c) Enforcement. If the defendant fails to appear as required by the condition of the bond, the surety whether corporate or private shall be ordered to deliver

the body of the defendant before the court within 30 days or judgment entered against them in the amount of the bond.

(d) Remission. After the entry of judgment, the court may remit the judgment in whole or in part under such conditions applying to the setting aside of the forfeiture as justice may require.

6. Exoneration

When the condition of the bond has been satisfied or the forfeiture thereon has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by the deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

7. Supervision of Detention Pending Trial

The court shall exercise supervision over the detention of defendant and witnesses within the reservation pending trial for the purpose of eliminating all unnecessary detention.

Section 40

Motions

An application to the court for an order shall be by motion. All motions shall be made orally before the court unless the court permits, or this Chapter requires, it to be made in writing. The person moving shall state the grounds upon which it is made and shall set forth the relief and orders sought. The oral motion may be supported by written affidavits offered to the court at the time of the motion. If affidavits are offered by the movant, the opposite party shall have reasonable time in which to file affidavits if required and so ordered by the court.

Section 41

Dismissal

1. By the Tribe

The tribal prosecutor may request the dismissal of a criminal complaint under such terms and conditions as the court may require.

2. By the Court

Dismissal of actions may be made by the court upon the request of the complaining witness, or the defendant for good cause shown. Costs may be assessed against a private individual who has filed a complaint and later requests that it be dismissed. The amount of costs will be determined by the Court.

Section 42

Service and Filing of Papers

1. Service: When Required - Written motions, notices of hearing, and other matters

heard ex parte, designations of record on appeal and similar papers shall be served upon each of the parties.

2. Service: How Made

Service may be made by mail or by personal service. If an attorney or advocate is of record on behalf of the defendant in any criminal case, service shall be made upon the attorney in lieu of personal service upon the defendant as is done in the same manner as in civil actions.

3. Notice of Orders

Immediately upon entry of an order made upon a written motion subsequent to arraignment, the clerk shall mail each party a notice thereof and shall make notice in the docket of the mailing. Lack of notice of the entry by the clerk does not effect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within a time allowed by the appellate rules of the tribe.

4. Filing

Papers required to be served shall be filed with the court. Papers shall be filed in the same manner as in civil actions.

Section 43

Prompt Disposition of Cases

The Court may provide for the placing of criminal proceedings on appropriate calendars. Preference shall be given to criminal proceedings of persons confined to jail as far as practicable.

Section 44

Exceptions Unnecessary

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefore; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Section 45

Harmless Error and Plain Error

1. Harmless Error

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

2. Plain Error

Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Section 46

Regulation of Conduct in the Court Room

The taking of photographs in the court room during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted by the court, unless consented to by the defendant in writing.

Section 47

Application and Exception

1. Courts

These rules shall apply to all criminal proceedings in the tribal court of the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho.

2. Exception

The juvenile court of the Shoshone-Bannock Tribes may provide for proceedings in the nature of a criminal action with rules other than these, if the tribal council has approved said rules.

Section 48

Records

The clerk of the court shall keep such records of criminal proceedings as shall be required by the chief judge of the court. Among the records required to be kept by the clerk shall be a book known as the criminal docket in which among other things shall be entered each order or judgment of the court. The entry of an order or judgment shall show the date the entry is made.

Section 49

Courts and Clerks

The court shall be deemed always open for the purpose of filing any proper paper or issuing and returning process and of making motions and orders. The clerk's office with the clerk in attendance shall be open during business hours on all days except Saturday, Sunday, and legal holidays, but a court may provide by local rule or order that its clerks office shall be open for specific hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day.

Section 50

Rules of Court

1. Rules of the Shoshone-Bannock Tribal Court

Rules made by the court for the conduct of criminal proceedings shall not be inconsistent with these rules. Copies of all rules made by the court shall upon their promulgation be furnished to the tribal council.

2. Procedure Not Otherwise Specified

If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or any applicable tribal ordinance or any rule of the tribe itself.

Section 51

Sentences

(a) Nature and Kind of Sentences

Any person who has been convicted by the Tribal Court on an offense enumerated in this Code may be sentenced to imprisonment, fined, or may be sentenced to work for the benefit of the tribe for a period not to exceed the maximum provided for the offense herein, and the period shall begin to run from the day of sentence. Any convicted person may be sentenced to serve his sentence in jail or by work or by a combination of both at the discretion of the sentencing judge.

If the convicted person chooses not to pay his fine, he shall likewise be held in jail or made to work at the discretion of the judge. In serving said fine in jail or work, the convicted person shall be credited on said fine \$5.00 per day for each day in jail, or \$10.00 per day, or fraction of day, at work, whichever is applicable.

(b) Payment of Fines

Fines shall be paid in cash, or in commodities or other personal property of the required value as may be directed by the Court.

All monies received from costs and fines shall be paid to the Court and shall be delivered thereby to authorized personnel in tribal headquarters for deposit in tribal funds as directed by the Business Council.

(c) Factors in Determining Sentence

In determining the character and duration of the sentence which shall be imposed, the Court shall take into consideration the previous conduct and record of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or wilful, and whether the offender has attempted to make amends, and shall give due consideration to the extent of the defendant's resources and the needs of his dependants. In determining the character and duration of sentence to be imposed, the Court should consider that sentences fixed in this Code are the maximum sentences and that the maximum sentence is to

be inflicted only in extreme cases.

(d) Suspension of Offenses

The Court may, on such terms as the court may impose, suspend the sentence and release the convicted person on probation upon that persons' signed pledge of good conduct for the duration of the sentence and pursuant to the terms of probation outlined by the Court.

(e) Penalties Not Otherwise Prescribed

Any person who is convicted of an offense enumerated in this Code for which another penalty is not specifically provided, shall be punished by a fine of not more than \$120.00 or imprisonment not to exceed sixty days, or both such fine and imprisonment.

Section 51.1

Probation

After conviction of an offense, the Court may, in its discretion, suspend the sentence imposed and allow the defendant his freedom on probation upon his signing a pledge of good conduct during the period of probation and upon the terms outlined by the Court, in accordance with the provisions of this subsection.

Section 51.1.1

Eligibility of Probation

No person who has been previously convicted of any felony in either Federal or State Court within the previous three years of sentencing in the Shoshone-Bannock Tribal Court shall be eligible for probation of any offense in the Tribal Court.

No person who has been previously convicted at least three times of the same offense in a Court of any federally recognized Indian Tribe within the previous twelve (12) months of sentencing in the Shoshone-Bannock Tribal Court shall be eligible for probation of that same offense in this Court.

Section 51.1.2

Probation and Parole Officer

In addition to the responsibilities assigned to the Probation and Parole Officer by the Tribal Council in the job description for that position, this officer shall be charged with the duty of supervising all persons placed on probation or released from custody of the Fort Hall Jail by the Court; of making such investigations as may be necessary; of determining whether violation of conditions of parole or probation exists in specific cases, and of preparing a case history record of those prisoners who request probation or parole.

Section 51.1.3

Investigation Reports

When a Probation and Parole Officer is available to the

Court, no defendant shall be placed on probation until a written report of investigation by that officer shall have been presented to and considered by the Court. The Probation and Parole Officer shall inquire into the circumstances of the offense, criminal record, social history and present condition of the defendant.

Section 51.1.4

Modification of Probation or Suspension

By order duly entered the Court may impose and may at any time modify any conditions of probation or suspension of sentence. The Court shall cause a copy of any such order to be delivered to the probation officer and to the probationer.

Section 51.1.5

Revocation of Probation or Parole

The Court shall not revoke probation or parole except after a hearing at which the probationer or parolee shall be present and apprised of the grounds on which such action is proposed.

Section 51.1.6

Violation of Probation or Parole

Any person who has been granted probation or parole and who shall violate the terms or conditions thereof shall be required to serve the original sentence plus an additional one-half of such sentence as a penalty for the violation.

Section 51.1.7

Period of Probation-Arrest for Violation

The period of probation or suspension of sentence may be indetermined or may be fixed by the Court, and may at any time be extended or terminated by the Court. Such period with any extension thereof shall not exceed five (5) years, except in cases in which the defendant is charged with failure to support his dependants.

At any time during probation or suspension of sentence, the Court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested and brought to summary hearing as provided in this Code.

Section 51.2

Parole

1. General

Any person sentenced by the Court who shall have without misconduct, served at least one-half the sentence imposed by such Court shall be eligible for parole, except where otherwise specified in this Code.

2. Board of Pardons and Parole

There is hereby created a Board of Pardons and Parole which shall consist of the Chief Judge of the Shoshone-Bannock Tribal Court, a member of the Fort Hall Business Council designated by the Chairman thereof, and an additional member of the Tribe who is not related to the person seeking parole and who

is appointed by the Business Council. The Board of Pardons and Parole shall have the authority to pardon or parole persons under Court sentence by a majority vote of the Board.

3. Granting Parole

The Board of Pardons and Parole shall not grant parole to any applicant until it has requested, received and considered an investigation report filed by the Probation and Parole Officer. Such report shall consider the circumstances of the offense, criminal record, social history and present condition of the applicant. The report will also detail the conduct of the applicant while incarcerated prior to the hearing. The Board may question the applicant if it so desires. If parole is granted, the Board shall state the terms of such parole in writing and shall furnish a copy to the parolee, Probation and Parole Officer and the Court. All parolees will be under the direct supervision of the Probation and Parole Officer.

A parole shall be ordered only for the best interests of society, not as a reward of clemency. It shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his proper employment or for his full-time enrollment in an education program or institution, or for his maintenance or care, and when the board believes he is able and willing to fulfill the obligations of a law abiding citizen.

Regardless of the Boards decision on the application for parole, the Board shall file with the Tribal Court a written report of its findings and conclusion in the matter along with its recommendations and terms or conditions if parole is granted. If parole is denied, the Board shall state the reasons for its denial.

The decision of the Board of Pardons and Parole is final and is not subject to appeal in the Tribal Courts. A copy of the written report shall be filed in the master file of the applicant-defendant.

No person shall be eligible for parole and no application shall be heard until that prisoner has served at least one-half of his sentence.

4. Offenses not Parolable

The Board shall not accept an application for parole and shall not interview any prisoner for parole who was committed for any of the following crimes: Incest, rape, sexual assault, sex with a foster child or stepchild, abduction for defilement, armed robbery, burglary when armed with a dangerous weapon, use of a

deadly weapon, assault with a deadly weapon, assault on a judge or police officer, mayhem, crime against nature, committing a lewd act upon a child, or with an attempt or assault with intent to commit any of said crimes. Any prisoner serving a sentence who is an habitual offender as defined in Section 51.1.1 and 51.5 shall not be eligible for parole.

5. Violation of Parole

Any person who shall violate the terms or conditions of his parole as established by the Board shall be governed by Section 51.1.6 of this Code.

Section 51.3

Commutation of Sentence

If the Court is satisfied that justice will best be served by reducing a sentence, the Court may at any time commute to a lesser period any sentence imposed upon a person, upon proof that during the period of the sentence the person served without misconduct and did satisfactory work.

Section 51.4

Medical Examination and Care

At the discretion of the Shoshone-Bannock Tribal Court, it may refer to the appropriate medical and/or psychiatric facility, for examination and treatment, any person whom the Court has reason to believe is in need of such examination and/or treatment.

At the recommendation of any U.S. Public Health Service physician, the Court may order any person to submit to appropriate medical and/or psychiatric treatment.

In the event the Federal government has no appropriate facilities for treatment, the Court may request the State District Court for commitment to an appropriate state institution.

Section 51.5

Habitual Offenders

Any person who is convicted three times for the same offense in one year shall be considered an habitual offender, the judgment shall so designate him, and he shall not be eligible for suspension of sentence, probation, parole, or trusteeship.

Section 52

Standard of Proof

The standard of proof required in any criminal proceeding shall be beyond a reasonable doubt.

Section 53

Limitation of Arrest Warrant

Any warrant issued for the arrest and apprehension of any person shall be valid for a period not to exceed one (1) year from the date it is signed by a tribal judge. Provided, that the absence from the Reservation

of the person named in the warrant to avoid service and execution of the warrant shall toll the time and shall not count in computing the one year limit.

Section 54

Report on Jail Sentences and Payments of Fines

It shall be the duty of the Clerk of the Court to report the payment of all fines to the judge imposing the fine. It shall be the duty of all police officers to report the serving of a sentence to the judge imposing the sentence.