TITLE 3 – COURTS AND RULES OF COURT
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Legislative History:

Enacted and established July 26, 1982 by Resolution No. C-31-82 as part of the Law and Order Code.

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Adopted revised Law & Order Code, Ord. No. 5 on May 24, 1990 by Res. No. C5-103-90.

Adopted Tribal Codes and rescinded all other conflicting codes on May 26, 1992 by Resolution No. C5-42-92.

Amendments adopted on July 29, 1993 by Resolution No. C7-118-93.

Amendments adopted on January 1, 1994 by Resolution C1-02-94.

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Adopted Pascua Yaqui Code and Rescinded all prior code on January 28, 2003 by Resolution No. C01-04-03

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Adopted on July 27, 2022, by Resolution No. C07-xx-22 and Ordinance No. 22-xx. Resolution No. C07-xx-22 and Ordinance No. 22-xx also repealed the previous version of this Chapter.

SUBCHAPTER A GENERAL PROVISIONS

Section 10 Scope (3 PYTC § 2-2-10 - Former 3 PYT R.Crim.P. Rule 1)

The provisions of this Chapter shall govern procedure in all criminal proceedings in the Pascua Yaqui Tribal Court.

Section 11 Rules of Procedure Savings Clause (3 PYTC § 2-2-11)

(A) The repeal of Chapter 2-2, Part II or Title 3 and Chapters 1, 2, 3, and 4, of Title 4, does not apply to an offense committed under that section, the applicable rule of criminal procedure or the possible sentence before the effective date of this Ordinance. An offense committed before the effective date of this Ordinance is governed by that section, rule of procedure and sentencing as it existed on the date the offense was committed, and the former law is continued in effect for that purpose. An offense is committed if all elements of the offense occurred before the effective date of this Ordinance.

(B) The effective date of this Ordinance is October 1, 2022.

(C) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(D) The repeal of Chapter 2-2, Part II or Title 3 and Chapters 1, 2, 3, and 4, of Title 4, shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

Section 12 Severability (3 PYTC § 2-2-12)

(A) It is hereby declared to be the intention of the Tribal Council that the sections, paragraphs, sentences, clauses, title, subsection, subpart and words of this Tribal Code are severable; and if any word, clause, sentence, paragraph, section, title, subsection, or subpart of this Code shall be declared unconstitutional by a valid judgment or decree of any Pascua Yaqui Tribal Court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining words, clauses, sentences, paragraphs, sections, titles, subsections, or subparts of this Tribal Code, since the same would have been enacted by the Tribal Council without the incorporation in this Tribal Code of any such unconstitutional word, clause, sentence, paragraph, section, title, subsection, or subpart. the remainder of this Ordinance not deemed unlawful, invalid or preempted, shall continue in full force and effect.

Section 20 Computation of Time (3 PYTC § 2-2-20 – Former 3 PYT R.Crim.P. Rule 3)

(A) These provisions of this Chapter are intended to provide for the just, 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.

(B) The determination of criminal matters shall be governed in all respects by the provisions of the Tribal Code unless otherwise expressly provided in this Chapter.

Section 30 Purpose and Construction (3 PYTC § 2-2-30 – Former 3 PYT R.Crim.P. Rule 2)

(A) Whenever a tribal law, or an order of the 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. When the last day is a Saturday, Sunday, or tribal holiday, the deadline shall be the first work day following the day that is not counted. Where the time limit is less than seven days, Saturdays, Sundays, and tribal holidays shall not be counted at all.

(B) When a time limit is counted from or to the time that notice is delivered to a person and the notice is delivered by mail rather than given directly to the person, it shall be presumed that delivery takes place three days after the notice is placed in a United States Postal Service mailbox.

SUBCHAPTER B SEARCH AND SEIZURE

Section 40 Search Warrants (3 PYTC § 2-2-40 – Former 3 PYT R.Crim.P. Rule 4)

The provisions of this Chapter shall govern procedure in all criminal proceedings in the Pascua Yaqui Tribal Court.

(A) A search warrant is a written order, signed by a Tribal Court judge, and directed to a tribal law enforcement officer ordering him or her to conduct a search and to seize items of property specified in the warrant, or to search for a person for whom an arrest warrant is outstanding.

(B) Every search warrant shall:

(1) Identify and describe the particular property or place to be searched;

(2) Identify and describe the items to be searched for and seized, and/or the person to be searched for;

(3) Specify a time limit after which the warrant is void, in no case longer than ten days from the date of its issuance.

Section 50 Examination on Oath; Affidavits; Issuance of Search Warrants (3 PYTC § 2-2-50)

(A) Before issuing a warrant, the Tribal Court 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 and cause the affidavit to be subscribed by the party or parties making the affidavit.

(B) Before issuing the warrant, the Tribal Court judge may also examine any other sworn affidavit submitted to him or her which sets forth facts tending to establish probable cause for the issuance of the warrant.

(C) The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing the grounds exist.

(D) In lieu of, or in addition to, a written affidavit, or affidavits, as provided in subsection (A), the Tribal Court judge may take an oral statement under oath which shall be recorded on tape, wire or other comparable method.

(1) This statement may be given in person to the Tribal Court judge or by telephone, radio or other means of electronic communication.

(2) This statement is deemed to be an affidavit for the purposes of issuance of a search warrant.

(3) The recorded statement shall be transcribed at the request of the court or either party, certified by the Tribal Court judge, and filed with the court.

Section 51 Telephonic Search Warrants (3 PYTC § 2-2-51)

(A) Every Tribal Court judge may take such examinations under oath listed in Section 50 by telephone and may grant search warrants telephonically.

(B) Any officer applying for a telephonic search warrant shall record the entire telephonic application and a copy of such electronic recording shall be filed along with the warrant with the clerk of the Tribal Court.

(C) Any officer who receives a telephonic search warrant shall return the warrant to the issuing judge on the next business day when the judge is present at Tribal Court for his or her signature and the warrant shall be filed with the clerk of the Tribal Court.

Section 55 Issuance: Form of Search Warrants; Duplicate Original Warrant; Facsimile (3 PYTC § 2-2-55 – Former 3 PYT R.Crim.P. Rule 5)

(A) Every Tribal Court 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 court.

(B) No search warrant shall be issued except upon a finding by the Tribal Court of probable cause that the search to be authorized by the warrant will discover:

(1) Stolen, embezzled, contraband or otherwise criminally possessed property; or

(2) Property which has been or is being used to commit a criminal offense; or

(3) Property which constitutes evidence of the commission of a criminal offense; or

(4) A person for whom an arrest warrant is outstanding.

(C) Probable cause to issue a warrant must be supported by a written and sworn statement based upon reliable information.

(D) If the Tribal Court judge is satisfied that probable cause for the issuance of the warrant exists, the Tribal Court judge shall issue a search warrant commanding a search by any tribal law enforcement officer of the person or place specified, for the items described.

(E) 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 Tribal Court judge shall authorize an unannounced entry.

(F) The warrant shall be in substantially the following form:

"To any Pascua Yaqui Tribal law enforcement officer:

Proof by affidavit having been this day made before me 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 or any part thereof, to retain such in your custody.

Given under my hand or direction and dated _____ (Tribal court Judge.)"

(G) The Tribal Court judge may orally authorize a law enforcement officer to sign the Tribal Court judge's name on a search warrant if the law enforcement officer applying for the warrant is not in the actual physical presence of the Tribal Court judge.

(1) This warrant shall be called a duplicate original search warrant and shall be deemed a search warrant for the purposes of this Chapter.

(2) In such cases, the Tribal Court judge shall cause to be made an original warrant and shall enter the exact time of issuance of the duplicate original warrant on the face of the original warrant.

(3) Upon the return of the duplicate original warrant, the Tribal Court judge shall file the original warrant and the duplicate original warrant.

(H) A Tribal Court judge may affix the Tribal Court judge's signature on a facsimile of an original warrant.

(I) The facsimile of the original warrant is deemed to be a search warrant for the purposes of this chapter.

(J) On return of the facsimile of the original warrant, the Tribal Court judge shall file the original warrant and the facsimile of the original warrant.

Section 60 Execution and Return of Search Warrant (3 PYTC § 2-2-60 – Former 3 PYT R.Crim.P. Rule 6)

(A) Search warrants shall only be executed under the supervision of Pascua Yaqui tribal law enforcement officers.

(B) The executing officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant.

(C) Warrants not returned within such time limit shall be void.

Section 70 Search Without a Warrant (3 PYTC § 2-2-70 – Former 3 PYT R.Crim.P. Rule 7)

No tribal law enforcement officer shall conduct any search without a valid warrant except:

(A) 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

(B) With the voluntary consent of the person being searched, or of the owner or occupant of the place to be searched; or

(C) When the search is incident to an arrest and seizure of contraband, 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

(D) Any other search which does not violate the constitutional rights of an individual, and has been found to be reasonable under the particular facts and circumstances of the situation by the Pascua Yaqui Tribal Courts and the Supreme Court of the United States.

Section 80 Disposition of Seized Property (3 PYTC § 2-2-80 – Former 3 PYT R.Crim.P. Rule 8)

(A) Any tribal law enforcement agency, an officer of which 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.

(B) After the entry of a judgment finally disposing of a case, a hearing shall be held by the Tribal 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 or is to be used as evidence in a pending case.

(C) Property taken as evidence, other than contraband, shall be returned to the owner after final judgment. Property confiscated as contraband shall become the property of the tribe and may be either destroyed, sold at public auction, retained for the benefit of the tribe, or otherwise lawfully disposed of as ordered by the court.

SUBCHAPTER C PRELIMINARY PROCEEDINGS

Section 90 Commencement of Criminal Proceedings (3 PYTC § 2-2-90)

(A) Misdemeanors.

(1) Misdemeanors may be filed in Tribal Court by citation signed by a law enforcement officer or a long form complaint signed by a prosecutor filed directly in Tribal Court.

(2) Once a misdemeanor citation or long form complaint have been filed in Tribal Court, the Court shall proceed to Initial Appearance under section 180 if the Defendant is in custody, or shall schedule Arraignment under section 300 if the defendant is out of custody.

(3) Criminal defendants may file a motion under section 370 challenging probable cause on misdemeanors at any time.

(B) Felonies. Felonies may be commenced by the filing of an interim complaint with a Tribal Court judge.

(1) Content of Interim Complaint. An interim complaint is a written statement of the essential facts constituting a public offense that is either signed by a prosecutor or made by a law enforcement officer under oath before a judge. The requirement that an interim complaint be made under oath shall be satisfied by an electronic oath, or affidavit containing an electronic signature, made by a law enforcement officer or agency representative under penalty of perjury.

(2) Duty of Judge

(a) If an interim complaint is made by a law enforcement officer or agency representative under oath, or prosecutor, the judge shall make a determination whether there is probable cause to believe an offense has been committed and the defendant committed it. The judge shall then proceed under section 230 if a determination of probable cause is made. If no such determination is made, the judge shall dismiss the interim complaint without prejudice to refiling.

(b) If an interim complaint is signed by a prosecutor, the judge shall proceed under section 230.

(B) **Necessarily Included Offenses.** An offense specified in a citation, information or complaint is a charge of that offense and all necessarily included offenses.

(C) If a defendant who has been duly summoned fails to appear, or there is reasonable cause to believe he or she will fail to appear upon being summoned, or if the summons cannot readily be served or delivered, an arrest warrant shall issue to affect the defendant's appearance to answer to the charge.

(D) The judge before whom the complaint is filed may, without unnecessary delay, subpoena and examine such witnesses as he or she deems necessary to the determination of whether or not a warrant or summons should be issued.

(E) When an accused has been arrested without a warrant, a complaint or a complaint together with other sworn statements, shall be filed with the court for review as to whether probable cause exists to hold the accused, and in all cases, a complaint shall be filed no later than at the time of arraignment, otherwise the defendant shall be released without prejudice to the subsequent filing of a criminal complaint.

(F) Any person who intentionally files or causes to be filed a criminal complaint 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 $100.00 and/or be imprisoned for a period not to exceed three days.

Section 100 Arrest (3 PYTC § 2-2-100 – Former 3 PYT R.Crim.P. Rule 10)

(A) Arrest is the taking of a person into custody in order that he or she may be held to answer for a criminal offense.

(B) No tribal law enforcement officer shall arrest any person for a criminal offense set out in the Tribal Code except when:

(1) The officer has a warrant signed by a tribal judge commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(2) The offense occurred in the presence of the arresting officer; or

(3) The officer has probable cause to believe that the person to be arrested has committed an offense.

(C) Any enforcement officer having authority to make an arrest may, and in the case where a reasonable person has reason to believe that life or limb is in danger, 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, he is not allowed admittance within a reasonable time.

Section 110 Arrest Warrants and Summons (3 PYTC § 2-2-110 – Former 3 PYT R.Crim.P. Rule 11)

(A) Every judge of the Tribal Court may issue warrants to arrest; provided, however, that such warrants shall be issued only upon a showing of probable cause in sworn written statements containing reliable information. No tribal judge shall issue an arrest warrant if he or she finds that there is not probable cause to believe that the offense charged has been committed by the named accused.

(B) Every arrest warrant shall command that the defendant be arrested and brought before the issuing judge, or, if he or she is unavailable, another tribal judge, and shall contain the following information:

(1) The name of the defendant, or if his or her name is unknown, any name or description by which he or she can be identified with reasonable certainty; and if known, the defendant's address; and

(2) The date of issuance of the warrant; and

(3) A statement of the offense with which the defendant is charged and a description of the acts which the accused committed which constitute the offense; and

(4) The signature of the issuing judge.

(C) A summons shall be in the same form as a warrant except that it shall summon the defendant to appear at a stated time and place within seven days of the date of service. At the request of the prosecutor the summons shall command the defendant to report to a designated place to be photographed and fingerprinted prior to his or her appearance in response to the summons. Unless good cause for failure to report is shown, such failure shall result in defendant's arrest at the time of appearance in response to the summons.

(D) A list of warrants shall be prepared daily and any served or quashed warrants shall be struck from the warrant list daily.

Section 120 Execution and Return of Warrant (3 PYTC § 2-2-120 – Former 3 PYT R.Crim.P. Rule 12)

(A) The warrant shall be directed to, and may be executed by, any tribal law enforcement officer.

(B) A warrant shall be executed by arrest of the 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 defendant as soon as possible. If the officer does not have the warrant in his or her possession at the time of the arrest, he or she shall inform the defendant of the offense charged and of the fact that a warrant has been issued.

Section 130 Service of Summons (3 PYTC § 2-2-130 – Former 3 PYT R.Crim.P. Rule 13)

(A) The summons may be served in the same manner as the summons in a civil action, except that service may not be by publication.

(B) A summons may be served by certified or registered mail, return receipt requested.

(C) Return of the receipt, including return by electronic means, shall be prima facie evidence of service.

Section 140 Defective Warrant (3 PYTC § 2-2-140 – Former 3 PYT R.Crim.P. Rule 14)

(A) A warrant of arrest shall not be invalidated, nor shall any person in custody thereon by discharged, because of a defect in form.

(B) The warrant may be amended by any tribal judge to remedy such defect.

Section 150 Notification of Rights After Arrest (3 PYTC § 2-2-150 – Former 3 PYT R.Crim.P. Rule 15)

A suspect 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; and

(B) That any statements made by the suspect may be used against him or her in court; and

(C) That the suspect 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 he or she does not have the financial ability to pay for counsel and detention is being sought.

Section 160 Notice to Appear (3 PYTC § 2-2-160 – Former 3 PYT R.Crim.P. Rule 16)

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

(B) The suspect, 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 or 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 is guilty of a misdemeanor and subject to arrest. Any person who signs such a promise and fails to appear may be prosecuted for the separate offense of failure to appear.

(C) 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 a judge.

(D) If a defendant fails to appear in response to a notice to appear, a warrant for his or her arrest shall be issued.

Section 170 Procedure Upon Arrest (3 PYTC § 2-2-170 - 3 PYT R.Crim.P. Rule 17)

(A) A person arrested shall be taken before a tribal judge without unnecessary delay. If he or she is not brought before a tribal judge by the close of the next business day during which the Tribal Court is open after arrest, the defendant shall immediately be released. In no event shall a person arrested be held more than 72 hours without being brought before a judge.

(B) A person arrested shall be taken for an initial appearance before the tribal judge who issued the arrest warrant, if the arrest was with a warrant, or, if the issuing judge is unavailable, or if the arrest was without a warrant, before the first available tribal judge. Upon defendant's appearance before the judge, a complaint, if one has not already been filed, shall promptly be prepared and filed. If a complaint is not filed within 48 hours from the time of the initial appearance before the judge, or by the time of the arraignment, whichever is later, the defendant shall be released from jail without prejudice to the subsequent filing of a criminal complaint.

(C) The chief judge shall take such steps as are necessary to assure that a tribal judge is available every day of the week for initial appearances as required by Subsection (A) above.

Section 180 Initial Appearance (3 PYTC § 2-2-180 – Former 3 PYT R.Crim.P. Rule 18)

(A) At the initial appearance of any person who was arrested without a warrant and against whom no verified complaints have been filed, the court shall, after informing the accused of his or her rights, as outlined below, first determine whether or not probable cause exists to continue to detain and prosecute the accused, and if not, shall order the accused released from custody immediately. The Court may enter a not guilty plea on behalf of the defendant as provided in section 320.

(B) At defendant's initial appearance pursuant to an arrest warrant and/or against whom complaints have been filed, the judge shall inform the defendant of his or her rights and:

(1) Determine the defendant's true name and address and, if necessary, amend the formal charges, if filed, to reflect it, instructing the defendant to notify the court promptly of any change of address;

(2) Inform the defendant of the charges against him or her;

(3) Inquire of the Tribe whether they seek loss of liberty as punishment to determine whether the provisions 3 PYTC § 2-2-310(B) apply;

(4) Provide timely notice to any person detained by order of the Tribe, both verbally and in writing, pursuant to 25 U.S.C. 1304 of his or her right to file in a court of the United States a petition for writ of habeas corpus and a petition to stay his or her further detention; and

(5) Inform the Defendant that if he or she fails to appear, a warrant may be issued for his or her arrest and that trial may proceed in his or her absence.

Section 181 Video and Audio Proceedings (3 PYTC § 2-2-181 – Former 3 PYT R.Crim.P. Rule 18.1)

(A) **Defendant in the Courtroom or at a Separate Location.** Notwithstanding the requirements in other provisions in this Chapter, the courts may use two-way interactive video technology or telephone to conduct the following proceedings between a courtroom and a defendant located at a prison, jail, or other location:

(1) Initial hearings on the warrant or complaint;

(2) Arraignments, pretrial conferences, pleas, show cause hearings, waivers and adjournments of extradition;

(3) Referrals for forensic determination of competency; or

(4) Waivers and adjournments of preliminary examinations.

(B) As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, the courts may use telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness or, upon a showing of good cause, any person at another location in a preliminary examination.

(C) As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, courts may use two-way interactive video technology or telephone to take testimony from a person at another location in the following proceedings:

(1) Evidentiary hearings, competency hearings, sentencings, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt;

(2) With the consent of the parties, trials. A party who does not consent to the use of two-way interactive video technology or telephone to take testimony from a person at trial shall not be required to articulate any reason for not consenting.

(D) The use of telephonic, voice, video conferencing, or two-way interactive video technology or telephone in any proceeding in which it is used must be recorded by the court, and the court must:

(1) Inform the defendant of the right to remain silent, of his or her right to counsel, and if the provisions of 3 PYTC § 2-2-310(B) apply, that counsel will be provided at no cost to the defendant if the court determines that he or she is indigent; and

(2) Determine the conditions of release in accordance with 3 PYTC § 2-2-200 and 3 PYTC § 2-2-210.

Section 190 Bail – Release Prior to Trial (3 PYTC § 2-2-190 – Former 3 PYT R.Crim.P. Rule 19)

(A) Every defendant shall be released pending and during trial on his or her own recognizance, unless the court determines, based upon findings of fact made at the initial appearance, or a later hearing to modify the conditions of release, that such release will not reasonably assure his or her appearance for all future hearings.

(B) No defendant shall be held without bail unless:

(1) The court determines, based upon findings of fact made at the initial appearance, or a later hearing to modify the conditions of release, that there is a grave risk that the defendant, while released, will commit a crime; or

(2) The Defendant is pending a revocation of probation in a separate matter; or

(3) The Court determines there is proof evident or presumption great that the defendant committed a felony offense while on release for a separate felony offense. Such determination shall take place at a no bond hearing

(a) At the no bond hearing the Court shall

(i) Hear live testimony regarding the material facts of the new alleged felony offense

(ii) Allow any defendant to cross-examine any testifying witness, and

(iii) Allow hearsay to be presented

(b) All defendants held without bond under this section shall be entitled to a no bond hearing within two business days of initial hearing

(C) Every person entitled to release under the terms of this section shall be entitled to release from custody pending and during trial under whichever one or more of the following conditions is deemed by the judge to be the least restrictive alternative which will reasonably assure the appearance of the person at any lawfully required hearing:

(1) Release on personal recognizance upon signing by the accused of a written promise to appear at trial and all other lawfully required times.

(2) Release to the custody of the designated person or organization agreeing to assure the accused's appearance.

(3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.

(4) Release after deposit by the accused of a bond in either cash or other sufficient collateral in an amount specified by the judge.

(5) Release after execution of a bail agreement by two responsible members of the community.

(6) Release upon any other condition deemed by the judge to be reasonably necessary to assure the appearance of the accused, to ensure the accused remains law abiding and to ensure the safety of the community or an individual victim as required.

(D) In determining the method of release or the amount of bail, the judge, on the basis of available information, shall take into account the following:

(1) The views of the victim;

(2) The nature and circumstance of the offense(s) charged;

(3) Whether the accused has a prior arrest or conviction for a violent offense;

(4) Evidence that the accused poses a danger to others in the community;

(5) The results of a lethality assessment for a domestic violence or family violence charge that is presented to the court;

(6) The weight of evidence against the accused;

(7) The accused's family ties, employment, financial resources, character and mental condition;

(8) The results of any drug test submitted to the court;

(9) Whether the accused is using any substance if its possession or use is prohibited by the Tribal Code;

(10) The length of the accused's residence in the community;

(11) The accused's record of arrests or convictions;

(12) The accused's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court hearings, both in this jurisdiction and other jurisdictions;

(13) Whether the accused has entered or remained in the United States illegally;

(14) Whether the accused's residence is on the Reservation, elsewhere in the state, in another state or outside the United States; and

(15) Whether the accused is facing mandatory imprisonment if convicted

(E) **Contact with Domestic Violence Victim.** In determining whether to allow an accused to have contact with a victim of a domestic violence offense, the Court shall consider the results of a domestic violence lethality assessment, if available.

Section 200 Conditions of Release (3 PYTC § 2-2-200 – Former 3 PYT R.Crim.P. Rule 20)

(A) At the initial appearance before a judge, a determination of the conditions of release shall be made. The defendant shall have the opportunity to be heard by the court with respect to the conditions of release. The court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for his or her arrest may be issued immediately upon report of a violation.

(B) Any defendant released from custody who changes his or her address without informing the Court and who is later unable to be served with notice of trial or any hearing shall be presumed to be voluntarily absent for the purposes of issuance of a warrant and trial in absentia. The defendant shall bear the burden of challenging this presumption and must demonstrate by a preponderance of the evidence that the absence was not voluntary.

(C) Every order of release on bond or defendant's own recognizance shall require that the defendant:

(1) Appear to answer and submit to the orders and process of the court;

(2) Refrain from committing any criminal offense;

(3) Not depart from the reservation without permission of the court;

(4) If released after judgment and sentence pending appeal, shall diligently prosecute the appeal.

Section 205 Right to Release After Conviction (3 PYTC § 2-2-205)

(A) After a person has been convicted of any offense for which the person will in all reasonable probability suffer a sentence of imprisonment, including but not limited to dangerous or repetitive felony offenses, the person shall not be released on bail or on the person's own

recognizance unless it is established that there are reasonable grounds to believe that the conviction may be set aside on a motion for new trial, reversed on appeal, or vacated in any post-conviction proceeding. The release of a person pending appeal shall be revoked if the person fails to prosecute the appeal diligently.

(B) **Persons facing probation revocation.** Any person facing a revocation of probation shall be held without bond unless the Court determines that the interests of justice require release on a bond or release to probation. The Court must state reasons on the record before releasing any person facing revocation of probation.

Section 210 Modification and Revocation of Release (3 PYTC § 2-2-210 – Former 3 PYT R.Crim.P. Rule 21)

(A) Any person remaining in custody may move for reexamination of the conditions of release based upon the existence of material facts not previously presented to the court.

(B) The court may, on its own initiative, at any time modify the conditions of release, after giving the parties an opportunity to respond to the proposed modification.

(C) Prosecutor's motion:

(1) Upon verified petition by the prosecutor stating facts or circumstances constituting a breach of the conditions of release, the court may issue a warrant or summons to secure the defendant's presence in court. A copy of the petition shall be served with the warrant or summons.

(2) Hearing. If after a hearing on the matters set forth in the petition, the court finds that the person released has not complied with the conditions of release, the court may modify the conditions or revoke release.

(D) Pretrial Services may petition the Court to modify or revoke the release of any defendant being supervised by that Department. The petition shall be signed by the Pretrial Services case worker and detail the reasons for the requested modification or revocation of release. Copies of such petition shall be provided to the Court, counsel for the defendant and the prosecutor. Upon receipt of such a petition, the Court may issue a warrant or summons to secure the defendant's presence in court. Upon the Court's request, the Pretrial Services case worker may staff the case in camera prior to any hearing on modification. Counsel for the defendant and the prosecutor may be present but may not participate in any such staffing.

(E) Any party moving for reexamination of release conditions of a defendant who is supervised by Pretrial Services shall provide a copy of that party's motion to the Pretrial Services case worker prior to any hearing on modification of release. The Court shall consider any written or oral response to motions to modify release by the Pretrial Services case worker in determining modification of conditions of release.

Section 220 Disposition of Bond (3 PYTC § 2-2-220 – Former 3 PYT R.Crim.P. Rule 22)

(A) Forfeiture: If at any time it appears to the court that a condition of an appearance 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 thereon within ten 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 prosecutor as any civil judgment.

(B) Exoneration: At any time that the court finds that there is no further need for an appearance bond, it shall exonerate the appearance bond and order the return of any security deposited.

SUBCHAPTER D PRELIMINARY PROCEEDINGS

Section 230 Right to Preliminary Hearing; Waiver; Postponement (3 PYTC § 2-2-230)

(A) Right to Preliminary Hearing. When a felony complaint is filed charging the defendant with the commission of a felony, a preliminary hearing shall commence before a judge not later than ten (10) calendar days following the defendant's initial appearance if the defendant is in custody and not later than twenty (20) calendar days following the defendant's initial appearance if the defendant is out of custody unless:

(1) The complaint has been dismissed

(2) The hearing is waived, or

(3) The judge orders the hearing postponed as provided in subsection (C)

(B) Waiver. A preliminary hearing may be waived by written waiver, signed by the defendant, his or her counsel and the prosecutor. All parties must stipulate to waiver of a preliminary hearing for the Court to grant a waiver.

(C) Setting a Preliminary Hearing. Unless the preliminary hearing is waived by all parties, the judge presiding over the defendant's initial appearance shall set a preliminary hearing ten (10) calendar days after the initial appearance if the defendant is in custody, or twenty (20) calendar days after the initial appearance if the defendant is out of custody. If the preliminary hearing date falls on a non-working day or Tribal holiday, the judge shall set the preliminary hearing for the last working day before the weekend or Tribal holiday.

(D) Postponement. If a preliminary hearing has not been commenced within ten (10) days as required in subsection (A), the defendant shall be released from custody automatically, unless the hearing has been postponed. The judge may postpone the preliminary hearing upon the motion of any party or on his or her own initiative upon a finding that extraordinary circumstances exist and that delay is indispensable to the interests of justice, entering a written order detailing the reasons for his or her finding and giving the parties prompt notice thereof.

Section 240 Summoning of Witnesses; Record of Proceedings; Hearing in Absentia (3 PYTC § 2-2-240)

(A) The judge shall issue process to secure the attendance of witnesses. Either party may issue subpoenas to secure the attendance of witnesses.

(B) The judge shall provide for a verbatim record of proceedings which may be by a certified court reporter, electronic, or other means in the discretion of the Presiding Judge of the Tribal Court.

(C) If a defendant is out of custody and fails to appear for his or her preliminary hearing, the preliminary hearing may proceed in the defendant's absence. A defendant may only challenge the preliminary hearing taking place in his or her absence if he or she first demonstrates by a preponderance of the evidence that his or her absence was not voluntary. If, at the conclusion of a preliminary hearing proceeding in absentia, the judge finds there is probable cause to believe that the offense(s) charged were committed and that the defendant committed them, the judge shall issue a bench warrant for the defendant's arrest.

Section 250 Nature of the Preliminary Hearing (3 PYTC § 2-2-250)

(A) **Procedure.** The preliminary hearing shall be held before a judge who shall admit only such evidence as is material to the question of whether probable cause exists to hold the defendant for trial. All parties shall have the right to cross-examine the witnesses testifying personally against them, and to review their previous written statements prior to such cross-examination. At the close of the prosecution's case, including cross-examination of prosecution witnesses by the defendant, the judge shall determine and state for the record whether the prosecution's case establishes probable cause. The defendant may then make a specific offer of proof, including the names of witnesses who would testify or produce the evidence offered. The judge shall allow the defendant to present the offered evidence, unless the judge determines that defendant's proffer would be insufficient to rebut the finding of probable cause.

(B) **Disclosure**. The prosecutor shall provide all disclosure specified by Section 600 that is then available and within the prosecutor's possession or control at least 24 hours prior to commencement of the preliminary hearing. If the Court finds that the prosecutor has failed to provide disclosure at least 24 hours prior to commencement of the preliminary hearing, the Court may impose any sanction that is appropriate in the interests of justice, including granting a continuance of the preliminary hearing, precluding the use of undisclosed evidence in the preliminary hearing, or dismissing the case with or without prejudice.

(C) **Hearsay**. Hearsay shall be permitted so long as foundation is laid to establish that the declarant would be available to testify should the case proceed to trial.

(D) **Inapplicability of Suppression Motions.** Rules or objections calling for the exclusion of evidence on the ground that it was obtained unlawfully shall be inapplicable in preliminary hearings.

Section 260 Determination of Probable Cause (3 PYTC § 2-2-260)

(A) **Holding a Defendant to Answer.** If it appears from the evidence that there is probable cause to believe that an offense has been committed and that the defendant committed it, the judge shall enter a written order holding the defendant to answer. Upon request, the judge shall reconsider conditions of release.

(B) **Amendment of Complaint.** The complaint may be amended at any time to conform to the evidence, but the judge shall not hold the defendant for a crime not charged in the original complaint.

(C) **Evidence.** The finding of probable cause shall be based on substantial evidence, which may be hearsay in whole or in part in the following forms:

(1) Written reports of expert witnesses;

(2) Documentary evidence without foundation, provided there is a substantial basis for believing such foundation will be available at trial and the document is otherwise admissible;

(3) The testimony of a witness concerning the declarations of another or others where such evidence is cumulative or there is reasonable ground to believe that the declarant or declarants will be personally available for trial.

(D) **Discharge of Defendant.** If it appears from the evidence that there is not probable cause to believe that an offense has been committed or that the defendant committed it, the judge shall dismiss the complaint without prejudice and discharge the defendant.

Section 270 Review of Preliminary Hearing (3 PYTC § 2-2-270)

(A) **Grounds.** A judge's determination to bind over a defendant shall be reviewable only by a motion for a new finding of probable cause alleging that the defendant was denied a substantial procedural right, or that no credible evidence of guilt was adduced. This motion must allege specifically the ways in which such evidence is lacking.

(B) **Timeliness.** A motion under Section 270(A) may be filed no later than 25 calendar days after the completion of the preliminary hearing.

(C) **Evidence.** Review of the evidence shall be limited to a transcript or audio recording of the proceedings.

(D) **Relief.** If the motion is granted, a new preliminary hearing shall be commenced within 15 calendar days after the order. If a new preliminary hearing is not commenced within 15 calendar days after the order, the case shall be dismissed without prejudice.

Section 280 Preservation of Recording (3 PYTC § 2-2-280)

(A) The clerk shall retain and preserve any electronic recording of a preliminary hearing until final disposition of the case.

Section 290 Proceeding to Arraignment (3 PYTC § 2-2-290)

(A) If the judge holds the defendant to answer and enters a finding of probable cause, arraignment shall be set ten (10) calendar days following the conclusion of the preliminary hearing. If the arraignment date falls on a non-working day or Tribal holiday, the judge shall set the arraignment for the last working day before the weekend or Tribal holiday.

Section 300 Arraignment (3 PYTC § 2-2-300 – Former 3 PYT R.Crim.P. Rule 23)

(A) Arraignment shall be held in open court with the defendant present, and, unless time is waived by the defendant with the concurrence of the court, it must be held:

(1) for defendants in custody, no later than 10 days after the filing of an indictment, information, complaint or preliminary hearing; and

(2) for defendants not in custody, no later than 30 days after the filing of an indictment, information, complaint or preliminary hearing.

(B) At the arraignment the court may:

(1) Determine the defendant's plea of not guilty, guilty, or no contest. Unless the defendant pleads guilty or no contest, the court shall enter a plea of not guilty on the defendant's behalf;

(2) Hear and decide motions concerning the conditions of release;

(3) Set a case management conference, approximately 30 days after arraignment. The court may also schedule a trial date;

(4) Advise the parties in writing of the dates set for further proceedings and other important deadlines; and

(5) Advise the defendant that if he or she should fail to appear that a warrant may be issued for his or her arrest and the trial may proceed in his or her absence.

(C) At arraignment, the Court shall address the defendant directly and inform him or her that he or she has the right to a trial by jury under the Constitution of the Pascua Yaqui Tribe. The Court shall then inquire whether the defendant waives his or her right to a trial by jury. The Court shall make a finding on the record that the defendant has knowingly, intelligently and voluntarily waived his or her right to a trial by jury. No defendant who has waived his or her right to a trial by jury shall be granted a trial by jury absent a showing that failure to do so would substantially impair the interests of justice.

Section 310 Rights of Accused at Arraignment (3 PYTC § 2-2-310 – Former 3 PYT R.Crim.P. Rule 24)

Before an accused is required to plead to any criminal charge, the judge shall:

(A) Advise the accused that he or she has the right to remain silent; to be tried by a jury if accused of a crime which is punishable by imprisonment; and to be represented by counsel; and if the provisions of 3 PYTC § 2-2-310(B) apply, that counsel will be provided at no cost to the defendant if the court determines that he or she is indigent; and that the arraignment will be postponed if the accused desires to consult with counsel and waives arraignment time requirements; and

(B) Read to the accused, and determine that he or she understands the complaint, the section of the Tribal Code which he or she is charged with violating, including the maximum authorized penalty.

Section 320 Not Guilty Plea (3 PYTC § 2-2-320 – Former 3 PYT R.Crim.P. Rule 25)

(A) If the accused pleads "not guilty" to the charge, the judge shall then inform him or her of the trial date and set conditions for release prior to trial.

(B) If the Court is unable to ascertain whether the defendant may knowingly, intelligently and voluntarily enter a guilty or no contest plea, the Court shall enter a not guilty plea on behalf of the defendant.

(C) The Court shall enter a not guilty plea on behalf of any defendant facing charges for which there is a victim who is unable to provide input at arraignment.

Section 330 Plea of Guilty or No Contest (3 PYTC § 2-2-330 – Former 3 PYT R.Crim.P. Rule 26)

(A) **Personal Appearance.** A plea of guilty or no contest may be accepted by the Tribal Court if the Tribal Court has jurisdiction to try the offense. Such plea A plea of guilty or no contest shall be accepted only when made by the defendant personally in open court.

(B) **Duty of Court to Advise Defendants.** A plea of guilty may be accepted only if knowingly voluntarily and intelligently made. Before accepting a plea of guilty or no contest, the court shall address the defendant personally in open court, informing the defendant of, and determining that he or she understands:

(1) The nature of the charge(s) to which the plea is offered;

(2) The nature and range of possible sentences for the offense(s) to which the plea is offered; and

(3) Rights that by pleading guilty or no contest, the Defendant give up under the Indian Civil Rights Act and/or the United States Constitution and the Constitution of the Pascua Yaqui Tribe, including:

(a) The right to counsel if her or she is not represented, and if the provisions of 3 PYTC §§ 2-2-310(B) & 410 apply, that counsel will be provided at no cost to the defendant if the court determines that he or she is indigent;

(b) The right to counsel at defendant's own expense if he or she is not represented;

(c) The right to a trial;

(d) The right to plead not guilty;

(e) The right to a jury if accused of a crime punishable by any term of imprisonment;

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

(g) The right to subpoena witnesses;

(h) That by pleading guilty or no contest, the defendant will waive the right to have the Court of Appeals review the proceedings by way of direct appeal, and may seek review only by filing a petition for post-conviction relief and, if denied, a petition for review; and

(i) That if he or she is not a citizen of the United States, the plea may have immigration consequences. Specifically, the court shall state, "if you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in deportation or removal even if the charge is later dismissed. Your plea or admission of guilt could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen." The court shall also give this advisement prior to any admission of facts sufficient to warrant finding of guilt, or prior to any submission on the record. The defendant shall not be required to disclose his or her legal status in the United States.

(C) **Duty of Court to Determine Voluntariness and Factual Basis.** Before accepting a plea of guilty or no contest, the court shall address the defendant personally in open court and determine that there is a factual basis for the plea, that the defendant wishes to give up the rights of which he or she has been advised, and that the plea is voluntary and not the result of force, threats, or promises (other than a plea agreement). The Court shall also inquire on the record whether the defendant has consumed any drugs, alcohol or medications in the previous 24 hours which may impair his or her ability to understand the proceedings. The Court shall then make a determination as to whether the defendant is able to fully understand the proceedings before accepting a guilty plea.

(D) **Pleas of No Contest.** A plea of no contest may be accepted only after due considerations of the views of the parties and the interest of the public and the victim in the effective administration of justice.

(E) **Record.** A complete record shall be made of all plea proceedings.

(F) **Waiver of Appeal.** By pleading guilty or no contest, a defendant waives the right to have the Court of Appeals review the proceedings by way of direct appeal, and may seek review only by filing a petition for post-conviction relief and, if denied, a petition for review.

Section 340 Plea Negotiations (3 PYTC § 2-2 340 – Former 3 PYT R.Crim.P. Rule 27)

(A) **Plea Negotiations.** The prosecutor and the defendant may negotiate concerning, and reach an agreement on, any aspect of the disposition of the case. At the request of either party, the court may, in its discretion, participate in settlement discussions by directing counsel having the authority to settle to participate in a good faith discussion with the court regarding a non-trial or non-jury trial resolution which conforms to the interests of justice. Before such discussions take place, the prosecutor shall afford the victim the opportunity to confer with the prosecutor concerning a non-trial or non-jury trial resolution, if they have not already conferred, and shall inform the court and counsel of any statement of position by the victim. If the defendant is to be present at any such settlement discussions, the victim shall also be afforded the opportunity to be present and to state his or her position with respect to a non-trial or non-jury trial settlement. If the victim chooses to make a statement, he or she shall not be subject to cross-examination. The trial judge shall only participate in settlement discussions with the consent of the parties. In all other cases, the discussions shall be before another judge and not with the trial judge unless both parties agree. If settlement discussions do not result in an agreement, the case shall be returned to the trial judge.

(B) **Plea Agreement.** The terms of a plea agreement shall be in writing and shall be signed by the defendant, his or her counsel, if any, and the prosecutor. An agreement may be revoked by any party before it is accepted by the court.

(C) **Determinations.** The parties shall file the agreement with the court, which shall address the defendant personally and determine that he or she understands and agrees to its terms, that the written document contains all the terms of the agreement, and that the plea is entered in conformance with 3 PYTC § 2-2 270 7 (A)-(D).

(D) **Acceptance of Plea.** After making such determinations, the court shall either accept or reject the tendered negotiated plea. The court 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 and reviewing a pre-sentence report, it rejects the provision as inappropriate.

(E) **Rejection of Plea.** If an agreement or any provision thereof is rejected by the court, it shall give the defendant an opportunity to withdraw the plea, advising the defendant that if he or she allows the plea to stand, the disposition of the case may be less favorable than contemplated by the agreement.

(F) **Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements.**

(1) **Prohibited Uses.** Except as otherwise provided in the Tribal Code, in a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in plea discussions:

(a) A guilty plea that was later withdrawn;

(b) A no contest plea;

(c) A statement made during a proceeding on either of those pleas;

(d) A statement made during plea discussions with a prosecutor if the discussions did not result in a guilty plea or if they resulted in a later-withdrawn guilty plea

(2) **Exceptions.** The court may admit a statement described above:

(a) In any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(b) In a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

(G) **Automatic Change of Judge.** If a plea is withdrawn after submission of the pre-sentence report, the judge, upon request of the defendant, shall disqualify himself or herself.

Section 350 Withdrawal of Plea (3 PYTC § 2-2-350 – Former 3 PYT R.Crim.P. Rule 28)

The court, 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 defendant as they existed before any amendment, reduction or dismissal made as part of a plea agreement shall be reinstated automatically.

Section 360 Pretrial Conference (3 PYTC § 2-2-360 – Former 3 PYT R.Crim.P. Rule 29)

(A) **Adoption of Procedure.** The court may conduct pretrial conferences. Attendance at the pretrial conference by the parties may be made mandatory by the court. Any pretrial conference set should be no later than 30 days prior to the trial start date.

(B) **Purposes.** The purposes of the pretrial conference may include:

(1) To provide a forum and procedure for the fair, orderly and just disposition of cases without trial;

(2) To permit the parties, without prejudice to their rights to trial, to engage in disclosure and conduct negotiations for dispositions without trial;

(3) To provide an opportunity for complying with the requirement of discovery as required by Subchapter J;

(4) To eliminate the need for setting for trial cases which may be disposed of without trial; or

(5) In all cases which cannot be fairly disposed of without trial, to enable the court to set a date certain for trial.

(6) To address any outstanding pretrial issues.

(C) **Procedure.** The court may designate the types of cases to be made subject to the pretrial conference, designate the persons who are required to attend the pretrial conference, provide for sanctions in the event of failure to attend, and establish other procedures and regulations that are reasonable and necessary for the conduct of the pretrial conferences and for carrying out the purpose of the pretrial conferences.

SUBCHAPTER E PRETRIAL MOTION PRACTICE; OMNIBUS HEARING

Section 370 General Provisions (3 PYTC § 2-2-370)

(A) **Scope.** Unless otherwise provided, this Subchapter shall govern the procedure to be followed in cases between arraignment and trial.

(B) **Making of Motions Before Trial.** All motions shall be made no less than 20 days prior to trial, or at such time as the court may direct. The opposing party shall have 10 days within which to file a response, unless the opposing party waives response. The moving party may then have 5 days within which to file a reply. Lack of jurisdiction may be raised at any time. Failure to file a reply shall not be construed as a party conceding the issues raised in the original motion.

(C) **Omnibus Hearing.** An omnibus hearing will be held only if affirmatively requested in writing by either or both parties within 45 days of the date of arraignment or 10 days after receipt of disclosure, whichever is later, or as ordered by the court. The omnibus hearing may be set at the earliest convenient date following the filing of the request but no later than 20 days prior to the trial date.

(D) **Effect of Failing to Make Motions in a Timely Manner.** Any motion, defense, objection or request not timely raised under subsection B shall be precluded, unless good cause is shown that the basis therefor was not then known, and by exercise of reasonable diligence could not then have been known, and the party raises it promptly upon learning of it.

(E) **Finality of Pretrial Determinations.** Except for good cause, or as otherwise provided, an issue previously determined by the court shall not be reconsidered and the previous determination shall remain the law of the case.

Section 380 Pretrial Motions to Suppress Evidence (3 PYTC § 2-2-380)

(A) **Defendant's Testimony.**

(1) The defendant may, but need not, testify at a pretrial hearing on the circumstances surrounding the acquisition of the evidence.

(2) If the defendant does testify at the hearing, he or she will be subject to cross-examination.

(3) If the defendant does testify at the hearing, he or she does not by so testifying waive his or her right to remain silent during the trial.

(4) If the defendant does testify at the hearing, neither this fact nor his or her testimony at the hearing shall be mentioned to the jury unless he or she testifies at trial concerning the same matters.

(B) **Burden of Proof.** The prosecutor shall have the burden of proving, by a preponderance of the evidence, the lawfulness in all respects of the acquisition of all evidence which the prosecutor will use at trial. However, whenever the defense is entitled under Subchapter H to discover the circumstances surrounding the taking of any evidence by confession, identification or search and seizure, or defense counsel was present at the taking, or the evidence was obtained pursuant to a valid search warrant, the prosecutor's burden of proof shall arise only after the defendant has come forward with evidence of specific circumstances which establish a prima facie case that the evidence taken should be suppressed.

Section 390 Dismissal of Prosecution (3 PYTC § 2-2-390)

(A) **On the Prosecutor's Motion.** The court, on motion of the prosecutor showing good cause therefor, may order that a prosecution be dismissed at any time upon finding that the purpose of the dismissal is not to avoid time limits for speedy trial.

(B) **On Defendant's Motion.** The court, on motion of the defendant, shall order that a prosecution be dismissed upon finding that the information or complaint is insufficient as a matter of law.

(C) **Record.** The court shall state, on the record, its reasons for ordering dismissal of any prosecution.

(D) **Effect of Dismissal.** Dismissal of a prosecution shall be without prejudice to commencement of another prosecution, unless the court finds that the interests of justice require that the dismissal be with prejudice.

(E) **Release of Defendant; Exoneration of Bond.** When a prosecution is dismissed, the defendant shall be released from custody, unless the defendant is in custody on some other charge, and any appearance bond shall be exonerated.

SUBCHAPTER F RIGHTS OF THE DEFENDANTS

Section 400 Defendant's Rights in a Criminal Proceeding (3 PYTC § 2-2-400)

(A) Unless otherwise set forth in this Chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

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

(1) To be free from excessive bail and cruel or unusual punishment;

(2) To a defense in person or by counsel;

(3) To be informed of the nature of the charges against him or her and to have a written copy of those charges;

(4) To confront and cross-examine all prosecution or hostile witnesses;

(5) To compel by subpoena;

(a) The attendance of any witnesses necessary to defend against the charges; and

(b) The production of any books, records, documents, or other things necessary to defend against the charges;

(6) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;

(7) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and

(8) To petition for a writ of habeas corpus.

Section 410 Right to Counsel (3 PYTC § 2-2-410 – Former 3 PYT R.Crim.P. Rule 31)

(A) At the initial appearance the defendant shall be informed of his right to be represented by counsel in any criminal proceeding at his own expense, except in those petty offenses such as traffic violations where there is no prospect of imprisonment or confinement after a judgment of guilty. The right to be represented shall include the right to consult with counsel as soon as feasible after a defendant is taken into custody, at reasonable times thereafter and sufficiently in advance of a proceeding to allow adequate preparation therefore.

(B) An indigent defendant shall be entitled to have an attorney or a tribal court advocate appointed to represent him or her at the Tribe's expense in any criminal proceeding in which the Tribe is seeking punishment by loss of liberty. At the initial appearance, the Tribe shall inform the Court whether or not the Tribe seeks punishment by loss of liberty. If the Tribe elects to seek punishment by loss of liberty at any time subsequent to the initial appearance, the Tribe shall notify the Court not later than thirty days before trial, and counsel shall be appointed by the Court.

(C) If the charges facing an defendant could result in loss of liberty of one year or more or a fine of greater than $5,000, or the defendant is facing any length of imprisonment and is charged under 25 U.S.C. § 1304, then the defendant shall have the right to an attorney licensed to practice law in both the Pascua Yaqui Tribal Courts and in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys. IF the defendant is determined to be indigent, then the Court will appoint such licensed attorney at the Tribe's expense.

(D) A defendant may waive his or her rights to counsel in writing, after the court has determined that he or she knowingly, intelligently and voluntarily desires to forego them. A defendant may withdraw a waiver of the right to counsel at any time, but will not be allowed to repeat any proceeding already held solely on the grounds of the waiver and consequent lack of counsel.

Section 420 Determination of Indigence (3 PYTC § 2-2-420)

(A) The term "indigent" as used in this Chapter means a person who is not financially able to employ counsel.

(B) A defendant desiring to proceed as an indigent shall complete under oath a questionnaire concerning that defendant's financial resources, on a form approved by the Chief Judge. The defendant shall be examined under oath regarding defendant's financial resources by the judge presiding at the defendant's initial hearing.

(C) After a determination of indigence or non-indigence has been made by the court, if there has been a material change in circumstances, either the defendant, the appointed attorney, or the prosecutor may move for reconsideration of that determination

Section 430 Manner of Appointment (3 PYTC § 2-2-430)

(A) Whenever counsel is appointed, the court shall enter an order to that effect, a copy of which shall be given or sent to the defendant, the attorney appointed, and the prosecutor.

(B) The public defender shall represent all persons entitled to appointed counsel whenever he or she is authorized by law, and able in fact to do so.

(C) If the public defender is not appointed, an attorney or advocate under contract with the Tribe to provide conflict criminal defense services shall be appointed to the case.

(D) On appeal of a matter requiring appointment of counsel under 3 PYTC § 2-2-310 (B), the trial or Appellate Court shall appoint new counsel for a defendant legally entitled to such representation when prior counsel has been permitted to withdraw.

Section 440 Judges (3 PYTC § 2-2-440)

In a criminal proceeding in which a defendant faces charges which could result in loss of liberty of one year or more or a fine greater than $5,000 or in which the defendant faces any length of imprisonment and is charged under the Special Domestic Violence Criminal Jurisdiction defined at 25 U.S.C. §1304, the criminal proceeding shall be presided over by a judge who has sufficient legal training to preside over criminal proceeding and is licensed to practice law by any jurisdiction in the United States.

Section 450 Speedy Trial; Priorities (3 PYTC § 2-2-450 – Former 3 PYT R.Crim.P. Rule 32)

(A) The trial of criminal cases shall have priority over the trial of civil cases.

(B) The trial of defendants in custody and defendants whose pretrial liberty may present unusual risks shall be given preference over other criminal cases.

(C) The prosecutor shall advise the court of facts relevant to determining the order of cases on the calendar.

Section 451 Speedy Trial; Time Limits (3 PYTC § 2-2-451 – Former 3 PYT R.Crim.P. Rule 33)

(A) Every person held in custody on a criminal charge shall be tried within 150 days from the date of initial appearance.

(B) Every person released pending trial shall be tried within 180 days from the date of initial appearance.

(C) 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 of the entry of the order.

Section 452 Speedy Trial; Excluded Periods (3 PYTC § 2-2-452)

(A) The following periods shall be excluded from the computation of the time limits set forth in section 451:

(1) Delays occasioned by or on behalf of the defendant, including, but not limited to, delays caused by an examination to determine competency or intellectual disability, the defendant's absence or incompetence, or his or her inability to be arrested or taken into custody on the Reservation.

(2) Delays resulting from a new probable cause determination under section 270.

(3) Delays resulting from an extension of the time for disclosure under section 640.

(4) Delays necessitated by congestion of the trial calendar, but only when the congestion is attributed to extraordinary circumstances.

(5) Delays resulting from continuances in accordance with section 453, but only for the time periods prescribed therein.

Section 453 Speedy Trial; Continuances (3 PYTC § 2-2-453)

(A) **Form of Motion.** A continuance of trial may be granted on the motion of a party. Any motion must be in writing and state with specificity the reason(s) justifying the continuance.

(B) **Grounds for Motion.** A continuance of any trial date shall be granted only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice. A continuance may be granted only for so long as is necessary to serve the interests of justice. In ruling on a motion for continuance, the court shall consider the rights of the defendant and any victim to a speedy disposition of the case. If a continuance is granted, the court shall state the specific reasons for the continuance on the record.

Section 454 Denial of Speedy Trial; Dismissal (3 PYTC § 2-2-454 – Former 3 PYT R.Crim.P. Rule 34)

If the court determines that a speedy trial time limit established by this Chapter has been violated, it shall, on motion of defendant or on its own initiative, dismiss the prosecution, with or without prejudice, as justice requires.

Section 460 Issuance of Subpoenas (3 PYTC § 2-2-460 - Former 3 PYT R.Crim.P. Rule 35)

(A) Upon the request of any party to a case or upon the Tribal Court's own initiative, the court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant, necessary to the determination of the case and not an undue burden on the person possessing the evidence.

(B) The subpoena may be signed and issued:

(1) A subpoena shall bear the signature of a tribal judge, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(2) By the chief prosecutor or one of his/her deputies or the attorney general for witnesses to appear before the grand jury or preliminary hearing, or for witnesses on a complaint, indictment or information to appear before the court in which the complaint, indictment or information is to be heard or tried or by the chief

prosecutor or one of his/her deputies or the attorney general, for witnesses requested by a grand jury.

(3) By the clerk of the court in which an indictment or information is to be tried.

(C) The clerk, at any time, on application of the defendant, and without charge, shall issue as many blank subpoenas, subscribed by the clerk as clerk, for witnesses as the defendant requires. Blank subpoenas shall not be used to procure discovery in a criminal case, including to access the records of a victim. Records relating to recovered memories or disassociated memories may be subject to subpoena only if the state seeks to introduce evidence of the victim's recovered or disassociated memory, the records are not otherwise privileged and the court approves the subpoena after a hearing. The victim shall be given notice of and the right to be heard at any proceeding involving a subpoena for records of the victim from a third party.

Section 461 Service of Subpoenas (3 PYTC § 2-2-461 – Former 3 PYT R.Crim.P. Rule 36)

(A) A subpoena may be served at any place within or without the confines of the reservation, but any subpoena served outside the reservation shall be served by a person authorized to serve subpoenas according to the law of the jurisdiction in which the subpoena is served.

(B) Except as provided in Subsection (A) above for the service of subpoenas outside of the reservation, a subpoena may be served by any tribal law enforcement officer or other person appointed by the court for such purpose, upon the written request of the party. In all other instances service may be in accordance with section D. 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.

(C) 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.

(D) A subpoena may be served by any person

(1) A subpoena may be served by any of the following methods:

(a) Personal service.

(b) Certified mail.

(c) First class mail, if a certificate of service and return card is returned by the addressee.

(2) Personal service of a subpoena is made by showing the original to the witness personally, informing him of its contents and delivering a copy of the subpoena to

such witness. Written return of service of a subpoena must be made without delay, stating the time and place of service.

(3) Subpoenas may be served by certified mail for delivery to addressee only. The subpoena shall be registered and mailed, postage and registry fee prepaid, to the addressee with a request endorsed on the envelope in the usual form for the return of the letter to the sender if not delivered within five days. The receipt of such certified letter by the addressee is deemed valid service upon him and the returned receipt signed by the addressee named in the subpoena is prima facie evidence of notification.

(4) Subpoenas may be served by first class mail if the addressee is supplied with a certificate of service and return card. The return of such card signifies and states that the addressee has received official notice to appear in court, that he waives all further service of subpoena and that he submits to the jurisdiction of the court for the purposes set forth in the subpoena. The return of the signed card is prima facie evidence of notification.

(5) The methods described in this section also apply to off reservation subpoenas.

Section 462 Failure to Obey Subpoena (3 PYTC § 2-2-462 – Former 3 PYT R.Crim.P. Rule 37)

(A) 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, and a bench warrant for his or her arrest, and 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.

(B) Upon the arrest 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 court determines that the failure to obey the subpoena was unjustified, the court may find the person in contempt of court and sentence him or her pursuant to the Tribal Code.

SUBCHAPTER G PRESENCE OF DEFENDANT, WITNESSES AND SPECTATORS, CHANGE OF JUDGE

Section 470 Defendant's Waiver of Right to be Present (3 PYTC § 2-2-470)

(A) A defendant may waive his or her right to be present at any proceeding by voluntarily absenting himself or herself from it.

(B) The court may infer that an absence is voluntary if the defendant had notice of the time of the proceeding, the right to be present at it and a warning that the proceeding would go forward in his or her absence should he or she fail to appear.

(C) Any proceeding may take place in the defendant's absence if he or she is voluntarily absent from the proceeding.

Section 480 Defendant's Forfeiture of Right to be Present (3 PYTC § 2-2-480)

(A) **Disruptive Conduct.** A defendant who engages in disruptive or disorderly conduct after having been warned by the court that such conduct will result in the defendant's expulsion from a proceeding shall forfeit his or her right to be present at that proceeding. Such conduct may include, but is not limited to, verbal or non-verbal communication with witnesses during the proceeding.

(B) **Re-acquisition of Right.** The court shall grant any defendant so excluded reasonable opportunities to return to the court upon the defendant's personal assurance of good behavior. Any subsequent disruptive conduct on the part of the defendant may result in his or her exclusion without additional warning.

(C) **Continuing Duty of Court.** The court shall employ every feasible means to enable a defendant removed from a proceeding under this rule to hear, observe or be informed of the further course of the proceeding, and to consult with counsel at reasonable intervals.

Section 490 Exclusion of Witnesses and Spectators (3 PYTC § 2-2-490)

(A) **Witnesses.** The court may, and at the request of either party shall, exclude prospective witnesses from the courtroom during opening statements and the testimony of other witnesses. The court shall also direct them not to communicate with each other until all have testified. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, the person shall not be excluded from the courtroom. Once a witness has testified on direct examination and has been made available to all parties for cross-examination, the witness shall be allowed to remain in the courtroom unless the court finds, upon application of a party or witness, that the presence of the witness would be prejudicial to a fair trial. Notwithstanding the foregoing, any victim and the defendant shall have the right to be present at all proceedings.

(B) **Spectators.** All proceedings shall be open to the public, including representatives of the press, unless the court finds, upon application of the defendant, that an open proceeding presents a clear and present danger to the defendant's right to a fair and impartial jury. A complete record of any closed proceedings shall be kept by the clerk of the court and made available to the public following the completion of trial or disposition of the case without trial.

(C) **Protection of Witness.** The court may, in its discretion, exclude all spectators during the testimony of a witness whenever reasonably necessary to prevent embarrassment or emotional disturbance of the witness. Exclusion shall not apply to any victim or the defendant.

(D) **Investigator.** If any exclusion order is entered pursuant to this section, both the defendant and the prosecutor shall nevertheless be entitled to the presence of one investigator at counsel table for the entire proceeding.

Section 495 Change of Judge for Cause (3 PYTC § 2-2-495)

(A) **Grounds.** In any criminal case prior to the commencement of a hearing or trial the prosecutor or any defendant shall be entitled to a change of judge if a fair and impartial hearing or trial cannot be had by reason of the interest or prejudice of the assigned judge.

(B) **Procedure.** Within 10 days after discovery that grounds exist for change of judge, but not after commencement of a hearing or trial, a party may file a motion verified by affidavit of the moving party and alleging specifically the grounds for the change. Except for the commencement of a hearing or trial, no event occurring before the discovery shall constitute a waiver of rights to change of judge for cause. Allegations of interest or prejudice which prevent a fair and impartial hearing or trial may be preserved for appeal.

(C) **Hearing.** Promptly after the filing of the motion, the Chief Judge of the Pascua Yaqui Court of Appeals, or his/her designee, shall provide for a hearing on the matter before a judge of the Court of Appeals, or a designee, no later than 20 days. The appellate judge shall decide the issues by the preponderance of the evidence and following the hearing, shall return the matter to the presiding judge of the Pascua Yaqui Tribal Court who shall as quickly as possible assign the action back to the original judge or make a new assignment, depending on the findings of the appellate judge. If a new assignment is to be made it shall be made in accordance with the provisions of this rule. Time shall be excluded until the requested motion has been resolved and the matter shall be stayed, and the trial judge should not proceed, except to enter necessary temporary orders before the action can be transferred to the Chief judge or the Chief judge's designee

SUBCHAPTER H INCOMPETENCY AND MENTAL EXAMINATIONS

Section 500 Definition and Effect of Incompetency (3 PYTC § 2-2-500)

(A) A person shall not be tried, convicted or punished for a felony or misdemeanor while, as a result of a mental illness, defect or disability, the person is unable to understand the proceedings against him or her or to assist in his or her own defense. Mental illness, defect or disability means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease and developmental disabilities.

(B) The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.

Section 501 Motion to Have Defendant's Mental Condition Examined (3 PYTC § 2-2-501)

(A) Motion for Examination. At any time after an information or complaint is filed, any party may request in writing, or the court on its own motion may order, an examination to determine whether a defendant is competent to stand trial, or to investigate the defendant's mental condition at the time of the offense. The motion shall state the facts upon which the mental examination is sought. On the motion of or with the consent of the defendant,

the court may order a screening examination for a guilty except insane plea to be conducted by the mental health expert.

(B) Medical and Criminal History Records. All available medical and criminal history records shall be provided to the court within three days of filing the motion for use by the mental health expert.

Section 510 Appointment of Experts (3 PYTC § 2-2-510)

(A) **Grounds for Appointment.** If the court determines that reasonable grounds for an examination exist, it shall appoint at least one mental health expert to examine the defendant and to testify regarding the defendant's mental condition. The court on its own motion or on the motion of any party may order that a mental health expert(s) be a physician specializing in psychiatry and licensed to practice.

(B) **Definition of Mental Health Expert.** The term "mental health expert" means:

(1) Any physician who specializes in psychiatry and is licensed to practice by the State of Arizona, or any other state, or

(2) Any psychologist who is licensed to practice by the State of Arizona, or any other state

(C) **Examinations.** The court may order the defendant to submit to physical, neurological or psychological examinations, if necessary, to determine the defendant's mental condition.

(D) **Costs.** The court shall order the defendant to pay the costs of the court ordered examination, unless the court finds that the defendant is indigent or otherwise unable to pay all or any part of the costs of the examination, in which case the Tribal Court shall cover the cost of the examination.

(E) **Content of Report.** An expert appointed pursuant to this section to examine a defendant shall provide a written report to the court within ten (10) working days of the examination. The report shall include at least the following information:

(1) The name of the mental health expert who examined the defendant.

(2) A description of the nature, content, extent and results of the examination and any tests conducted.

(3) The facts on which the findings are based.

(4) An opinion as to the competency of the defendant

If the mental health expert determines that the defendant is not competent to stand trial, the report shall also include the following information:

(1) The nature of the mental disease, defect or disability that is the cause of the incompetency.

(2) The defendant's prognosis.

(3) The most appropriate form and place of treatment, based on the defendant's therapeutic needs and potential threat to public safety.

(4) Whether the defendant is incompetent to refuse treatment and should be subject to involuntary treatment.

(F) **Medication.** If the mental health expert determines that the defendant is currently competent by virtue of ongoing treatment with psychotropic medication, the report shall address the necessity of continuing that treatment and shall include a description of any limitations that the medication may have on competency.

(G) **Additional Examinations.** This section shall not prohibit any party from retaining its own expert to conduct any additional examinations at its own expense.

(H) **Immunity.** Any person who is appointed as a mental health expert or clinical liaison under this section is entitled to immunity, except that the mental health expert or clinical liaison may be liable for intentional, wanton or grossly negligent acts that are done in the performance of the expert's or liaison's duties.

(I) **Experts' Reports on Guilty Except Insane Pleas.**

(1) If the defendant raises the defense of guilty except insane, on request of the court or any party, with the consent of the defendant, the mental health expert appointed pursuant to this section shall provide a screening report to evaluate the defendant's state of mind at the time of the offense.

(2) If the defendant's state of mind at the time of the offense will be included in the examination, the court shall not appoint the expert to address this issue until the court receives the medical and criminal history records of the defendant.

(3) Within ten working days after the expert is appointed, the parties shall provide any additional medical or criminal history records that are requested by the court or the expert.

Section 520 Disclosure of Mental Health Evidence to the Court and Parties (3 PYTC § 2-2-520)

(A) **Reports of Appointed Experts**. The reports of experts made pursuant to Section 430 shall be submitted to the court within ten working days of the completion of the examination and be made available to all parties, except that any statement or summary of the defendant's statement concerning the offense(s) charged shall be made available only to

the defendant. Upon receipt, court staff will copy and distribute the expert's report to the court and to defense counsel. Defense counsel is responsible for editing a copy for the prosecutor, which is to be returned to court staff within 24 hours of receipt. Court staff will copy and distribute the edited copy to the court and the prosecutor.

(B) **Reports of Other Experts**. At least 15 working days prior to any hearing, the parties shall make available to the opposite party for examination and reproduction the names and addresses of mental health experts who have personally examined a defendant or any evidence in the particular case, together with the results of mental examinations or scientific tests, experiments or comparisons, including all written reports or statements made by them in connection with the particular case.

Section 530 Hearing and Orders (3 PYTC § 2-2-530)

(A) **Hearing.** Within 30 days after the expert reports have been submitted to the court, the court shall hold a hearing to determine the defendant's competency. The parties may introduce other evidence regarding the defendant's mental condition, or by written stipulation, submit the matter on the experts' reports.

(B) **Orders.** After the hearing:

(1) If the court finds that the defendant is competent, proceedings shall continue without delay.

(2) If the court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within 21 months of the date found incompetent, it may, upon request of either party,

(a) Remand defendant to the Arizona Department of Health Services or other court approved facility for civil commitment proceedings;

(b) Order appointment of a guardian; or

(c) Release defendant from custody and dismiss charges without prejudice.

(3) If the court determines that the defendant is incompetent, it may order competency restoration treatment unless there is clear and convincing evidence that the defendant will not regain competency within 15 months. Defendant shall bear the burden of demonstrating by clear and convincing evidence that he or she will not regain competency within 15 months. The court shall determine whether the defendant should be subject to involuntary treatment and may extend the treatment for six months beyond the 15 month limit if it finds that defendant is making progress toward restoration to competency. All treatment orders shall specify where treatment will occur; whether treatment is inpatient or outpatient, transportation to the treatment site, length of treatment, and transportation after treatment. The treatment order shall specify that the court shall be notified if the defendant regains competency before the expiration of the order of commitment.

(4) If the court determines that the defendant is incompetent, the court shall further determine whether the defendant is incompetent to refuse treatment, including medication, and should be subject to involuntary treatment.

(5) Orders, publicly available, shall be written in conformity with section 550.

(C) **Restoration to Competency.** If the court determines that confinement is necessary for treatment, the court may commit the defendant for competency restoration treatment to the competency restoration treatment program. If no such program has been designated, the court may commit the defendant for competency restoration treatment to the Arizona State Hospital, or to any other facility that is approved by the court. The court shall specify in its order if the defendant is incompetent to refuse treatment, including medication.

(D) **Costs.** The defendant shall be responsible for the cost of competency restoration treatment at the Arizona State Hospital or other court approved facility. If the defendant is indigent or otherwise unable to pay all or part of the cost competency restoration treatment, the court may order the Tribal Government to pay the cost of competency restoration treatment.

(E) **Modification of Order.** The court may modify any order under this section at any time.

(F) **Reports.** The court may order the person supervising the defendant's court-ordered restoration treatment to file a report with the court, the prosecutor and the defense attorney as follow: 1) for inpatient treatment, 120 days after the court's original treatment order and each 180 days thereafter; 2) for outpatient treatment, every 60 days; 3) when the person supervising the defendant believes defendant is competent to stand trial; 4) when the person supervising the defendant concludes that the defendant will not be restored to competency within 21 months of the court's finding of incompetence; 5) 14 days before the expiration of the court's order. The treatment supervisor's report must include at least the following:

(1) The name of the treatment supervisor;

(2) Description of the nature, content, extent and results of the examination and tests conducted;

(3) Facts on which the treatment supervisor's findings are based; and

(4) Treatment supervisor's opinion as to defendant's competency to understand the nature of the court proceeding and assist in his or her defense.

If the treatment supervisor finds the defendant remains incompetent, the report must also include:

(5) Nature of the mental disease, defect or disability that is the cause of incompetency;

(6) Prognosis as to defendant's restoration to competency and estimated time period for restoration to competency; and

(7) Recommendations for treatment modifications.

If the treatment supervisor finds that the defendant has regained competency, the report must also include any limitations imposed by medications used in restoration treatment.

(G) **Calculation of Time.** The court shall only consider the time a defendant actually spends in a restoration program when calculating the time requirements in this section. If a defendant is out of custody and fails to attend any outpatient appointments, the time limits in this section shall be deemed waived.

Section 540 Subsequent Hearings (3 PYTC § 2-2-540)

(A) **Grounds.** The court shall hold a hearing to determine the defendant's competency:

(1) Upon receiving a report from an authorized official of an institution in which a defendant is receiving restoration treatment under section 530 stating that in the official's opinion, the defendant has become competent to stand trial; or

(2) Upon motion of the defendant, accompanied by a certificate of a mental health expert stating that in the expert's opinion the defendant is competent to stand trial; or

(3) At the expiration of the maximum period allowed under section 530; or

(4) On the court's own motion at any time.

(B) **Counsel and Experts.** During proceedings under this section, the defendant shall be entitled to representation by counsel, pursuant sections 410 and 420. The court, in its discretion, may appoint new mental health experts as provided in section 510.

(C) **Finding of Competency.** If the court finds that the defendant is competent, the regular proceedings shall commence again without delay, the defendant being entitled to repeat any proceeding except for a preliminary hearing as provided in section 230 if the defendant can demonstrate there are reasonable grounds to believe that he or she was prejudiced by his or her previous incompetency.

(D) **Finding of Continued Incompetency.** If the court finds that the defendant is still incompetent, it shall proceed in accordance with section 530, unless the court determines that there is a substantial probability that the defendant will regain competency within the foreseeable future, then the court shall renew and may modify the treatment order for not more than an additional 180 days.

(E) **Dismissal of Charges.** The court may, in its discretion, order the dismissal of charges against any defendant adjudged incompetent at any time, after providing notice and a hearing. Upon dismissal of charges, a defendant shall be released from custody unless the court finds that a defendant's condition warrants a civil commitment hearing.

Section 550 Privilege and Records (3 PYTC § 2-2-550)

(A) **General Restriction.** No evidence of any kind obtained under this subchapter shall be admissible at any proceeding to determine guilt or innocence unless the defendant presents evidence intended to rebut the presumption of sanity.

(B) **Privileged Statements of Defendant:**

(1) No statement of the defendant obtained under this subchapter, or evidence resulting therefrom, concerning the events which form the basis of the charges against the defendant shall be admissible at the trial of guilt or innocence, or at any subsequent proceeding to determine guilt or innocence, without his or her consent.

(2) No statement of the defendant or evidence resulting therefrom obtained under these provisions, concerning any other events or transactions, shall be admissible at any proceeding to determine the defendant's guilt or innocence of criminal charges based on such events or transactions.

(C) The reports of experts shall be treated as confidential by the court and counsel in all respects, except the records of other experts may be disclosed by the court and counsel to other mental health experts to assist in their evaluation of defendant. After the case proceeds to trial or defendant is found unable to regain competence, the court shall order the mental health experts' reports sealed. The court may order the reports opened only for further competency or sanity evaluation, statistical study or when necessary to assist in mental health treatment pursuant to restoration to competency.

SUBCHAPTER I GUILTY EXCEPT INSANE

Section 560 Insanity Test; Burden of Proof; Guilty Except Insane Verdict (3 PYTC § 2-2-560)

(A) A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders. Conditions that do not constitute legal insanity include, but are not limited to momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

(B) The defendant shall prove the defendant's insanity by clear and convincing evidence.

(C) If the finder of fact determines that the defendant is guilty except insane, the court shall order that the defendant be committed to the Arizona State Hospital or other secure mental

health facility until such time as the Arizona State Hospital or secure mental health facility determines that the Defendant is no longer a danger to himself or others.

(D) A guilty except insane verdict or plea is not a criminal conviction for sentencing enhancement purposes.

Section 570 Examination; Procedures; Costs; Disclosure of Reports (3 PYTC § 2-2-570)

(A) In any criminal prosecution in which the defendant has declared the defendant's intent to invoke an insanity defense, the court shall appoint a mental health expert to evaluate the defendant's mental state at the time of the offense.

(B) If the defendant refuses to be examined by the court-appointed mental health expert, the defense shall be precluded from introducing expert evidence of the defendant's mental state at the time of the offense.

(C) The defendant shall bear the cost of the court-appointed mental health expert. If the defendant is indigent, or otherwise unable to pay all or part of the cost of the mental health expert, the court shall pay the cost of the mental health expert.

(D) The privilege of confidential communications between a medical doctor or licensed psychologist and the defendant as it relates to the defendant's mental state at the time of the alleged crime does not apply if the defense of insanity is raised.

(E) If the defense of insanity is raised, both the prosecutor and defense counsel shall receive complete copies of any report by medical doctors or licensed psychologists who examined the defendant to determine the defendant's mental state at the time of the alleged crime or the defendant's competency at least ten calendar days prior to trial.

Section 580 Commitment (3 PYTC § 2-2-580)

(A) If any defendant is found guilty except insane, the court may order the defendant be committed to the Arizona State Hospital or other secure mental health facility until such time as the defendant no longer poses a danger to himself or others.

(B) If the defendant is committed to the Arizona State Hospital, the Arizona Psychiatric Security Review Board, or other mental health facility review board, may make such determinations as to appropriate placement of the defendant once the commitment has been made.

SUBCHAPTER J DISCOVERY

Section 600 Disclosure by Tribe (3 PYTC § 2-2-600 – Former 3 PYT R.Crim.P. Rule 38)

(A) **Initial Disclosure in Felony Cases.** Unless otherwise ordered by the court, at the preliminary hearing, the prosecutor shall make available to the defendant all reports containing items listed in Section 640 (B) (3) and (4) that were in the possession of the attorney filing the charge at the time of filing.

(B) The prosecutor shall make available to the defendant the following material and information within the prosecutor's possession or control:

(1) The names and address of all persons whom the prosecutor will call as witnesses in the case-in-chief together with their relevant written or recorded statements;

(2) All statements of the defendant and of any person who will be tried with the defendant;

(3) All then existing original and supplemental reports prepared by a law enforcement agency in connection with the particular crime with which the defendant is charged;

(4) The names and addresses of experts who have personally examined the defendant(s) or any evidence in that particular case, together with the results of physical examinations and of scientific tests, experiments or comparisons, including all written reports or statements made by them in connection with the particular case;

(5) A list of all papers, documents, photographs or tangible objects which the prosecutor will use at trial or which were obtained from or purportedly belong to the defendant;

(6) A list of all prior convictions of the defendant which the prosecutor intends to use at trial

(7) A list of all prior acts of the defendant which the prosecutor will use to prove motive, intent, or knowledge or otherwise use at trial;

(8) All material or information which tends to mitigate or negate the defendant's guilt as to the offense charged or which would tend to reduce his or her punishment therefore, including all prior felony convictions of witnesses whom the prosecutor expects to call at trial;

(9) Whether there has been any electronic surveillance of any conversations to which the defendant was a party, or of the defendant's business or residence;

(10) Whether a search warrant has been executed in connection with the case; and

(11) Whether the case has an informant, and, if so, the informant's identity, if the defendant is entitled to know either or both of these facts under section 620(B)(2).

(C) **Time for Disclosure.** Unless otherwise ordered by the court, the prosecutor shall disclose the materials and information listed in subsection B of this section, not later than 30 days after arraignment.

(D) **Prior Felony Convictions.**

(1) In a felony case, at least thirty days prior to trial, or thirty days after receipt of a written request from defendant, whichever occurs first, the prosecutor shall make available to defendant a list of prior felony convictions of witnesses the prosecutor intends to call at trial.

(2) In a misdemeanor case, at least ten days prior to trial, the prosecutor shall make available to defendant a list of prior felony convictions of witnesses the prosecutor intends to call at trial.

(3) In a felony case, at least thirty days prior to trial, or thirty days after receipt of a written request from defendant, whichever occurs first, the prosecutor shall make available to defendant a list of prior felony convictions that the prosecutor intends to use to impeach a disclosed defense witness at trial.

(4) In a misdemeanor case, at least ten days prior to trial, the prosecutor shall make available to defendant a list of prior felony convictions that the prosecutor intends to use to impeach a disclosed defense witness at trial.

(E) **Additional Disclosure upon Request and Specification.** Unless otherwise ordered by the court, the prosecutor shall, within thirty days of receipt of a written request from defendant, make available to the defendant for examination, testing and reproduction the following:

(1) Any specified items contained in the list submitted under subsection (B)(5).

(2) Any 911 calls existing at the time of the request that can reasonably be ascertained by the custodian of record to be related to the case.

(3) Any completed written reports, statements and examination notes made by experts listed in subsections (B)(1) and (B)(4) of this section in connection with the particular case.

The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody to protect physical evidence produced under this section or to allow time to complete any examination of such items.

(F) Extent of prosecutor's duty to obtain information. The prosecutor's obligation under this Section extends to material and information in the possession or control of members of his or her staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor's control.

(G) Disclosure by Order of the court. Upon motion of the defendant showing substantial need in the preparation of his or her case for additional material or information not otherwise covered by section 600, and that defendant is unable without undue hardship to obtain the substantial equivalent by other means, the court in its discretion may order any person or issue a subpoena to make it available to him or her. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

(H) Disclosure of rebuttal evidence. Upon receipt of the notice of defenses required from the defendant under 3 PYTC § 2-2-610 the prosecutor shall disclose the names and addresses of all persons whom the prosecutor will call as rebuttal witnesses together with their relevant written or recorded statements.

Section 610 Disclosure by Defendant (3 PYTC § 2-2-610 – Former 3 PYT R.Crim.P. Rule 39)

(A) Physical evidence. At any time after the filing of the complaint, upon written request of the prosecutor, the defendant, in connection with the particular crime with which he or she is charged, shall:

(1) Appear for a line-up;

(2) Speak for identification by witnesses;

(3) Be fingerprinted, palm-printed, foot printed or voice printed;

(4) Pose for photographs not involving reenactment of an event;

(5) Try on clothing;

(6) Permit the taking of samples of his or her hair, blood, saliva, urine or other specified materials which involve no unreasonable intrusions of his or her body;

(7) Provide specimens of his or her handwriting; or

(8) Submit to a reasonable physical or medical inspection of his or her body, provided such inspection does not include psychiatric or psychological examination.

(9) Defendant shall be entitled to the presence of counsel at the taking of such evidence. This Subsection shall supplement, and not limit, any other procedures established by law.

(B) Notice of defenses. Within 40 days after the arraignment, or within ten days after the prosecutor had made the disclosures required by this Chapter, whichever is the longer time, the defendant shall provide the prosecutor with a written notice specifying all defenses as to which he or she will introduce evidence at trial, including, but not limited to, alibi, insanity, self-defense, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character. The notice shall specify for each defense the persons, including the defendant, whom the defendant will call as witnesses at trial in support thereof. It may be signed by either the defendant or defense counsel, and shall be filed with the court.

(C) Disclosures by defendant. Simultaneously with the notice of defenses submitted under 3 PYTC § 2-2-610, the defendant shall make available to the prosecutor for examination and reproduction:

(1) The names and addresses of all persons other than the defendant, whom the defense will call as witnesses at trial, together with all statements made by them in connection with the particular case;

(2) The names and addresses of experts to be called by the defendant at trial, together with the results of physical examinations and of scientific tests, experiments or comparisons, including all written reports and statements, made by them in connection with the particular case; and

(3) A list of all papers, documents, photographs and other tangible objects which the defense will use at trial, including any recording or transcript of interviews of witnesses the defense intends to use to impeach such witness at trial.

(D) Additional disclosure upon request and specification. The defendant, upon written request, shall make available to the prosecutor for examination, testing, and reproduction any specified items contained in the list submitted under 3 PYTC § 2-2-610.

(E) Extent of defendant's duty to obtain information. The defendant's obligation under this Section extends to material and information within the possession or control of the defendant, and his or her defense counsel and agents.

(F) Disclosure by order of the Court. Upon motion of the prosecutor showing that he or she has substantial need in the preparation of the case for additional material or information not otherwise covered by 3 PYTC § 2-2-610, that he or she is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the defendant's rights under the Indian Civil Rights Act, the court in its discretion may order any person or issue a subpoena to make such material or information available to the prosecutor.

Section 620 General Standards (3 PYTC § 2-2-620)

In all disclosure under this Subchapter, the following shall apply:

(A) **Statements**.

(1) *Definition*. Whenever it appears in this subchapter, the term "statement" shall mean:

(a) A writing signed or otherwise adopted by another person;

(b) A mechanical, electronic or other recording of a person's oral communications or a transcript thereof, and

(c) A writing containing a verbatim record or a summary of a person's oral communications.

(2) *Superseded Notes.* Handwritten notes that have been substantially incorporated into a document or report within twenty working days of the notes being created,

or that have been otherwise preserved electronically, mechanically or by verbatim dictation, shall no longer themselves be considered a statement and are no longer subject to disclosure.

(B) **Materials Not Subject to Disclosure.**

(1) *Work Product.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecutor, members of the prosecutor's legal or investigative staff or law enforcement officers, or of defense counsel or defense counsel's legal or investigative staff.

(2) *Informants.* Disclosure of the existence of an informant or the identity of an informant who will not be called to testify shall not be required where disclosure would result in substantial risk to the informant or to the informant's operational effectiveness, provided the failure to disclose will not infringe on the defendant's rights under the Indian Civil Rights Act.

(C) **Failure to Call a Witness or Raise a Defense.** The fact that a witness' name is on a list furnished under this rule, or that a matter contained in the notice of defenses is not raised, shall not be commented upon at the trial, unless the court on motion of a party, allows such comment after finding that the inclusion of the witness' name or defense constituted an abuse of the applicable disclosure provision.

(D) **Use of Materials.** Any materials furnished to an attorney pursuant to this subchapter shall not be disclosed to the public but only to others to the extent necessary for the proper conduct of the case.

(E) **Requests for Disclosure.** All requests for disclosure shall be made to the opposing party. A party shall not file a request with the Court without first making a good faith effort to resolve the disclosure issue without involving the Court. All formal requests filed with the Court shall contain a written avowal of compliance with this provision.

Section 630 Excision and Protective Orders (3 PYTC § 2-2-630 – Former 3 PYT R.Crim.P. Rule 40)

(A) Discretion of Court to Deny, Defer, or Regulate Discovery. Upon motion of any party showing good cause, the court may at any time order that disclosure of the identity of any witness be deferred for any reasonable period of time not to extend beyond five days prior to the date set for trial, or that any other disclosures required by this Chapter be denied, deferred or regulated when it finds:

(1) That the disclosure would result in a risk of harm outweighing any usefulness of the disclosure to any party; and

(2) That the risk of harm cannot be eliminated by a less substantial restriction of discovery rights.

(B) Discretion of the court to authorize excision. Whenever the court finds, on motion of any party, that only a portion of a document or other material is discoverable under this Subchapter, it may authorize the party disclosing it to excise that portion of the material which is non-discoverable and disclose the remainder.

(C) Protective and excision order proceedings. On motion of the party seeking a protective or excision order, or submitting for the court's determination the discoverability of any material or information, the court may permit the party to present the material or information for the inspection of the judge outside of the presence of the jury. Counsel for all other parties shall be entitled to be present when such presentation is made.

(D) Preservation of Record. If the court enters an order that any material, or any portion thereof, is not discoverable under this Chapter, the entire text of the material shall be sealed and preserved in the record to be made available to the court of appeals in the event of an appeal.

Section 640 Continuing Duty to Disclose, Final Disclosure Deadline, Extension (3 PYTC § 2-2-640 – Former 3 PYT R.Crim.P. Rule 41)

(A) **Continuing Duties.** The duties prescribed in this rule shall be continuing duties and each party shall make additional disclosure, seasonably, whenever new or different information subject to disclosure is discovered.

(B) **Additional Disclosure.** Any party that determines additional disclosure may be forthcoming within 30 days of trial shall immediately notify both the court and the opposing party of the circumstances and when the disclosure will be available.

(C) **Final Deadline for Disclosure.** Unless otherwise permitted, all disclosure required by this rule shall be completed at least seven days prior to trial.

(D) **Disclosure After the Final Deadline.** A party seeking to use material and information not disclosed at least seven days prior to trial shall obtain leave of court by motion, supported by affidavit, to extend the time for disclosure and use the material or information. If the court finds that the material or information could not have been discovered or disclosed earlier even with due diligence and the material or information was disclosed immediately upon its discovery, the court shall grant a reasonable extension to complete the disclosure and grant leave to use the material or information. Absent such a finding, the court may either deny leave or grant a reasonable extension to complete the disclosure and leave to use the material or information, and if granted the court may impose any sanction other than preclusion or dismissal.

(E) **Extension of Time for Scientific Evidence.** Upon a motion filed prior to the final deadline for disclosure, supported by affidavit from a crime laboratory representative or other scientific expert that additional time is needed to complete scientific or other testing, or reports based thereon, and specifying the additional time needed, the court shall, unless it finds that the request for extension resulted from dilatory conduct, neglect, or other

improper reason on the part of the moving party, grant a reasonable extension in which to complete disclosure. The period of time of the extension shall be excluded by the court from all time periods listed in this Subchapter.

Section 650 Sanctions (3 PYTC § 2-2-650 - Formerly 3 PYT R.Crim.P. Rule 42)

(A) **Failure to Make Disclosure.** If a party fails to make disclosure required by this subchapter any party may move to compel disclosure and for appropriate sanctions. The court shall order disclosure and shall impose any sanction it finds appropriate, unless the court finds that the failure to comply was harmless or that the information could not have been disclosed earlier even with due diligence and the information was disclosed immediately upon its discovery. All orders imposing sanctions shall take into account the significance of the information not timely disclosed, the impact of the sanction on the party and the victim and the stage of the proceedings at which the disclosure was ultimately made. Available sanctions include, but are not limited to:

(1) Precluding or limiting the calling of a witness, use of evidence or argument in support of or in opposition to a charge or defense; or

(2) Dismissing the case; or

(3) Granting a continuance or declaring a mistrial when necessary in the interests of justice; or

(4) Holding a witness, party, person acting under the direction or control of a party, or counsel in contempt; or

(5) Imposing costs of continuing the proceedings; or

(6) Any other appropriate sanction.

(B) **Motion for Sanctions.** No motion brought prior to trial under subsection (A) of this Section will be considered or scheduled unless a separate statement of moving counsel is attached certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.

SUBCHAPTER K TRIAL

Section 660 Trial Procedure; Evidence (3 PYTC § 2-2-660 – Formerly 3 PYT R.Crim.P. Rule 43)

(A) The time and place of court sessions, and all other details of judicial procedure not determined by the provisions of this Chapter shall be set out in rules of court; provided, however, that no rule of court shall abridge any right granted or protected by this Chapter.

(B) When two or more defendants are jointly charged with an offense, they shall be prosecuted jointly, provided that the Court may, in its discretion, on application duly made prior to trial, direct that separate trials be had.

(C) Whenever due process or the court requires, the Federal Rules of Evidence shall be adopted in any trial proceeding or evidentiary hearing.

(D) A defendant in a criminal action need not testify. He is presumed to be innocent until the contrary is proven. The defendant's failure to testify on his own behalf shall in no way be construed against him nor commented upon by the Tribe.

(E) Trial By Judge. The date having been set for the hearing, the defendant shall be brought before the Court, with witnesses subpoenaed, and the defendant may, at their own expense, in a criminal proceeding, have assistance of counsel either professional or otherwise, for their defense. If the provisions of 3 PYTC 2-2-410 apply, counsel will be provided at no cost to the defendant if the court determines that he or she is indigent. The complaint shall be read to the defendant and the defendant may change their plea or stand trial. If the defendant changes their plea from "not guilty" to "guilty", sentence may be entered.

(1) If defendant chooses to stand trial, the judge shall require the witnesses to be sworn and proceed to hear evidence. Evidence to support the complaint shall be heard first and followed by evidence on behalf of defendant. Under no circumstance may the Court compel any defendant in any criminal case to be a witness against himself.

(2) The defendant shall have the right to argue their case and cross-examine the witnesses. After evidence has been submitted, the Judge shall render his decision. If found “not guilty” the defendant shall be released forthwith.

(F) If, after the commencement of the trial of a criminal action or proceeding, the judge presiding at such trial shall die, become ill, or for any other reason be unable to proceed with and finish the trial, if there be no other judge available, then the Clerk of the Court shall adjourn the Court until such time that a judge shall arrive to complete said trial. The judge authorized by the provision of this Section to proceed with and complete the trial shall have the same power, authority, and jurisdiction as if the trial had been commenced before such judge.

Section 670 Jury Trial (3 PYTC § 2-2-670 – Former 3 PYT R.Crim.P. Rule 44)

(A) Any person accused of a crime for which more than six months imprisonment is specified in the Tribal Code as a possible penalty shall be granted a jury trial, upon his or her request.

(B) The procedures for jury selection shall be as provided in 3 PYTC 2-1-160. However, the jury fees shall not be assessed to either the defendant or the Tribe.

(C) Juries for criminal trial shall consist of six jurors and one alternate. The verdict must be unanimous.

(D) When a jury has been selected, the judge shall administer to the jurors the following oath:

“You and each of you do solemnly swear or affirm that you will well and truly try the issues relative to the cause now on trial according to the law and the evidence under the pains and penalty of perjury.”

(E) If a case be continued, the jury shall then be notified of the new date for trial and no further notice to them of such date is required. The penalty for failure to appear at the time to which the trial is continued is Contempt of Court.

(F) Order of Trial Procedure. The jury having been empaneled and sworn, the trial must proceed in the following order:

(1) The Clerk of the Trial Court must read the complaint and state the plea of the defendant to the jury.

(2) Opening statements shall be given by the Tribe followed by the defendant and his counsel.

(3) The Tribe must open the case and offer evidence in support of the charge. The defendant or his counsel shall have the right to cross-examine any witness called by the Tribe.

(4) The defendant or his counsel may open the defense and offer evidence in support thereof. The Tribe shall have the right to cross-examine any witness called by the defendant or his counsel.

(5) The parties may then respectively offer rebutting testimony only, unless the Court, in furtherance of justice, permits them to offer evidence upon their original case.

(6) When the evidence is concluded, the Tribe and the defendant or his counsel may argue the case to the Court and jury, the Tribe opening the argument and having the right to close same.

(7) Upon the conclusion of the arguments, the Court shall charge the jury orally or in writing, stating the law of the case. However, at the beginning of the trial or from time to time during the trial and without any request from either party, the judge may give the jury such instructions on the law applicable to the case as he may deem necessary for their guidance on hearing the case.

(G) Questions of law are to be decided by the Court; questions of fact by the jury.

(H) When the Court is of the opinion that it is proper for the jury to view the place in which the offense charged is said to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body to the place which shall be shown them by a person appointed by the Court for that purpose.

(I) At the close of evidence or at such time during the trial as the judge directs, counsel for each party may file with the Trial Court Judge written instruction on the law which the party requests the judge to deliver to the jury. At the same time, copies of such requests shall be furnished to opposing counsel. The judge shall inform counsel of his proposed action upon each request prior to delivery to the jury after arguments are completed. No party may assign as error any portion of the judge's charge or omission there from unless

he makes his objection before the jury retires to consider its verdict. Objections must be given out of the hearing of the jury.

(J) In every criminal case, the Court shall provide the following and no other instruction defining the burden of proof and proof beyond a reasonable doubt:

"The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent. The Tribe has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the Tribe's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him/her guilty. If, on the other hand, you think there is a real possibility that he/she is not guilty, you must give him/her the benefit of the doubt and find him/her not guilty. In deciding whether the defendant is guilty or not guilty, do not consider the possible punishment."

(K) After hearing the case, the jury shall retire for deliberation. The jury may take with it all instructions, exhibits, and papers which have been received into evidence or any notes of the testimony taken in the trial by jurors. After the jury has retired for deliberation, if there be any disagreement as to be informed on any part of the testimony or if it desires to be informed on any point of law arising in the case, the jury may reconvene in Court and the information required may be given at the discretion of the Court.

(L) In the event the jury is unable to agree upon a verdict, the Judge shall declare a mistrial, dismiss the jury and order a new trial, which shall be set in accordance with 3 PYTC § 2-2-451.

SUBCHAPTER L POST-VERDICT PROCEEDINGS

Section 800 Sentencing (3 PYTC § 2-2-800 – Former 3 PYT R.Crim.P. Rule 45)

(A) **Time for Sentencing.** Upon a determination of guilt, the court shall set a date for sentencing. Sentence shall be pronounced not less than 15 nor more than 30 days after the determination of guilt unless the court, after advising the defendant of his or her right to a pre-sentence report, grants his or her request that sentence be pronounced earlier.

(B) **Extension of Time for Sentencing.** If good cause is shown, the court may reset the date of sentencing within 60 days after the determination of guilt

(C) **Pre-Sentence Report.**

(1) **When Prepared.** The court shall require the Probation Department, or another arm of the court, to prepare a pre-sentence report in all cases in which it has discretion over the penalty to be imposed, except that requiring such a report is discretionary

in those cases where the defendant can only be sentenced to imprisonment for less than one year, in which a request under subsection A is granted, or in which a pre-sentence report concerning the defendant is already available. A pre-sentence report shall not be prepared until after the determination of guilt has been made or the defendant has entered a plea of guilty or no contest. In all cases where the potential imprisonment is more than one year, the Court may only waive a pre-sentence report if all parties so stipulate.

(2) **When Due.** Except when a request under subsection A is granted, the pre-sentence report shall be delivered to the sentencing judge at least two days before the date set for sentencing.

(3) **Disclosure to the Parties.** The court shall permit the prosecutor and defense counsel, or if without counsel, the defendant to inspect all pre-sentence reports. A portion of any report not made available to one party shall not be made available to the other. Once the pre-sentence report is made available to the defendant, the court shall permit the victim to inspect it, except for those parts excised by the court or made confidential by law.

(4) **Date of Disclosure.** The pre-sentence report shall be made available to the parties at least two days prior to the sentencing.

(5) **Excision.** The court may excise from the pre-sentence report disclosed to the parties:

(a) Diagnostic opinions which may seriously disrupt a program of rhabilitation;

(b) Sources of information obtained on a promise of confidentiality, and

(c) Information which would disrupt an existing police investigation.

When a portion of a pre-sentence report is not disclosed, the court shall inform the parties and shall state on the record its reasons for making the excision.

(6) **Contents**.

(a) Applying the Sentencing Guidelines. The presentence report must:

(i) calculate the defendant's offense level and criminal history category;

(ii) state the resulting sentencing range and kinds of sentences available;

(iii) identify any factor relevant to:

1. the appropriate kind of sentence, or

2. the appropriate sentence within the applicable sentencing range; and

(iv) identify any basis for departing from the applicable sentencing range.

(b) Additional Information. The presentence report must also contain the following:

(i) the defendant's history and characteristics, including:

1. any prior criminal record;

2. the defendant's financial condition; and

3. any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;

(ii) information that assesses any financial, social, psychological, and medical impact on any victim;

(iii) when appropriate, the nature and extent of nonprison programs and resources available to the defendant;

(iv) when the law provides for restitution, information sufficient for a restitution order;

(v) a statement of whether the government seeks forfeiture; and

(vi) any other information that the court requires

(c) Exclusions. The presentence report must exclude the following:

(i) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program;

(ii) any sources of information obtained upon a promise of confidentiality; and

(iii) any other information that, if disclosed, might result in physical or other harm to the defendant or others.

(D) **Presence of the Defendant.** The defendant shall be present at sentencing.

(E) **Concurrent or Consecutive Sentences.** Separate sentences of imprisonment imposed on a defendant for two or more offenses, whether they are charged in the same complaint or information, shall run consecutive to one another unless the

court expressly directs otherwise. The Court shall state the reasons for concurrent sentences on the record whenever concurrent sentences are imposed.

(F) **Re-sentencing.** Where a judgment or sentence, or both, have been set aside on appeal, by collateral attack or on a post-trial motion, the court may not impose a sentence for the same offense, or a different offense based on the same conduct, which is more severe than the prior sentence unless (1) it concludes, on the basis of evidence concerning conduct by the defendant occurring after the original sentencing proceeding, that the prior sentence is inappropriate, or (2) the original sentence was unlawful and on remand it is corrected and a lawful sentence imposed, or (3) other circumstances exist under which there is no reasonable likelihood that the increase in the sentence is the product of actual vindictiveness by the sentencing judge.

(G) Any person who has been convicted of a criminal offense in the Tribal Court may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period permitted by the Tribal Code provision specifying the punishment for the offense.

(2) A money fine in an amount permitted by the Tribal Code provision specifying the punishment for the offense.

(3) A sentence of imprisonment may be suspended and the defendant placed on probation, which may require:

(a) Labor for the benefit of the tribe.

(b) Rehabilitative measures.

(H) Civil Restitution. In addition to or instead of the penalties provided in subsection (A) above, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money, or the performance of any other act for the benefit of the injured party which is reasonably related to the offense committed. Testimony of the victim shall be considered in the determination of the appropriate disposition under this Section.

(I) Pre-Sentence Reports. In determining the appropriate sentence, the judge may consider presentence reports prepared by the parties, position of the victim, and any other factors which the judge deems relevant. A victim providing input at sentencing shall not be subject to cross-examination.

(J) Indigency. If, solely because of indigency, a convicted offender is unable to pay a money fine assessed under this Section, the court shall allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the court at specified intervals until the entire

sum is paid. If the offender willfully defaults on such payments, the court may find the offender in contempt of court and imprison him or her accordingly.

(K) Pardon. The Chairman of the Tribal Council, may, in his discretion, grant a reprieve, pardon, and commutation, after sentence, except in the case of a person convicted twice of the same offense. The Chairman shall report to the Tribal Court each reprieve, pardon, and commutation granted, stating the pertinent facts and the reasons for granting it.

Section 810 Probation; Revocation (3 PYTC § 2-2-810 – Former 3 PYT R.Crim.P. Rule 46)

(A) Where a sentence of imprisonment or a fine has been imposed on a convicted offender, the Tribal Court may, in its discretion, suspend the service of such sentence or payment of such fine and release the person on probation under any reasonable conditions deemed appropriate by the court.

(B) Any person who violates the terms of his or her probation may be required by the court to serve the sentence or pay the fine originally imposed or such part of it as the court may determine to be suitable giving consideration to all the circumstances; provided, that such revocation of probation shall not be ordered without a hearing before the court at which the offender shall be entitled, at his or her own expense, to the assistance of counsel either professional or otherwise, for their defense. If the provisions of 3 PYTC § 2-2-410 apply, counsel will be provided at no cost to the defendant if the court determines that he or she is indigent. The offender shall have the opportunity to explain his or her actions.

(C) If the Court finds that defendant's alleged violation(s) of probation are such that the defendant (1) poses a risk to the community, (2) is a risk to commit new crimes, and (3) in cases involving a victim, is a risk to a victim, the Probation Officer may request that any Law Enforcement Officer arrest the Defendant immediately for violating the terms of probation. If a probationer is arrested for violating the terms and conditions of probation, the defendant shall be brought for initial hearing on the next business day during which the Tribal Court is open. If a probationer is arrested for violating the terms and conditions of probation, such probationer shall be held without bond unless extraordinary circumstances exist justifying release. The Court shall state such reasons for releasing a probationer on the record before ordering release.

Section 820 Parole; Revocation (3 PYTC § 2-2-820 – Former 3 PYT R.Crim.P. Rule 47)

(A) Any person sentenced by the court to detention or labor shall be eligible for parole only after serving at least two thirds of his or her sentence, at such time and under such reasonable conditions as are set by the court.

(B) Any person who violates the conditions of his or her parole may be required by the court to serve the whole of the original sentence, provided that such parole revocation shall not be ordered without a hearing before the court at which the offender shall be entitled to the assistance of counsel either professional or otherwise, for their defense. If the provisions

of 3 PYTC § 2-2310(B) apply, counsel will be provided at no cost to the defendant if the court determines that he or she is indigent. The offender shall have the opportunity to explain his or her actions.

(C) If the Court finds that defendant's alleged violation(s) of parole are such that the defendant (1) poses a risk to the community, (2) is a risk to commit new crimes, or (3) in cases involving a victim, is a risk to a victim, the Parole Officer may request that any Law Enforcement Officer arrest the Defendant immediately for violating the terms of parole. If a parolee is arrested for violating the terms and conditions of parole, the parolee shall be brought for initial hearing on the next business day during which the Tribal Court is open. If a parolee is arrested for violating the terms and conditions of parole, such parolee shall be held without bond unless extraordinary circumstances exist justifying release. The Court shall state such reasons for releasing a parolee on the record before ordering release.

Section 830 Motion for New Trial (3 PYTC § 2-2-830 – Former 3 PYT R.Crim.P. Rule 48)

(A) Power of the Court. When the defendant has been found guilty by a jury or by the court, the court on motion of the defendant, or on its own initiative with the consent of the defendant, may order a new trial.

(B) Timeliness. A motion for a new trial shall be made no later than ten days after the verdict has been rendered.

(C) Grounds. The court may grant a new trial for any of the following reasons:

(1) The verdict is contrary to law or to the weight of the evidence;

(2) The prosecutor has been guilty of misconduct;

(3) A juror or jurors have been guilty of misconduct;

(4) The court erred in the decision of a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of a party;

(5) For any other reason not due to his own fault, the defendant has not received a fair and impartial trial.

(D) The granting of a new trial places the parties in the same position as if no trial has been held; all testimony must be reproduced and the former verdict cannot be used or referred to either in the evidence or the argument.

(E) Pending a new trial, the accused shall be entitled to bail the same as before trial.

Section 840 Clerical Mistakes (3 PYTC § 2-2-840)

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 without motion of either party after such notice, if any, as the court orders.

Section 850 Appeal Bond (3 PYTC § 2-2-850 – Former 3 PYT R.Crim.P. Rule 49)

(A) At the time of sentencing, the trial court may fix the amount of bond to be posted in the event an appeal is filed, or may specify that the appeal may be taken on the defendant's own recognizance, or may deny bail. In a case in which the defendant has been sentenced to jail time, determinations of the amount of bond, conditions of release, or denial of release shall be based upon a new evaluation of the case pursuant to 3 PYTC §§ 2-2-200, 205 and 210. After conviction, the burden of establishing that the defendant will not flee or pose a danger to the community rests with the defendant.

(B) Execution of the sentence shall be stayed pending appeal when the defendant posts an appeal bond in accordance with the order of the trial court, or when the appeal is taken on the defendant's own recognizance.

(C) If the trial court does not allow the appeal to be taken while the defendant is on his own recognizance, or determines that the defendant be held without bond, the defendant may petition the court of appeals, at any time after the entry of the order of the trial court setting a bond, or denying a release, to stay the execution of sentence and to allow the defendant to be released upon his or her own recognizance or to set a bond, or to otherwise modify conditions of release. If the court of appeals denies the requested relief, the appeal may be taken, but the execution of sentence shall not be stayed until the defendant has met the conditions of release established by the trial court.

(D) Any defendant in custody during the appeal shall receive the same benefits and credits in the computation of the sentence as if no appeal had been taken.

(E) Failure of the defendant to prosecute the appeal shall result in revocation of release and execution of the sentence.

SUBCHAPTER M POST-CONVICTION RELIEF [Reserved]

Section 900 Scope of Remedy and Grounds for Relief (3 PYTC § 2-2-900) [Reserved]

(A) **Scope of Remedy.** Subject to the limitations of subsection B, any person who has been convicted of, or sentenced for, a criminal offense may, without payment of any fee, institute a proceeding to secure appropriate relief. Any person who pled guilty or no contest, admitted a probation violation, or whose probation was automatically violated based upon a plea of guilty or no contest shall have the right to file a post-conviction relief proceeding, and this proceeding shall be known as a post-conviction relief of-right proceeding. No person who has the remedy of appeal to the Pascua Yaqui Court of Appeals or Writ of Habeas Corpus to Federal Court shall have the ability to file a post-conviction relief of-right proceeding.

(B) **Grounds for relief.**

(1) The conviction or the sentence was in violation of the Indian Civil Rights Act or the Constitution of the Pascua Yaqui Tribe and/or, when applicable, the United States Constitution;

(2) The court was without jurisdiction to render judgment or to impose sentence;

(3) The sentence imposed exceeded the maximum authorized by the Tribal Code or the Constitution of the Pascua Yaqui Tribe, or is otherwise not in accordance with the sentence authorized by law;

(4) The person is being held in custody after the sentence imposed has expired;

(5) Newly discovered material facts exist and such facts probably would have changed the verdict or sentence. Newly discovered material facts exist if:

(a) The newly discovered material facts were discovered after the trial.

(b) The defendant exercised due diligence in securing the newly discovered material facts.

(c) The newly discovered material facts are not merely cumulative or used solely for impeachment, unless the impeachment evidence severely undermines testimony which was of critical significance at trial such that the evidence probably would have changed the verdict or sentence.

(6) The defendant's failure to file a notice of post-conviction relief of-right or notice of appeal within the prescribed time was without fault on the defendant's part, or

(7) There has been a significant change in the law that if determined to apply to defendant's case would probably overturn the defendant's conviction or sentence, or

(8) The defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would have found the defendant guilty of the underlying offense beyond a reasonable doubt, or that the court would not have imposed the same sentence.

Section 910 Preclusion of Remedy (3 PYTC § 2-2-910) [Reserved]

(A) **Preclusion.** A defendant shall be precluded from relief under this subchapter based upon any ground:

(1) Raisable on direct appeal to the Court of Appeals or Writ of Habeas Corpus to Federal Court or on post-trial motion.

(2) Finally adjudicated on the merits on appeal or any previous collateral proceeding.

(3) That has been waived at trial, on appeal, or in any previous collateral proceeding.

(B) **Exceptions.** Remedy shall not be precluded for Section 900 (B) (4), (5), (6), (7), and (8). When a claim under Section 900 (B) (4), (5), (6), (7), or (8) is raised in a successive or untimely post-conviction relief proceeding, the notice of post-conviction relief must set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner. If the specific exception and meritorious reasons do not appear substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner, the notice shall be summarily dismissed.

(C) **Burden of Proof.** The prosecutor shall plead and prove any ground of preclusion by a preponderance of the evidence. Though the prosecutor has the burden to plead and prove grounds of preclusion, any court on review of the record may determine and hold that an issue is precluded regardless of whether the prosecutor raises preclusion.

Section 920 Nature of Proceeding; Relation to Other Proceedings (3 PYTC § 2-2-920) [Reserved]

(A) This proceeding is part of the original criminal action and not a separate action. It displaces and incorporates all trial court post-trial remedies except post-trial motions and habeas corpus. If a defendant applies for a writ of habeas corpus in a trial court having jurisdiction of his or her person raising any claim attacking the validity of his or her conviction or sentence, that court shall under this section transfer the cause to the court where the defendant was convicted or sentenced and the latter court shall treat it as a petition for relief under this rule and the procedures of this rule shall govern.

Section 930 Commencement of Proceedings (3 PYTC § 2-2-930) [Reserved]

(A) **Form, Filing and Service of Petition.** A proceeding is commenced by timely filing a notice of post-conviction relief with the Tribal Court. The court shall provide notice forms for commencement of all post-conviction relief proceedings. In a post-conviction of-right proceeding, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the final order or mandate by the appellate court in the petitioner's first petition for post-conviction relief proceeding. In all other cases, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the order and mandate in the direct appeal, whichever is the later. Any notice not timely filed may only raise claims pursuant to section 900 (B) (4), (5), (6), (7), and (8). The notice shall bear the caption of the original criminal action or actions to which it pertains. On receipt of the notice, the court shall file a copy of the notice in the case file of each such original action and promptly send copies to the defendant, the prosecutor, the defendant's attorney, if known, noting in the record the date and manner of sending the copies. The prosecutor shall notify any victim who has requested notice of post-conviction proceedings.

(B) **Notification of Court of Appeals.** If an appeal of the defendant's conviction, sentence, or both is pending, the clerk, or the court, within 5 days after the filing of the notice for post-conviction relief, shall send a copy of the notice to the Court of Appeals, noting in the record the date and manner of sending the copies.

(C) **Appointment of Counsel.** Upon the filing of a timely or first notice in a post-conviction relief proceeding, the presiding judge, or his or her designee, shall appoint counsel for the defendant within 15 days if requested and the defendant is determined to be indigent. Upon the filing of all other notices, the appointment of counsel is within the discretion of the presiding judge. On a showing of good cause, a defendant may be granted a thirty day extension within which to file the petition. Additional extensions of thirty days shall be granted only upon a showing of extraordinary circumstances.

In a post-conviction of-right proceeding, counsel shall investigate the defendant's case for any and all colorable claims. If counsel determines there are no colorable claims which can be raised on the defendant's behalf, counsel shall file a notice advising the court of this determination. Counsel's role is then limited to acting as advisory counsel until the trial court's final determination. Upon receipt of the notice, the court shall extend the time for filing a petition by the defendant in propria persona. The extension shall be 45 days from the date the notice is filed. Any extensions beyond the 45 days shall be granted only upon a showing of extraordinary circumstances.

A defendant proceeding without counsel shall have sixty days to file a petition from the date the notice is filed or from the date the request for counsel is denied.

(D) **Transcript Preparation.** If the trial court proceedings have not been previously transcribed, the defendant may request on a form provided by the clerk of court that certified transcripts be prepared. The court shall expeditiously review the request and order only those transcripts prepared that it deems necessary to resolve the issues to be raised in the petition. The preparation of the transcripts shall be at the court’s expense if the defendant is indigent. The time for filing the petition shall be tolled from the time a request for the transcripts is made until the transcripts are prepared or the request is denied. Certified transcripts shall be prepared and filed within sixty days of the order granting the request.

(E) **Assignment of Judge.** The proceeding shall be assigned to the sentencing judge where possible. If it appears that the sentencing judge's testimony will be relevant, that judge shall transfer the case to another judge.

Section 940 Contents of Petition (3 PYTC § 2-2-940) [Reserved]

(A) The petition shall be accompanied by a declaration by the defendant stating under penalty of perjury that the information contained is true to the best of the defendant's knowledge and belief. Facts within the defendant's personal knowledge shall be noted separately from other allegations of fact. Affidavits, records, or other evidence currently available to the defendant supporting the allegations of the petition shall be attached to it. Legal and record citations and memoranda of points and authorities are required. In post-conviction of-right,

the petition shall not exceed 25 pages. The response shall not exceed 25 pages, and any reply shall not exceed 10 pages. A petition which fails to comply with this rule shall be returned by the court to the defendant for revision with an order specifying how the petition fails to comply with the rule. A petition that has been revised to comply with the rule shall be returned by the defendant for refiling within 30 days after defendant's receipt of the non-complying petition. If the petition is not so returned, the court shall dismiss the proceedings with prejudice. The period for response by the prosecutor shall begin on the date a returned petition is refiled.

Section 950 Additional Pleadings; Summary Disposition; Amendments (3 PYTC § 2-2-950) [Reserved]

(A) **Prosecutor's Response.** Forty-five days after the filing of the petition, the prosecutor shall file with the court and send to the defendant or counsel for the defendant, a response. Affidavits, records or other evidence available to the prosecutor contradicting the allegations of the petition shall be attached to it. On a showing of good cause, the prosecutor may be granted a thirty day extension to file a response. Additional extensions shall be granted only upon a showing of extraordinary circumstances.

(B) **Defendant's Reply.** Within fifteen days after receipt of the response, the defendant may file a reply. Extensions shall be granted only upon a showing of extraordinary circumstances.

(C) **Summary Disposition.** The court shall review the petition within twenty days after the defendant's reply was due. On reviewing the petition, response, reply, files and records, and disregarding defects of form, the court shall identify all claims that are procedurally precluded under this rule. If the court, after identifying all precluded claims, determines that no remaining claim presents a material issue of fact or law which would entitle the defendant to relief under this subchapter and that no purpose would be served by any further proceedings, the court shall order the petition dismissed. If the court does not dismiss the petition, the court shall set a hearing within thirty days on those claims that present a material issue of fact or law. If a hearing is ordered, the prosecutor shall notify the victims, upon the victims' request pursuant to statute or court rule relating to victims' rights, of the time and place of the hearing.

(D) **Amendment of Pleadings.** After the filing of a post-conviction relief petition, no amendments shall be permitted except by leave of court upon a showing of good cause.

Section 960 Evidentiary Hearing (3 PYTC § 2-2-960) [Reserved]

(A) **Evidentiary Hearing.** The defendant shall be entitled to a hearing to determine issues of material fact, with the right to be present and to subpoena witnesses.

(B) **Evidence.** The rules of evidence applicable in criminal proceedings shall apply, except that the defendant may be called to testify at the hearing.

(C) **Burden of Proof.** The defendant shall have the burden of proving the allegations of fact by a preponderance of the evidence. If a violation of the Indian Civil Rights Act or the

Constitution of the Pascua Yaqui Tribe is proven, the prosecutor shall have the burden of proving that the violation was harmless beyond a reasonable doubt.

(D) **Decision.** The court shall rule within 10 days after the hearing ends except in extraordinary circumstances where the volume of the evidence or the complexity of the issues require additional time. If the court finds in favor of the defendant, it shall enter an appropriate order with respect to the conviction, sentence or detention, any further proceedings, including a new trial and conditions of release, and other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law relating to each issue presented.

(E) **Transcript.** The court may, and shall upon request of a party within the time for filing a petition for review to the Court of Appeals, order that a certified transcript of the evidentiary hearing be prepared. The preparation of the evidentiary hearing transcript shall be at the court's expense if the defendant is indigent.

Section 970 Review (3 PYTC § 2-2-970) [Reserved]

(A) **Motion for Rehearing; Response; Reply.** Any party aggrieved by a final decision of the Tribal Court in post-conviction relief proceedings may, within fifteen days after the ruling of the court, move the court for a rehearing setting forth in detail the grounds wherein it is believed the court erred. No response to a motion for rehearing will be filed unless requested by the court, but a motion for rehearing will not be granted in the absence of such a response. A reply, if any, shall be filed within 10 days after the service of the response. The filing of a motion for rehearing in the trial court is not a prerequisite to the filing of a petition for review pursuant to paragraph (c) of this section.

(B) **Disposition When Motion Granted.** If the motion for rehearing is granted, the court may either (1) amend its previous ruling without a hearing, or (2) grant a new hearing and then either amend or reaffirm its previous ruling. In either case, if the court amends its previous ruling, it shall set forth its reasons for amending the previous ruling. The prosecutor shall notify the victim, upon request, of any action taken by the court.

(C) **Petition for Review.** Within thirty days after the final decision of the Tribal Court on the petition for post-conviction relief or the motion for rehearing, any party aggrieved may petition the Court of Appeals for review of the actions of the Tribal Court. A cross-petition for review may be filed within 15 days after service of a petition for review. The petition for review, cross-petition and all responsive pleadings filed pursuant to this rule shall be filed in the Court of Appeals. Within 3 days after filing a petition or cross-petition for review, the petitioner and cross-petitioner, if any, shall file a notice of such filing with the Tribal Court. The notice of filing may include a designation of record adding to the record any additional certified transcripts of Tribal Court proceedings that were prepared or that were otherwise available to the Tribal Court and the parties and that are material to the issues raised in the petition for review. Motions for extensions of time to file petitions or cross-petitions shall be filed in and ruled upon by the Tribal Court. All other motions shall be filed in the Court of Appeals.

(1) *Form and Contents.* The petition or cross-petition for review shall contain a caption setting forth the title of the case, a space for the Court of Appeals case number, the Tribal Court case number and a brief descriptive title. An original and four copies of the petition and an original and one copy of the appendix, if any, shall be filed if review is being sought in the Court of Appeals. The parties shall be designated as in the Tribal Court proceedings. The petition or cross-petition shall not exceed 20 pages, exclusive of the appendix, shall not have a cover or be bound, but shall be fastened with a single staple in the upper left corner, and shall contain the following:

(a) Copies of the Tribal Court's rulings.

(b) The issues which were decided by the Tribal Court and which the defendant wishes to present to the Court of Appeals for review.

(c) The facts material to a consideration of the issues presented for review.

(d) The reasons why the petition should be granted. The petition shall not incorporate any document by reference, except appropriate appendices. If the appendices exclusive of the Tribal Court's rulings exceed 15 pages in length, such appendices shall be fastened together separately from the petition and the copies of the Tribal Court's rulings.

In post-conviction relief of-right cases, an appendix is not required, but the petition shall contain specific references to the record.

The filing of a motion for rehearing pursuant to subsection (a) of this section does not limit the issues that may be raised in the petition or the cross-petition for review. Failure to raise any issue that could be raised in the petition or the cross-petition for review shall constitute waiver of appellate review of that issue.

(2) *Service; Response; Reply.* The petitioner or cross-petitioner shall serve a copy of the petition or cross-petition on the adverse party. A response may be filed within 30 days from the date upon which the petition or cross-petition is served. The response shall not exceed 20 pages, exclusive of any appendix. A reply, if any, may be filed within 10 days after the service of a response. The reply shall be limited to matters addressed in the response and shall not exceed 10 pages. No appendices shall be submitted with a reply.

(D) **Stay Pending Review.** A motion for rehearing or a petition for review filed by the prosecutor pursuant to this section shall stay an order granting a new trial until final review is completed. For any other relief granted to a defendant, a stay pending further review is within the discretion of the Tribal Court or the Court of Appeals. The prosecutor shall notify the victim upon request of any action taken.

(E) **Filing of the Record.** In post-conviction relief of-right, within 45 days after the receipt of the notice of filing of a petition for review, the record, including the Tribal Court file and the certified transcript, shall be transmitted to the Court of Appeals.

(F) **Disposition When Petition Granted.** The Court of Appeals may, in its discretion, grant review and may order oral argument upon the petition if deemed necessary and may issue such orders and grant such relief as it deems necessary and proper. The prosecutor shall notify the victim, upon request, of any action taken by the Court of Appeals.

(G) **Return of the Record.** In post-conviction relief of-right cases, when the matter is determined, the clerk of the Court of Appeals shall return the record to the Tribal Court for retention according to law.

SUBCHAPTER N VICTIMS' RIGHTS

Section 1000 Rights of Crime Victims (3 PYTC § 2-2-1000)

(A) **Definitions:**

(1) *Victim.* As used in this section, a "victim" is defined in accordance with the definition provided in the Tribal Code. With regard to the rights to be notified and to be heard pursuant to this section, a person ceases to be a victim upon the acquittal of the defendant or upon the dismissal of the charges against the defendant as a final disposition. If a victim is in custody for an offense, the victim's right to be heard pursuant to this rule is satisfied through affording the victim the opportunity to submit a written statement, where legally permissible and in the discretion of the court. A victim not in custody may exercise his or her right to be heard pursuant to this rule by appearing personally, or where legally permissible and in the discretion of the court, by submitting a written statement, an audiotape or videotape. A victim exercising his or her right to be heard while not testifying at a trial or evidentiary hearing shall not be subject to cross-examination.

(2) *Criminal Proceeding.* As used in this Section, a "criminal proceeding" is defined as a trial, hearing, (including hearing before trial), oral argument, or other matter scheduled and held before the Tribal Court at which the defendant has the right to be present, or any post-conviction proceeding.

(B) **Victims' Rights.** This Section shall be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other section, a victim shall have and be entitled to assert each of the following rights:

(1) The right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.

(2) The right to be provided with written notice regarding those rights available to the victim under this rule and under any other provision of law.

(3) Upon request, the right to be given reasonable notice of the date, time and place of any criminal proceeding.

(4) The right to be present at all criminal proceedings.

(5) The right to be notified of any escape of the defendant.

(6) Upon request, the right to be informed of any release or proposed release of the defendant, whether that release be before expiration of the sentence or by expiration of the sentence, and whether it be permanent or temporary in nature.

(7) Upon request, the right to confer with the prosecution, prior to trial when applicable, in connection with any decision involving the pre-conviction release of the defendant, a plea bargain, a decision not to proceed with a criminal prosecution, dismissal of charges, plea or sentence negotiation, a pretrial diversion program, or other disposition prior to trial; the rights to be heard at any such proceeding and at sentencing.

(8) The right to be accompanied at any interview or judicial proceeding by a parent or other relative, except persons whose testimony is required in the case. If the court finds, under this subsection 8 or subsection 9 below, that a party's claim that a person is a prospective witness is not made in good faith, it may impose any sanction it finds just, including holding counsel in contempt.

(9) The right to name an appropriate support person, including a victim's caseworker, to accompany the victim at any interview or court proceeding, except where such support person's testimony is required in the case.

(10) The right to require the prosecutor to withhold, during discovery and other proceedings, the victim's date of birth, social security number, official state- or government-issued driver license or identification number, home address, and telephone number of the victim, e-mail address, the address and telephone number of the victim's place of employment, and the name of the victim's employer, providing, however, that the court may order disclosure as necessary to protect the defendant's rights under the Indian Civil Rights Act or the Constitution of the Pascua Yaqui Tribe. If disclosure is made to defense counsel, counsel shall not disclose such information to any person other than counsel's staff and designated investigator, and shall not convey the information to the defendant without prior authorization from the court.

(11) The right to a copy of any pre-sentence report provided to the defendant except those parts excised by the court or made confidential by the law.

(12) The right to be informed of the disposition of the case.

(13) The right to a speedy trial or disposition and prompt and final conclusion of the case after conviction and sentence.

(14) The right to be informed of a victim's right to restitution upon conviction of the defendant, of the items of loss included thereunder, and of the procedures for invoking the right.

(C) **Assistance and Representation.**

(1) The victim shall also have the right to the assistance of the prosecutor in the assertion of the rights enumerated in this Section or otherwise provided for by the Tribal Code. The prosecutor shall have the responsibility to inform the victim, as defined by these rules, of the rights provided by these rules and by law, and to provide the victim with notices and information which the victim is entitled by these rules and by law to receive from the prosecutor.

(2) The prosecutor shall have standing in any judicial proceeding, upon the victim's request, to assert any of the rights to which the victim is entitled by this rule or by any other provision of law.

(3) In any event of any conflict of interest between the prosecutor and the wishes of the victim, the prosecutor shall have the responsibility to direct the victim to the appropriate legal referral, legal assistance, or legal aid agency.

(4) In asserting any of the rights enumerated in this rule or provided for in any other provision of the law, the victim shall also have the right to engage and be represented by personal counsel of his or her choice at his or her own expense.

(D) **Victims' Duty to Implement Rights.** Any victim desiring to claim the notification rights and privileges provided by this Section must provide his or her full name, address and telephone number to the prosecutor and to any other entity from which notice is requested by the victim. If the victim is a corporation, partnership, association or other legal entity and has requested notice of the hearings to which it is entitled by law, that legal entity shall promptly designate a representative by giving notice thereof, including such representative's address and telephone number, to the prosecutor and to any other entity from which notice is requested by the victim. Upon receipt of such notice, the prosecutor shall notify the defendant and the court thereof. Thereafter, only such a designated representative shall be entitled to assert a claim to victims' rights on behalf of that legal entity. Any change in designation must be provided in writing to the prosecutor and to any other entity from which notice is requested by the victim.

(E) **Waiver.** The rights and privileges enumerated in this section may be waived by any victim. Failure to keep the address and telephone number current or to designate such representative of a legal entity shall be considered as a waiver of notification rights under this section.

(F) **Court Enforcement of Victim Notice Requirements.**

(1) If the victim has been notified as requested, the court shall further inquire of the prosecutor whether the victim is present. If the victim is present and the prosecutor advises the court that the victim wishes to be addressed by the court, the court shall inquire whether the victim has been advised by the prosecutor of the rights conferred by this Section. If the victim has not been so advised, the court shall recess the hearing and the prosecutor shall immediately comply with subsection (C)(1) of this section. The court shall also provide the victim with a written list of the victims' rights enumerated in subsection (B) of this Section.

(2) If the victim has not been notified as requested, the court should not proceed unless public policy, the specific provisions of the Tribal Code, or the interests of due process otherwise require. In the absence of such considerations the court shall have discretion to reconsider any ruling made at a proceeding of which the victim did not receive notice as requested.

(G) **Appointment of Victim's Representative.** Upon request, the court shall appoint a representative for a minor victim or a representative for an incapacitated victim. Notice of appointment of such representative shall be given by the court to the parties.

SUBCHAPTER O EXTRADITION

Section 1010 Form of Demand (3 PYTC § 2-2-1010 – Former 3 PYT R.Crim.P. Rule 50)

(A) No demand for extradition of a person charged with a crime in another jurisdiction or other Reservation shall be recognized unless in writing. The request shall state that the accused was present in the jurisdiction or reservation at the time of commission of the alleged crime and fled to avoid prosecution. A copy of a Warrant shall accompany the request, and a copy of a Judgment of Conviction or indictment, if applicable. A copy of said demand shall be delivered or served upon the Tribal Chairman.

(B) The statement by the demanding authority or the copy of the indictment, information, or complaint made before a state or tribal court must charge that the person sought is within the Pascua Yaqui Reservation or subject to the Pascua Yaqui Trial Court's jurisdiction, and (1) is charged with a crime by the demanding authority, or (2) has escaped or evaded confinement, or (3) has broken the terms and conditions of his bail, against the demanding jurisdiction or Tribe. The copy must be authenticated by the executive authority, or their designee/agent, making the demand, which shall be prima facie evidence of its truth.

Section 1020 Extradition of Persons Imprisoned or Awaiting Trial (3 PYTC § 2-2-1020 – Former 3 PYT R.Crim.P. Rule 51)

When it is desired to have returned to the demanding jurisdiction a person charged with a crime, and such person is imprisoned or is held under criminal proceedings pending against him, the Tribe may agree to the extradition of such person before the conclusion of such proceedings or term of sentence, upon condition that such person be returned to the Tribe after the prosecution in the demanding jurisdiction is terminated, unless the Tribal Prosecutor determines that further prosecution is not necessary.

Section 1025 Local criminal prosecution (3 PYTC § 2-2-1025)

(A) If the Tribe initiates criminal prosecution under the laws of the Tribe against a person who is demanded by another jurisdiction, time limits for extradition are tolled during the period that Tribal criminal prosecution is pending. Tribal Court shall retain jurisdiction over the fugitive matter and shall continue in effect the fugitive release conditions until one of the following occurs:

(1) The local criminal prosecution is disposed; or

(2) The fugitive matter is vacated.

Section 1030 Investigation (3 PYTC § 2-2-1030 – Former 3 PYT R.Crim.P. Rule 52)

When a demand is made upon the Tribe for the surrender of a person so charged with a crime, the Tribal Court may call on the Prosecutor to investigate or assist in investigating the demand, and report to the Court the situation and circumstances of the person so demanded and whether said person ought to be surrendered.

Section 1040 Warrant (3 PYTC § 2-2-1040 – Former 3 PYT R.Crim.P. Rule 53)

(A) If the Court deems that the extradition demand should be complied with, the Court shall issue a warrant of arrest directed to a law enforcement officer for the arrest of the named person.

(B) A warrant for extradition shall not be issued unless the documents presented by the authority making demand show:

(1) The accused was present in the demanding jurisdiction at the time of the commission of the alleged crime, or thereafter fled the demanding jurisdiction;

(2) The accused is now on the Pascua Yaqui Reservation; and

(3) The accused is lawfully charged by indictment or information filed by a prosecuting officer and supported by affidavit, made before a competent court of the demanding jurisdiction with having committed a crime under the laws of the demanding jurisdiction, or has been convicted of a crime in the demanding jurisdiction and has escaped from confinement or broken parole, probation or violated terms of court release.

(4) Subsection (3) above shall not apply in situations where there is an agreement between the Tribe and the demanding jurisdiction to provide reciprocal probation services; sharing of law enforcement and other pertinent information relating to probationers, assistance in the serving of summons and warrants on probationers from the Tribe or the demanding jurisdiction, providing supervision of probationers and training services for court personnel.

Section 1050 Proceedings (3 PYTC § 2-2-1050 – Former 3 PYT R.Crim.P. Rule 54)

(A) No persons arrested upon a warrant shall be delivered over to the demanding authority until such person appears before a Judge, who shall inform such person of the demand for surrender, the charge(s), and right to legal counsel.

(B) If the accused shall test the legality of the arrest, the Court shall fix a reasonable time for the accused to apply for a Writ of Habeas Corpus. When such Writ is applied for, notice of such hearing shall be given to the prosecuting authority of the demanding authority.

(C) The Tribal Chairman shall be kept advised of all extradition proceedings by the Court.

Section 1060 Waiver (3 PYTC § 2-2-1060 – Former 3 PYT R.Crim.P. Rule 55)

Formal extradition proceedings may be waived if the accused signs a statement that he consents to his return to the demanding authority.

Section 1070 Guilt or Innocence (3 PYTC § 2-2-1070 – Former 3 PYT R.Crim.P. Rule 56)

The guilt or innocence of the accused may not be inquired into by a Pascua Yaqui Tribal Judge in any proceeding after the demand for extradition has been properly presented except as may be necessary in identifying the person held as the person charged with the crime.

Section 1080 Delivery; Tribal Chairman Ultimate Authority (3 PYTC § 2-2-1080 – Former 3 PYT R.Crim.P. Rule 57)

After the Court issues an Order for Extradition, the keeper of the jail or enforcement officer, or person having charge of the accused, shall deliver the accused to the demanding authority provided that the Tribal Chairman of the Tribal Council grants consent in writing to the extradition. If written consent is not granted to extradite within 10 days of the Court's Order for Extradition, the accused shall be released.

Section 1090 Reciprocity (3 PYTC § 2-2-1090)

(A) The Tribe shall be authorized to request extradition from any demanding jurisdiction which requests extradition from the Pascua Yaqui Indian Reservation

(B) Upon request of the Pascua Yaqui Tribe, any other demanding jurisdiction shall follow all local rules and procedures governing extradition, including any determination as to whether local charges must be resolved before extradition may occur. The Tribe's rules of procedure shall apply only once a Defendant is brought into the custody of the Pascua Yaqui Tribe.

(C) The Tribe shall not seek a Writ of Habeas Corpus Ad Prosequendum from a State or other Reservation if an accused has local charges pending unless extraordinary circumstances exist justifying circumventing the formal extradition process. As a matter of public policy, formal extradition is preferred over using a Writ of Habeas Corpus Ad Prosequendum while an accused has local charges pending in another jurisdiction.