

ONEIDA INDIAN NATION
RULES OF CRIMINAL PROCEDURE

Table of Contents

Chapter 1 - General Provisions

| | | |
|-----------------|---------------------------------------------------------------------|----------|
| Rule 101 | Definitions | 1 |
| Rule 102 | Parties; Nation as prosecuting party | 2 |
| Rule 103 | Parties; defendant | 2 |
| Rule 104 | Punishment; imposition only upon legal conviction | 2 |
| Rule 105 | Double jeopardy | 3 |
| Rule 106 | Limitation of prosecution | 3 |
| Rule 107 | No common law offenses | 3 |
| Rule 108 | Discharge of persons not brought promptly to trial | 3 |

Chapter 2 - Commencement of Proceedings

| | | |
|-----------------|---------------------------------------------------------|-----------|
| Rule 201 | Commencement of a criminal prosecution | 5 |
| Rule 202 | The complaint | 5 |
| Rule 203 | Arrest warrant or summons to appear | 6 |
| Rule 204 | Appearance tickets | 7 |
| Rule 205 | Arraignment | 9 |
| Rule 206 | Commitments | 13 |
| Rule 207 | Joinder | 13 |
| Rule 208 | Withdrawing guilty plea | 13 |
| Rule 209 | Plea bargaining | 14 |

| | | |
|------------------------------------------|-----------------------------------------------------------------------|----|
| Rule 210 | Pleading and motions before trial; defenses and objections | 14 |
| Rule 211 | Concurrent trial of defendants or charges | 16 |
| Rule 212 | Discovery and inspection | 16 |
| Rule 212a | Demands for production of statements and reports of witnesses | 17 |
| Rule 213 | Subpoena | 19 |
| Chapter 3 - Trial | | |
| Rule 301 | Trial by jury or by the court | 20 |
| Rule 302 | Trial jurors | 20 |
| Rule 303 | Order of trial | 22 |
| Rule 304 | Judge disability | 24 |
| Rule 305 | Evidence | 24 |
| Rule 306 | Expert witnesses and interpreters | 24 |
| Rule 307 | Motion for judgment of acquittal | 25 |
| Rule 308 | Instructions | 25 |
| Rule 309 | Verdict | 25 |
| Rule 310 | Appeals | 26 |
| Chapter 4 - Judgment and Sentence | | |
| Rule 401 | Judgment | 28 |
| Rule 402 | Presentence investigation reports | 28 |
| Rule 403 | Sentence | 29 |
| Rule 404 | Defendants sentenced to incarceration | 29 |
| Rule 405 | New trial | 30 |

| | | |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Rule 406 | Arrest of judgment | 30 |
| Rule 407 | Correction or reduction of sentence | 30 |
| Rule 406 | Clerical mistakes | 30 |
| Chapter 5 - Arrest | | |
| Rule 501 | Arrest defined; person authorized to arrest | 31 |
| Rule 502 | Arrest by law enforcement officer | 31 |
| Rule 503 | Arrest by private person | 32 |
| Rule 504 | Possessing of dangerous weapons or instruments; search; seizure; arrest | 32 |
| Rule 505 | Detention to determine whether crime relating to firearms or deadly weapons or instruments has been committed; reasonable cause; search incident to detention; disposal of seized firearm or weapon . . . | 32 |
| Rule 506 | Resistance to arrest | 33 |
| Rule 507 | Method of making arrest; amount of restraint | 33 |
| Rule 508 | Use of force to effect arrest, prevent escape, or overcome resistance . | 34 |
| Rule 509 | Judge, oral order to officer or private person to arrest | 34 |
| Rule 510 | Authority to summon aid to make arrest | 34 |
| Rule 511 | Formalities in making arrest; exceptions | 34 |
| Rule 512 | Exhibition of warrant on request | 35 |
| Rule 513 | Arrest under warrant; force permissible | 35 |
| Rule 514 | Breaking open door or window to effect arrest; demand for admittance; explanation of purpose | 35 |
| Rule 515. | Notification of rights | 35 |

Chapter 6 - Search and Seizure

| | | |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------|----|
| Rule 601 | Search without search warrant | 37 |
| Rule 602 | Search warrants; issuance; proceedings authorized; availability of affidavits and testimony in support of probable cause requirement . . . | 37 |
| Rule 603 | Territorial limitations on execution of certain search warrants | 38 |
| Rule 604 | Issuance of search warrant | 38 |
| Rule 605 | Persons authorized to execute search warrants | 38 |
| Rules 606 | Execution of search warrants | 39 |
| Rule 607 | Command of search warrant | 39 |
| Rule 608 | Use of force in execution of search warrant | 39 |
| Rule 609 | Detention and search of person on premises | 39 |
| Rule 610 | When search warrant may be executed | 39 |
| Rule 611 | No warrant quashed for technicality | 40 |
| Rule 612 | Custody and disposition of property seized | 40 |

Chapter 7 - Authorized Sentences and Dispositions

| | | |
|----------|------------------------------------------------------------|----|
| Rule 701 | Applicability of provisions | 42 |
| Rule 702 | Sentencing policies | 42 |
| Rule 703 | Length of sentence | 42 |
| Rule 704 | Authorized dispositions. | 42 |
| Rule 705 | Place of imprisonment | 44 |
| Rule 706 | Concurrent and consecutive terms of imprisonment | 44 |
| Rule 707 | Calculation of terms of imprisonment | 44 |
| Rule 708 | Release on parole; conditional release | 45 |

Chapter 8 - Diversions

| | | |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| Rule 801 | Definitions | 47 |
| Rule 802 | Diversion agreement authorized; policies and guidelines by Nation Prosecutor; background information | 47 |
| Rule 803 | Grant of diversion; factors to consider | 48 |
| Rule 804 | Provisions of diversion agreement; waiver of speedy trial and jury trial, when; alcohol and drug related offenses; stay of criminal proceedings; filing of agreements | 49 |
| Rule 805 | Conditioning diversion on plea prohibited; inadmissibility of agreement | 50 |
| Rule 806 | Failure to fulfill diversion agreement; satisfactory fulfillment; records . | 50 |
| Rule 807 | Term of diversion | 50 |

Chapter 9 - Bail

| | | |
|-----------------|------------------------------------------------------------|-----------|
| Rule 901 | Release prior to trial | 51 |
| Rule 902 | Release after conviction | 53 |
| Rule 903 | Penalties for failure to appear | 53 |
| Rule 904 | Persons or classes prohibited as bondsmen | 53 |
| Rule 905 | Authority to act as bail bondsmen | 53 |

Chapter 10 - Expungement

| | | |
|------------------|-----------------------------------------|-----------|
| Rule 1001 | Expungement of records | 54 |
|------------------|-----------------------------------------|-----------|

Chapter 11 - Victim Rights

| | | |
|------------------|--------------------------------|-----------|
| Rule 1101 | Victim rights | 56 |
|------------------|--------------------------------|-----------|

Chapter 12 - Police

| | | |
|------------------|------------------------------------------------------------------------------------------------------------------------|-----------|
| Rule 1201 | Citizens' complaints against personnel; investigation; description of procedure; retention of records | 57 |
| Rule 1202 | Personnel records; confidentiality; discovery | 57 |

ONEIDA INDIAN NATION
RULES OF CRIMINAL PROCEDURE
CHAPTER 1
GENERAL PROVISIONS

101. DEFINITIONS

Rule 101 DEFINITIONS

"Appellate court" means the Appellate Court of the Oneida Indian Nation.

"Appearance bond" means an agreement, with or without security entered into by a person in custody by which the person is bound to comply with the conditions specified in the agreement.

"Appearance ticket" means a written request issued by a law enforcement officer that a person appear before the Nation court at a stated time and place.

"Arraignment" means the formal act of calling the defendant before the court informing the defendant of the offense with which the defendant is charged, and asking the defendant whether the defendant is guilty or not guilty.

"Arrest" means the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime. The giving of an appearance ticket is not an arrest.

"Bail" means the security given for the purpose of insuring compliance with the terms of an appearance bond.

"Complaint" means a written statement under oath of the essential facts constituting a crime, except that an appearance ticket issued by a law enforcement officer shall be deemed a valid complaint if it is signed by the law enforcement officer.

"Court" means the Trial court of the Oneida Indian Nation.

"Custody" means the restraint of a person pursuant to an arrest or the order of the court.

"Detention" means the temporary restraint of a person by a law enforcement officer.

"Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the Nation or ordinances or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes probation officers and while acting within the scope of their authority.

"Nation Prosecutor" means any attorney who is authorized by law to appear for and on behalf of the Nation in a criminal case.

"Search warrant" means a written order made by a judge directed to a law enforcement officer commanding the officer to search the premises described in the search warrant and to seize property described or identified in the search warrant.

"Summons" means a written order issued by the judge directing that a person appear before the court at a stated time and place and answer to a charge pending against the person.

"Territorial jurisdiction" means all lands possessed, occupied or held by or for the Nation in its sovereign capacity.

"Warrant" means a written order made by the judge directed to any law enforcement officer commanding the officer to arrest the person named or described in the warrant.

102. PARTIES; NATION AS PROSECUTING PARTY

Rule 102 PARTIES; NATION AS PROSECUTING PARTY

A criminal action is prosecuted in the name of the Oneida Indian Nation against the person charged with the offense.

103. PARTIES; DEFENDANT

Rule 103 PARTIES; DEFENDANT

The party prosecuted in a criminal action is designated as the defendant. The word "he" as used in these Rules shall mean both the male and female gender and includes the plural as well as the singular.

104. PUNISHMENT; IMPOSITION ONLY UPON LEGAL CONVICTION

Rule 104 PUNISHMENT; IMPOSITION ONLY UPON LEGAL CONVICTION

No person shall be punished for a criminal offense except upon a legal conviction in the Nation Court.

105. DOUBLE JEOPARDY

Rule 105 DOUBLE JEOPARDY

No person can be subjected to a second prosecution for a criminal offense for which he has once been prosecuted and convicted or acquitted in Nation Court.

106. LIMITATION OF PROSECUTION

Rule 106 LIMITATION OF PROSECUTION

- a. Every criminal proceeding shall be commenced within seven (7) years of the date of commission and diligent discovery of the offense, or prosecution for that offense shall be forever barred.
- b. If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the day the final act causing the offense to be completed occurred.
- c. The date of "diligent discovery" is the date at which, in the exercise of reasonable diligence, some person other than the defendant and his conspirator knew or should have known that an offense had been committed.
- d. Time spent outside the territorial jurisdiction of the Nation for the purpose of avoiding prosecution shall not be counted toward the limitation period.

107. NO COMMON LAW OFFENSES

Rule 107 NO COMMON LAW OFFENSES

No act or failure to act shall be subject to criminal prosecution unless made an offense by a law or ordinance of the Nation.

108. DISCHARGE OF PERSONS NOT BROUGHT PROMPTLY TO TRIAL

Rule 108 DISCHARGE OF PERSONS NOT BROUGHT PROMPTLY TO TRIAL

1. If any person charged with a crime and held in jail solely by reason of the crime and is not brought to trial within ninety (90) days after such person's arraignment on the charge, such person shall be entitled to be discharged from further liability to be tried for the crime charged, unless the delay shall happen as a result of the application or fault of the defendant, or a continuance shall be ordered by the court under subsection (3).

2. If any person charged with a crime and held to answer on an appearance bond shall not be brought to trial within one hundred eighty (180) days after arraignment on the charge, such person shall be entitled to be discharged from further liability to be tried for the crime charged, unless the delay shall happen a result of the application or fault of the defendant, or a continuance shall be ordered by the court under subsection (3).
3. The time for trial may be extended beyond the limitations of subsection (1) and (2) of this section for any of the following reasons:
 - a. The defendant is incompetent to stand trial;
 - b. A proceeding to determine the defendant's competency to stand trial is pending and a determination thereof may not be completed within the time limitation fixed for trial by this section;
 - c. There is material evidence which is unavailable; that reasonable efforts have been made to procure such evidence; and that there are reasonable grounds to believe that such evidence can be obtained and trial commenced within the next succeeding ninety (90) days. Not more than one continuance may be granted the Nation on this ground.
 - d. Because of other cases pending for trial, the court does not have sufficient time to commence the trial of the case within the time fixed for trial by this section. Not more than one continuance of not more than thirty (30) days may be ordered upon this ground.
4. In the event a mistrial is declared or a conviction is reversed on appeal the time limitations provided for herein shall commence to run from the date the mistrial is declared or the date of the decision of the Nation Appellate court.

CHAPTER 2

COMMENCEMENT OF PROCEEDINGS

201. COMMENCEMENT OF A CRIMINAL PROSECUTION

Rule 201 COMMENCEMENT OF A CRIMINAL PROSECUTION

1. A prosecution shall be commenced by filing a criminal complaint with the Court by the Nation prosecutor. A copy of the complaint shall be furnished to the defendant or the defendant's attorney.
2. The court may in extreme cases, upon affidavits filed with the Chief Trial judge of the Court of the commission of a crime, order the Nation prosecutor to institute criminal proceedings against any person, but such judge shall be disqualified from sitting in any case wherein such order was entered and is further prohibited from communicating about such case with any other judge appointed to preside therein.

202. THE COMPLAINT

Rule 202 THE COMPLAINT

- a. **Complaint.** The complaint is a written statement under oath of the essential facts constituting a crime(s) and charging a named individual(s) with the commission of that crime(s).
- b. The complaint shall contain:
 1. The name and address of the court; and
 2. The name and address of the defendant and a description of the defendant; and
 3. The signature of the Nation Prosecutor; and
 4. A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated; and
 5. The name of the person against whom or against whose property the offense was committed and the names of the witnesses if known; and

6. The general name and penal code section number of the charged offense.
- c. Error. No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown.
- d. Time of filing complaint. A complaint may be filed at any time within the period prescribed by Section 106 of these Rules. If an accused has been arrested without a warrant the complaint shall be filed no later than the time of arraignment.

203. ARREST WARRANT OR SUMMONS TO APPEAR

Rule 203 ARREST WARRANT OR SUMMONS TO APPEAR

- a. If it appears from the complaint that an offense has been charged against the defendant, the judge shall issue a summons to the defendant to bring him before the court. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Nation supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.
- b. Issuance of Arrest Warrants or Summons. Unless the judge has reasonable grounds to believe that the person will not appear on a summons, a summons shall be issued instead of an arrest warrant.
- c. Contents of Arrest Warrants. The warrant of arrest shall be signed by the judge issuing it, and shall contain the name and address of the court; the name of the defendant, or if the correct name is unknown, any name by which the defendant is known and the defendant's description; and, a description of the offense charged with a reference to the section of the criminal code alleged to have been violated. It shall order and command the defendant be arrested and brought before the Court to enter a plea. When two or more charges are made against the same person only one warrant shall be necessary.
- d. Contents of Summons. A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before the Court within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall issue.

e. **Execution of Arrest Warrants and Service of Summons.**

1. Warrants for Arrest may be executed at any time within the territorial jurisdiction of the Nation and shall be executed by a Nation police officer. A copy of the arrest warrant shall be given to the person arrested at the time of arrest or as soon thereafter as is reasonably possible.
 2. Criminal Summons may be served by any Nation police officer or any adult person authorized in writing by the Court. Service may be made at any place within the territorial jurisdiction of the Nation.
 3. Criminal Summons are to be served at a person's home only between the hours of 7:00 am and 9:00 pm, unless an authorization to serve such process after 9:00 p.m. is placed on the face thereof by the Judge.
 4. The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such and returned to the Court.
 5. Arrests shall be made in accordance with Chapter 5 of this Rules.
- f. Defective warrant. A warrant shall not be quashed or abated nor shall any person in custody for a crime be discharged from such custody because of any technical defect in the warrant.

204. APPEARANCE TICKETS

Rule 204 APPEARANCE TICKETS

- a. Whenever a law enforcement officer would be empowered to make an arrest without a warrant for an offense but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he may, in his discretion, issue the defendant an appearance ticket instead of taking the person into custody. Such appearance ticket, signed by the law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, unless the Court orders that a formal complaint be filed.
- b. **Contents of Appearance Ticket.**
 1. The ticket shall contain the name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the appearance ticket.

2. The ticket shall contain an agreement by the defendant to appear before the court on a day certain to answer to the charge, and the signature of the defendant.
3. The ticket shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court.
4. One (1) copy of the ticket shall be given to the defendant and two (2) copies shall be delivered to the Nation prosecutor.

c. **Posting of Cash Bail.**

1. Issuance and service of an appearance ticket by a police officer may be made conditional upon the posting of bail. In such case, the bail becomes forfeit upon failure of such person to comply with the directions of the appearance ticket. The person posting such bail must complete and sign a form which states (a) the name, residential address and occupation of each person posting cash bail; and (b) the title of the criminal action or proceeding involved; and (c) the offense or offenses which are the subjects of the action or proceeding involved, and the status of such action or proceeding; and (d) the name of the principal and the nature of his involvement in or connection with such action or proceeding; and (e) the date of the principal's next appearance in court; and (f) an acknowledgement that the cash bail will be forfeited if the principal does not comply with the directions of the appearance ticket; and (g) the amount of money posted as cash bail. The bail may be posted as provided in subdivision two.
2. A desk officer in charge at the Nation police station, or any of his superior officers may, in an amount prescribed in subdivision, and upon the posting must issue and serve an appearance ticket upon the person, give a receipt for the bail, and release such person from custody. Such bail may be fixed in the following amounts:
 - (i) For a felony, any amount not exceeding seven hundred fifty dollars.
 - (ii) For a misdemeanor, any amount not exceeding five hundred dollars.
 - (iii) For a violation, any amount not exceeding two hundred fifty dollars.

205. ARRAIGNMENT

Rule 205 ARRAIGNMENT

- a. **Arraignment Defined.** Arraignment is the bringing of an accused person before the court, informing him of the charge against him and of his rights, receiving his plea and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a criminal summons or appearance ticket or, if the accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.
- b. **Procedure at Arraignment.** Arraignments shall be conducted in the following order:
 1. The Judge shall request the prosecutor to read the charges.
 2. The prosecutor shall read the entire complaint, deliver a copy to the defendant unless he has previously received a copy thereof, and state the minimum and maximum authorized penalties.
 3. The Judge should determine that the accused understands the charge against him and explain to the defendant that he has the following rights:
 - (i) the right to remain silent.
 - (ii) to be tried by a jury upon written request filed with the clerk two days after arraignment with a \$10.00 jury fee, which fee may be waived by the Court upon a showing of hardship.
 - (iii) to consult with an attorney and that if he desires to consult with an attorney the arraignment will be postponed.
 4. The Judge shall ask the defendant if he wishes to obtain counsel and, if the defendant so desires, he will be given a reasonable time to obtain counsel. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea until the date set for his appearance.
 5. If the Defendant cannot afford counsel, the court will appoint counsel for him. The defendant must complete an in forma pauperis application.
 6. The Judge should then ask the defendant whether he wishes to plead "guilty", "nolo contendere", or "not guilty".
- c. **Pleas.**

- a. Alternatives.
1. In general. A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead the court shall enter a plea of not guilty.
 2. Conditional Pleas. With the approval of the court and the consent of the Nation, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.
- b. Nolo Contendere. A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.
- c. Advice to Defendant. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:
1. the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, and when applicable, that the court may also order the defendant to make restitution to any victim of the offense and/or perform community service; and
 2. if the defendant is not represented by an attorney, that the defendant has the right to be represented by an attorney at every stage of the proceeding; and
 3. that the defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury and at that trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, and the right against compelled self-incrimination; and
 4. that if a plea of guilty or nolo contendere is accepted by the court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and
 5. if the court intends to question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant has pleaded, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.
- d. Insuring That the Plea is Voluntary. The court shall not accept a plea of guilty or

nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the Nation and the defendant or the defendant's attorney.

e. Plea Agreement Procedure.

1. In General. The Nation prosecutor and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the Nation will do any of the following:

A. move for dismissal of other charges; or

B. make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

C. agree that a specific sentence is the appropriate disposition of the case.

The court shall not participate in any such discussions.

2. Notice of Such Agreement. If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court, or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (e)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw the plea.

3. Acceptance of a Plea Agreement. If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for the plea agreement.

4. Rejection of a Plea Agreement. If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the

opportunity to then withdraw the plea, and advise the defendant to then withdraw the plea, and advise the defendant that if the defendant persists in a guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

5. Time of Plea Agreement Procedure. Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.
6. Inadmissibility of Pleas, Plea Discussions, and Related Statements. Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:
 - A. a plea of guilty which was later withdrawn;
 - B. a plea of nolo contendere;
 - C. any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or
 - D. any statements made in the course of plea discussions with an attorney for the Nation which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible

- (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or
 - (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.
- f. Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.
- g. Record of Proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the

inquiry into the accuracy of a guilty plea.

- h. Harmless Error. Any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded.

206. COMMITMENTS

Rule 206 COMMITMENTS

No person shall be detained or jailed for a period longer than seventy-two (72) hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of the Judge has been issued.

- a. A temporary commitment shall be issued pending investigation of charges or trial.
- b. A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the Court.

207. JOINDER

Rule 207 JOINDER

- a. **Joinder of Offenses.** Two or more offenses may be charged in one complaint so long as they are set out in separate counts and:
 - 1. They are part of a common scheme or plan, or
 - 2. They arose out of the same occurrence.
- b. **Joinder of Defendants.** Two or more defendants may be joined in one complaint if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each defendant need not be charged in each count.

208. WITHDRAWING GUILTY PLEA

Rule 208 WITHDRAWING GUILTY PLEA

A motion to withdraw a plea of guilty shall be made only before a sentence is imposed, deferred, or suspended, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice.

209. PLEA BARGAINING

Rule 209 PLEA BARGAINING

Whenever the defendant pleads guilty as a result of a plea arrangement with the prosecutor, the full terms of such agreement shall be disclosed to the Court. The Judge, in his discretion, is not required to honor such agreement. In the event that the Judge decides not to honor such agreement, he should offer the defendant an opportunity to withdraw his plea and proceed to trial.

210. PLEADING AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS

Rule 210 PLEADING AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS

- a. Pleadings in criminal proceedings shall consist of the complaint, summons or appearance ticket and the plea of either guilty, nolo contendere, or not guilty. All other pleadings and motions shall be made in accordance with this Rules.
- b. Motions raising defenses and objections may be made as follows:
 1. Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.
 2. Motion to suppress confession or admission.
 - a. Prior to the trial a defendant may move to suppress as evidence any confession or admission given by him on the ground that it is not admissible as evidence.
 - b. The motion shall be in writing and shall allege the grounds upon which it is claimed that the confession or admission is not admissible as evidence.
 - c. If the motion alleges grounds which, if proved, would show the confession or admission not to be admissible the court shall conduct a hearing into the merits of the motion.
 - d. The burden of proving that a confession or admission is admissible shall be on the prosecution.
 - e. The issue of the admissibility of the confession or admission shall not be submitted to the jury. The circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing

upon the credibility or the weight to be given to the confession or admission.

- f. The motion shall be made before trial, unless the opportunity did not exist or the defendant was not aware of the ground for the motion, but the court in its discretion may entertain the motion at the trial.

3. Motion to Suppress Illegally Seized Evidence.

- a. Prior to the trial a defendant aggrieved by an unlawful search and seizure may move for the return of property and to suppress as evidence anything so obtained.
- b. The motion shall be in writing and state facts showing why the search and seizure were unlawful. The judge shall receive evidence on any issue of fact necessary to determine the motion and the burden of proving that the search and seizure were lawful shall be on the prosecution. If the motion is granted then at the final conclusion of the case, the court shall order the suppressed evidence restored to the party entitled, unless it is otherwise subject to lawful detention.

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

- a. Such motions shall be made in writing and filed with the Court at least five (5) business days before the day set for trial. Such motions will be argued before the Court on the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the Court and not by the jury.
- b. If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the Court shall enter judgment as is appropriate in light of the decision.

211. CONCURRENT TRIAL OF DEFENDANTS OR CHARGES

Rule 211 CONCURRENT TRIAL OF DEFENDANTS OR CHARGES

- a. The Court may order two or more defendants tried together if they could have been joined in a single complaint, or may order a single defendant tried on more than one complaint at a single trial.
- b. If it appears that a defendant or the Nation is prejudiced by a joinder of offenses or other defendants for trial, the court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the court may order the Nation to deliver to the court for inspection in chambers, any statements made by a defendant which the Nation intends to introduce in evidence at the trial.

212. DISCOVERY AND INSPECTION

Rule 212 DISCOVERY AND INSPECTION

- a. The prosecutor shall, upon request, permit the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control of, or reasonably obtainable by the prosecution. The prosecution shall, upon request, make available, copies of reports of physical, mental or scientific test or examinations relating to or done on the defendant and memoranda of any oral confession made by the defendant and a list of the witnesses to such confession.
- b. Upon request, the prosecuting attorney shall permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies, or portions thereof, which are or have been within the possession, custody or control of the prosecution, and which are material to the case and will not place an unreasonable burden upon the prosecution. Except as provided in section (a), this section does not authorize the discovery or inspection of reports, memoranda or other internal Nation documents made by officers in connection with the investigation or prosecution of the case, or of statements made by Nation witnesses or prospective Nation witnesses, other than the defendant, except as may be provided by law.
- c. If the defendant seeks discovery and inspection under section (a) or section (b), the defendant shall permit the Nation prosecutor to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at trial, and which are material to the case and will not place an unreasonable burden on the defense. Except as to scientific or medical reports, this section does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by

the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, the defendant's agents or attorneys.

- d. The Nation prosecutor and the defendant shall cooperate in discovery and reach agreement on time, place and manner of making the discovery and inspection permitted, so as to avoid the necessity for the court intervention.
- e. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred or make such other order as is appropriate. Upon motion, the court may permit either party to make such showing, in whole or in part, in the form of a written statement to be inspected privately by the court. If the court enters an order granting relief following such a private showing, the entire text of the statement shall be sealed and preserved in the records of the court in the event of an appeal.
- f. Discovery under ~~this rule~~ must be completed no later than 20 days after arraignment or at such reasonable later time as the court may permit.
- g. If, subsequent to compliance with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under this rule, the party shall promptly notify the other party or the party's attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this section, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.
- h. The Nation prosecutor and defendant shall be permitted to inspect and copy any juvenile files and records of the defendant for the purpose of discovery and verifying the criminal history of the defendant.

212a. DEMANDS FOR PRODUCTION OF STATEMENTS OF WITNESSES

Rule 212a DEMANDS FOR PRODUCTION OF STATEMENTS AND REPORTS OF WITNESSES

- a. In any criminal prosecution brought by the Nation, no statement or report in the possession of the Nation which was made by a Nation witness or prospective Nation witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

- b. After a witness called by the Nation has testified on direct examination, the court shall, on motion of the defendant, order the Nation to produce any statement (as hereinafter defined) of the witness in the possession of the Nation which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.
- c. If the Nation claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness or concerns a confidential informant, the court shall order the Nation to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness or relates to the identification of a confidential witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the Nation and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.
- d. If the Nation elects not to comply with an order of the court under subsection (c) or (d) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interest of justice required that a mistrial be declared.
- e. The term "statement", as used in subsections (c), (d), and (e) of this section in relation to any witness called by the Nation, means:
 - 1. a written statement made by the witness and signed or otherwise adopted or approved by him;
 - 2. a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the witness and recorded contemporaneously with the making of such oral statement.
- f. The defendant or his attorney shall reveal by written notice to the court and the prosecutor at least five (5) working days before trial the names and addresses of any

witnesses upon whom the defense intends to rely to provide an alibi or insanity defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

213. SUBPOENA

Rule 213 SUBPOENA

- a. The defendant and the prosecutor shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued in blank. Subpoenas in criminal cases shall be issued, served and returned as in civil cases.
- b. A subpoena may be served any place within the territorial jurisdiction of the Nation Court, and served as provided for service in civil cases.
- c. Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of court, and prosecution may proceed upon the order of the court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the person performing such service.
- d. It shall not be necessary to tender any fee or mileage allowance to any witness when he is served with a subpoena to attend any criminal case and give testimony either on behalf of the prosecution or the defendant.

TRIAL

CHAPTER 3

301. TRIAL BY JURY OR BY THE COURT

Rule 301 TRIAL BY JURY OR BY THE COURT

- a. All trials of offenses shall be by the Court without a jury unless the defendant files a written request for a jury trial and a one hundred dollar (\$100.00) jury fee not less than two days after arraignment. The judge may in his discretion waive the jury fee if the defendant shows that he is without sufficient funds to pay the jury fee.
- b. Juries shall be composed of six (6) members with one (1) alternate if an alternate juror is deemed advisable by the Court.
- c. In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which shall be embodied in a written decision.

302. TRIAL JURORS

Rule 302 TRIAL JURORS

- a. A jury shall consist of six members.
- b. Jurors shall be drawn from the list of eligible jurors, prepared by the Clerk of the Court in conformance with the Rules of the Court.
- c. The court shall permit the defendant or his counsel and the prosecutor to examine the jurors and the court itself may make such an examination.
- d. Challenges for Cause.
 1. Each party may challenge any prospective juror for cause. Challenges for cause shall be tried by the court.
 2. A juror may be challenged for cause on any of the following grounds:
 - a. He is related to the defendant, or a person alleged to have been injured by the crime charged or the person on whose complaint the prosecution was begun, by consanguinity within the sixth degree, or is the spouse of any person so related.

- b. He is attorney, client, employer, employee, landlord, tenant, debtor, creditor or a member of the household of the defendant or a person alleged to have been injured by the crime charged or the person on whose complaint the prosecution was instituted.
 - c. He is or has been a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution.
 - d. He was a juror at a former trial of the same cause.
 - e. He was a juror in a civil action against the defendant arising out of the act charged as a crime.
 - f. He was a witness to the act or acts alleged to constitute the crime.
 - g. He occupies a fiduciary relationship to the defendant or a person alleged to have been injured by the crime or the person on whose complaint the prosecution was instituted.
 - h. His state of mind with reference to the case or any of the parties is such that the court determines there is doubt that he can act impartially and without prejudice to the substantial rights of any party.
3. All challenges for cause must be made before the jury is sworn to try the case.
- e. Challenges regarding jury members may be taken as follows:
 - 1. Each side shall be entitled to three (3) preemptory challenges;
 - 2. Either side may challenge any juror for cause;
 - 3. An alternate juror shall be treated as a regular juror for purpose of challenges.
 - d. The alternate juror may be dismissed prior to the jury's retiring to deliberation if he has not first been called to replace on original juror who has become, for any reason, unable or disqualified to serve.

303. ORDER OF TRIAL

Rule 303 ORDER OF TRIAL

1. The trial of all criminal offenses shall be conducted in the following manner:
 - a. The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its discretion.
 - b. If the parties are ready to proceed, and if the case is to be tried by jury, the Judge should require all prospective jurors to swear to decide the case in a fair and impartial manner if selected for jury duty.
 - c. If the case is to a jury, the Court should select a potential jury panel as selected under the Rules of Civil Procedure by random and question them to determine if they have any interest in the case.
 - d. When the Court is satisfied that no juror should be dismissed for statutory cause, the prosecution and then the defendant shall be allowed to question the prospective jurors. The Court may delay any examination it wishes to make until after the parties have examined the jury panel.
 - e. If it appears that a prospective juror is related to a party in the case or is biased for or against a party, or if the outcome would significantly affect the property, family, or other important interest of the prospective juror, the Court shall dismiss him for cause and select another person from the jury panel.
 - f. Both the prosecutor and the defendant may alternatively request the Court to dismiss any juror by preemptory challenge. Each party shall have three (3) preemptory challenges and the Court may not refuse to grant them. No reasons need be given for the challenges and alternate jurors shall be examined and selected as the original panel was selected. The final jury panel should then be sworn.
 - g. The Court shall request the prosecutor to read the criminal complaint and to make his opening statement. Prior to reading the complaint, the court should explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense charged against the defendant. The court shall also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

- h. The prosecutor shall then read the complaint and briefly present the facts which he intends to prove to show the offense. No argument of the facts or law shall be allowed.
- i. The defense may then make an opening statement or may reserve their opening statement until the beginning of the presentation of the defense evidence.
- j. The prosecutor shall then present his evidence followed by the defendant's presentation of his defense evidence. After the defendant has presented his evidence, the prosecutor may present evidence in rebuttal.
- k. The prosecutor shall then present his closing argument, the defendant his closing argument, and the prosecutor shall be allowed to present a rebuttal.
- l. If trial is to a jury the Judge should give the jury his instructions and the jury shall retire to decide their verdict. If trial is to the Judge, he shall then make his decision or announce the time at which he will present his decision.
- m. If the verdict is "not guilty", the defendant shall be discharged and bail exonerated.
- n. If the verdict is "guilty", the Judge shall order a pre-sentence investigative report and hold a hearing at a later time or date to decide on an appropriate sentence. The defendant may waive a pre-sentence investigation report and request to be immediately sentenced.

2. Mistrials.

- a. The court may terminate the trial and order a mistrial at any time that the judge finds termination is necessary because:
 - (1) It is physically impossible to proceed with the trial in conformity with law; or
 - (2) There is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law and the defendant requests or consents to the declaration of a mistrial; or
 - (3) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the prosecution; or
 - (4) The jury is unable to agree upon a verdict; or

(5) False statements of a juror on voir dire prevent a fair trial.

- b. When a mistrial is ordered, the court shall direct that the case be retained on the docket for trial or such other proceedings as may be proper and that the defendant be held in custody pending such further proceedings, unless he is released pursuant to the terms of an appearance bond.

304. JUDGE DISABILITY

Rule 304 JUDGE DISABILITY

- a. If by reason of death, sickness or other disability, the Judge before whom a jury trial has commenced is unable to proceed with the trial, another Judge will be appointed and upon certifying that he has familiarized himself with the record of the trial, the trial will proceed.
- b. If by reason of death, sickness or other disability, the Judge before whom the defendant has been tried is unable to perform the required duties of a Judge after the verdict or finding of guilt, another Judge will be appointed to perform those duties unless such Judge feels he cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

305. EVIDENCE

Rule 305 EVIDENCE

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the Oneida Indian Nation Rules of Evidence, except as herein otherwise provided.

306. EXPERT WITNESSES AND INTERPRETERS

Rule 306 EXPERT WITNESSES AND INTERPRETERS

- a. Either party may call expert witnesses of their own selection and each bear the cost of such.
- b. The court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

307. MOTION FOR JUDGMENT OF ACQUITTAL

Rule 307 MOTION FOR JUDGMENT OF ACQUITTAL

- a. The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his right to present evidence.
- b. If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

308. INSTRUCTIONS

Rule 308 INSTRUCTIONS

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

309. VERDICT

Rule 309 VERDICT

- a. The verdict of a jury shall be unanimous and shall be returned by the jury to the judge in open court. If the jury is unable to agree, the jury may be discharged and the defendant tried again before a new jury.
- b. If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.
- c. If the evidence is found to support such verdict, the defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or a lesser included offense without having been formally charged with the lesser included offense or attempt.

- d. Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.
- e. After return of the verdict, the jury may, in the Judge's discretion, be requested to recommend the punishment to be imposed after a hearing at which both parties have the opportunity to present evidence in mitigation or aggravation of the sentence. The jury's recommendation in such cases shall not be binding on the Judge at sentencing.

310 APPEALS

Rule 310 APPEALS

Any appeal permitted to be taken from a final judgment of the court in a criminal case shall be taken to the Nation Appellate Court. Whenever an interlocutory appeal is permitted in a criminal case, such appeal shall be taken to the Nation Appellate Court.

1. Appeals by defendant, when; Appeals by Prosecution; Transfers to Appellate Court.

- a. Except as otherwise provided, an appeal to the Appellate Court may be taken by the defendant as a matter of right from any judgment against the defendant in the trial court and upon appeal any decision of the trial court made in the progress of the case may be reviewed. No appeal shall be taken by the defendant from a judgment of conviction before the trial judge upon a plea of guilty or nolo contendere, except that jurisdictional or other grounds going to the legality of the proceedings may be raise by the defendant.
- b. Appeals to the Appellate Court may be taken by the prosecution from cases before the trial judge as a matter of right in the following cases, and no others:
 - 1. From an order dismissing a complaint;
 - 2. from an order arresting judgment;
 - 3. upon a question reserved by the prosecution; or
 - 4. upon an order granting a new trial.

2. Interlocutory Appeals by the Nation. When the Nation trial judge prior to the commencement of trial of a criminal action, makes an order quashing a warrant or a search warrant, suppressing evidence or suppressing a confession or admission an appeal may be taken by the prosecution from such order if notice of appeal is filed within ten (10) days after entry of the order. Further proceedings in the trial court shall be stayed pending determination of the appeal.

3. Release of Defendant Pending Appeal by Prosecution.
 - a. A defendant shall not be held in jail nor subject to an appearance bond during the pendency of an appeal by the prosecution.
 - b. The time during which an appeal by the prosecution is pending shall not be counted for the purpose of determining whether a defendant is entitled to discharge under Rule 108 of these rules.
4. Decision and Disposition of Case on Appeal. The Appellate Court may reverse, affirm or modify the judgment order appealed from, or may order a new trial. In either case the cause must be remanded to the trial court with proper instruction, together with the decision of the Appellate Court.
5. Procedure on Appeal. Except as otherwise provided by statute, the statutes and rules governing procedure on appeals to the Appellate Court in civil cases shall apply to and govern appeals to the Appellate Court in criminal cases.
6. Disposition of Defendant When Judgment Reversed on Appeal. When a judgment of conviction or sentence is reversed, and it appears that no crime has been committed, the Appellate Court shall direct that the defendant be discharged. If it appears that the defendant is guilty of a crime, although improperly charged, the Appellate Court shall order the defendant to be held in custody, subject to the order of the court in which he or she was convicted.
7. Time for Appeal from Judgment of Trial court.
 - a. The defendant may appeal from the judgement of the Trial Court no later than ten (10) days after the judgement form is entered by the Clerk.

CHAPTER 4
JUDGMENT AND SENTENCE

401. JUDGMENT

Rule 401 JUDGMENT

A judgment of conviction shall set forth in writing the charge, plea, verdict or findings, and the sentence imposed. If the defendant is found not guilty or is otherwise entitled to be released, judgment shall be entered accordingly. The judgment form shall be signed by the Judge and entered by the Clerk.

402. PRESENTENCE INVESTIGATION REPORTS

Rule 402 PRESENTENCE INVESTIGATION REPORTS

- a. The court shall order the preparation of the presentence investigation report by the Nation Probation Officer as soon as possible after conviction of the defendant.
- b. Each presentence report prepared for an offender to be sentenced shall include:
 1. A summary of the factual circumstances of the crime or crimes of conviction.
 2. If the defendant desires to do so, a summary of the defendant's version of the crime.
 3. When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. The report shall include a complete listing of restitution for damages suffered by the victim.
 4. A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations. Such listing shall including the source of information regarding each listed prior conviction any available source of documents through which the listed convictions may be verified. They shall be attached to the presentence investigation report.
 5. The presentence report will become part of the court record and shall be accessible to the public, except that the official version, defendant's version and the victim's statement, any psychological reports and drug and alcohol reports shall be accessible only to the parties and the sentencing judge.

403. SENTENCE

Rule 403 SENTENCE

Sentence shall be set forth as follows:

- a. Sentence shall be imposed without unreasonable delay in accordance with the provisions of the criminal statute or ordinance violated and Chapter 7 of this Rules. Pending sentence the Court may commit the defendant to jail or continue or alter the bail. Before imposing sentence, the Court shall allow counsel or other persons an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement on his own behalf and to present any information in mitigation of punishment.
- b. Time served in jail prior to the judgment and sentence while awaiting or during trial shall be allowed as a credit toward any sentence of imprisonment in accordance with Rule 707 (6).

404. DEFENDANTS SENTENCED TO INCARCERATION

Rule 404 DEFENDANTS SENTENCED TO INCARCERATION

- a. If the defendant is to be sentenced to incarceration, the court shall prepare a judgment form which shall be signed by the court and filed with the clerk. The judgement form shall reflect the conviction, the sentence and the commitment, and shall contain the following:
 1. The pronouncement of guilty including:
 - A. The title of the crime;
 - B. the statute violated; and
 - C. the date the offense occurred.
 2. The sentence imposed including a statement of the effective date of the sentence indicating whether it is the date of imposition or some date earlier to give credit for time confined pending disposition of the case or credit for time on probation.

405. NEW TRIAL

Rule 405 NEW TRIAL

The court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If trial was by the Court without a jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one month after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. a motion for a new trial based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within such further time as the Court may fix during the seven-day period.

406. ARREST OF JUDGMENT

Rule 406 ARREST OF JUDGMENT

The Court, on motion of a defendant, shall dismiss the action if the complaint does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within seven (7) days after verdict or finding of guilty or plea of guilty, or within such further time as the Court may fix during the seven-day period.

407. CORRECTION OR REDUCTION OF SENTENCE

Rule 407 CORRECTION OR REDUCTION OF SENTENCE

The Court shall correct an illegal sentence at any time and shall correct a sentence imposed in an illegal manner within thirty days after the sentence is imposed, or within thirty days after receipt by the Court of a mandate issued upon affirmance of the judgment or dismissal of the appeal by the Appellate Court. The court may also reduce a sentence upon revocation of probation.

408. CLERICAL MISTAKES

Rule 406 CLERICAL MISTAKES

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

**CHAPTER 5
ARREST**

501. ARREST DEFINED; PERSON AUTHORIZED TO ARREST

Rule 501 ARREST DEFINED; PERSON AUTHORIZED TO ARREST

An arrest is taking a person into custody, in a case and in the manner authorized by law.

502. ARREST BY LAW ENFORCEMENT OFFICER

Rule 502 ARREST BY LAW ENFORCEMENT OFFICER

A law enforcement officer may arrest a person under any of the following circumstances:

- a. The officer has a warrant commanding that the person be arrested.
- b. The officer has ~~probable cause to~~ believe that a warrant for the person's arrest has been issued by the Nation Court or in another jurisdiction for a crime committed therein.
- c. The officer has probable cause to believe that the person is committing or has committed:
 1. A felony; or
 2. A misdemeanor, and the law enforcement officer has probable cause to believe that:
 - A. The person will not be apprehended or evidence of the crime will be irretrievably lost unless the person is immediately arrested;
 - B. The person may cause injury to self or others or damage to property unless immediately arrested; or
 - C. The person has intentionally inflicted bodily harm to another person.
- d. Any crime that has been or is being committed by the person in the officer's view.

503. ARREST BY PRIVATE PERSON

Rule 503 ARREST BY PRIVATE PERSON

A person who is not a law enforcement officer may arrest another person when:

1. a felony has been or is being committed and the person making the arrest has probable cause to believe that the person is guilty thereof; or
2. any crime has been or is being committed by the arrested person in the view of the person making the arrest.

504. POSSESSING OF DANGEROUS WEAPONS OR INSTRUMENTS; SEARCH; SEIZURE; ARREST

Rule 504 POSSESSING OF DANGEROUS WEAPONS OR INSTRUMENTS; SEARCH; SEIZURE; ARREST

A police officer may search for dangerous weapons or instruments on any person whom he has legal cause to arrest, whenever he has reasonable cause to believe that the person possesses a dangerous weapon or instrument. If the officer finds a dangerous weapon or instrument, he may take and keep it until the completion of the questioning, when he shall either return it or arrest the person. The arrest may be for the illegal possession of the weapon.

505. DETENTION TO DETERMINE WHETHER CRIME RELATING TO FIREARMS OR DEADLY WEAPONS OR INSTRUMENTS HAS BEEN COMMITTED; REASONABLE CAUSE; SEARCH INCIDENT TO DETENTION; DISPOSAL OF SEIZED FIREARM OR WEAPON

Rule 505 DETENTION TO DETERMINE WHETHER CRIME RELATING TO FIREARMS OR DEADLY WEAPONS OR INSTRUMENTS HAS BEEN COMMITTED; REASONABLE CAUSE; SEARCH INCIDENT TO DETENTION; DISPOSAL OF SEIZED FIREARM OR WEAPON

- a. In addition to any other detention permitted by law, if a police officer has reasonable cause to believe that a person has a firearm or other deadly weapon or instrument with him in violation of any provision of law relating to firearms or deadly weapons or instruments the police officer may detain that person to determine whether a crime relating to firearms or deadly weapons or instruments has been committed.

For purposes of this section "reasonable cause to detain" requires that the circumstances known or apparent to the officer must include specific and articulable facts causing the officer to suspect that some offense relating to firearms or deadly

weapons or instruments has taken place or is occurring or is about to occur and that the person to be detained is involved in that offense. The circumstances must be such as would cause any reasonable police officer in like position, drawing when appropriate on his training and experience, to suspect the same offense and the same involvement by the person in question.

- b. Incidental to any detention permitted pursuant to subdivision (a), a police officer may conduct a limited search of the person for firearms or weapons or instruments if the police officer reasonably concludes that the person detained may be armed and presently dangerous to the peace officer or others. Any firearm or weapon seized pursuant to a valid detention or search pursuant to this section shall be admissible in evidence in any proceeding for any purpose permitted by law.
- c. This section shall not be construed to otherwise limit the authority of a police officer to detain any person or to make an arrest based on reasonable cause.
- d. This section shall not be construed to permit a police officer to conduct a detention or search of any person at the person's residence or place of business absent a search warrant or other reasonable cause to detain or search.
- e. If a firearm or weapon is seized pursuant to this section and the person from whom it was seized owned the firearm or weapon or instrument and is convicted of a violation of any offense relating to the possession of such firearm or weapon, the court shall order the firearm or weapon to be deemed a nuisance and disposed of.

506. RESISTANCE TO ARREST

Rule 506 RESISTANCE TO ARREST

If a person has knowledge or by the exercise of reasonable care, should have knowledge, that he is being arrested by a police officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.

507. METHOD OF MAKING ARREST; AMOUNT OF RESTRAINT

Rule 507 METHOD OF MAKING ARREST; AMOUNT OF RESTRAINT

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

508. USE OF FORCE TO EFFECT ARREST, PREVENT ESCAPE, OR OVERCOME RESISTANCE

Rule 508 USE OF FORCE TO EFFECT ARREST, PREVENT ESCAPE, OR OVERCOME RESISTANCE

Any police officer who has reasonable cause to believe that the person to be arrested has committed an offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A police officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or of threatened resistance, of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

509. JUDGE, ORAL ORDER TO OFFICER OR PRIVATE PERSON TO ARREST

Rule 509 ~~JUDGE, ORAL ORDER TO OFFICER OR PRIVATE PERSON TO ARREST~~

The Judge may orally order a police officer or private person to arrest any one committing or attempting to commit an offense in the presence of the judge.

510. AUTHORITY TO SUMMON AID TO MAKE ARREST

Rule 510 AUTHORITY TO SUMMON AID TO MAKE ARREST

Any police officer making an arrest may orally summon as many persons as he deems necessary to aid therein.

511. FORMALITIES IN MAKING ARREST; EXCEPTIONS

Rule 511 FORMALITIES IN MAKING ARREST; EXCEPTIONS

The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape.

The person making the arrest must, on request of the person he is arresting, inform the latter of the offense for which he is being arrested.

512. EXHIBITION OF WARRANT ON REQUEST

Rule 512 EXHIBITION OF WARRANT ON REQUEST

An arrest by a police officer acting under a warrant is lawful even though the officer does not have the warrant in his possession at the time of the arrest, but if the person arrested so requests it, the warrant shall be shown to him as soon as practicable.

513. ARREST UNDER WARRANT; FORCE PERMISSIBLE

Rule 513 ARREST UNDER WARRANT; FORCE PERMISSIBLE

When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary and reasonable means to effect the arrest.

514. BREAKING OPEN DOOR OR WINDOW TO EFFECT ARREST; DEMAND FOR ADMITTANCE; EXPLANATION OF PURPOSE

Rule 514 BREAKING OPEN DOOR OR WINDOW TO EFFECT ARREST; DEMAND FOR ADMITTANCE; EXPLANATION OF PURPOSE

To make an arrest, a police officer may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired.

515. NOTIFICATION OF RIGHTS

Rule 515. NOTIFICATION OF RIGHTS

- a. Upon arrest, the defendant shall be notified that he has the following rights:
 1. The right to remain silent and that any statements made by him may be used against him in Court.
 2. That he has the right to obtain an attorney and to have an attorney present at any questioning; That if he cannot afford an attorney one will be appointed to represent him.
 3. That if he wishes to answer the questions of the police, he may stop or request time to speak with his attorney at any point in the questioning.
- b. Prior to conducting a consensual warrantless search, the officer shall specifically inform

the person to be searched or the person in charge of the property to be searched that:

1. The search will be conducted only with the person's consent.
 2. That the person is under no obligation or requirement to consent to the search and may refuse to consent to the search if he chooses to do so, or request the advice of an attorney at his own expense prior to responding to the requested consent to the search.
 3. That if the person refuses to consent to the search, the officer will not search the person or property without first obtaining a warrant from the court.
- c. Whenever possible, the officer should obtain a written statement that the person understood these rights, and waives them, prior to taking a voluntary statement from a defendant or conducting a warrantless consensual search, provided that the absence of such a written statement does not preclude the admission of the statement or other evidence if the Court determines that the statement or consent to search were voluntary.

**CHAPTER 6
SEARCH AND SEIZURE**

601. SEARCH WITHOUT SEARCH WARRANT

Rule 601 SEARCH WITHOUT SEARCH WARRANT

When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

- a. Protecting the officer from attack;
- b. Preventing the person from escaping; or
- c. Discovering the fruits, instrumentalities, or evidence of the crime.

**602. SEARCH WARRANTS; ISSUANCE; PROCEEDINGS AUTHORIZED;
AVAILABILITY OF AFFIDAVITS AND TESTIMONY IN SUPPORT OF PROBABLE
CAUSE REQUIREMENT**

**Rule 602 SEARCH WARRANTS; ISSUANCE; PROCEEDINGS AUTHORIZED;
AVAILABILITY OF AFFIDAVITS AND TESTIMONY IN SUPPORT
OF PROBABLE CAUSE REQUIREMENT**

- a. A search warrant shall be issued only upon written statement of any person under oath or affirmation which states facts sufficient to show probable cause that a crime has been or is being committed and which particularly describes a person, place or means of conveyance to be searched and things to be seized. If the Judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the Judge may issue a search warrant for the seizure of the following:
 1. Any things which have been used in the commission of a crime, or any contraband or any property which constitutes or may be considered a part of the evidence, fruits or instrumentalities of a crime under the laws of the Nation. The term "fruits" as used in this code shall be interpreted to include any property into which the thing or things unlawfully taken or possessed may have been converted.
 2. Any person who has been kidnapped in violation of the laws of the Nation or who has been kidnapped in another jurisdiction and is now concealed within the territorial jurisdiction of the Nation.
 3. Any human fetus or human corpse.

4. Any person for whom a valid felony arrest warrant has been issued in the Nation or in another jurisdiction.
- b. Before ruling on a request for a search warrant, the Judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses that the affiant may produce. Such proceeding shall be recorded and made part of the application for a search warrant.
- c. Affidavits or sworn testimony in support of the probable cause requirement of this section shall not be made available for examination without a written order of the court, except that such affidavits or testimony when requested shall be made available to the defendant or the defendant's counsel for such disposition as either may desire.

603. TERRITORIAL LIMITATIONS ON EXECUTION OF CERTAIN SEARCH WARRANTS

Rule 603 TERRITORIAL LIMITATIONS ON EXECUTION OF CERTAIN SEARCH WARRANTS

Search warrants issued by the judge may be executed only within the territorial jurisdiction of the Nation.

604. ISSUANCE OF SEARCH WARRANT

Rule 604 ISSUANCE OF SEARCH WARRANT

All search warrants shall show the time and date of issuance. The statement on which the warrant is issued need not be filed with the clerk of the court until the warrant has been executed or has been returned "not executed."

605. PERSONS AUTHORIZED TO EXECUTE SEARCH WARRANTS

Rule 605 PERSONS AUTHORIZED TO EXECUTE SEARCH WARRANTS

A search warrant shall be issued in duplicate and shall be directed for execution to all law enforcement officers of the Nation, or to any law enforcement officer specifically named therein.

606. EXECUTION OF SEARCH WARRANTS

Rules 606 EXECUTION OF SEARCH WARRANTS

A search warrant shall be executed within ten (10) days from the time of issuance. If the warrant is executed the duplicate copy shall be left with any person from whom any things are seized or if no person is available the copy shall be left at the place from which the things were seized. Any warrant not executed within such time shall be void and shall be returned to the court as "not executed."

607. COMMAND OF SEARCH WARRANT

Rule 607 COMMAND OF SEARCH WARRANT

A search warrant shall command the person directed to execute the same to search the person, place or means of conveyance particularly described in the warrant and to seize the things particularly described in the warrant.

608. USE OF FORCE IN EXECUTION OF SEARCH WARRANT

Rule 608 USE OF FORCE IN EXECUTION OF SEARCH WARRANT

All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to execute a search warrant.

609. DETENTION AND SEARCH OF PERSON ON PREMISES

Rule 609 DETENTION AND SEARCH OF PERSON ON PREMISES

In the execution of a search warrant the person executing the same may reasonably detain and search any person in the place at the time:

- a. To protect himself from attack, or
- b. To prevent the disposal or concealment of any things particularly described in the warrant.

610. WHEN SEARCH WARRANT MAY BE EXECUTED

Rule 610 WHEN SEARCH WARRANT MAY BE EXECUTED

A search warrant may be executed at any time of any day or night.

611. NO WARRANT QUASHED FOR TECHNICALITY

Rule 611 NO WARRANT QUASHED FOR TECHNICALITY

No search warrant shall be quashed or evidence suppressed because of technical irregularities not affecting the substantial rights of the accused.

612. CUSTODY AND DISPOSITION OF PROPERTY SEIZED

Rule 612 CUSTODY AND DISPOSITION OF PROPERTY SEIZED

1. Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the Judge, and shall be so kept as long as necessary for the purpose of being produced as evidence at trial. The property seized may not be taken from the officer having it in custody so long as it is or may be required as evidence in any trial. The officer seizing the property shall give a receipt to the person detained or arrested particularly describing each article of property being held and shall file a copy of such receipt with the Judge before whom the person detained or arrested is taken. Where seized property is no longer required as evidence, the court may transfer the same to the jurisdiction of any other court, including courts of another Indian Nation, state or federal court, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.
2. When property seized is no longer required as evidence, it shall be disposed of as follows:
 - A. Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner.
 - B. Money shall be restored to the owner unless it was used for an unlawful purpose, in which case it shall be forfeited, and shall be paid to the Nation.
 - C. Property which is unclaimed or the ownership of which is unknown shall be sold at public auction and the proceeds, less the cost of sale and any storage charges incurred in preserving it, shall be paid to the Nation.
 - D. Articles of contraband shall be destroyed, except that any such articles the disposition of which is otherwise provided by law, shall be dealt with as so provided, and any such articles the disposition of which is not otherwise provided by law and which may be capable of innocent use may

in the discretion of the court be sold and the proceeds paid to the Nation.

- E. Firearms, ammunition, explosives, bombs and like devices, which have been used in the commission of crime shall be destroyed by the Oneida Indian Nation Police.
- F. Controlled substances shall be destroyed.
- G. Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.

CHAPTER 7
AUTHORIZED SENTENCES AND DISPOSITIONS

701. APPLICABILITY OF PROVISIONS

Rule 701 APPLICABILITY OF PROVISIONS

The sentences prescribed by these Rules shall apply in the case of every offense.

702. SENTENCING POLICIES

Rule 702 SENTENCING POLICIES

The sentencing policy of the Nation is to strive toward restitution and reconciliation of the offender and the victim and Nation. While one goal of sentencing is to impress upon the wrongdoer the wrong he has committed, the paramount goal is to restore the victim and Nation to the position that existed prior to the commitment of the offense, and to restore the offender to harmony with them and the community by requiring him to right his wrongdoing. With consideration of these goals in mind, the provisions of this Chapter shall govern sentencing for criminal offenses.

703. LENGTH OF SENTENCE

Rule 703 LENGTH OF SENTENCE

1. Felonies The court may sentence a person convicted of a felony to a term of imprisonment not to exceed one year and/or a fine not to exceed \$5,000.00.
2. Misdemeanors The Court may sentence a person convicted of a misdemeanor to a term of imprisonment not to exceed six months and/or a fine not to exceed \$2,500.00.
3. Violations The Court may sentence a person convicted of a violation to a term of imprisonment not to exceed three months and/or a fine not to exceed \$1,000.00.

704. AUTHORIZED DISPOSITIONS.

Rule 704 AUTHORIZED DISPOSITIONS.

- a. Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

1. commit the defendant to a jail facility for the term provided by law;
2. impose the fine applicable to the offense;
3. release the defendant on probation if the circumstances are substantial and compelling, subject to such terms and conditions as the court may deem appropriate for a period not exceeding three (3) times the amount of the maximum sentence;
4. assign the defendant to a house arrest program;
5. order the defendant to attend and satisfactorily complete an alcohol or drug education or training program;
6. order the defendant to pay full or partial restitution;
7. impose any appropriate combination of (1), (2), (3), (4), (5), and (6); or
8. suspend imposition of sentence.

In addition to or in lieu of any of the above, the court may order the defendant to submit to and complete an alcohol and drug evaluation and pay the evaluation fee.

In imposing a fine the court may authorize payment in installments. The Court may allow the defendant to exchange actual work performed for the Nation or the victim in lieu of a fine at the rate of eight (8) hours of work per fifty dollars (\$50.00) of fine.

In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of the Nation Probation Department. If the court commits the defendant to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of probation or parole.

The court in committing a defendant to a term or imprisonment shall fix the term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

- b. This section shall not deprive the court of any authority conferred by any other Nation statute to decree a forfeiture of property, suspend or cancel a license, or impose any other civil penalty as a result of a conviction of a crime.
- d. Acceptance of probation shall not constitute an acquiescence in the judgment for

purpose of appeal and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has requested probation or suspension of sentence.

705. PLACE OF IMPRISONMENT

Rule 705 PLACE OF IMPRISONMENT

The place of imprisonment shall be in a facility as designated by the Court.

706. CONCURRENT AND CONSECUTIVE TERMS OF IMPRISONMENT

Rule 706 CONCURRENT AND CONSECUTIVE TERMS OF IMPRISONMENT

The sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other as the court directs at the time of sentence.

707. CALCULATION OF TERMS OF IMPRISONMENT

Rule 707 CALCULATION OF TERMS OF IMPRISONMENT

1. If the sentences run concurrently, the time served under imprisonment on any of the sentences shall be credited against the minimum periods of all the concurrent sentences, and the maximum terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run;
2. If the sentences run consecutively, the minimum periods of imprisonment are added to arrive at an aggregate minimum period of imprisonment equal to the sum of all the minimum periods, and the maximum terms are added to arrive at an aggregate maximum term equal to the sum of all the maximum terms.
3. Good behavior time. Time allowances earned for good behavior, shall not exceed one-fourth of the maximum or aggregate maximum term.
4. Time served under vacated sentence. When a sentence of imprisonment that has been imposed on a person is vacated and a new sentence is imposed on such person for the same offense, or for an offense based upon the same act, the new sentence shall be calculated as if it had commenced at the time the vacated sentence commenced, and all time credited against the vacated sentence shall be credited against the new sentence.
5. Escape. When a person who is serving a sentence of imprisonment escapes from custody, the escape shall interrupt the sentence and such interruption shall continue until the return of the person to custody. Any time spent by

such person in custody from the date of escape to the date the sentence resumes shall be credited against the term or maximum term of the interrupted sentence, provided:

- A. That such custody was due to an arrest or surrender based upon the escape; or
 - B. That such custody arose from an arrest on another charge which culminated in a dismissal or an acquittal; or
 - C. That such custody arose from an arrest on another charge which culminated in a conviction, but in such case, if a sentence of imprisonment was imposed, the credit allowed shall be limited to the portion of the time spent in custody that exceeds the period, term or maximum term of imprisonment imposed for such conviction.
6. Deduction of time spent in confinement. In any criminal action in which the defendant is convicted upon a plea of guilty or trial by court or jury or upon completion of an appeal, the judge, if he sentences the defendant to confinement, shall direct that for the purpose of computing defendant's sentence and his or her parole eligibility and conditional release dates, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order, such date shall be established to reflect and shall be computed as an allowance for the time which the defendant has spent incarcerated pending the disposition of the defendant's case. In recording the commencing date of such sentence, the date as specifically set forth by the court shall be used as the date of sentence and all good time allowances are to be allowed on such sentence from such date as though the defendant were actually incarcerated in any institution.

708. RELEASE ON PAROLE; CONDITIONAL RELEASE

Rule 708 RELEASE ON PAROLE; CONDITIONAL RELEASE

1. Release on parole:
 - A. A person who is serving a sentence of imprisonment may be paroled at any time after the expiration of the minimum or the aggregate minimum period of imprisonment of the sentence or sentences. Release on parole shall be in the discretion of the Judge, and such person shall continue service of his sentence or sentences while on parole.
 - B. A person who is serving a term of imprisonment shall, if he so requests,

be conditionally released from jail when the total good behavior time allowed to him, is equal to or greater than the unserved portion of his maximum or aggregate maximum term. The conditions of release shall be such as may be imposed by the Judge in accordance with Nation law.

- C. Every person so released shall be under the supervision of the probation officer for a period equal to the unserved portion of the maximum or aggregate maximum term.
2. Conditional release shall interrupt service of the sentence or sentences and the remaining portion of the term or aggregate term shall be held in abeyance. Every person so released shall be under the supervision of the Nation probation officer. Compliance with the conditions of release during the period of supervision shall satisfy the portion of the term or aggregate term that has been held in abeyance.
 3. Violation of the terms of parole or conditional release shall result in the immediate incarceration of the person, subject to a due process hearing.

CHAPTER 8 DIVERSION

801. DEFINITIONS

Rule 801 DEFINITIONS

1. "Nation Prosecutor" means the prosecutor for the Oneida Indian Nation.
2. "Complaint" means the criminal complaint charging the defendant with an offense.
3. "Diversion" means referral of a defendant in a criminal case to a supervised performance program prior to adjudication.
4. "Diversion agreement" means the specification of formal terms and conditions which a defendant must fulfill in order to have the charges against him or her dismissed.

802. DIVERSION AGREEMENT AUTHORIZED; POLICIES AND GUIDELINES BY NATION PROSECUTOR; BACKGROUND INFORMATION

Rule 802 DIVERSION AGREEMENT AUTHORIZED; POLICIES AND GUIDELINES BY NATION PROSECUTOR; BACKGROUND INFORMATION

- a. After a complaint has been filed charging a defendant with commission of a crime and prior to conviction thereof, and after the Nation Prosecutor has considered the factors listed in Section 803, if it appears to the Nation Prosecutor that diversion of the defendant would be in the interests of justice and of benefit to the defendant and the community, the Nation Prosecutor may propose a diversion agreement to the defendant. The terms of each diversion agreement shall be established by the Nation Prosecutor in accordance with section 804.
- b. The Nation Prosecutor shall adopt written policies and guidelines for the implementation of a diversion program in accordance with these Rules. Such policies and guidelines shall provide for a diversion conference and other procedures in those cases where the Nation Prosecutor elects to offer diversion in lieu of further criminal proceedings on the complaint.
- c. Each defendant shall be informed in writing of the diversion program and the policies and guidelines adopted by the Nation Prosecutor. The Nation Prosecutor may require any defendant requesting diversion to provide information regarding prior criminal charges, education, work experience and training, family, residence in the community,

medical history, including any psychiatric or psychological treatment or counseling, and other information relating to the diversion program. In all cases, the defendant shall be present and shall have the right to be represented by counsel at his own expense at the diversion conference with the Nation Prosecutor.

803. GRANT OF DIVERSION; FACTORS TO CONSIDER

Rule 803 GRANT OF DIVERSION; FACTORS TO CONSIDER

In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the Nation Prosecutor shall consider at least the following factors among all factors considered:

- a. The nature of the crime charged and the circumstances surrounding it;
- b. any special characteristics or circumstances of the defendant;
- c. whether the defendant is a first-time offender and if the defendant has previously participated in diversion.
- d. whether there is a probability that the defendant will cooperate with and benefit from diversion;
- e. whether the available diversion program is appropriate to the needs of the defendant;
- f. the impact of the diversion of the defendant upon the community;
- g. recommendations, if any, of the involved law enforcement agency;
- h. recommendations, if any, of the victim;
- i. provisions for restitution; and
- j. any mitigating circumstances.

804. PROVISIONS OF DIVERSION AGREEMENT; WAIVER OF SPEEDY TRIAL AND JURY TRIAL, WHEN; ALCOHOL AND DRUG RELATED OFFENSES; STAY OF CRIMINAL PROCEEDINGS; FILING OF AGREEMENTS

Rule 804 PROVISIONS OF DIVERSION AGREEMENT; WAIVER OF SPEEDY TRIAL AND JURY TRIAL, WHEN; ALCOHOL AND DRUG RELATED OFFENSES; STAY OF CRIMINAL PROCEEDINGS; FILING OF AGREEMENTS

- a. A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the Nation Prosecutor, the Nation Prosecutor shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under Nation law to a speedy arraignment and a speedy trial. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.
- b. The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) and, the date the complaint was filed.
- c. If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of alcohol and substance abuse laws, the diversion agreement shall include a stipulation, agreed to by the defendant and the Nation Prosecutor, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the term of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:
 1. Perform community service specified by the agreement; and
 2. Enroll in and successfully complete an alcohol and drug program or a treatment program, or both.
- d. If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of driving under the influence, the diversion agreement may restrict the defendant's driving privileges, in addition to any suspension and to driving only under the following circumstances: (1) In going to or returning from

the person's place of employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go to attend an alcohol and drug safety action program; (5) at such times of the day as may be specified by the diversion agreement; and (6) to such places as may be specified by the diversion agreement.

Restrictions imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

805. CONDITIONING DIVERSION ON PLEA PROHIBITED; INADMISSIBILITY OF AGREEMENT

Rule 805 CONDITIONING DIVERSION ON PLEA PROHIBITED; INADMISSIBILITY OF AGREEMENT

No defendant shall be required to enter any plea to a criminal charge as a condition for diversion. No statements made by the defendant or counsel in any diversion conference or in any other discussion of a proposed diversion agreement shall be admissible as evidence in criminal proceedings on crimes charged or facts alleged in the complaint.

806. FAILURE TO FULFILL DIVERSION AGREEMENT; SATISFACTORY FULFILLMENT; RECORDS

Rule 806 FAILURE TO FULFILL DIVERSION AGREEMENT; SATISFACTORY FULFILLMENT; RECORDS

- a. If the Nation Prosecutor finds at the termination of the diversion period or any time prior thereto that the defendant has failed to fulfill the terms of the specific diversion agreement, the Nation Prosecutor shall inform the court of such finding and the court, after finding that the defendant has failed to fulfill the terms of the specific diversion agreement at a hearing thereon, shall resume the criminal proceedings on the complaint.
- b. If the defendant has fulfilled the terms of the diversion agreement, the court shall dismiss with prejudice the criminal charges filed against the defendant.

807. TERM OF DIVERSION

Rule 807 TERM OF DIVERSION

An agreement for diversion shall not exceed one (1) year.

**CHAPTER 9
BAIL**

901. RELEASE PRIOR TO TRIAL

Rule 901 RELEASE PRIOR TO TRIAL

a. Any person charged with an offense shall, at his arraignment, be ordered released pending trial, on his personal recognizance or upon execution of an unsecured appearance bond in an amount specified by the Court subject to the condition that such person shall

1. not attempt to influence, injure, tamper with or retaliate against a juror, witness, informant, or victim or violate any other law; or
2. bail may be denied if the Court determines that such a release will not reasonably assure the appearance of the person as required.

When such determination is made, the Judge shall, either in lieu of or in addition to release on personal recognizance or execution of an unsecured appearance bond, impose one or any combination of the following conditions of release which will reasonably assure the appearance of the person for trial:

1. Place the person in the custody of a designated person or organization agreeing to supervise him;
 2. Place restrictions on the travel, association, or place of abode of the person during the period of release;
 3. Require the execution of an appearance bond in a specified amount in cash or other security as directed, of a sum not to exceed 10% of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;
 4. Require the execution of a bail bond with sufficient solvent sureties;
 5. Impose any other condition deemed reasonably necessary to assure appearance for further proceedings.
- b. In determining which conditions of release will reasonably assure appearance, the Court shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and

his record of appearance at Court proceedings or of flight to avoid prosecution or failure to appear at Court proceedings.

- c. A Judge authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.
- d. A person for whom conditions of release are imposed and who after forty-eight hours from the time of the arraignment continues to be detained as a result of his inability to meet the conditions of release, shall upon application, be entitled to have the conditions reviewed by the Judge who imposed them. Unless the conditions of release are amended and the person is thereupon released, the Judge shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the Judge who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the Judge shall set forth in writing the reasons for continuing the requirement.
- e. The Judge ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release. Provided, that, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.
- f. Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence.
- g. Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the Court, nor to prevent the Court by rule from authorizing and establishing a Policeman's Bail Schedule for certain offenses or classes of offenses through which a person arrested may post bail with the Chief of the Nation Police or his designee for transmittal to the Court Clerk and obtain his release prior to his arraignment before the Judge.

902. RELEASE AFTER CONVICTION

Rule 902 RELEASE AFTER CONVICTION

A person who has been convicted of an offense and is either awaiting sentence or has filed an appeal, shall be treated in accordance with the provisions of Rule 901 unless the Judge has reason to believe that one or more conditions of release will not reasonably assure that the person will not flee or pose a danger, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained.

903. PENALTIES FOR FAILURE TO APPEAR

Rule 903 PENALTIES FOR FAILURE TO APPEAR

Whoever, having been released pursuant to this Chapter willfully fails to appear before the Court as required, shall incur a forfeiture of any security which was given or pledged for his release, and in addition, as punishment may be subject to a fine of \$500.00 and a term of imprisonment not to exceed six months.

904. PERSONS OR CLASSES PROHIBITED AS BONDSMEN

Rule 904 PERSONS OR CLASSES PROHIBITED AS BONDSMEN

The following persons or classes shall not be bail bondsmen and shall not directly or indirectly receive any benefits from the execution of any bail bond; jailers, police officers, judges, court clerks and any person having the power to arrest or having anything to do with the control of Nation prisoners.

905. AUTHORITY TO ACT AS BAIL BONDMEN

Rule 905 AUTHORITY TO ACT AS BAIL BONDMEN

Any person authorized to act as bail bondsmen in the federal or state courts shall be qualified to act as bondsmen in the Nation Court, and shall be liable to the same obligations as in their licensing jurisdiction and comply with all orders and rules of the Nation Court.

CHAPTER 10
EXPUNGEMENT

1001. EXPUNGEMENT OF RECORDS

Rule 1001 EXPUNGEMENT OF RECORDS

- a. Any person who has been convicted of a criminal offense in the Nation court may petition the court for the expungement of the conviction if two or more years have elapsed since the person: (1) satisfied the sentence imposed; or (2) was discharged from probation, parole, postrelease supervision, conditional release or a suspended sentence.
- b. When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice to the Nation prosecutor. The petition shall state: (1) the defendant's full name; (2) the full name of the defendant at the time of arrest and conviction, if different from the defendant's current name; (3) the defendant's date of birth; (4) the crime for which the defendant was convicted; and (5) the date of the defendant's conviction. There shall be no filing fee for the petition. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.
- c. At the hearing on the petition, the court shall order petitioner's conviction expunged if the court finds that:
 - (1) the petitioner has not been convicted of a crime in the past two (2) years and no proceeding involving any crime is presently pending or being instituted against the petitioner;
 - (2) the circumstances and behavior of the petitioner warrant the expungement; and
 - (3) expungement is consistent with the public welfare.
- d. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:
 - (1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;
 - (2) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;
 - (3) the conviction may be disclosed in a subsequent prosecution for an offense

which requires as an element of such offense a prior conviction of the type expunged;

- e. Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the conviction.
- f. In any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of a crime has been expunged under this statute may state that such person has never been convicted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with federal law relating to the use or possession of firearms by persons convicted of a felony.
- g. Whenever the record of any conviction has been expunged under the provisions of this section, the custodian of the records of arrest, conviction and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:
 - (1) The person whose record was expunged;
 - (2) a criminal justice agency, private detective agency or a security firm, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or firm by the person whose record has been expunged;
 - (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
 - (4) a person entitled to such information pursuant to the terms of the expungement order;
 - (5) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

CHAPTER 11
VICTIM RIGHTS

1101 VICTIM RIGHTS

Rule 1101 VICTIM RIGHTS

In all criminal prosecutions, a victim shall have the following rights:

1. the right to be treated with fairness and respect throughout the criminal justice process;
2. the right to timely disposition of the case following arrest of the accused, provided no right of the accused is abridged;
3. the right to be reasonably protected from the accused throughout the criminal justice process;
4. the right to notification of court proceedings;
5. the right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person's testimony would be materially affected if such person hears other testimony;
6. the right to communicate with the prosecution;
7. the right to object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused;
8. the right to make a statement to the court at sentencing;
9. the right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law; and
10. the right to information about the arrest, conviction, sentence, imprisonment and release of the accused.

Nothing in this section shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case.

CHAPTER 12

POLICE

1201. CITIZENS' COMPLAINTS AGAINST PERSONNEL; INVESTIGATION; DESCRIPTION OF PROCEDURE; RETENTION OF RECORDS

Rule 1201 CITIZENS' COMPLAINTS AGAINST PERSONNEL; INVESTIGATION; DESCRIPTION OF PROCEDURE; RETENTION OF RECORDS

- a. The Nation Police Department shall establish a procedure to investigate citizens' complaints against the personnel of the department, and shall make a written description of the procedure available to the public.
- b. Complaints and any reports or findings relating thereto shall be retained for a period of at least five years.

1202. PERSONNEL RECORDS; CONFIDENTIALITY; DISCOVERY

Rule 1202 PERSONNEL RECORDS; CONFIDENTIALITY; DISCOVERY

Police officer personnel records and records of information obtained from such records, are confidential and shall not be disclosed in any criminal or civil proceeding. This section shall not apply to investigations or proceedings concerning the conduct of police officers conducted by the Nation Prosecutor.