

**WARM SPRINGS TRIBAL CODE**

**CHAPTER 202**

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# WARM SPRINGS TRIBAL CODE

## CHAPTER 202

### I. CRIMINAL PROCEDURES

#### 202.010 Definitions.

- (1) "Complaint" means a written statement sworn to by a complaining witness charging that a named person has committed a particular criminal offense.
- (2) "Probable Cause" means a reasonable belief an offense has been committed and the accused person did commit the act.
- (3) "Arrest" means the taking of a person into police custody in order that he may be held to answer for a criminal offense charge.
- (4) "Search Warrant" means a written order signed by a tribal Judge upon a showing of probable cause and directed to Tribal Police ordering the conduct of a search and seizure of items or property specified in the warrant. The property and place to be searched will be particularly identified and the items to be seized will be identified with particularity.
- (5) "Arraignment" means the bringing of an accused before the Court, informing him of the charge against him and his rights prior to receiving his plea.
- (6) "Motion" means a request for Court order on any matter relating to an action which has been commenced in Tribal Court.
- (7) "Bail" means money or other security deposited by a defendant with the Court to obtain his release from jail and to guarantee his appearance at a scheduled Court hearing.
- (8) "Bench Warrant" means an order issued in Court by a judge authorizing the legal authorities to seize a person. Is most often used to compel a person's attendance before the Court.
- (9) "Bill of Attainder" means a legislative act directed against a specific person, pronouncing him guilty of an alleged crime without trial or conviction in a court of law.
- (10) "Beyond a Reasonable Doubt" means the standard of proof required for conviction of a defendant for a criminal act. This is a factual determination by the judge or jury where they can see no reasonable doubt remains as to the guilt of the person charged. It does not require proof so clear that there is no possibility of error. It means simply that the proof offered must be so conclusive and complete

that all reasonable doubts of the fact are removed from the mind of the decider of fact.

- (11)** "Bond" means a written agreement to produce a released prisoner at a scheduled time and place for hearing or trial. It is given by the signature of two adult, enrolled members who are competent to enter into such an agreement at the time of signing.
- (12)** "Community Service" means a Court ordered probationary program where the sentenced person is required to perform labor on behalf of the community.
- (13)** "Contraband" means:

  - (a)** Any narcotic or dangerous drug or controlled substance which has been or is possessed with intent to sell or offer for sale in violation of any laws or regulations of the United States, the Tribes, or the State of Oregon dealing therewith; or which has been acquired or is possessed, sold, transferred, or offered for sale, in violation of any laws of the United States, the Tribes, or the State of Oregon dealing therewith; or which has been acquired by theft, robbery or burglary;
  - (b)** Any firearm, with respect to which there has been committed any violation of any provision of the Warm Springs Tribal Code, of the National Firearms Act or any regulation issued pursuant thereto, or the State of Oregon;
  - (c)** Any other item of personal property, the possession of which has been made illegal by the provisions of the Warm Springs Tribal Code.
- (14)** "Defendant" means the person against whom a legal action is brought either by the Tribes or an individual.
- (15)** "Double Jeopardy" means a second prosecution or second punishment for the same offense after a jury has been sworn or after a judge in a non-jury trial receives the first evidence at a trial.
- (16)** "Expert Witness" means a person who is qualified to speak with authority on a subject by reason of special training, skill or familiarity with the subject.
- (17)** "Fine" means a Court ordered payment of money as penalty or punishment for a finding of wrong-doing in a civil action or criminal action.
- (18)** "Tribal Police Officer" means employees of the Confederated Tribes who are sworn as police officers of the Tribes and such other law enforcement officials that may be given such authority by Tribal Council action.

- (19) "Willful" in a civil action means an act which is intentional or knowing or voluntary as distinguished from accidental. When used in a criminal context, it generally means an act done with a bad purpose without justifiable excuse.

## II. PRELIMINARY PROCEEDINGS

**202.100 Complaints.** All criminal prosecutions for violation of offenses under WSTC Chapter 300 will be commenced upon the filing of a written complaint with the Tribal Court. Any person, Indian or non-Indian, may file such a complaint. The complaint shall be prosecuted in the name of the Confederated Tribes in the discretion of the tribal prosecutor.

- (1) Each complaint filed must be certified by the Tribal Prosecutor and contain the following information:
  - (a) Name and address of the accused, if known, and if not known, a reasonable description for identification purposes.
  - (b) Signature of the complaining person.
  - (c) Specification of the offense charged by WSTC title, chapter and section number.
  - (d) A concise statement of facts which would constitute specification of the time and place the alleged offense occurred.
- (2) Complaints made to the Tribal Prosecutor shall be submitted without delay to the Court for a probable cause determination. Where the complaint and accompanying documents are sufficient to establish probable cause, the Court shall issue a warrant for arrest or issue a summons for the accused to appear at a specified time and place to answer to the charge.
- (3) When there has been an arrest without a warrant, a complaint will be timely filed for judicial determination that probable cause exists to hold the accused on that charge. In no instance shall a complaint be filed later than the time of arraignment.

**202.105 Statute of Limitations.** Except as provided below, no complaint shall be filed for a criminal offense unless the offense shall have been committed within a one-year period from the date of filing. This one year limitation shall not apply to the criminal offense of sexual abuse (WSTC 305.345), and any other criminal offense committed concurrently with the offense of sexual abuse, which shall have a five year statute of limitations.<sup>1</sup>

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<sup>1</sup> WSTC 202.105 was amended by Resolution No. 8728, adopted October 18, 1993, extending the statute of limitations for sexual abuse and concurrent criminal offenses from one year to five years.

**202.110 Withdrawal of a Complaint.** The Prosecutor and/or complaining person may withdraw a filed complaint without permission of the Court prior to arraignment only. After arraignment withdrawal will be allowed only upon submission of a written request containing the following:

- (1) A showing of good cause to withdraw.
- (2) A statement from the Prosecutor that the paramount interests of the Confederated Tribes would not be harmed.
- (3) If the moving party is other than the Prosecutor a waiver of the right to again complain upon the circumstances growing out of the original matter.

**202.120 Arrests.** No member of the Tribal Police shall arrest any person for an offense in violation of the WSTC or federal law, except in the following circumstances:

- (1) When such offense shall occur in the presence of the arresting officer; or
- (2) There is reasonable cause to believe that the person arrested has committed an offense; or
- (3) The officer shall have a tribal warrant commanding him to apprehend such persons; or
- (4) The officer is acting upon a Tribal Court order for arrest of an Indian upon a non-tribal warrant; or
- (5) The officer is acting under authority of an order issued pursuant to paragraph (c) or (d) of subsection (1) of WSTC 331.235 or WSTC 331.815.

**202.125 Private Person Arrests.** A private person shall not arrest or attempt to arrest another person even where there is cause to believe that a crime has been committed in his presence.

**202.130 Arrest Warrants.**

- (1) Every Judge of the Tribal Court shall have authority to issue warrants to arrest. Such warrants shall issue, in the discretion of the Judge, only upon submission of a written Warrant Request containing a sworn statement giving probable cause to believe that the offense charged has been committed by the named accused.
- (2) No warrant to arrest shall be valid unless it shall bear the signature of a duly qualified Judge of the Tribal Court.
- (3) Arrest warrants may be executed only by a duly qualified member of the Tribal Police or Special Officer of the United States Bureau of Indian Affairs.

- (4) Every Tribal Court Judge has authority to issue a bench warrant where there is personal knowledge of probable cause to arrest.
- (5) Every warrant issued by the Court will be valid if it appears regular on its face. It does not have to be extremely detailed, technically correct or patterned after a warrant used by another jurisdiction.<sup>2</sup>

**202.135 Non-Tribal Warrants.**

- (1) Upon receipt of a valid warrant charging an Indian with a violation of the laws of any lawful authority, or proof of the existence of such warrant, the Tribal Court shall issue an order directed to the Chief of the Warm Springs Tribal Police, instructing him that the person named shall be apprehended by a member of the Tribal Police and delivered over to the proper authority.
- (2) When a non-tribal warrant has been executed, it shall be the duty of the Tribal Police Chief to notify the proper authority of the arrest. The arrested person may be detained in the Tribal jail for a period not to exceed 24 hours from the time of arrest. If the requesting authority does not take physical custody of the arrested person within 24 hours from time of first notification, that person shall be released unless the Court finds good cause to order continued detention.
- (3) Notwithstanding the provisions of subsection (1) above, the Tribal Court shall not cause warrants to be enforced in cases in which the warrant is based upon the failure of the Indian to appear in Court on a traffic citation charging less than a Class "A" misdemeanor as defined by Oregon statute unless the Court shall find that exceptional circumstances exist.

**202.140 Summons.**

- (1) Where there is probable cause to arrest for an offense, the Tribal Court may elect to issue a summons instead of a warrant for arrest. The summons shall command the accused to appear before the Tribal Court at a stated time and place to answer to the charge.
- (2) If the defendant fails to appear in response to a summons, a bench warrant for his arrest shall issue from the Court.

**202.150 Search Warrants.**

- (1) Every Tribal Judge shall have authority to issue warrants for the search and seizure of property and premises of any person under jurisdiction of the Tribal Court.

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<sup>2</sup> Subsection 5 added by Tribal Resolution No. 7868 adopted August 9, 1989.

- (2) No warrant for search or seizure will issue except upon a showing of probable cause that a search will uncover the following:
  - (a) Stolen, embezzled, contraband or otherwise criminally possessed property.
  - (b) Property which has been or is being used to commit a criminal offense.
  - (c) Property which is evidence of the commission of a criminal offense.
- (3) The Court will not issue a warrant unless there is probable cause supported by a sworn, written statement based upon timely and reliable information.

**202.155 Execution of Warrants.** Warrants authorizing search and seizure shall only be executed by Tribal Police Officers or Special Officers of the Bureau of Indian Affairs. The executing officer shall return the warrant to Tribal Court within the time limit shown on the face of the warrant. Warrants not returned within the specified time limits shall be void.

**202.160 Validity of Warrants.** A warrant will be valid only if it contains the signature of a Tribal Court Judge and describes with particularity the persons or property to be searched and the articles to be seized.

**202.165 Search Without Warrant.** Tribal and B.I.A. law enforcement officers are subject to disciplinary action for any search conducted without a valid warrant except:

- (1) When making a lawful arrest; or
- (2) By consent of the person being searched; or
- (3) When there is reasonable belief that the person searched may be armed and dangerous; or
- (4) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen or embezzled property; or
- (5) Search of a vehicle is made incident to completion of a regular and routine inventory; or
- (6) When there is probable cause to believe that contraband or evidence is present and there is no time to obtain a warrant without it being destroyed.

**202.170 Disposing of Seized Property.**

- (1) Tribal police shall make an inventory of all property seized by warrant or otherwise. A copy of that inventory and warrant will be left with the person whose property was taken. A copy will also be provided the Tribal Court.
- (2) A separate and special hearing shall be held by Tribal Court to determine the disposition of all property seized by police. Upon satisfactory proof of

ownership, the property may be returned to the owner, unless it is contraband, or is to be used as evidence in a pending case. Property taken as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall become the property of the Tribes and may be destroyed or sold at public auction, or retained for the benefit of the Tribes or otherwise lawfully disposed of as ordered by the Court.

### III. ARRAIGNMENT

#### **202.200 Purpose of Arraignment.**

- (1) The first appearance of a defendant before a Judge in open court will be at the arraignment. The purpose of the arraignment is to:
  - (a) Bring the defendant before the Court.
  - (b) Advise the defendant of his rights and the significant nature of the charges against him.
  - (c) To accept a plea from the defendant.

**202.205 Conduct of Arraignment.** A defendant must appear personally at arraignment but may be accompanied by representative counsel. When before the Court, the arraignment will proceed as follows:

- (1) The defendant shall be given a copy of the complaint, or summons and complaint, if a copy had not been previously served upon him.
- (2) The Judge will read the complaint to the defendant.
- (3) The Court will then entertain motions to set aside the charges. The normal grounds for such motions are that the complaint is insufficient on its face; probable cause is lacking; or, there is a lack of jurisdiction. The Court will rule from the bench on any motion to set aside a charge.
- (4) Where there is probable cause to believe that the accused has committed an offense, the Court will advise the defendant of each right guaranteed under the Indian Civil Rights Act of 1968; and, advise the defendant of the maximum penalty which may be imposed if he is found guilty or pleads guilty to the offense as charged.
- (5) The Court will then ask the defendant to enter a plea of guilty or not guilty.

**202.210 Not Guilty Pleas.** Where a Not Guilty plea is made, the Court will do the following:

- (1) Ask the defendant if he wants a jury trial or waives his right to such trial.

- (2) Set a date and time for trial.
- (3) Remind the defendant of the personal responsibility to be prepared to argue on the merits at time of trial.
- (4) Advise the defendant that he has 5 working days in which to provide the Court with a list of desired witnesses and the name of representative counsel.

**202.220 Guilty Pleas.** Where a defendant offers a plea of Guilty, the Court will do the following:

- (1) Personally question defendant to insure that the plea is made voluntarily with full understanding of the possible penalties.
- (2) Advise the defendant that there is no right of appeal after a Guilty plea is entered.
- (3) The Judge will then pass sentence or set a date for later sentencing.

**202.225 Court Refusal of Plea.** If there is any reasonable doubt in the mind of a Judge that a defendant who pleads guilty does not fully understand the nature of the charge or consequences, the Judge may refuse to accept the plea and will enter a Not Guilty plea on behalf of the defendant.

**202.230 Sentence.** A Judge will not render a sentence upon a Guilty plea unless fully satisfied that the defendant is pleading guilty because he or she did, in fact, commit the offense.

**202.240 No Plea.** Where a defendant elects to make no plea, the Court will enter a plea of Not Guilty on behalf of the defendant.

**202.250 Disqualification Requests.** The Court will not entertain motions for disqualification of a Judge on arraignment. The procedural nature of the arraignment and the protection incorporated preclude the necessity for a disqualification at the time.

**202.260 Guaranteed Rights.** When the Court informs a defendant of his rights, the rights advised shall include, but are not limited to the following:

- (1) The right to counsel at defendant's expense.
- (2) The right to be informed of the charges against him.
- (3) The right to have the Court within its jurisdiction, compel witnesses against him to appear and testify.
- (4) The right to cross-examine and question the witnesses against him.
- (5) The right to call witnesses in his own behalf and to have the Court within its jurisdiction, compel the attendance of those witnesses.

- (6) The right to a speedy and public trial.
- (7) The right to a jury trial.
- (8) The right at trial to testify or not to testify in his own behalf.
- (9) The right to appeal if found guilty.
- (10) The right to be released on bail or his own recognizance pending trial.

**202.270 Plea Bargain Agreements.**

- (1) The Court will not be bound by any plea resulting from a plea bargain agreement unless the Judge has been fully advised on the agreement in open court, on the record.
- (2) A plea bargain will not be honored by the Court if there is any doubt as to defendant's full and total understanding of the agreement as determined by the Judge through personal questioning.
- (3) After questioning the defendant, the Judge will insure that there is no further agreement other than that which has been read into the record by the Prosecutor. The Court may then accept or reject the agreement.

**202.275 Plea Bargain Limits.** The Prosecutor is limited in a plea bargain agreement to the following:

- (1) Moving to dismiss other charges; or
- (2) Agreeing not to oppose defendant's request for a particular sentence, with the understanding that the request is not binding on the Court; or
- (3) Agreeing that a specific sentence is the appropriate disposition of the case.

**202.280 Accepting or Rejecting.**

- (1) In those cases where the Court accepts a plea bargain agreement, the Tribes are thereafter bound by such agreement.
- (2) Where the Court rejects a plea bargain arrangement, the defendant will be advised to withdraw the planned plea. If the defendant persists in offering a guilty plea, it will not be accepted until he has been advised by the Judge that disposition may be less favorable than was offered under the agreement.

**202.300 Bail and Bond.** Every Indian charged with any offense before the Tribal Court may be admitted to bail or bond or released on personal recognizance except as hereafter provided.

- (1) Bail shall be made by delivery of the specified amount in cash to a Judge, tribal clerk or other person authorized by the Court to accept bail.
- (2) In lieu of bail, a bond agreement may be executed by two reliable adult members of the Confederated Tribes on a form provided by the Court or Tribal Jail. In no case shall the penalty specified in the bond agreement exceed twice the maximum penalty set by the WSTC for the offense charged.
- (3) The cash or bond agreement shall be executed before a tribal Judge or other person authorized by the Court to accept bail or bond.
- (4) Bail and bond agreements shall be promptly filed with the Court Clerk.

**202.305 Failure to Appear.** Where a defendant released on bail or bond fails to appear for the scheduled proceeding, the Court may act as follows:

- (1) Forfeit bail in an amount not to exceed \$500 and issue a bench warrant for arrest of the defendant.
- (2) Schedule a show cause hearing for the persons who executed the bond and, if found liable, require payment and forfeiture of the bond amount.

**202.310 Double Bail.** In certain cases, the Court has discretion to double the required minimum bail amount. This will normally be done only where there is evidence that the alleged offender fits one of the following categories:

- (1) Is on probation at time the offense is committed.
- (2) Is awaiting trial for another offense.
- (3) Has a record of repeat offenses in the past 12 months.

**202.320 No Bail.** The protection of individuals and the community demands that certain persons be held without bail or bond in exceptional circumstances. Such action is limited to the following situations:

- (1) The person has been charged with a crime of violence. This requires that the person have been convicted of another crime of violence within a one year period preceding this crime of violence; or, committed this offense while on bail, probation, or other release for another crime of violence.
- (2) The person has been charged with obstructing justice. This requires that the person have threatened, injured or intimidated a witness or juror or has attempted such threat, injury or intimidation.

- (3) The person has demonstrated suicidal or destructive character. This requires evidence to indicate that positive attempts have been made to carry out this forbidden activity.
- (4) There is strong likelihood of flight before trial. This requires a documented history of such flight, or evidence of circumstances indicating that such flight is potential.
- (5) The person represents a danger to the community. This requires a pattern of behavior evidenced by past and present conduct and, no conditions for release are available which would reasonably assure the safety of the community.

**202.325 No Bail Hearings.** Denial of a right to bail or bond will occur only after such request is made by the Prosecutor and the Court has immediately held a pretrial detention hearing and determined by clear and convincing evidence that there is substantial probability that the accused committed that offense.

- (1) Where the Court finds that denial of bail or bond is proper, an order for detention will be issued with the Court's findings of fact.
- (2) Where a person is held without right to bail or bond, his case will be put on an expedited calendar and the trial will be given priority. If a conviction results, the defendant will be credited with the time served pending the trial.

**202.330 Bail Amounts.** A defendant qualified for release upon posting of bail or bond will be admitted to bail or posting of an amount determined by the Court which amount is sufficient and necessary to insure the presence of defendant at a scheduled court proceeding.

**202.335 Detention Without Bail.** No Indian shall be detained, jailed or imprisoned except on a non-Tribal warrant for a period longer than twenty-four (24) hours unless there be issued a commitment and detention order bearing the signature of a Judge of the Tribal Court. A Temporary Commitment Order shall be issued for each Indian held for trial and a Final Commitment Order issued for each Indian held after sentencing.

**202.340 Bail on Appeal.** Every person who has been convicted of an offense and made a timely filing of appeal shall be admitted to bail or bond if not otherwise disqualified under WSTC 202.320.

#### IV. PRETRIAL

**202.400 Pretrial Motions.** Motions seeking Court action on a matter may be made orally or in writing.

- (1) Oral motions shall be made upon the record before the Court with all parties present.

- (2) Written motions will be addressed to the Judge scheduled to preside over the matter and copies must be served upon the Court and opposing party at the same time.

**202.405 Presentation of Motion.**

- (1) Failure by an opposing party to file an answer to a written motion is deemed to be consent to granting of the motion by the Court.
- (2) Written pretrial motions shall contain supporting reasons for the request and shall be filed not later than three (3) working days before the scheduled date and time of trial.

**202.410 Ruling on Motions.** A Judge may make a judgment on a pretrial motions solely on the basis of the written request and answer; or, elect instead to set a time and date for oral argument on the motion.

- (1) Judges are not required to provide justification for the decision made in ruling upon a motion. A justification may, however, be offered for purposes of clarification.
- (2) Either party may make an objection to the ruling on a motion in order to preserve the right to later appeal.

**202.415 Scope of Motions.** Pretrial motions shall include but are not limited to the following:

- (1) Motion for set over of a trial date.
- (2) Motion to dismiss a complaint for lack of jurisdiction or failure to state an offense.
- (3) Motion for pretrial conference.

**202.420 Discovery.** The fair and orderly administration of justice demands liberal disclosure of evidence.

**202.425 Defendant Requests.** Upon request of a defendant, the Tribes shall make available to defendant for inspection, copying or photographing:

- (1) Any relevant written or recorded statements made by defendant which are in the possession, custody or control of the Tribes.
- (2) Copies of records of any oral statements made by defendant in response to a law enforcement interrogation, prior to or after arrest.
- (3) Copies of the defendant's prior criminal record which are maintained by the Tribes.

- (4) Any books, papers, documents, photographs, tangible objects or copies or portions of material which are in the possession, custody and control of the Tribes, and which would affect preparation of defendant's defense.
- (5) Reports or results of physical or mental examinations or of scientific tests or experiments which are intended for use as evidence at trial by the Tribes, are in possession, custody or control of the Tribes and would affect preparation of defendant's defense.
- (6) Copies of police reports which have been completed by the arresting officer(s).

**202.430 Prosecutor Requests.** Upon request of the Tribes, the defendant shall make available for inspection, copying or photographing:

- (1) A list of witnesses the defendant intends to call at trial;
- (2) Copies of all exhibits the defendant intends to introduce as evidence at trial;
- (3) Books, papers, documents, photographs, tangible objects or copies or portions of material which are in the possession, custody and control of defendant for purpose of introducing as evidence at trial.
- (4) Results or reports of physical or mental examinations or scientific tests or experiments which are intended for use as evidence at trial by defendant, in the possession, custody or control of the defendant.

**202.435 Sanctions.** Where the defendant or prosecutor fails to comply with the discovery rule outlined in WSTC 202.425 and 202.430, the presiding Judge in the trial may rule the withheld evidence or tendered witness to be inadmissible at trial.

**202.440 Limits of Discovery.** The parties are not authorized discovery of reports, memoranda or other internal strategy documents made by the parties or their counsel in connection with investigation or preparation of the case.

**202.445 Witnesses.** In all instances prior to trial, the defendant and prosecutor must make available to the other party the names of all witnesses to be called at trial.

## V. TRIALS

**202.500 Conduct of Trials.** All criminal trials will be deemed to have commenced at the scheduled time and date as provided in notice to the parties.

**202.505 Lateness.** Should any party be absent at commencement of the trial, the Court will wait 15 minutes for an appearance.

- (1) Where a party arrives after the trial has commenced, but within 15 minutes of scheduled time of trial, the Court may hold that person in contempt.

- (2) Where a defendant fails to appear within 15 minutes after the scheduled start of a trial, the Court may issue a bench warrant for arrest of the defendant for contempt.
- (3) Where the Prosecutor fails to appear within fifteen 15 minutes after the scheduled start of a trial, the Court may dismiss the case or reschedule and a contempt citation may issue.
- (4) Where a witness or juror is late or fails to appear at trial, that person may be held in contempt.

**202.510 Preliminary Motions.** When all parties are present and ready to proceed, the Court will entertain preliminary motions. All motions will be oral and may include but are not limited to the following:

- (1) Motion for removal of all witnesses from the Courtroom until called to testify.
- (2) Motion to dismiss for lack of jurisdiction, if the questions had not been previously raised and ruled upon.

**202.520 Opening Statements.** Each party shall have the right to make an opening statement. The purpose of the opening statement is to outline the issues, evidence, arguments or theory of the case. The Prosecution shall make the first opening statement and be followed by the defendant's opening statement. Either side may waive or reserve any opening statement.

**202.525 Prosecution Case.** When opening statements have been completed, the Prosecution will be directed to present its case. Each of the prosecution witnesses will be called in a turn determined by the Prosecutor. All witnesses must have been sworn before testimony is presented. The defendant must be given full opportunity to cross-examine each prosecution witness.

**202.530 Defense Case.** After completion of presentation of the prosecution's case, the defendant shall be given an opportunity to present the defense case in chief. Defense witnesses will be sworn and allowed to offer testimony. The prosecution must be given full opportunity to cross-examine each defense witness in turn.

**202.540 Exhibits and Evidence.** During the presentation of its case each side may offer into evidence any admissible physical evidence which is available as support. The Court will rule upon admissibility as each item is submitted.

**202.550 Closing Arguments.** When there has been a full presentation of both sides of the case, each party shall have the right to make a closing argument. The Prosecution will proceed first.

- (1) Parties may, in non-prejudicial terms, interpret the facts, argue the law and generally summarize the case.

- (2) The trial Judge will exercise strong control to prevent attempts to argue evidence or facts which were not presented during conduct of the trial.
- (3) Either side may elect to waive the right to make a closing argument.

**202.560 Objections.** Objections may be made by either party to procedures or admissibility of evidence during conduct of the trial. All objections shall be timely made and stated with particularity. The Judge shall immediately rule upon an objection or recess to take the question under advisement for a later ruling.

**202.570 Juries.**

- (1) A jury will be empaneled for trial upon request of a criminal defendant and seated in accordance with the provisions of WSTC 200.335 and 200.340.
- (2) After receiving instructions from the Judge, the jury shall retire for deliberation to a private place under supervision of the Court Clerk.
  - (a) The jurors, before deliberation or voting, shall elect one member as foreperson of the jury.
  - (b) In open discussion, the jurors shall then weight the arguments and apply the law to the facts presented at trial.
  - (c) An open vote or sealed ballot vote may then be taken by the foreperson.
  - (d) The foreperson will notify the Judge when a unanimous decision has been made.

**202.580 Verdicts.**

- (1) Where a verdict of Not Guilty is found by either the Court or a Jury, judgment shall be pronounced immediately and the defendant shall be released from custody at that time.
- (2) Where the Court or Jury finds a verdict of Guilty, that judgment shall be pronounced upon the defendant in open court. The Court may sentence the convicted person immediately or schedule a time and place for sentencing later.

**202.585 Burden of Proof.**

- (1) In a trial by Judge, the Court shall render a verdict of Guilty only where the defendant is found guilty beyond a reasonable doubt. After closing arguments, the Court may announce its decision immediately upon the case or reserve decision for a later date.
- (2) A jury must unanimously find the defendant guilty beyond a reasonable doubt, or not guilty.

- (a) When there has been a decision by the jury, the Judge will be notified and Court called back into session with all parties and jury present.
- (b) The Court will ask the foreperson if the jury has reached a verdict. When answered in the affirmative, the written verdict will be passed to the Judge who will announce the verdict and pass judgment on defendant.
- (c) Where the jury cannot arrive at a unanimous verdict, the Court will declare a mistrial and order a new trial.

**202.590 Appeal.** Upon announcing a verdict of Guilty, the Judge shall inform the defendant of the right to appeal under the WSTC Chapter 204.

## **VI. POST TRIAL SENTENCING**

**202.600 After Judgment.** Where a criminal defendant has been convicted of an offense, the Court may sentence the person immediately or delay sentencing to a later time.

### **202.610 Sentencing Powers.**

- (1) The Court has broad discretion imposing sentence and may order restitution, jail, fine, probation, assignment to a remedial program or assignment to community service.
- (2) In deciding the character and duration of the sentence to be imposed, the Court will take into consideration the previous conduct of the defendant; circumstances under which the offense was committed; and, whether the offense was malicious or willful. The Court shall also consider attempts made at restitution; the extent of defendant's resources; and, needs of his dependents.
- (3) A Judge shall consider all circumstances to determine whether the maximum penalty or a lesser penalty should be imposed.

**202.615 Defendant Must Be Present.** A person who has been convicted of an offense must be physically in Court at the time that sentence is imposed. The Court will permit the defendant an opportunity to offer remarks or other support to aid in determining the proper sentence.

**202.620 Presentence Reports.** Where a convicted person does not have a repeat history of appearances before the Court, the sentencing Judge may delay imposing sentence until a presentence report has been completed. It is in the discretion of the Court to decide whether a presentence investigation will be done.

- (1) Preparation of the presentence report will be the responsibility of the Parole and Probation Department.
- (2) Information to be provided includes, but is not limited to:

- (a) Prior convictions.
  - (b) Personal characteristics.
  - (c) Financial status.
  - (d) Circumstances affecting defendant's behavior.
  - (e) Home situation.
  - (f) Circumstances of the offense.
- (3) The defendant shall be entitled to review and respond to the presentence report.

**202.630 Labor for the Tribes.**

- (1) In the discretion of the Court, any Indian sentenced to jail may be permitted to perform labor for the Tribes. Such person shall be confined to the jail except during actual periods of labor, which will be performed under the supervision of the jailkeeper. Two days' credit on the sentence will be awarded for each full day of labor.
- (2) Where a sentence imposed for a criminal conviction consists of a fine only, and the convicted person cannot pay that fine, the following options are available for enforcement:
- (a) The convicted person may elect to labor for the Tribes at a credit rate of \$10 a day for each full day of labor. When not performing actual labor, he shall be confined to the jail; or
  - (b) The convicted person may elect to remain in jail without performing labor, with a credit on the fine of \$5 for each day spent in jail.

**202.635 Restitution.** In addition to any other sentence imposed, the Court may order restoration damages or compensation be paid by an offender who has inflicted intentional injury upon the person or property of another. Restitution may be ordered through surrender of property or payment of money damages.

**202.640 Suspended Sentence.** Where a jail sentence has been imposed on a convicted offender, the Court has discretion to suspend that sentence and release the person to probation under any reasonable terms and conditions deemed appropriate by the Court, provided that the period of probation shall not exceed the maximum term of sentence specified for that offense in the WSTC.

**202.645 Probation Violations.** A person who violates the terms of probation may be required by the Court to serve all or part of the sentence originally imposed. This may be done

after consideration of all circumstances, provided that revocation of probation occurs by Court Order only after a show cause hearing, as provided for in WSTC 200.615 Failure to Comply.

**202.650 Parole.** In the discretion of the Court, any person serving a specified jail sentence may be eligible for parole after serving one-half of the sentence imposed. Parole shall be granted only upon the signing of a parole agreement and after demonstrated continued good conduct.

**202.655 Parole Violations.** Any person who violates the conditions of the parole agreement may be required by the Court order to complete the whole of the original sentence, as determined by the Court following a show cause hearing at which the offender has an opportunity to explain any reason for violation.