

EXPIRES ON
FEBRUARY 29, 2024

TITLE 4
CRIMINAL PROCEDURE CODE
History and Amendments¹

Title 4 adopted by Tribal Resolution No. 80-120, approved by the Bureau of Indian Affairs and effective on February 25, 1981.

Section 4 revised and amended by Tribal Resolution No. 87-33, approved by the Bureau of Indian Affairs and effective on December 12, 1988.

Title 4 section and page numbering scheme revised and amended by Tribal Resolution No. 89-34, effective on March 21, 1989.

Section 4-1-124(11) amended by Resolution No. 94-1, approved by the Bureau of Indian Affairs and effective on April 18, 1994.

Section 4-1-101 amended definitions for “Peace Officer” and “Police Commission” by Resolution No. 98-115, approved by the Bureau of Indian Affairs and effective on November 18, 1998.

Title 4, Article 2, Juvenile Delinquency Code adopted by Resolution No. 00-172, approved by the Bureau of Indian Affairs and effective when Bureau of Indian Affairs approved it.

Sections 4-1-121(1), (2), and (7) amended by Tribal Resolution No. 2007-66, on March 18, 2007.

Section 4-1-115(5) amended by Tribal Resolution No. 2010-84, on April 13, 2010.

Section 4-1-121 amended by Tribal Resolution No. 2010-52, approved by the Bureau of Indian Affairs and effective on December 10, 2010.

Resolution No. 2021-151 reformatted version of the Criminal Procedure Code with technical changes (see below) and incorporation of previous amendments; **effective until February 29, 2024**. Resolution 2023-212 repeals and replaces the 2021 reformatted version with a fully revised code effective March 1, 2024.

2021 technical changes:

Title 4 – Criminal Procedure Code: This Code incorporates the following various technical edits: Add “Article 1. CRIMINAL PROCEDURES” title; alphabetically arrange the definitions; replace “tribal law and order code” with “Southern Ute Indian Tribal Code;” in Section 4-1-104(2)(b)(iv) change “and” with “at” where it appears necessary; in Section 4-1-104(2)(b)(vi), add the applicable citation Section 4-1-122 where necessary; in Section 4-1-105, subsections (a), (b), and (c) are changed to (1), (2), and (3); “peace officer” is added instead of “officer,” “enforcement officer,” or other law enforcement references throughout Code; in 4-1-106(2) “shall” is changed to “will” where appropriate; change “magistrate” to “judge; in Section 4-1-113, change subsection (a) – (d) with (1) – (4); in Section 4-1-120(4)(a), added “witness” before “statements” and deleted “of such witnesses as well as;” in Section 4-1-121(2) added subsections (a) and (b) instead of two separate paragraphs; in Section 4-1-123, delete “and all” and “such time as,”

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and change “said opening statement” to “one;” in Section 4-1- 125(2), change “provided that such” to “but a;” in Section 4-1-131(2), change “Indian Court Rights Act” to “Indian Civil Rights Act;” and change Article II to Article 2.

In Section 4-1-104(2)(c), there is an obvious typographical error corrected that was identified in a Tribal Court case. In *SUIT v. Henry*, 15 NICS App. 35, fn. 4 (2017), the court stated that “This citation to the code is an obvious scrivener’s error. There is no Section 4-1-104(2)(a)(1). We find that the code intended to refer to Section 4-1-104(2)(c)(i), because that section specifically addresses the advisement of rights and immediately proceeds Section 4-1-104(2)(c)(ii).” Accordingly, the citation 4-1-104(2)(a)(i) is corrected to be 4-1-104(2)(c).

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TITLE 4
SOUTHERN UTE INDIAN TRIBAL CODE
CRIMINAL PROCEDURE CODE

Article 1. CRIMINAL PROCEDURES

4-1-101. Definitions.

- (1) **Arraignment.** Arraignment is an appearance of the accused in court in which he is informed of his rights, the charge against him, receive a plea, if any, and setting bail as appropriate in accordance with this Code.
- (2) **Arrest.** Arrest is the taking of any person in custody by a peace officer that may be held to answer for a tribal offense.
- (3) **Complaint.** A complaint is a written statement sworn to by the complaining witness and charging that a named individual has committed a particular criminal offense and it initiates all criminal prosecutions.
- (4) **Contraband.** Contraband means that property or those articles that are intrinsically illegal to possess such as gambling devices or drugs.
- (5) **Daytime and Nighttime Hours.** Daytime hours mean those between a half hour before sunup and a half hour after sundown. Nighttime hours mean those hours a half hour after sundown and a half hour before sunup.
- (6) **Fresh Pursuit.** Fresh pursuit is the act of following by a peace officer to overtake a person whom the officer has reason to believe has committed a violation of the Southern Ute Indian Tribal Code intending to arrest such person for such violation or to question him. The term shall include and be limited to immediate and uninterrupted chase. Any peace officer as defined by this code shall have authority to engage in fresh pursuit to apprehend and return to this jurisdiction any alleged violator apprehended after this pursuit.
- (7) **Peace Officer.** A peace officer is any commissioned member of any law enforcement department or division of the Southern Ute Indian Tribe and any certified law enforcement officer employed by a federal, tribal, state, county, or municipal law enforcement agency; however, this definition does not alter any jurisdictional provisions or restrictions that exist as a matter of law, nor does it constitute or confer deputization or Southern Ute commission authority.

- (8) **Probable Cause.** Probable cause is a belief by a man of reasonable prudence that an offense has been committed and that it has been committed by the person arrested or accused. It is more than mere suspicion, but less than a quantity of evidence needed to convict the defendant.
- (9) **Police Commission.** A police commission is a delegation of police authority to enforce tribal law on the Southern Ute Indian Reservation and may be issued or revoked by the Southern Ute Indian Tribal police chief with the concurrence of the Southern Ute Indian Tribal Council chairman upon the administration of an Oath of Office by the Southern Ute Indian Tribal Court.
- (10) **Search Warrant.** A search warrant is an order in writing signed by the tribal court judge and directing any peace officer to search for items or articles designated in the warrant and bring them before the Southern Ute Indian Tribal Court. The warrant shall describe the property or place to be searched and shall describe the items to be seized with particularity.
- (11) **Summons.** A summons is a written order or notice directing a person to appear before the Tribal Court at a stated time and place and answer to a charge outlined in the summons against him and charging the commission of a crime by the alleged offender.

4-1-102. Complaint.

- (1) All criminal prosecutions for violation of the Southern Ute Indian Tribal Code shall be initiated by complaint.
- (2) The complaint shall contain:
 - (a) The signature of the complaining witness sworn to before a tribal judge or individuals designated by the chief judge;
 - (b) A written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained;
 - (c) The name or description of the person alleged to have committed the offense; and
 - (d) The section of the tribal code allegedly violated.
- (3) The chief judge of the tribal court may designate an individual or individuals who shall assist persons in writing complaints and who shall screen them for sufficiency. The complaint shall then be submitted without unnecessary delay

to the tribal judge to determine whether a warrant or a summons shall be issued.

- (4) If the complaint alone or in conjunction with sworn statements sufficiently establishes probable cause to believe that a crime has been committed by the person charged, the court shall issue a warrant pursuant to this Code instructing the tribal police to arrest the named accused, or in the alternative, the court shall issue a summons commanding the accused to appear before the court at a specified time and place to answer the charge.
- (5) When an accused is arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether or not probable cause for arrest exists. In no instance shall a complaint be filed later than the time of arraignment.

4-1-103. Arrest.

- (1) No tribal law enforcement officer shall arrest any person for a criminal offense set out in the Southern Ute Indian Tribal Code except when:
 - (a) The officer shall have a warrant signed by a tribal judge commanding the arrest of such person, or the officer knows that such a warrant has been issued; or
 - (b) The offense occurs in the presence of the arresting officer or the officer has probable cause to believe that the person to be arrested has committed an offense.
- (2) Every judge of the tribal court has authority to issue warrants to arrest, and such warrants shall be issued only upon the showing of probable cause and sworn written statement. The tribal judge shall deny the issuance of a warrant if he finds that there is not probable cause to believe that the offense charged has been committed by the named accused.
- (3) The arrest warrant shall contain the following information:
 - (a) The name or description, and address, if known, of the person to be arrested;
 - (b) Date of issuance;
 - (c) Alleged acts that caused the arrest;
 - (d) The section of the Tribal Code alleged to be violated; and
 - (e) The signature of the issuing judge.

4-1-104. Notification of Rights at Time of Arrest.

- (1) Upon arrest, the suspect may be advised of the following rights:
 - (a) That he has a right to remain silent;
 - (b) That any statements made by him may be used against him in court;
 - (c) That he may obtain counsel at his own expense;
 - (d) That he is accused of violating a crime; and
 - (e) That questioning may cease until he has time to obtain counsel or once questioning begins he may stop it at any time in order to obtain counsel.

- (2) Rights of the defendant after arrest:
 - (a) If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before a tribal judge. Thereafter, a complaint or a summons and complaint shall be filed, if it has not already been filed, without unnecessary delay in the Tribal Court and a copy given to the defendant.

 - (b) At the first appearance of the defendant in court, it is the duty of the judge to inform the accused of and make certain that he understands the following:
 - (i) He need make no statement and any statement made can and may be used against him;

 - (ii) He has a right to counsel at his own expense and to consult with an attorney at his own expense before any further proceedings are held;

 - (iii) Any plea he makes must be voluntary on his part and not the result of undue influence or coercion on the part of anyone;

 - (iv) He has the right to bail, at the amount of bail that has been set by the court;

 - (v) The nature of the charges against him and the possible penalties; and

 - (vi) He has a right to a trial by a jury of 6 upon the payment of the jury fee required by Section 4-1-122 of this Title and if he makes a

request for a jury trial in writing or in open court, and if the request is made and the fee paid within 10 days of the day he enters his plea.

(c)

- (i) Before any person who is in custody is questioned or in any manner interrogated concerning any possible criminal activity committed by that person, he shall be advised of the following rights:
 - (A) He has a right to remain silent and anything he says can and may be used against him;
 - (B) He has a right to counsel at his own expense;
 - (C) That questioning will cease until he has time to consult with counsel; and
 - (D) He may end the questioning at any time.
- (ii) Any evidence that is obtained either directly or indirectly as a result of any custodial interrogation that is not preceded by the advisement of the rights set forth above in Section 4-1-104(2)(c) shall be suppressed by the court upon the filing of a motion to suppress that evidence. A motion to suppress evidence shall be filed and a hearing held on the motion before trial unless the facts giving rise to the right to suppression of the evidence are unknown to the defendant or his counsel and could not have been discovered by a reasonable inquiry before trial.

4-1-105. Arrest Without a Warrant. Any peace officer may without a warrant arrest any person:

- (1) For a tribal offense committed or attempted in his presence.
- (2) When he has reasonable cause for believing the person arrested has committed an offense. He is justified in making the arrest though afterwards it is found that the offense has not been committed by the party arrested.
- (3) When a person is arrested without a warrant, the officer must inform him of his authority and the cause of the arrest except when he is in the actual commission of a tribal offense or is pursued immediately after the commission of an offense.

4-1-106. Officer Permitted to Break Into a Dwelling House. Any peace officer having authority to make an arrest may enter a dwelling house without permission for the purpose of making an arrest when after notice of his intention he is not allowed admittance in a reasonable time in the following situations:

- (1) Where he has reason to believe that life or limb is in immediate danger; or
- (2) When he is in fresh pursuit of an offender and he fears that the offender will flee the scene or will destroy or transfer out of the jurisdiction evidence or contraband.

4-1-107. Execution of the Warrant.

- (1) The warrant may be directed to any peace officer and shall be executed by any such officer to whom it may be delivered.
- (2) The warrant shall be executed by the arrest of the person. The peace officer need not have the warrant in his possession at the time of the arrest, but upon request, shall as soon as possible but no later than 24 hours after the arrest, show it to the defendant. At the time of making the arrest, the arresting officer must inform the defendant of his rights.
- (3) **Return of Warrant.** Upon service of the warrant of arrest or failure to find and apprehend the accused, the officer to whom the warrant is directed shall endorse and return it to the Southern Ute Tribal Court for filing.

4-1-108. Arrest Pursuant to a State Warrant or Summons.

- (1) Any person found within the boundaries of the Southern Ute Indian Reservation, who is wanted by state authorities for a violation of state law committed outside the jurisdiction of the Southern Ute Tribal Court or as a material witness to a felonious crime and a warrant of arrest or subpoena has been issued from the state court, may be arrested and taken into custody by a peace officer for prompt transfer to the appropriate enforcement agency.
- (2) The arrest and removal of the fugitive or witness will be accomplished in accordance with the procedure set forth in this Code:
 - (a) Copies of state warrants may be presented to the agency branch of law enforcement services whereupon they will be recorded as to the date and time received;
 - (b) The warrant or witnesses will be promptly presented to the tribal court judge of the Southern Ute Indian Tribal Court for a review as to the date, charge, and person named to determine its apparent validity;

- (c) The judge, after satisfying himself as to the validity of the warrant, may issue an order for the arrest of the alleged fugitive from justice or witness.

4-1-109. Summons in Lieu of Warrant.

- (1) When otherwise authorized to arrest a suspect, a tribal police officer or judge may, in lieu of a warrant, issue a summons commanding the accused to appear before the tribal court at a stated time and place and answer to the charge.
- (2) The summons shall contain the same information as a warrant except that it may be signed by a police officer.
- (3) If a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.
- (4) No summons will issue except in a case where a complaint has been filed pursuant to procedures outlined in this Code.

4-1-110. Issuance of a Search Warrant.

- (1) Every tribal judge shall have the power to issue a warrant for the search and seizure of property, premises, or persons located within the exterior boundaries of the Southern Ute Indian Reservation.
- (2) No warrant or search and seizure shall be issued except upon probable cause that a search will discover:
 - (a) Stolen, embezzled, contraband or otherwise criminally possessed property;
 - (b) Property which has been or is being used to commit a criminal offense; or
 - (c) Property which constitutes evidence of the commission of a criminal offense.
- (3) Probable cause shall be supported by a written statement sworn to before an impartial judge based upon reliable information. If an unidentified informant is used, the source of his information and the foundation of his trustworthiness, and the events which have led to his conclusions must be described with particularity.
- (4) Search warrants shall issue only on affidavits sworn to or confirmed before the impartial judge relating facts sufficient to:
 - (a) Identify or describe as nearly as may be possible, the premises, the person, place or thing to be searched;

- (b) Identify or describe the property to be searched or seized or inspected.
- (c) Establish the grounds for issuance of the warrant or probable cause to believe such grounds exist;
- (d) Establish probable cause to believe that the property to be searched or seized or inspected is located at, in, or upon the premises, person or place or thing to be searched;
- (e) A copy of the affidavit and a copy of the transcript of testimony taken in support of their request for a search warrant shall be attached to the search warrant filed with the court. A copy of the affidavit shall be attached to the warrant upon execution.

4-1-111. Execution in Return of Search Warrant.

- (1) Warrants of search and seizure shall only be executed by tribal law enforcement officers and only during daylight hours unless the court determines an emergency exists and orders the search after sundown and before sunrise. The executing officer shall return the warrant to the tribal court within the time limits shown on the face of the warrant which in no case shall be longer than 10 days from the date of issuance. Warrants not executed within such time limits shall be void.
- (2) No peace officer shall execute a search warrant without determining if there is any person in control of the building, vehicle, structure, or container to be searched. If the peace officer discovers such person, he shall inform him of the existence of a search warrant and the peace officer's intent to search. Should the person in control of the property refuse to admit or relinquish control of the property or if no person shall be found, the peace officer may break open any of the property or place and conduct a search.

4-1-112. Disposition of Seized Property.

- (1) The police shall make an inventory of all property seized by warrant or otherwise, and a copy of such inventory shall be left with the person from whom the property was taken. The original inventory shall be filed with the court along with the return of the warrant.
- (2) A hearing shall be held at tribal court to determine the disposition of all property seized by the police. Upon satisfactory proof of ownership, property shall be delivered to the owners unless the property is contraband or it is to be used as evidence in a pending case. Property which is used as evidence and not contraband shall be returned to the owner after final judgment. Property

confiscated which is contraband shall become the property of the Southern Ute Indian Tribe.

- (3) Any vehicle used in drug traffic shall be considered as contraband and become the property of the Southern Ute Indian Tribe.

4-1-113. Search Without a Warrant. No tribal law enforcement officer shall conduct any search without a valid warrant except:

- (1) Incident to making a lawful arrest; or
- (2) With consent of the person being searched; or
- (3) When he has probable cause to believe 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 and has reason to believe that it will be immediately removed from the jurisdiction.

4-1-114. Arraignment.

- (1) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular scheduled session of court.
- (2) **Rights of the Accused at Arraignment.** Before an accused is required to plea to any criminal charge, the judge shall read to the accused and determine that he understands the charges against him, the section of the Tribal Code which he is charged with violating and the possible authorized penalty. The court shall advise the accused that he has the right to remain silent, to be tried by a jury, to be represented by counsel at his own expense, and that the arraignment will be postponed should he desire to consult with counsel.
- (3) **Receipt of Plea at Arraignment.** If the accused pleads not guilty to the charge, the judge shall then inform him of a trial date and set conditions for bail before trial.
- (4) If the accused pleads guilty to the charge:
 - (a) The judge shall determine that the plea is made voluntarily and that the accused understands the consequences of the plea including the rights he is waiving by the plea, including the right to trial by jury, the right to be

confronted by one's peers, the right to be represented by counsel of his choice, and the right to testify or not testify as he may choose.

- (b) The judge shall again explain the crime and determine that there is a factual basis for defendant's guilty plea.
 - (c) The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he deems necessary for the imposition of the sentence.
 - (d) Before sentencing the accused shall be afforded an opportunity to inform the court of facts in mitigation of the sentence.
- (5) **If the Accused Refuses to Plea.** If the accused refuses to plea, the judge shall enter a plea of not guilty on his behalf.

4-1-115. Bail.

- (1) **Release Before Trial.** Every person charged with a criminal offense before the Tribal Court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is necessary to assure the appearance of the defendant at any time required:
- (a) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and at all other required times;
 - (b) Release to the custody of a designated person or organization agreeing to assure the accused's presence;
 - (c) Release with reasonable restrictions on the travel, association or place of residence of the accused during the period of release;
 - (d) Release after deposit by the accused or any other person of a bond and cash or pledge of sufficient collateral in an amount specified by the judge or bail schedule. The judge in his discretion may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered;
 - (e) Release after execution of a bail agreement by two responsible members of the community; or
 - (f) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.
- (2) **Bail Release by Police Officer.** Any tribal police officer authorized to do so by the court may admit an accused person to bail pursuant to the bail schedule or

release upon personal recognizance. The police officer shall have available a bail schedule prepared by the court or tribal council which shall be used for setting a money bond where such condition of release is deemed necessary. Any police officer who refuses to release an accused on bail or who specifies a bail condition that the accused is unable to satisfy shall bring such accused before a tribal judge for a review of the release conditions at the first available opportunity and without unnecessary delay.

- (3) **Bail Release Pending Approval.** Every person who has been convicted of a tribal offense and who has filed a petition for a writ of habeas corpus shall be treated in accordance with the provisions of Section 4-1-115(1) above, unless the judge has substantial reason to believe that no condition of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a threat of imminent danger to the community, to the accused or to any other person.
- (4) **Considerations in Determining Bail.** The court, in determining bail, should consider the following circumstances:
 - (a) Circumstances of the offense charged;
 - (b) Accused's family's ties, employment, financial resources, character, and mental condition;
 - (c) Length of the accused's residence in the community;
 - (d) Accused's record of conviction; and
 - (e) Accused's record of appearance or failure to appear at prior court proceedings.
- (5) **Protection Order against Defendant.**
 - (a) There is hereby created a mandatory protection order against any person charged with a crime under the provisions of this title, which allegedly involves violence or the threat of violence against an Intimate Partner, as defined in section 2-2-105(2), or another member of the person's household, which order shall remain in effect from the time that the person is released on bond, pursuant to the bond schedule, until further order of the Court.
 - (b) Such order shall restrain the defendant from any contact with the alleged victim(s) of the acts charged and may include any other order against the defendant that the Tribal Court deems appropriate to protect the safety of the alleged victim(s), including:

- (i) An order restraining the defendant from harassing, stalking, threatening, molesting, intimidating, retaliating against, or tampering with any victim or family member of a victim;
 - (ii) An order prohibiting possession or control of firearms or other weapons; or
 - (iii) An order prohibiting possession or consumption of alcohol or controlled substances.
- (c) Before a defendant is released, the Court shall inform the defendant of the protection order effective by this section, including any orders issued under subsection (b), and shall inform the defendant that a violation of such order is a crime under this Article and is punishable by contempt.
 - (d) The Tribal Court shall require that the defendant acknowledge the protection order as a condition of any bond for the release of the defendant and shall further ensure that the terms of the protection order issued by this section are included on the bond form as well as any other conditions of any bond for the release of the defendant.
 - (e) The protection order issued under this section shall be on a standard form and a copy shall be provided to the protected parties.

4-1-116. Withdrawal of Guilty Plea. The court may allow a defendant to withdraw a plea of guilty whenever it appears that the interest of justice and fairness would be served by so doing.

4-1-117. Standards Governing Appearance of Attorneys and Counsel. No defendant in a criminal proceeding shall be denied the right to counsel at his own expense. Counsel shall be admitted to practice in tribal court as prescribed by this Code.

4-1-118. Subpoenas.

- (1) Any party may request issuance of a subpoena for appearance of a witness or for any physical evidence which is relevant, necessary to the determination of the case and not an undue burden on the person possessing the evidence. The clerk of the court may issue subpoenas which have been signed by a tribal judge and which are to be served within the confines of the reservation.
- (2) A subpoena shall bear the signature of the tribal judge or clerk of the tribal court and it shall state the name of the court, the name of the person, or description of physical evidence to be subpoenaed, the title of the proceeding and the time and place where the witness is to appear or the evidence is to be produced.

(3) **Service of Subpoenas:**

- (a) A subpoena may be served at any place within or without the confines of the reservation, but any subpoena to be served outside the reservation shall be issued personally by a judge of the tribal court. The subpoena may be served by any police officer or any other person appointed by the court for that purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his place of residence with any competent person 18 years of age or older who also resides there.
- (b) Proof of service of the subpoena shall be filed with the clerk of the court by noting on the back of the copy of the subpoena the date and name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(4) **Witnesses:**

- (a) Each witness answering a subpoena shall be entitled to a fee of \$2.00 for each day his services are required in court. In addition, the court may order the payment of reasonable travel and living expenses of the witness.
- (b) **Fees and Expenses.** Witness fees provided for in this section shall be paid by the Tribe upon completion of the trial, but such expenses may be taxed as cost against the defendant if he is found guilty; provided, however, that no defendant shall be incarcerated solely because of his inability to pay such costs immediately.
- (c) If the court finds that a complaint was not filed in good faith but with frivolous or malicious intent, the court may order the complainant to reimburse the Tribe for expenditures incurred under this section, and such order shall constitute a judgment upon which execution may levy.

4-1-119. Joinder.

- (1) **Joinder of Offenses.** Two or more violations may be charged in the same complaint in a separate count for each offense if the offenses charged are based on the same act or transaction or series of acts or transactions.
- (2) **Joinder of Defendants.** Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act, transaction, or in the same series of acts, or transactions constituting an offense or offenses. Such defendants may be charged on one or more counts together or separately, and all the defendants need not be charged on every count.

- (3) **Trial Together of Complaint or Summons and Complaint.** The court may order two or more complaints tried together if the offenses and the defendants, if there are more than one, could have been joined in a single complaint. The procedure shall be the same as if the prosecution were under such single complaint.
- (4) **Relief from Prejudicial Joinder.** If it appears that a defendant or the prosecution is prejudiced by a joinder of offenses or of defendants in a complaint or by such joinder for trial together, the court may order separate trial of counts or grant a severance of defendants or provide whatever other relief justice requires. Upon motion, any defendant shall be granted a separate trial as of right if the court finds that the prosecution probably will present evidence against the joint defendant (other than reputation or character testimony) that would not be admissible in a separate trial of the moving defendant.

4-1-120. Discovery.

- (1) The police or prosecutor shall, upon written request within 5 days before trial, permit the defendant or his attorney:
 - (a) To inspect and copy any statement or confession or copies made by the defendant or any witness;
 - (b) To inspect any physical evidence within the possession or control of the police or prosecutor;
 - (c) To copy and inspect any reports made by any person or agency in the matter before this court.
- (2) In addition, the prosecutor shall present the defendant or his attorney with a list of all known witnesses within 5 days before trial. The prosecutor or the police shall disclose to the defendant or his attorney any statement, evidence, or test results which would tend to disprove the defendant's guilt or reduce the penalties in the case.
- (3) The court may, within its discretion, allow discovery less than 5 days before trial.
- (4) The defendant or his attorney and the prosecutor shall reveal by written notice to the opposing party at least 5 working days before a trial or hearing in the matter, the names of all witnesses the party intends to call at trial or at a hearing, the nature of any affirmative defense the defendant intends to use at trial and the existence of any reports of tests the prosecution or the defense intends to use at trial:

- (a) If the defendant intends to call any witnesses or introduce into evidence any reports or tests, the defendant shall provide the prosecution with a copy of any witness statements and the reports or tests.
- (b) The court may shorten the time the list is to be submitted before trial if the opposing party would not be prejudiced thereby.

(5) Enforcement of Discovery Provisions.

- (a) When either the prosecution or defense refuses to comply with this section, the court can order compliance upon motion of the prejudiced party.
- (b) If such noncompliance is at a date so as to irreparably prejudice any party, the court may, in its discretion, postpone trial if no prejudice will accrue to the defendant or refuse to admit into evidence anything that discovery should have been had upon but that was not had.
- (c) If any party refuses to comply with these sanctions, the court may find that party in contempt of court, and in addition, if the prosecution refuses to comply with these sanctions, the court may dismiss the case against the defendant with prejudice.

4-1-121. Juries.

- (1) **Qualification of Jurors.** The basic qualifications of a juror shall be: Any person who is a duly enrolled member of the Southern Ute Indian Tribe who has reached his 18th birthday, has been a resident of the Southern Ute Indian Reservation for 90 days, who has not been adjudicated as incompetent or been appointed a guardian by a court of competent jurisdiction, and who has not been convicted of a felony in any jurisdiction. Despite the foregoing, no elected member serving on the Tribal Council shall be required to serve on a jury of the Tribal Court, whether that service is requested by judicial summons or by some other means of compulsion.

(2) Selection of Jury Panel.

- (a) The clerk, upon order of the tribal court, shall prepare a list of the names of eligible jurors, through a random and impartial selection process. These names shall then become the jury list until a new list is prepared. If that list proves to be inadequate, additional names may be added to the list in the same manner as set forth by order of the tribal judge.
- (b) When an insufficient number of jurors respond when summoned, or where by challenge the number of jurors is reduced below the number required

for that case, the judge shall command the police to summon and return forthwith with a sufficient number of eligible jurors to complete the panel.

- (3) **Jury Panels.** Within 2 days after receipt of an order of the tribal court judge directing to be summoned, the clerk shall notify by mail, or by service of notice in person by the police department, all prospective jurors, of the date, time, and place that the jury trial will be held. The clerk shall notify the parties or their attorneys of any of the names of the jurors summoned.
- (4) **Challenge.**
 - (a) A challenge is an objection made to the trial jurors and is of 2 kinds: (i) of the panel; or (ii) to an individual juror.
 - (b) A challenge to the panel is an objection in writing made to all the jurors returned, and may be taken by either party. The panel may be challenged when (i) there is an error in the procedure used in summoning the jurors, (ii) bias can be shown, or (iii) there is an omission to summon one or more of the jurors drawn.
 - (c) All challenges for cause must be taken first by the defendant and then by the Tribe. Preemptory challenges may be taken by either party at any time during the seating of the jury and before the jury is sworn.
 - (d) **A Challenge for Cause.** A challenge for cause may be made by the Tribe or by the defendant, and must specify the facts constituting the causes. It may be made for any of the following causes:
 - (i) Having served as a juror in a civil action brought against the defendant for the act charged as an offense;
 - (ii) Being a party adverse to the defendant in a civil action, or having complained against or been accused by the defendant in a criminal action;
 - (iii) Being a witness or a victim in the pending criminal action;
 - (iv) Having formed or expressed an opinion as to the guilt or innocence of the defendant as would prevent the juror from rendering a fair verdict upon the evidence submitted on the trial;
 - (v) A relationship between the juror and the defendant that in the opinion of the judge would cause a juror to be unable to render an impartial decision.

- (e) **Failure to Challenge for Cause.** Failure to challenge shall constitute a waiver of the basis for challenge.
- (f) **Preemptory Challenges.** A preemptory challenge can be taken by either party and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court may exclude him. The defendant is entitled to 2 and the Tribe 2 preemptory challenges. If two or more defendants are jointly tried for any public offense, the Tribe and the defendant shall be entitled to 2 preemptory challenges which, on the part of the defendants, must be exercised jointly.
- (g) After each challenge sustained for cause or made preemptorily, another juror shall be called, may be challenged for cause, and shall be subject to preemptory challenge.

- (5) **Jury Oath.** When a jury has been selected, the judge shall administer to the jurors the following oath:

You and each of you do solemnly swear and affirm that you will try the issues relative to the cause now on trial according to law and the evidence presented in this case, and shall at all times obey the instructions and orders of the court in this matter.

- (6) **Continuance.** If the case is to be continued, the jury shall then be notified of the new date for trial and no further notice to them of the date is required. Penalty for failure to appear at the time to which the trial is continued is contempt of court.
- (7) **Jury Fees.** Every person chosen and summoned to serve on the jury shall be entitled to a fee of \$40 per day plus any reasonable mileage or expense which the tribal judge deems fair. It shall be the duty of the Tribe to pay such jury fees.
- (8) **Limit.** If a person serves as a juror on a case which goes to trial, he shall not be called again to serve on jury duty within any one calendar year without his express written permission.
- (9) The term of the court shall run from October 1 to September 30. The jury list shall be dated annually for every term of court.

4-1-122. Jury Requests. In all criminal cases, the defendant shall be entitled upon filing a written request and paying a \$25 jury fee to have the case heard and decided by a jury of not less than 6 persons. The court may, in its discretion, waive the jury fee if it believes the defendant is indigent and cannot pay the fee and if the defendant so requests either in writing or orally in an open court for such a waiver.

4-1-123. Order of Proceedings at Trial.

- (1) Unless otherwise agreed by the parties as circumstances dictate reasonable change, a trial in all criminal matters shall be as follows:
 - (a) The clerk shall summon all jurors, if any.
 - (b) Six jurors shall be called at random from those summoned.
 - (c) The defendant and the Southern Ute Indian Tribe shall be entitled to challenge for cause preemptorily any of the jurors summoned until the jury is chosen.
 - (d) The judge shall make preliminary instructions to the jurors after they have been sworn in.
 - (e) The prosecution may make an opening statement or reserve its opening statement until the prosecution's case is closed and before the defendant presents any evidence.
 - (f) The prosecution shall then proceed with its case in chief, allowing the defendant to cross-examine each witness immediately after the prosecution has examined the witness.
 - (g) The defendant shall then give his opening statement if he has reserved one.
 - (h) The defendant shall then proceed to present any evidence he wishes to present allowing the prosecution to cross-examine any witnesses presented.
 - (i) The prosecution shall then be allowed to call rebuttal witnesses and present any evidence on rebuttal so long as the evidence responds directly to any evidence presented by the defendant or the cross-examination of the defendant or any prosecution witnesses.
 - (j) The prosecution shall then be entitled to make a closing statement.
 - (k) The defendant shall then be entitled to make a rebuttal statement.
 - (l) The judge shall then instruct the jury of the law they are to apply.
 - (m) The jury shall then deliberate in secret without contacting any person out of the jury concerning the case and shall not return a verdict unless the verdict is unanimous. The jury may, if it has questions, direct any questions in writing to the judge who will inform both parties of the

question and of his answer. If the jury is unable to reach a verdict, the court shall declare a mistrial and dismiss the jury.

- (n) When a verdict is returned, and before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire from further deliberation or may be discharged.
- (o) After the prosecution has presented its case in chief and after all evidence has been presented in the case, the defendant or the court may move for a judgment of acquittal of one or more of the offenses charged.

4-1-124. Sentencing.

- (1) **Sentencing in General.** A person judged guilty of an offense under this Code shall be sentenced in accordance with this part.
- (2) **General Principles.** The sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense, and the rehabilitative needs of the defendant.
- (3) **Sentences.**
 - (a) The court may, as provided for in this part, sentence a person judged guilty of an offense to any one of the following sentences or combinations of these sentences:
 - (i) To pay a fine;
 - (ii) To remove from or disqualification of public office, or both, but only if that is specifically provided for as punishment for conviction of a specific offense;
 - (iii) To probation or suspension of sentence on such terms and conditions as the court may direct;
 - (iv) To imprisonment or confinement either full or part time.
 - (b) The court shall also have the authority to order a person judged guilty of an offense to pay any of the following amounts or do the following acts:
 - (i) Pay court costs not to exceed \$25;
 - (ii) Pay any civil penalty provided by law.

- (iii) Pay money damages, surrender property, or perform any other act for the benefit of any person or party injured personally or in his property by the person judged guilty provided such injuries are fairly attributable to the act or failure to act constituting the offense for which the guilt was determined.
 - (c) The court shall have the authority in compliance with the provisions of Title 9 of this Code to exclude and remove any person from the Southern Ute Indian Reservation if it finds that such person is a serious danger to the Tribe or its members. A person is a serious danger to the Tribe or its members if that person has committed any of the following as defined in this Code:
 - (i) Three or more offenses of assault, assault and battery, mayhem or any combination; or
 - (ii) Criminal homicide if the court finds that the criminal homicide is done purposefully or knowingly; or
 - (iii) Three or more of any sexual offenses as defined in this Code, except indecent exposure; or
 - (iv) Five or more offenses against property as defined in this Code; or
 - (v) Two or more offenses of endangering the welfare of a child as defined in this Code.
 - (d) Where a person has been charged and convicted of any offense under the laws of the United States of America and such offense (a) takes place within the exterior boundaries of the Southern Ute Indian Reservation, and (b) is substantially similar to any of the offenses outlined above in Subsection (c), such offense shall be counted just as if it were a violation of the Tribal Code for the purpose of this section.
 - (e) This section shall not deprive a court of its authority to cite for contempt, cancel or suspend a license, forfeit property, or do any other act or make any other order authorized by law.
- (4) **Maximum Fines.** Maximum fines and sentences of imprisonment contained in each offense defined are maximums only and the court has leeway to fine or sentence to imprisonment within the maximum allowable limits set forth in each offense, or both.
- (5) **Payment of Fines and Other Monies.**

- (a) Fines shall be paid in cash unless upon request of the defendant the court allows payment by commodities of like value or by other means. The court may, upon request of a defendant or on its own motion, allow that any fines or other required payments be paid in installments or on conditions suitable to the means of the defendant.
 - (b) Upon default payment of any fine, the court may, if justice requires, impose an additional sentence of incarceration of no more than one day for each \$10 of the required money left unpaid.
 - (c) Methods available for collecting a civil judgment shall be available to collect any unpaid money upon order of the court following a failure to make any required payment, and ascertainment of the reason therefor.
 - (d) When justice requires, the court may revoke or remit a fine or any unpaid portion or any other monies required to be paid or may modify the terms and conditions of payment.
- (6) **Decision to Impose a Fine.** In determining whether to impose a fine and its amount, the court shall consider:
- (a) The financial resources of the defendant and the burden that payment of a fine will impose in regard to his other obligations;
 - (b) The ability of a defendant to pay a fine on an installment basis or on other conditions to be fixed by the court;
 - (c) The extent to which payment of a fine will interfere with the ability of the defendant to make any ordered restitution or reparation to the victim of the crime; and
 - (d) Whether there are particular reasons which fine appropriate as a deterrent to the offense involved or appropriate as a corrective measure for the defendant.
- (7) **Concurrent and Consecutive Sentences.** Unless the court shall direct otherwise in its pronouncement of a sentence, all sentences shall run concurrently and not consecutively. The court shall consider the gravity and circumstances of the offense and the history, character, and rehabilitative needs of the defendant as well as the need to protect the public in determining whether to impose consecutive sentences. Upon request by the court, a pre-sentence report from the probation or parole officer shall be given to the court before determination of sentencing.

- (8) **Credit for Pretrial Imprisonment.** Credit against a term of imprisonment imposed following a judgment of guilty may be given to the defendant in the discretion of the court for all times spent in custody as a result of the criminal charge for which the sentence is imposed or as a result of the conduct on which such charge is based.
- (9) **Reduction of Sentences.** The court, upon its own motion or the motion of any party, may reduce the sentence in terms of either the fine or the imprisonment if new factors bearing on the sentence become known. Such a reduction or modification shall be done in open court.
- (10) **Sentence Proceeding.** As soon as practicable after determination of guilt and the examination of any pre-sentence reports or recommendations, proceedings shall be held at which time the court shall:
- (a) Hear submissions by the parties on the facts relevant to the sentence;
 - (b) Hear arguments by the defendant or his counsel and by the prosecution officer or attorney on the applicability of various sentencing alternatives;
 - (c) Afford the defendant an opportunity to make a statement to the court;
 - (d) Hear any basis before a plea, if such was entered, and appropriate recommendations based on the plea agreement;
 - (e) Make specific findings on all controverted issues of fact which are deemed relevant to the sentencing decisions;
 - (f) Ascertain and consider all credits due the defendant as a result of prior periods of incarceration;
 - (g) Carefully state and assure that a record is made of the precise terms of the sentence imposed and assure that those responsible for executing the sentencing be informed of such terms;
 - (h) State for the record the reasons for selecting the particular sentence imposed; and
 - (i) Require that a record be kept of the sentencing with a verbatim recording or transcription if possible.
- (11) **Suspension of Sentence and Probation.** Upon suspension of a sentence, the court may place a convicted defendant on probation for a period not to exceed one year, and as a condition of probation, may require the defendant:
- (a) To meet family responsibilities.

- (b) To devote himself to a specific employment or occupation.
- (c) To undergo available medical or psychiatric or other rehabilitative treatment, and to enter and remain in a specified institution.
- (d) To prescribe a course of study or vocational training.
- (e) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- (f) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons.
- (g) To refrain from the use of all intoxicants, narcotics, or drugs, the sale of which is controlled by the state or federal government except for those taken or used under a doctor's orders and obtained by a doctor's prescription or Peyote taken in conjunction with religious ceremonies or when used as medication if this is an accepted practice of the person sentenced.
- (h) To have in his possession no firearms or other dangerous weapon, as specified by the court.
- (i) To make restitution to the victim of his crime.
- (j) To remain within the jurisdiction of the court and to notify the court of any change in employment or address.
- (k) To report to the court or probation officer on a periodic basis.
- (l) To post a bond conditioned on the performance of any of the foregoing.
- (m) To satisfy any other conditions recently related to the rehabilitation of the defendant and not incompatible with his freedom of conscience or unduly restrictive of his liberty given his status as a probationer.
- (n) Defendant shall be given a copy of the requirements of his probation stated clearly and concisely and to be used as a guide during this period of probation.

(12) **Penalties not Otherwise Specified.** Any person who commits any unlawful act as defined in any Title of the Southern Ute Indian Tribal Code or a criminal violation of any provision of the Southern Ute Indian Tribal Code for which there is no specific criminal penalty stated, shall be sentenced to a term of imprisonment not to exceed 1 year and a fine not to exceed \$1,000, or both the

term of imprisonment and the fine. In addition, the court shall order restitution to any victims of the crime, which may include the Tribe itself.

4-1-125. Parole.

- (1) Any person sentenced by the court to detention or labor shall be eligible for parole at such time and under such reasonable conditions as determined by the court.
- (2) Any person who violates the conditions of his parole may be required by the court to serve the whole of the original sentence, but a revocation of parole shall not be ordered without a hearing before the court at which time the offender shall have the opportunity to explain his actions. Before the time of the hearings, the parole violator will know the nature of the alleged parole violation.
- (3) Parole may include any conditions set forth under the probation section in this Code and must include a copy of parole requirements to be given to the defendant and to be used as a guide during the period of parole.

4-1-126. New Trial.

- (1) **Motion for New Trial.** The court, on motion of the defendant, may grant him a new trial if required in the interest of justice. If the trial is to the court without a jury, the court, on motion of defendant for new trial, may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.
- (2) **Time.** A motion for new trial other than one based on the ground of newly discovered evidence shall be made within 14 days after a verdict or finding of guilty or within such further time as the court may fix.
- (3) **Newly Discovered Evidence.** A motion for new trial based on newly discovered evidence may be filed at any time. Newly discovered evidence shall be that evidence which was not reasonably discoverable at the time of trial.

4-1-127. Dismissal.

- (1) **By the Prosecution.** No case pending in any court shall be dismissed or a nonprosecution entered unless upon a motion in open court and with the court's consent and approval. Such a motion shall be supported by a statement concisely stating the reasons for such action. This dismissal may not be entered during the trial without the defendant's consent.
- (2) **Dismissal by the Court.** If there is unnecessary delay in the trial of a defendant, the court may dismiss the case. If a trial of a defendant is delayed more than 90 days after the filing of a complaint or a summons and complaint,

unless the delay is occasioned by the action or request of the defendant, the court may dismiss the case and the defendant shall not thereafter be tried for the same offense.

4-1-128. Service and Filing of Papers. Written motions, other than those which are heard ex parte. Written notices and similar papers shall be served upon adverse parties.

- (1) **Service, How Made.** Whenever under these rules or by court order, service is required or permitted to be made upon a party represented by an attorney, this service shall be made upon the attorney. Unless service upon the party himself is ordered by the court, service upon the attorney or upon a party shall be made in a manner provided for under civil actions unless otherwise ordered by the court.
- (2) **Notice of Orders.** Immediately upon entry of an order made out in the presence of the parties, and after the complaint or summons and complaint is filed, the clerk shall mail to each party affected a notice of the order and shall note the mailing in the docket.

4-1-129. Records.

- (1) **Docket.** The court or clerk shall keep a record known as the court docket and shall enter in it each action to which these statutes are applicable. The docket shall be appropriately indexed so that all entries may be readily located.

4-1-130. Procedure Not Otherwise Specified. If no procedure is specifically prescribed by this Code, the court may proceed in any manner not inconsistent with this Code.

4-1-131. Verdict.

- (1) **Verdict Forms.** Before the jury retires, the court shall submit to it, written forms of verdict for its consideration.
- (2) **Several Defendants.** If there are two or more defendants, the jury at any time during its deliberation, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all the defendants, the defendant or defendants as to whom it does not agree may be tried again as is consistent with the "Indian Civil Rights Act," 25 USC 1301, et seq.

Article 2. SPECIAL PROCEDURES RELATING TO JUVENILE DELINQUENTS

4-2-101. Legislative Declaration. By providing separate procedures to be used in cases relating to juvenile delinquents, it is the intention of the Southern Ute Indian Tribal Council to separate children committing juvenile offenses from the legal

consequences of criminal behavior whenever possible; to substitute therefor a program of supervision, care, and rehabilitation consistent with the protection of the community; to provide a forum in which any child charged as delinquent or as a status offender in another jurisdiction may be referred to the Southern Ute Indian Tribal Court for adjudication, disposition, or supervision; and to recognize that substance abuse is a disease that may be prevented and treated.

4-2-102. Definitions.

- (1) **Detention Facility.** A facility whose primary purpose is confinement.
- (2) **Juvenile.** A child; a person who is under the age of 18.
- (3) **Juvenile Delinquent.** A juvenile who commits a juvenile offense before his or her 18th birthday and who is adjudicated delinquent.
- (4) **Tribal Court.** The Southern Ute Indian Tribal Court.

4-2-103. Jurisdiction.

- (1) The jurisdiction of the Tribal Court with respect to juvenile delinquency shall extend to all proceedings involving a child who is accused of committing a juvenile offense within the exterior boundaries of the Southern Ute Indian Reservation or whose case has been transferred to the Tribal Court for adjudication, disposition, or supervision from another jurisdiction.
- (2) The Tribal Court's jurisdiction shall extend to the child and the child's parent(s), guardian(s) or custodian(s).

4-2-104. Applicability of Other Provisions of the Criminal Procedure Code.

- (1) The procedures set forth in the Criminal Procedure Code shall apply to juveniles and juvenile offenses, except as otherwise specifically provided in these procedures relating to juveniles or as determined by the court in the interest of justice. In applying provisions of the Criminal Procedure Code to juveniles and juvenile offenses, the term complaint shall refer to the petition and the term defendant shall refer to the child who is accused of a juvenile offense. All provisions of this Title shall be interpreted together to provide the procedures applicable to the investigation, arrest, prosecution and sentencing of juveniles, consistent with the legislative declaration.
- (2) A finding that a child is a juvenile delinquent shall not be deemed a criminal conviction.

- (3) Persons not directly involved with the proceedings shall be excluded from all juvenile delinquency proceedings unless the court orders otherwise.

4-2-105. Powers of the Court.

- (1) The court shall have the authority to issue and enforce all orders relating to juvenile delinquency proceedings. The court shall have the power to issue and enforce all appropriate orders necessary to its jurisdiction, including the power to sanction for contempt.
- (2) If necessary to protect the best interests of the child, the court may appoint a guardian ad litem. Such an appointment may be made in addition to the appointment of counsel for the child.

4-2-106. Juvenile Offenses. A child commits a juvenile offense if he or she is under the age of 18 and commits a violation of the Southern Ute Indian Tribal Code.

4-2-107. Petitions.

- (1) Formal proceedings against a child alleged to be a juvenile delinquent shall be initiated by a petition filed by the Tribal Prosecutor on behalf of the Southern Ute Indian Tribe. The child's parent(s), guardian(s) or custodian(s) shall be served with a copy of the petition and notice of the proceedings against the child. If no parent, guardian, or custodian can be located and served with a copy of the petition and notice of the proceeding, the court shall appoint a guardian ad litem for the child, who shall be served instead.
- (2) The petition shall contain:
 - (a) the name and general description of the child;
 - (b) the child's date of birth;
 - (c) the tribal affiliation, if any, of the child and parents;
 - (d) the names and addresses of the parent(s), guardian(s), or custodian(s);
 - (e) a statement describing the conduct constituting the offense charged, including the date and time of the alleged offense; and
 - (f) the section of the tribal code allegedly violated.

4-2-108. Arrest.

- (1) A judge may issue a warrant for the arrest of a juvenile when the judge finds, on the basis of an affidavit or sworn testimony, that there is probable cause to believe that the juvenile has committed a juvenile offense.
- (2) A juvenile may be taken into custody and detained in accordance with the provisions of the Criminal Procedure Code if the officer has probable cause to believe that the juvenile has committed a juvenile offense.

4-2-109. Notification of Rights.

- (1) Upon his or her first appearance in court, a juvenile shall be advised of the rights as set forth in the Criminal Procedure Code, except that the juvenile shall not have the right to a jury trial.
- (2) Whenever a juvenile is informed of his or her rights as required, such juvenile shall also be informed of the following additional rights:
 - (a) The right to have a parent, guardian, custodian, or counsel present during any questioning or interrogation or when making any statement of any kind;
 - (b) The right to apply for the services of court-appointed counsel in accordance with applicable resolutions of the Southern Ute Indian Tribal Council providing for the appointment of counsel or the Tribal Public Defender for those accused of juvenile offenses; and
 - (c) The right to have the proceedings remain confidential.

4-2-110. Transfers from Other Courts. The court may accept or decline the transfer of cases from state, federal, or other tribal courts involving children who are alleged to be delinquent or who are alleged to be status offenders for the purposes of adjudication, disposition, or supervision.

4-2-111. Informal Conference.

- (1) When a petition has been filed alleging that a child has committed a juvenile offense, the Tribal Prosecutor may confer with the child and the child's parent(s), guardian(s), or custodian(s) for the purpose of resolving the matter without a formal adjudication.
- (2) Statements made by the child at the informal conference shall not be used against the child in determining the truth of the allegations in the petition.
- (3) The child may be represented by counsel at the informal conference.

4-2-112. Deferred Adjudications.

- (1) At or after the informal conference, upon the basis of the information obtained during the preliminary investigation, the Tribal Prosecutor may enter into a written agreement with the child and the child's parent(s), guardian(s), or custodian(s), guardian ad litem or attorney, specifying particular conditions to be observed during a deferred adjudication period.
- (2) If the child and the child's parent(s), guardian(s), or custodian(s), guardian ad litem or attorney enter into an informal adjustment agreement with the Tribal Prosecutor, it shall be reduced to writing and presented to the court for approval.
- (3) In determining whether a deferred adjudication is appropriate, the court shall consider all relevant factors, including the following:
 - (a) The nature and seriousness of the offense;
 - (b) The previous number of contacts with the police, juvenile probation officers, or the court;
 - (c) The age and maturity of the child;
 - (d) The child's acceptance of responsibility for the offense;
 - (e) The willingness of the child to perform the conditions of the deferred adjudication;
 - (f) The treatment of other juveniles in similar cases; and
 - (g) The participation of and input from the child's parent(s), legal guardian(s) or legal custodian(s).
- (4) No deferred adjudication shall be approved by the court unless the child admits the allegations in the petition.
- (5) If the child successfully completes the requirements of the deferred adjudication agreement, the case shall be dismissed and no further action taken in the case.

4-2-113. Revocation of Deferred Adjudication. If the child fails to successfully complete the requirements of the deferred adjudication agreement, the Tribal Prosecutor may file a motion to revoke the deferred adjudication and adjudicate the child delinquent. The revocation matter shall be heard by the court, and the standard of proof shall be by a preponderance of the evidence. If the child is found to have violated the terms and conditions of the deferred adjudication, then the child shall be adjudicated a juvenile delinquent on the basis of the child's prior admission and sentenced by the court.

4-2-114. Medical, Psychological, and Substance Abuse Assessment. The court may order a medical, psychological, or substance abuse assessment to determine the mental or

physical state of the child, so that appropriate steps can be taken to protect the child's health and well-being. Such an examination shall be conducted on an outpatient basis unless the court finds that an inpatient assessment is necessary.

4-2-115. Pre-Adjudication Examination of Disabled Child. Where there are indications that the child may be mentally or emotionally disturbed or developmentally disabled, the court, on the motion of any party or on its own motion, may order the child to be tested by a qualified psychiatrist, psychologist, or other qualified mental health professional before a hearing on the merits of the petition. Such an examination shall be conducted on an outpatient basis unless the court finds that an inpatient assessment is necessary.

4-2-116. Adjudications.

- (1) When a child is found to come within the jurisdiction of the Children's Court as a juvenile delinquent, the court shall make findings of the facts upon which it bases its jurisdiction over the child and the facts that constitute delinquency. The delinquency petition must be proven beyond a reasonable doubt.
- (2) Upon an adjudication, the court may enter orders in the best interests of the child and for the protection of the public, including the following:
 - (a) Place the child on probation in his own home subject to conditions determined by the court;
 - (b) Place the child in the legal custody of a relative or other suitable person with or without probation;
 - (c) Place the child in a juvenile facility, including but not limited to alcohol or substance abuse treatment center, emergency shelter or halfway house; foster home, group home; shelter home or secure juvenile detention facility; or an approved boarding school, a ranch, a forestry camp, or other camp or similar program for care and for work; provided that the person, agency or association operating the facility has been approved by the Southern Ute Indian Tribal Council, either directly or through a delegation of authority;
 - (d) Order the child to be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or order that he receive other special care, and for such purposes place the child in a hospital or other suitable facility;
 - (e) Order the child to be evaluated and treated for substance abuse, domestic violence, or other behavioral problems;

- (f) Order the child to make restitution for damage or loss caused by his wrongful acts or impose fines, or both;
 - (g) Order the child to be employed;
 - (h) Order the child's paycheck or other resources be used to fulfill obligations for restitution or for other obligations imposed by the court; and
 - (i) Order other requirements or conditions related to the rehabilitation of the juvenile, protection of the community, or payment of restitution.
- (3) The court may also impose such conditions as it sees fit, including, but not limited to:
- (a) Restrictions on visitations by parents;
 - (b) Restrictions on the child's associates, occupation, and other activities; and
 - (c) Requirements to be observed by the parent(s), guardian(s) and custodian(s).
- (4) An order under this title for out-of-home placement of a child shall include a date for review of the case by the court with a new date to be set upon each review.

4-2-117. Information from Law Enforcement and Court Records.

- (1) The pleadings, adjudication, disposition, probation records, and evidence presented before the court in proceedings relating to juvenile delinquents shall be inadmissible as evidence against the child in any other proceeding, except as impeachment following a judicial determination that the use of such evidence is both relevant and fair.
- (2) Tribal law enforcement records and court files concerning a child shall be confidential and shall not be open for inspection to any but the following: the child; the child's parent(s), guardian(s), custodian(s), or guardian ad litem; the child's counsel; law enforcement personnel directly involved in the handling of the case; court personnel directly involved in the handling of the case; and any other person, by order of the court, found to have a legitimate interest in the particular case or the work of the court.